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EU Environmental Policies: A short history of the policy strategies

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III.1 Introduction

Many issues under discussion today have a long history. Some issues which were already on the agenda during the 70s have recently returned to the forefront. A short history of policy strategies over the last 20 years therefore offers an insight into the current situation.

This analysis takes as its starting point the six Environmental Action Programmes. These are medium-term programmes and strategic policy documents which reflect the fundamental elements of contemporary environmental thinking and problem perceptions, as well as strategic policy orientation. New action programmes often reflect a change in the general political climate of their time.

But they are not binding programmes for action - even if they contain lists of planned activities. A short history of the Environmental Action Programmes puts the more specific industry legislation into the wider context of environmental policy strategies.

The following analysis of the six EAPs suggests, that in terms of principles, there has been much more continuity than change over the last 30 years. Yet in terms of more specific policy actions, one can observe a gradual learning process. It starts with hot-spot management, and gradually moves towards a more holistic and integrated approach, looking for synergies between business and environmental goals. Progress however has never been linear and European environmental policies over the last 30 years have always been very sensitive to wider economic and political cycles.

III.2 An idealistic start 1973 - 1982

The EC started its environmental policies with an ambitious programme. This contained many elements of today's ideas on "Sustainable Development". After the first United Nations Conference on the Environment in Stockholm in 1972 and growing public and scientific concerns on the limits to growth, the Commission became active in initiating an original Community policy. On the basis of European Council commitments in 1972 to establish a Community environmental policy, the first EAP was decided upon in November 1973⁴.

This programme already established the argument that economic development, prosperity and the protection of the environment are mutually interdependent. It was argued, that "the protection of the environment belongs to the essential tasks of the Community" (ibid.). Among the most important objectives were:

- ▶ the prevention, reduction and containment of environmental damage
- ▶ the conservation of an ecological equilibrium
- ▶ the rational use of natural resources

⁴ in: OJ C112/1 from 20.12.1973

The First EAP emphasised the need for a comprehensive assessment of the impacts of other policies, in an effort to avoid damaging activities. In this way, the First EAP already contained, in an embryonic form, many of the later ideas behind “sustainable development”. Environmental policies in the EC originally had their own environmental justification, without this being subordinated to internal market objectives.

These ambitious targets were formulated in a spirit of optimism as regards the feasibility of far reaching policy change, which became frustrated during the following decades of environmental policy making.

Yet the first steps, as proposed by the First EAP, were more “down to earth”. It proposed a gradual approach to defining environmental quality objectives. This started with research activities on the nuisance of pollutants, on the causes of pollution and on criteria for environmental objectives. At the end of this process a definition of product and environmental quality norms was put forward. The approach was based on the protection of single environmental media (water, air, soil etc.). The First EAP devoted most of its attention to water protection and waste, but it also contained a sectoral approach, with special reference to agriculture and spatial planning. Also mentioned were preparatory activities for emissions control.

The Second EAP (1977 - 1981)⁵ was essentially a follow up to the first in terms of approach and objective, with simply a greater range of problems to be dealt with. Nature Protection received special attention.

In terms of a practical approach the First and the Second Programmes (1973-1981) advocated quality values for water and air. The quality objectives for drinking water were very strict – those for air could be achieved without strong policy intervention.

The evaluation of the practical success of this first period of environmental policy making is, in general, relatively critical. Initial enthusiasm declined considerably during the periods of economic recession (1975 – 1978, 1981 -1983). Nevertheless a number of framework directives, especially for water and waste, were decided during this period.

III.3 Towards the Internal Market 1982 - 1987

The Third EAP (1982 - 1986)⁶ and partially the Fourth (1987 - 1992) reflect a considerable change in policy approach, being much more closely related to the completion of the Internal Market than their predecessors.

The Third EAP emphasised the potential risks and benefits of environmental policies to the Internal Market and issue linkage between the internal market and environmental policies became a key driver for programming and activities. Environmental emissions standards needed to be harmonised to avoid distortions to industry competitiveness. Product regulations had to be

⁵ In: OJ C 139/1 from 13.6.1977

⁶ In: OJ C 46/1 from 17.2.1983; Fourth EAP in: OJ C328/1 from 7.12. 1987.

harmonised to avoid non-tariff barriers emanating from different national product norms. On the other hand, the third EAP emphasised the economic benefits, especially the positive employment effects to be gained from environmental policies.

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The environmental policy approach was also modified. The Third EAP shifted from a quality approach to an emission-oriented approach. It proposed formulating emission limit values for stationary, as well as mobile, sources. But beyond this new approach, in order to introduce better filter technologies for the reduction of emissions at the “end of the pipe”, the objectives of the first and second EAPs were restated. The Third EAP also made positive reference to the first global strategy for “Sustainable Development” formulated by the IUCN in 1980. Waste avoidance, efficient resource use and integrated environmental technologies were some of the objectives of the third EAP.

The practice of environmental policies during the eighties was particularly concerned with clean-air policies, and noise and risk management for industrial sites.

This policy change came about partially as a result of strong German pressure. As a result of the discussion on the ‘Waldsterben’, the economic forest interests involved and emerging pressure from the Green Party, the German government decided on ambitious clean-air policies requiring emission reductions from large combustion plants and cars. During the 1980s, to avoid distortions in competition, German industries and the government successfully lobbied for a harmonised European emissions control policy. Other pioneering countries were also successful in exporting national policy innovations to EU level: a tradition of strategic environmental planning from the Netherlands, a culture of participatory environmental policies from many of the smaller countries, a focus on setting environmental quality objectives from the UK and more recently the reform of chemicals policies in Scandinavian countries.

III.4 Towards environmental policy integration 1987 – 1992 (the Fourth EAP)

1987 is often seen as a turning point in EC environmental policy, since environmental protection received its own chapter in the Treaty. Yet in terms of approach and practice, one finds much more continuity than change, with the Treaty codifying many principles, which can already be found in earlier policy documents. As with the Third EAP, the economics of European environmental policies remained central to the thinking behind the Fourth EAP, with an assumption of harmony between the objectives of the internal market and environmental protection. The harmonisation of environmental standards was to take place at a “high level”. If this condition were met, national measures, which might distort free trade, would not be necessary. Harmonisation at a high level was justified as an essential component of the competitiveness of European industries in global markets.

The Fourth EAP marks a further change in the approach to environmental policy. The shortcomings of the earlier approaches (i.e. quality policy, emissions orientation) were recognised. An

approach which relied entirely on environmental quality objectives was recognised as shifting problems to other media or other regions (the case of long range transboundary pollution). Likewise, it was acknowledged that, an approach which focussed on emission controls for stationary sources was unlikely to achieve certain ecosystem or health based quality objectives. The Fourth EAP instead proposed a more integrated approach. For the first time, environmental protection was not perceived as an additive, but rather as an integrated activity within the whole production process. Part of the integrated approach was to reduce energy or material inputs and to close cycles, so that waste streams could be minimised. Furthermore, pollution control was to systematically control all environmental media (water, air and soil) and involve an evaluation of the problem causing substances. Therefore the Fourth EAP started to discuss a “sectoral approach”, analysing the impact of strategic economic sectors on the environment. For the first time ever, the evaluation of new, incentive based instruments, such as taxes, subsidies or tradable emission permits was announced.

This was an initial commitment for the strategic reorientation of environmental policies in the EC, which gradually took place between 1989 and 1994. The ideas of the Fourth EAP (integrated approach, sector analysis, new instruments) were further elaborated in the following years. This change is often characterised as a “paradigmatic change”, a change from “trade orientation” to a “sustainability frame”. Environmental policy is less perceived as an additive policy and more as an integrated part of economic decision-making.. “Sustainable development” gradually became a normative reference for environmental policy in the EU from the beginning of the 1990s onwards. The incorporation of the environmental dimension and the systematic search for “no regret strategies” were promoted. In other words, win-win situations were identified where both environmental and economic objectives could benefit. The White Paper on Growth, Competitiveness and Employment (*CEC 1993*) proposed a new development model, which tried to create employment and improve the efficiency of resource use by a shift in the relative prices of labour and energy. Sustainable development was perceived as a tool for improving the state of the environment, social efficiency and competitiveness simultaneously.

A number of external factors contributed to the further advancement and elaboration of the new policy approach. Among the most important were the emergence of new global threats (1), the respective preparations for the UNCED conference in 1992 (2), the wider support for economic instruments (3) and a new wave of environmentalism in Europe (4). :

(1) At the end of the 1980s, the debate on global environmental risks, especially that relating to climate change, reached the official agenda. Since 1985 a number of international conferences had been urging for dramatic policy changes. In 1988, following an initiative from the European Parliament taken two years earlier, the Commission reacted to those international changes with its first general communication to the Council. In its second communication to the Council in 1990, the Commission proposed a strategy to stabilise emissions by using a mix of efficiency standards, fiscal instruments and research.

The climate change debate has some inherent characteristics that require environmental policies beyond end-of-pipe technologies. It requires a long-term perspective, since both the impact of climate change and the redundancy of any effective policy measure can only be experienced in

the long run. For CO₂ reduction, traditional end-of-pipe technologies are not yet available. That means that integrated efficient technologies, structural change in the economy, or even new production and consumption patterns are required. Furthermore, CO₂ reduction requires policy changes in several different sectors (such as energy, transport, agriculture and the chemical industry). To give long-term orientation to all those different sectoral actors a target led environmental policy approach, as established with the Kyoto-protocol and the EU commitments on reduction targets, is very helpful.

(2) Its global character required international action, where the Community could play a major role in "regime building" and as a "leader". This last characteristic made it attractive to the Commission because it could be used as a tool for strengthening European integration and the Commission's own role in international politics. Global leadership was an important incentive in drafting a proposal on an energy/CO₂-tax, before the UNCED conference took place in June 1992 (ibid.)

(3) At the end of the 1980s, a new regulatory approach for environmental policies was promoted by the Commission – especially the use of indirect, economic instruments. The Task Force Report on the Internal Market and the Environment (1989) was not the first document but the most explicit early document to propose environmental taxes. The different initiatives of the Commission became authorised by the "Dublin Declaration" of the European Council from June 1990, which asked the Commission to prepare a communication on "economic instruments". In the following years, several studies on the economic, social, and environmental impacts of these new instruments were edited. The pilot project for this new approach - the CO₂/Energy tax - was proposed in May 1992. The tax clearly focused on energy efficiency and fuel substitution, both of which were target-oriented approaches towards structural change. This shift towards economic and fiscal instruments took place in several OECD countries. During this period, the limits of the traditional approach to promote end-of-pipe solutions by regulations had become obvious, namely in the Scandinavian countries, Denmark, the Netherlands, and to a certain extent in Germany. Furthermore, the new regulatory approach fitted better into the "neo-liberal wave" rather than the previous command-and-control approaches, because it focused on market mechanisms, deregulation, and self-regulation.

(4) At the end of the 1980s, there was a mounting wave of environmentalism. Membership of environmental organisations increased considerably. Green parties were popular in several EU countries, and achieved good results at national level and in the European Parliament. Enquiries into environmental preferences confirm the rising level of public expectation between 1988 and 1992. At European level, a considerable number of new ECO (Environmental Citizens' Organisation) offices, mainly establishing access to the EU institutions for their national members, were set up between 1986 and 1992. Their capacity in terms of staff, professionalism and networking with members and experts increased considerably during the nineties. Thus, the new approach was greatly supported by increased public concern for the environment in general and strengthened capacities of "green" organisations and parties in particular.

This strategic reorientation was then explicitly formulated in the Fifth Environmental Action Programme (1992 - 1999).

Among the most interesting and innovative elements of the Fifth Environmental Action Programme were:

- ▶ The principal aim of sustainable development according to the definition of the Brundtland Report.
- ▶ Reference to the sectoral approach, which integrates an environmental dimension into the most polluting sectors (transport, energy, agriculture, etc.), and the limits of old end-of-pipe approaches. Instead, the action programme proposed structural change in favour of public transport, energy efficiency and waste prevention.
- ▶ The emphasis on new instruments, especially on market-oriented instruments such as fiscal incentives or voluntary instruments, which strengthen producers and consumers own interests in environmental decision-making.
- ▶ The new consensus-oriented approach taking into account the crucial role of non-governmental protagonists and local/regional authorities to represent the general interest of the environment. This may contribute to innovative concepts, raise public awareness, and enforce the implementation of EU directives.
- ▶ The setting of medium and long-term objectives for the reduction of some pollutants, and proposed instruments to achieve these objectives.

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Hence, the Fifth Environmental Action Programme had in its philosophical part, all the necessary elements of a policy oriented towards "ecological structural change".

III.5 Roll-Back 1992 - 1995

The new approach of the Commission met considerable resistance from Member States. The period after the UNCED conference can be characterised as a downward cycle of environmental policies.

Unfortunately this bold initiative from the Commission did not find sufficient support amongst Member States. Shortly after the UNCED conference a new agenda was promoted by several Member States, which concentrated mainly on the competitiveness of industries and the decentralisation of environmental policies. This new agenda partly contradicted the ambitious ideas of the 5th EAP. Therefore little progress could be achieved on the more innovative projects of the 5th EAP - whereas decisions on others were taken relatively rapidly.

The proposal for an energy/CO₂ tax, a pilot project for using the new approach, was watered down during two years of negotiations and finally dropped as a Community tax in 1994. In May 1995 the Commission presented a new proposal which re-nationalised the responsibility for introducing such a tax for an interim period. Also, several other initiatives and ideas for reform came to a standstill because of strong opposition from certain industries, from other Directorates General of the European Commission, and from Member States.

Some of these have been well documented, including the watering down of the originally ambitious objectives of the packaging directive in 1994, the delays in the Strategic Environmental Impact Assessment directive proposal (*see chapter V.3.5.2*) and progress in environmental taxation in sectors other than the energy sector (e.g. transport.).

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Member States reacted to the more ambitious elements of the 5th EAP with demands to re-nationalise environmental policies according to the subsidiarity principle. Upon the initiative of Germany and UK, a high level expert group was set up to analyse the potential to reduce regulations that impose excessive costs on the industrial sector. The so-called “Molitor-Group” systematically scrutinised environmental legislation that was only perceived in terms of its perceived cost dimension to the economy (*CEC 1995*). Existing legislation was attacked particularly in the fields of water protection (the drinking water directive), waste (i.e. the principle of proximity; or the promotion reuse systems) and procedural law (Environmental Impact Assessment Directive).

As a response to the new agenda of several Member States a new regulatory approach emerged that focused on procedural requirements, framework directives, voluntary agreements and self-regulatory information and management tools. Such instruments are rather consensus-oriented and require the co-operation of industries. They are less demanding on European standards and are less substantive, but leave more flexibility and leeway to Member States.

As to the principle approach and the objectives, however, the Commission confirmed and further refined the approach of the Fifth EAP in its first and second progress reports on its implementation.

There are a number of reasons for the “roll-back of environmental policies”:

(1) During this period, it became obvious that the Commission was overly optimistic on the willingness of Member States to follow “paradigmatic change”. Some Member States were not willing to follow the new approach in substance. They were reluctant to support the new quality of European integration. The failure of the Fifth Environmental Action Programme was interpreted as a symptom for the limits to European integration in environmental policies.

(2) The pending economic crisis and difficulties in ratifying the Maastricht Treaty contributed to a more cautious attitude from the Commission as regards the promotion of innovative and far-reaching new proposals. Furthermore, the programmatic impetus met considerable resistance from both governments and interest groups – especially from those who would have to bear the costs of such a new approach. Difficulties in getting the Energy/CO₂-tax proposal approved by the Council was just a symptom of the problem of implementing the “paradigmatic change” mentioned above. Evaluative reports concluded that progress on policies directed towards structural change “has been piecemeal and slow”. The reports even observed a standstill in the efforts towards structural change.

(3) Due to reunification the preference structure completely changed in one of the potential leaders of EU environmental policies – Germany.. The discussion on the modernisation of environmental policies there came to a standstill, whereas the economic problems of reunification, especially high unemployment, became a primary concern.

III.6 1997 -2003: The last wave of environmental regulation?

At the end of the 90s one can observe a patchwork of different, partially contradictory trends, with different environmental policy approaches being promoted simultaneously. There was a certain revival of the "sustainability approach" New ambitious legislation – partly strengthening the emissions oriented policies of the eighties - can be observed, as well as continuing attempts at deregulation and diffusion of competencies.

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Sustainability remains on the agenda. After it was strengthened as a Community target in the Amsterdam Treaty from 1997, the Commission and several Presidencies launched an initiative for environmental policy integration, called the Cardiff Process. Environmental policy integration and sustainable development became key elements of a complex architecture of strategy documents. The Commission shifted from its previous top-down approach and its instrumental focus of environmental policy integration towards a broader and less committed approach: basically sectoral Council formations were asked to identify the key problems of their sectors, to define objectives and to formulate activities in order to meet the objectives. Generally most of the sector strategies lacked commitment, were vague and lacked innovation. The hopes of the Commission, that sectoral self-responsibility and voluntary action by transport, agriculture or economic ministers would work, were left frustrated.. Some progress was achieved on indicators, as were some sector targets, namely for transport and energy (*EEB 1999, 2001*). A serious target setting process on some key environmental issues was not launched by the Commission (*see: SRU 2002*).

However the revival of environmental legislation in the late 90s was impressive An unprecedented regulatory boom on many technical but also some very political issues started in 1996. This included :

- ▶ New complex and holistic framework legislation, such as the Ambient Air Quality Directive (96/62), the Water Framework Directive (2000/60) or the IPPC-Directive (1996/61), formulating an ambitious work programme for several decades, while delegating many decisions and tasks to member states, bureaucratic networks or to civil society and business. The reform of European Chemicals Policies launched in the late nineties and proposed in 2003 also belongs to this category. It is still to be seen if these new tools of cooperative governance mobilise sufficient resources and enthusiasm can drive environmental innovation.
- ▶ New target oriented legislation, setting maximum national emission ceilings for key pollutants, but leaving member states the freedom to choose how to achieve necessary reductions. The NEC-Directive (2001/81) is the most sophisticated example of this approach. Based upon long term targets and an assessment of a cost-effective reduction curve, the EU has set nationally differentiated emission ceilings for 4 pollutants. With the 2003 Emission Trading Directive, another target-oriented policy, setting nationally differentiated CO₂-targets – the so called burden-sharing agreement – became legally binding.

- ▶ The Completion, revision or modernisation of existing legislative programmes, such as the daughter directives on air quality (1999/30; 2000/69;2002/3), on emission control for cars (98/69) and lorries (99/96), fuel standards (in 1998) or the large combustion plants (2001) and the incineration directives (2000/76), the landfill directive /1999/31) or the revision of the Seveso, the Ecolabel and EMAS-directives generally lead to more ambitious standards and a more comprehensive system of protection.
- ▶ The introduction of many new environmental policy instruments - namely the establishment of producer responsibility, take back and recovery targets for some waste streams (End of Life Vehicules (2000/53) and WEEE (2002/96), Strategic Environmental Impact Assessment (2001/42) , Environmental Liability (2004), CO₂- Emission Trading (2003/87). All are incentive based instruments, internalising the external costs of giving feed-back to economic and public decisions.
- ▶ New procedural legislation or the revision of existing legislation strengthening civil society rights, notably the three Aarhus pillars: freedom to information, participation rights and access to justice (Directives 2003/4,2003/35 and CEC Directive proposal 2003/624).

Furthermore policy preparation at EU level became much more participatory, inviting environmental NGOs to play a role in committees, expert networks and numerous consultation processes and hence to slightly counterbalance influential industry lobbying at all levels of the Commission. .

Each of those pieces of legislation had more or less serious shortcomings and deficits. However the system of environmental programmes, duties, rights and incentives made impressive progress during that phase. New committed member states, the environmental Commissioners of that period, the strong and constructive support of "rainbow" coalitions in the European Parliament and of a majority of Green and Social Democrat Ministers in the Environmental Council all contributed to the unprecedented dynamics of that period. A "green triangle" of environmental policy making between Commission, Environmental Council and the European Parliament was able to successfully bypass traditional veto players, pursuing economic or institutional interests and succeeded in introducing new instruments, which would have politically failed politically even in so-called pioneering member states without European support. National environmental policies have become mainly EU driven.

III.7 The 6th EAP and the Thematic Strategies

The 6th EAP may fall within a secular change in support for ambitious environmental policies. The overall political agenda is driven by the development concerns of new member states, a new wave of deregulation linked with the debate on European Governance and the increasing relevance of economic considerations. All this is also reflected in a change of political majorities in Europe.

The 6th EAP does not share the ambitious goals of its predecessor. It is both more reluctant to set targets and to identify key instruments. The starting point of the 6th EAP is that so-called persistent environmental problems, such as climate change, the loss of biodiversity or the over-consumption of resources require a broader approach beyond environmental legislation. Furthermore the need for the consolidation of existing legislation is increasing, especially in the view of enlargement. Basically the 6th EAP formulates a framework of general principles and objectives, which will be more specified by so-called thematic strategies on key issues, such as pesticides, resources, recycling, soils, the urban environment, the marine environment, and clean air. The reform of chemicals policy and policies to reduce EU green house gas emissions also belongs to the key policy priorities for this first decade of the new millennium.

The 6th EAP adopts a very cautious approach. It identifies themes and principles. Specification takes place by strategies, which are partially frameworks for further frameworks. The political strategy of the 6th EAP is to postpone potentially contentious and controversial political decisions to later phases or to avoid them altogether by relying on cooperative approaches to environmental policy making. Cooperative approaches with industry, such as integrated product policies, the wider use of standardisation for environmental policies, voluntary agreements, cooperation with Member States' expert fora, or both (e.g. chemicals policy reform) rank high on the political agenda in order to manage complex risks, where knowledge both on the scale of the problem and on the availability of solutions is limited. It is evident that those new governance approaches relieve the legislator and strengthen the role of private and public professionals with specific technical skills. Furthermore the Commission is changing its key role from an initiator of legislation to a manager of policy processes. Environmental policy may hence lose its previous political profile and become more and more a theme for small specialist expert communities. Those communities are responsive to scientific evidence, but the selection criteria for representatives from civil society wanting to participate in those communities has also increased. The cooperative management of the policy processes is very demanding in terms of resources and staff and some processes simply fail to gain momentum because of insufficient public investment, Integrated product policy is certainly a case in point. So it is far from evident that cooperative arrangements deliver more than the traditional regulatory instruments. This applies especially to countries and situations where the negotiation capacity and expertise of public service and of environmental organisations is in the early stages of development. A further problem is that policy approaches become over complex. Holistic and integrated approaches promise to tackle and balance everything with everything at the same time. However the risk is that in the end they amount only to fine rhetoric on principles - and little action.

III.8 Outlook

Future environmental policies need to become refocussed. Persistent environmental problems are the challenge for the forthcoming phase of policy making and should be prioritised. Solving persistent environmental problems needs the involvement of other sectors, but environmental policy will have to play a key role. Setting quantitative and binding targets, which may be nationally differentiated but give direction to Europe's environment as a whole, and defining acceptable

levels of risk and of environmental quality based upon the precautionary principle, will continue to be an environmental policy task. There is also a great deal of scope for improvement in emissions standards, and restrictions or incentives for further preventative behaviour from business and consumers. However, the behaviour of these two groups will not improve if the overall market signals are wrong. Implementation not only requires better cooperation and negotiation with other sectors and with industry, but there will also be a need in the future for someone who is entitled to negotiate on behalf of the environment, such as environmental citizens organisations and naturally the respective environmental authorities. Environmental legislation on targets and quality objectives are key starting points for negotiating with industry and member states. Clean air and climate change policies show that a target led approach can act as driving force for improvement.

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