



EU Environmental Law: Sources, Principles and Instruments

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The significance of the EU Environmental Law-1

- Environmental regulation constitutes a **significant part of the EU Law** in general
- It has contributed to the creation of a **comprehensive** and **effective** **common environmental legal framework for Member States** (up to 80% of environmental norms in EU Member States stem from EU Law)
- It is supported by a **strong enforcement mechanism** based inter-alia on the effective role of the European Court of Justice (ECJ)

The significance of the EU Environmental Law-2

Functions of the EU Environmental Law from an International Law Perspective

- A. EU Environmental Law constitutes a very sophisticated regional legal regime of international environmental law, so that it can be a source of inspiration for other regions
 - B. EU is a fundamental **actor of the international community** in environmental matters, as it plays a critical role in the negotiation, conclusion and implementation of International Agreements, including MEAs
- EU provides additional legal means for the Implementation and enforcement of **International Environmental Law at EU level**



Actors in the EU Environmental Law

- **Council of EU (Formation of the Environment Ministers)**
- **- European Parliament (*732 members directly elected*)**
- **European Commission (*1 per state*)**
- **European Court of Justice (*1 per state*)**

Sources of EU Environmental Law-1

- The Sources of the EU Environmental Law are the following :
- A) The Treaties- **The Treaty on the EU, the TFEU and the Charter of the Fundamental Rights (EU Primary Law)**
- B) The International Treaties to which the EU is a party which bind both the EU Institutions and the MS (Article 216 para. 2 TFEU). MEAs are concluded mainly both by the EU and the MS (“mixed agreements”)
- C) The EU Legislation adopted in the application of the Treaties (**EU Secondary Law**)
- **D)** The Decisions of the EU Courts (Court of Justice of the European Union, General Court)

Sources of EU Environmental Law-2

Article 288 TFEU

To exercise the Union's competences, the institutions shall adopt regulations, directives, decisions, recommendations and opinions.

A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.

Some preliminary remarks

- „EU legislation lies behind some 80% of national environmental legislation.”
- The great majority of EU environmental law is comprised of Directives
- Proper interpretation is a must!
- CJEU is the most important source of interpretation of the EU Environmental Law
- „The precedents of the Court’s judicial practice are important sources of shaping and interpretation of the law.”.

EU Competence in Environmental Matters-1

- **General EU Law Principle:** The principle of conferred powers set in Article 5 TEU requires that the EU shall act only within the limits of competence conferred upon it by the MS in the Treaties to attain the objectives set out therein.
- **The competences are defined in Articles 2-6 TFEU**
- **The EU has no exclusive competence in protecting the environment** (except for the exclusive competence on the conservation of marine living resources under the common fisheries policy)
- Pursuant to Article 4 para. 2 lit. e' TFEU the environment is classified among the 11 **shared competences**. Article 2 para. 2 of the TFEU, which regulates the exercise of shared competences, confers **the EU the power to legislate and to adopt legally binding acts in the relevant shared areas. MS can act only if the EU has chosen not to.**

EU Competence in Environmental Matters-2

- **Article 192 of TFEU is the specific legal basis in the field of the environment and confers the EU the competence to adopt all the measures, which are supposed to realize the objectives set in Article 191 of the TFEU**
- **The EU competence on environmental matters is defined in relation to a wide area, such as the environment (there is no definition of the environment in the Treaties). In any case, “environment” is determined in a broader sense (including e.g. landscape management, safeguarding human health).**

EU Competence in Environmental Matters-3

- Moreover, the extent of the competence is determined by the purpose of the designed measures to contribute to the realization of the objectives set in Article 191 TFEU, which are defined in broad terms.
- The competence conferred to EU by Articles 191 and 192 TFEU is, thus, not limited to the adoption of substantive rules for the protection of the environment but also includes the adoption of procedural instruments, which can contribute to the better implementation of the EU Environmental Law

EU Competence in Environmental Matters-4

- Due to the classification of the environment as a shared competence, the EU action should be based on two principles:
- A) The subsidiarity principle (Article 5 para.2 TEU)-
- **The Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level**
- **The principle contains two tests that have to be cumulatively satisfied:**
 - a) a negative one “the objectives cannot be sufficiently achieved by the MS and b) a positive one “they are better achieved at the EU level by reason of the scale or the effects of the proposed action”
- **The subsidiarity test can be easily met in case of environmental issues transfrontier in nature, such as the biodiversity loss, the depletion of ozone layer and the climate change**
- **B) Proportionality Principle (Article 5 para. 4 TEU)**
- The content and the form of the Union Act shall not exceed what is necessary to achieve the objectives set in the Treaties



The Objectives of the EU Environmental Policy

■ Article 191 para.1 TFEU :

- preserving, protecting and improving the quality of the environment
- protecting human health
- prudent and rational utilisation of natural resources
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular climate change

The role of principles in EU Environmental law

- A. Principles:** a) Their legal binding character cannot be denied, especially for those which are established in the Treaties
- b) Principles are to be distinguished from rules.
- c) Principles are critical for the interpretation of rules, for filling gaps in rules, and for providing standards for weighing conflicting rules

B. General Principles with specific environmental relevance

- 1) The sustainable development principle
- 2) The high level of environmental protection
- 3) The integration principle
- 4) The subsidiarity principle

Sustainable development in EU Law

- **A. It is established as a general objective of the EU (Art. 3.3, 3.5).**
 - “DETERMINED to promote economic and social progress for their peoples, taking into account the principle of sustainable development [...]” (TEU, Preamble)
 - “The Union [...] shall work for the sustainable development of Europe [...]” (TEU, Art. 3.3)
 - “[...] the Union [...] shall contribute to peace, security, the sustainable development of the Earth [...]” (TEU, Art. 3.5)
- **B. Sustainable (“prudent and rational use”) Use of natural Resources and sustainable management of global natural resources are objectives for the EU as a whole (Article 21.2.f and 191, 2)**

The Integration principle

- Article 11 TFEU stipulates that “ environmental protection requirements must be integrated into the definition and implementation of the Union Policies and activities, in particular with a view to promoting sustainable development”. (See also Article 37 of the European Charter of Fundamental Rights)
- **The environmental requirements which have to be considered are the objectives, the principles and the criteria set in Articles 2 and 191 TFEU.**
- **Definition includes every stage of the legislative process,** namely from the definition of the policy objectives to the adoption of the concrete piece of legislation or its revision

The high level of environmental protection

- Article 191.2 TFEU stipulates that the Union policy on the environment shall aim at a high level of protection, taking into account the diversity of situations in the various regions of the Union. The same obligation is enshrined in Article 3.3 TEU and Article 37 of EU Charter of Fundamental Rights.
- As the obligation does not contain only a high level of environmental protection, but also an improvement of the quality of the environment, the requirement has a dynamic nature. **The obligation is tempered though by the requirement to take the differences between various regions of the EU into account. The relevant provision does not determine the ways in which the EU should achieve such a high level of protection.**



Specific Environmental Principles in EU Primary Law

- **Article 191.2 TFEU**
- 1. The prevention principle
- 2. The precautionary principle
- 3. The rectification of environmental damage at source
- 4. The polluter pays principle

The prevention principle

- The principle originates from international law (Principle 21 of the Stockholm Declaration) and is enshrined in numerous MEAs (on marine environment, climate, waste and protection of the biodiversity).
- In the international law context, the principle is closely associated with the no harm principle
- The principle **calls for taking action to prevent environmental damage from occurring rather than repairing it.**
- **Article 191.2 TFEU establishes the principle without determining the modalities of its application**
- The principle is implemented through numerous Directives (Environmental Impact Assessment Directive, Industrial Emissions Directive, Water and Waste Framework Directives, SEVESO III Directive)

The precautionary principle-1

- **When does the principle apply? In accordance with settled-case law, the precautionary principle is not designed to protect purely hypothetical risks.**
- **In accordance with the Commission Communication the principle applies only when there are reasonable grounds for concern that the potentially dangerous effects on the environment, human, animal or plant welfare plant may be inconsistent with the high level of protection chosen by the Community**
- **The two stages for the application of the principle: a) risk assessment and b) risk management**

The precautionary principle-2

- **Scientific Risk Assessment** aims to provide a rigorous as possible scientific basis for managing the risks. **Risk assessment is a systematic scientific process, which involves the identification of the hazard , the dose-response assessment, the exposure assessment and the risk characterization .**
- **Risk Management** is the decision taken by the politicians and the administrative authorities on the basis of the findings of the risk assessment after the consideration of both the legislative requirements and the economic, political, normative or even ethical dimensions of the problem. **Risk management relates thus to the determination of the acceptable level of risk.**

The polluter pays principle-1

- The main function of the principle is that polluters should bear the cost of the measures aiming at restoring the pollution that they have caused or the measures aiming at preventing immediate harm to the environment.
- Polluter pays principle and preventive principles should be seen as complementary aspects of a single reality. **In this sense, the true aim of the polluter pays principle would be, by means of the appropriate instruments, to encourage pollutants to reduce their level of pollution instead of being content to pay charges**

The polluter pays principle-2

- The principle aims also at the “internalization” of the cost of both the pollution prevention and control measures and the environmental or resource costs, which have to be reflected in the market prices-**This is the efficiency interpretation of the principle**
- **The principle is also viewed as a manifestation of the equity principle**, as it holds the polluter accountable for the pollution he has created in order to avoid passing on costs to third parties who did not contribute to the creation of the pollution



The source principle

- **The principle requires that environmental damage should be rectified at source as a priority.**
- The principle has been widely applied in the area of waste management. (“proximity principle concerning waste disposal)
- References to the principle can be found in the Directive 2008/103 on environmental quality standards in the field of water policy and in the Directive 2002/95 on waste electrical and electronic equipment.

Major instruments of EU environmental law

Administrative procedures and instruments

- notification,
- registration,
- classification,
- authorisation,
- product classification,
- prohibitions, obligations,
- control, monitoring,
- voluntary instruments,
- economic instruments,
- public participation
- procedural issues

Major instruments of EU environmental law

- A major classification is between the “**command and control**” **policy instruments and the new environmental policy instruments (including economic instruments)**
- **Command and Control Policy Instruments:** notification, registration, classification, authorisation, product classification, prohibitions
- **Economic Instruments:** Those policy instruments which may influence environmental outcomes by changing the cost and benefits of alternative actions open to economic agents. They aim to do so by making the environmentally preferred action financially more attractive.’ (OECD, 1997, p. 20).
- **Economic Instruments :** a) environmental taxes b) environmental fees or charges and c) emissions trading