

Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

The Manual was published by Earthscan/Routledge from 2010 to 2012. It was designed as an on-line interactive reference work and annual printed versions were also produced.

This section is the text of the Manual as published in 2012. It is therefore important to note the following:

- The contents have not been updated since 2012 and no guarantee is given of the accuracy of the contents given potential subsequent developments.
- The sections include links to external websites (e.g. to legal texts). These links continue to work as long as those links are not broken by those websites.
- The sections also include the original links that enabled interactivity within the published on-line version of the Manual. These links no longer work.

© Copyright IEEP 2014

The Manual should be cited as follows:

Farmer, A.M. (2012) (Editor). Manual of European Environmental Policy. 1043pp. Routledge, London.

Environment in the Treaties

For a long period of time, the European Community (as it was then) had nothing that could properly be described as environment policy and, though some early measures did relate to the environment, they were adopted with common market objectives in mind using the then Article 100 (e.g. vehicle noise, labelling of chemicals).

The turning point came in 1973 when, following a Declaration by the Community's Heads of State and Government in October 1972, an Environmental Action Programme was issued (see below). It spelt out action that the Commission would propose to reduce pollution and nuisances; improve the natural and urban environments; deal with environmental problems caused by the depletion of certain natural resources; and promote awareness of environmental problems and education. This prompted the adoption of some of the first pieces of 'environmental' legislation, including the Birds Directive [79/409/EEC](#) in 1979.

By 1987, some 200 items of environmental legislation had been agreed, under either the then Article 100 (now Article 115 TFEU) (on the approximation of laws affecting the functioning of the Common Market), or under the 'catch-all' Article 235 (now Article 352 TFEU). The lack of a clear legal base for the Community's environmental policy was criticized in several Member States, particularly in Germany, and by the United Kingdom¹. However, following an Inter-Governmental Conference (IGC) in 1986 to amend the Treaty, a new 'Environment Title' (Articles 130r–t) was introduced by the 1987 Single European Act. This, for the first time, provided explicit legal underpinning to the Community's environment policy.

The objectives of the Environment Title were very broad, enabling the Commission to propose legislation in areas where it had previously been reluctant to tread, such as the protection of wildlife habitats, or the freedom of access to environmental information. These objectives were to preserve, protect and improve the quality of the environment; contribute towards protecting human health; and ensure a prudent and rational utilization of natural resources. Action relating to the environment was to be based on the principles that preventive action is to be taken; that environmental damage should be rectified at source; and that the polluter should pay. The Single European Act also introduced the important principle that 'environmental protection requirements shall be a component of the Community's other policies'.

In preparing its action in relation to the environment, the Community was to take into account available scientific and technical data; environmental conditions in the various regions of the Community; the potential benefits and costs of action or lack of action; and the economic and social development of the Community as a whole. Action could be taken in instances where it was felt that the objectives would be better achieved at the Community level than by individual Member States. However, it stated that Member States would not be prevented from maintaining or introducing more stringent measures than those set at the Community level, so long as they were compatible with the overall objectives of the Treaty, for example the internal market (former Article 130t).

The Maastricht Treaty

The Maastricht Treaty of 1992 strengthened the Community's commitment to environmental protection by including, as one of its basic tasks, the promotion of 'sustainable and non-inflationary growth respecting the environment' (Article 2). Article B of the Common Provisions of the Treaty similarly refers to 'economic and social progress which is balanced and sustainable'. Though some environmentalists were disappointed that the full Brundtland definition of sustainable development (1987) was not included in the Treaty, and many considered that 'sustainable growth' could easily be interpreted as 'sustained growth'; nevertheless this change reflected a symbolic step towards greening the Treaty. The Articles in the Environment Title were also strengthened, so that policy was to 'aim at a high level of protection', and be based on the 'precautionary principle' as well as those principles set out in the Single European Act. Furthermore, the requirement on integration introduced in Article 130r was reinforced, such that 'Environmental protection requirements must be integrated into the definition and implementation of other Community policies'. In addition, a 'Declaration by the Member States on Assessment of the Environmental Impact of Community Measures' was annexed to the Treaty, adding more weight to the environmental commitments now enshrined. This stated that 'The Conference notes that the Commission undertakes in its proposals, and that the Member States undertake in implementing these proposals, to take full account of their environmental impact and of the principle of sustainable growth'.

The Maastricht Treaty also strengthened the role of the European Parliament in developing environment policy, by establishing the co-decision procedure in which it has equal power to the Council, and extending the number of policy areas where the Council could adopt environmental legislation using Qualified Majority Voting (QMV) rather than unanimity (see section on EU institutions for further information on QMV). This was a positive step in two respects. Firstly, the European Parliament had traditionally been 'greener' than the Council; and secondly, extending QMV removed the power of veto, which in theory would make environmental standards easier to agree. However the cooperation procedure remained the norm for environment policy, and unanimity was still required in the Council in matters primarily of a fiscal nature, town and country planning, land-use (with the exception of waste management and 'measures of a general nature'), the management of water resources and decisions affecting a Member State's choice of energy sources and structure of its energy supply.

The Amsterdam Treaty

Sustainable development was made an explicit objective of the EC with the agreement of the Amsterdam Treaty in 1997. This amended Article 2, such that: 'The Community shall have as its task ... to promote throughout the Community a harmonious, balanced and sustainable development of economic activities, sustainable and non inflationary growth ...'. The Amsterdam Treaty also strengthened the requirement to integrate the environment into other European Union (EU) policy sectors by bringing it to the beginning of the Treaty (Article 6) (rather than it being hidden away in the Environment Title) and explicitly stating that 'Environmental protection requirements must be integrated into the definition and implementation of

the (other) Community policies ...'. Furthermore, a non-binding Declaration attached to the Treaty committed the Commission to undertake to 'prepare environmental impact assessment studies when making proposals which may have significant environmental implications', building on the Maastricht Declaration which only required it to take 'full account' of the environmental impact of proposals. These two developments gave DG Environment much more power in promoting integration within the Commission. Article 6 gave rise to new approaches to environmental policy development, including the (Cardiff Integration Process) and the (EU Sustainable Development Strategy).

As with its predecessors, the *Amsterdam Treaty* made changes to the way in which decisions were to be made. Co-decision became the normal process for agreeing environment policy, thus further enhancing the role of the European Parliament (with the exception of fiscal measures etc.). It was also extended to transport policy and Trans-European Networks (TENs), and to the Structural Funds' implementing Regulations. The Treaty also renumbered Articles. The broad objectives, set out in Article 174 (now Article 191 TFEU) provided the Community with legal competence to act in all areas of environmental policy.

The Nice Treaty

The Nice Treaty was signed in February 2001 and came into force on 1 February 2003. It reformed the institutional structure of the EU to facilitate the enlargement of the EU in May 2004, a task which was originally intended to have been done by the Amsterdam Treaty. One of the most significant changes for environmental policy was with regards to changes in the QMV system. The Treaty established a system involving a double majority of Member States and votes cast, and in which a Member State could request verification that the countries voting in favour represented a sufficient proportion of the Union's population. Thus, a new weighting of Council votes came into force on 1 November 2004, which saw the smaller Member States having more votes relative to their population than larger Member States.

The Lisbon Treaty

After the failed Constitutional Treaty, the Lisbon Treaty finally came into force on 1 December 2009. The Lisbon Treaty is in fact a set of amendments to the two main treaties governing the EU: the Treaty on European Union ([TEU](#)) and the Treaty establishing the European Community (TEC). The second one was given a new name, the Treaty on the Functioning of the EU ([TFEU](#)). The Treaty left the core treaty provision (Articles 174–176 of the TEC) on environmental policy substantively unchanged. However, these are now Articles 191–193 of the TFEU. Article 6 of the TEC is now Article 11 of the TFEU and remains unchanged. However, the previous Article 2 of the TEC has been repealed and replaced by Article 3 of the TEU. The new Article is somewhat strengthened, because now instead of calling for the '*sustainable development of economic activities*' it establishes that the Union '*shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment*'. In addition, clarification is included on the EU's responsibilities to the global environment as Article 3 goes on to say that '*in its*

relations with the wider world, the Union shall contribute to peace, security, the sustainable development of the Earth'. Thus the Treaty gives a strong legal mandate for the EU to pursue its objective of sustainable development not only of Europe but beyond. A summary of the most significant changes affecting EU environmental policy in successive treaties is set out in Table 1.

Table 1. A summary of the significant changes affecting European Union (EU) environmental policy in successive treaties

Year signed	Year in force	Treaty	Changes affecting environmental policy
1957	1958	Rome	- No mention of environment.
1986	1987	Single European Act	- Environmental Title added. - Article on Integration added. - Qualified Majority Voting (QMV) for the internal market.
1992	1993	Maastricht	- 'Sustainable growth respecting the Environment' becomes one of the tasks of the Community (Article 2). - Environment Title strengthened to include mention of 'precautionary principle'. - Integration Article (Article 130r) was reinforced. - The number of policy areas where the Council could adopt environmental legislation using QMV was extended. - Co-decision strengthened the role of the European Parliament in developing environment policy.
1997	1999	Amsterdam	- Article 2 strengthened so that 'Sustainable development of economic activities' made an explicit objective of the EU. - Integration Article given more prominence (Article 6). - Co-decision became the normal process for agreeing environment policy.
2001	2003	Nice	- QMV changed to establish a double majority of Member States and votes cast.
2007	2009	Lisbon	- Environment Title (174–176 of the TEC) substantively unchanged but numbering changed (now Articles 191–193 of TFEU). - Integration Article now Article 11. - Article 2 strengthened so that the EU shall work for the 'sustainable development of Europe' and the 'sustainable development of the Earth' (now Article 3 of the TEU).

Significantly, the Lisbon Treaty makes energy policy formally an area of 'shared competence' between the Union and the Member States, with its own specific chapter or Title XXI Article 194 of the TFEU. This will empower the institutions to adopt Directives and Regulations not only for the sake of the internal energy market, but

also to ensure security of supply and ‘promote energy efficiency and energy saving and the development of new and renewable forms of energy’. However, a crucial proviso remains that measures adopted under the new energy article ‘shall not affect a Member State’s right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply’ (Article 194 (2)). This could limit the scope for ambitious EU initiatives on energy policy, including those with environmental goals. Although this wording is designed to protect national sovereignty in matters of energy policy, including over the use of nuclear energy, many measures that would be relevant from a sustainable development perspective are bound to affect the choice between different sources of energy; in fact, this is their very purpose. If there is a clear environmental rationale and strong political support for such measures, they could, however, still be adopted under Article 192 of the TFEU, provided unanimity can be reached within the Council.

The Treaty fully integrates ‘fisheries’ into the Agriculture chapter (Article 3 (1) of the TFEU). However, the explicit inclusion of the conservation of ‘marine biological resources’ under the Common Fisheries Policy, based on the existing case law of the European Court of Justice, may further shift responsibility for the protection of marine biodiversity in matters related to the Common Fisheries Policy from Member States to the EU. This may not unanimously be welcomed by the environmental community and Member States which are more critical of the EU’s track record on environmental integration in fisheries policy.

The co-decision procedure became known as the ‘ordinary legislative procedure’ with the entry into force of the Lisbon Treaty (Article 294 TFEU), thus implying that what used to be the exception in decision making has become the norm for most policy areas. The Lisbon Treaty increases the range of policies in which the European Parliament has co-decision powers, including to agriculture and fisheries (with some important exceptions, such as agricultural price support and fisheries quotas). This logical extension of the democratic process could potentially have important implications in policy areas with large ecological footprints. Although the European Parliament has traditionally been supportive of environmental policy, its views on agriculture have also been heavily coloured by the farming community and lobby groups. Therefore, the impact of this significant extension of the Parliament’s powers is difficult to predict. The Lisbon Treaty also eliminated the distinction between compulsory expenditure (including CAP expenditure) and non-compulsory expenditure; thus for the first time extending the Parliament’s influence to the whole budget.

Today, the growing corpus of ‘environment policy’ is effectively composed of two elements: what is traditionally the field of environment Ministries (for example air and water pollution) and the policies of other Ministries (for example transport policy) to advance the cause of environmental protection in both the short and long term. The two elements inevitably overlap, and both are necessary for achieving ‘balanced and sustainable development of economic activities’. The thematic chapters in this Manual are primarily concerned with the first. However, the chapters in Part D provide an overview of the links between environmental policy and other sectors of EU policy and of action taken to integrate environmental requirements into these other sectors. In addition to Articles 191–193 (ex-Articles 174–176 TEC) in the

Environment Title of the Treaty, several other Articles are also relevant to environmental protection and the development of Community policy in this area. These are listed in Table 2.

Table 2. Relevant Treaty Articles (Consolidated Version of the Treaty on the Functioning of European Union)

Article(s)	Subject
PART ONE – PRINCIPLES*	
11	Integration
PART THREE – POLICIES AND INTERNAL ACTIONS OF THE UNION	
38–44	Agriculture (including CAP)
90–100	Transport
114–118	Approximation of laws
26–27	Internal market
170–172	Trans-European Networks
176	Structural Funds
191–193	Environment
194	Energy
PART FIVE – EXTERNAL ACTION BY THE UNION	
206–207	External trade
208–211	Development Cooperation
216–219	International Agreements
PART SIX – INSTITUTIONAL AND FINANCIAL PROVISIONS	
223–234	European Parliament
235–236	The European Council
237–243	The Council (Article 238 QMV)
244–250	The Commission
251–281	European Court of Justice (including infringement proceedings)
288	Types of legislation
294	Co-decision procedure
PART SEVEN – GENERAL AND FINAL PROVISIONS	
335–358	General powers

*Ex-Article 2 on objectives of the EU became Article 3 of the TEU.

The scope of Community environment policy

The broad objectives of EU environmental policy as set out in Articles 191–193 (ex-Articles 174–176) provide the Community with legal competence to act in all areas of environmental policy. However, it is clear from the Treaty that this competence is not exclusive and that it is shared with the Member States. In practice, the scope of the Community's intervention in environmental policy is limited by two major factors.

- (i) The first is the principle of ‘subsidiarity’, which restricts action at EU level to those areas where it can be more effective than national or regional interventions. The principle was first introduced specifically in relation to environment policy in the Single European Act, and later given legal force in relation to all Community policies in the Maastricht Treaty. Procedures have since been introduced within the Commission to screen legislative proposals for their conformity with the subsidiarity principle. Partly as a result of this, some environmental Directives have taken the form of ‘framework’ legislation, leaving Member States with considerable discretion in their implementation.
- (ii) The second factor limiting the scope of the Community’s environmental policy has been the continuing requirement in the Treaty for the unanimous – rather than majority – support of Member States in the Council of Ministers for Community action in areas which most Member States regard as particularly sensitive. Examples include ‘green’ taxation, quantitative management of water resources, town and country planning and certain aspects of energy policy.

As a result, the corpus of Community environmental legislation gives relatively comprehensive coverage to air and water pollution and waste management, but contains very few items which apply, for example, to land-use planning or traffic management. Such Community interventions as there are in these areas tend to take less prescriptive forms, such as guidance or the provision of financial support for the exchange of good practice. Having said this, broad quantitative water objectives are now established by the Water Framework Directive [2000/60/EC](#) and assessment processes in the Floods Directive [2007/60/EC](#).

Environmental Action Programmes

To date, the EU’s Environmental Action Programmes have effectively had two main purposes: they suggest specific proposals for legislation that the Commission intends to put forward over the next few years; and they provide an occasion to discuss some broad ideas in environmental policy and suggest new directions for the future. The first five action programmes (see [Table 3](#)), were merely political statements of intent. However, as a result of the Maastricht Treaty (1992), the [sixth Environment Action Programme](#) takes the form of a Decision, adopted jointly by the Council and the European Parliament under the ordinary legislative procedure (see section on EU decision-making processes) (previously known as the co-decision procedure). Proposed by the Commission in January 2001, and adopted in July 2002, it is the result of a formal inter-institutional decision-making process embodying a formal commitment of the three institutions.

Table 3. Action programmes on the environment

	Period covered	Date approved	OJ reference
1st	1973–1976	22.11.73	C112 20.12.73
2nd	1977–1981	17.05.77	C139 13.06.77
3rd	1982–1986	07.02.83	C 46 17.02.83

4th	1987–1992	19.10.87	C328 07.12.87
5th	1993–2000	01.02.93	C138 17.05.93
6th	2002–2012	22.07.02	L242 10.09.2002

Unlike previous programmes, the sixth Environmental Action Programme (see section on The sixth environmental action programme and the thematic strategies) takes a thematic and ‘strategic’ approach to environmental issues. It contains no new targets and timetables, and few direct references to specific legislative proposals. Instead, it provides for details to be set out in seven Thematic Strategies (see section on The sixth environmental action programme and the thematic strategies) covering soil; the marine environment; pesticides; air quality; the urban environment; the sustainable use of natural resources; and waste recycling. These Thematic Strategies, which were elaborated during the period 2002–2006, marked a different approach to the development of EU environmental policy, but their effectiveness has not yet been proven.