5

International co-operation: the European Union

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5.1 Introduction

International policy making is a complex and time-consuming business. At a national level, in a democratic system, people are accustomed to well-defined decision-making bodies like governments and parliaments, exercising full jurisdiction over their territories and taking decisions in accordance with carefully defined, consistent rules and procedures. Decision making on these lines is both open and accessible and allows interest groups and citizens to exercise their rights of public participation and to make use of the opportunities for lobbying politicians and governments. As a rule, these activities receive plenty of attention in the media. The criterion in the decision-making process is clear: the decision taken should be in the interests of the country as a whole. Moreover, those who bear ultimate responsibility for such decisions, i.e. the elected politicians, have to face their constituencies from time to time in order to defend them. Once decisions have been taken, there is likewise a well-defined system of implementation and enforcement to ensure that they are made effective.

Internationally, however, the situation is entirely different. There is a wide variety of regimes, each of which covers a limited territory and deals with a limited range of subjects. In a large number of cases, such regimes have no powers in their own right and are instead dependent on the unanimous agreement of the participating states. These states, in turn, are generally eager to maintain unlimited jurisdiction over their own territories. Self-interest is paramount. Hence the criterion for decision making in a regime is the maximisation of the aggregate benefit to all participants. The process is one of negotiation, characterised by confidentiality. It is a closed system, which defines its own rules, based on unanimity. There is little scope for incorporating any checks and balances. As a rule, systems of implementation and enforcement are inefficient and sometimes totally absent. It is difficult, therefore, for citizens and interest groups to interfere with the process and media coverage is limited. International negotiations are

the work of governments, seldom of elected politicians, and the result is a lack of proper public accountability.

This chapter discusses the decision-making process in relation to environmental policy under the regime of the European Union. In many respects, this regime is quite extraordinary. When it was established in the 1950s under the name of the European Community, the six founding member states agreed to create a well-equipped supranational regime with its own institutions, administration, court and sources of funding, that could in principle be endowed with its own supranational powers. These would override national sovereignties. Given the sensitivity of nation states to any diminution of their powers, it was agreed at the outset that all important decisions and particularly those that would entail the transfer of sovereignty, would be taken only on the basis of unanimity.

The European Community has gradually expanded over the years, not only in terms of the number of member states, but also in terms of the areas covered by common policies and in the systems, procedures and competencies in relation to decision making. Although the European Community was not created for the purpose of producing an environmental policy, the environment has emerged as an important policy area. This chapter provides a historical perspective on the development of process of environmental policy making within the European Union, breaking it down into four separate periods.

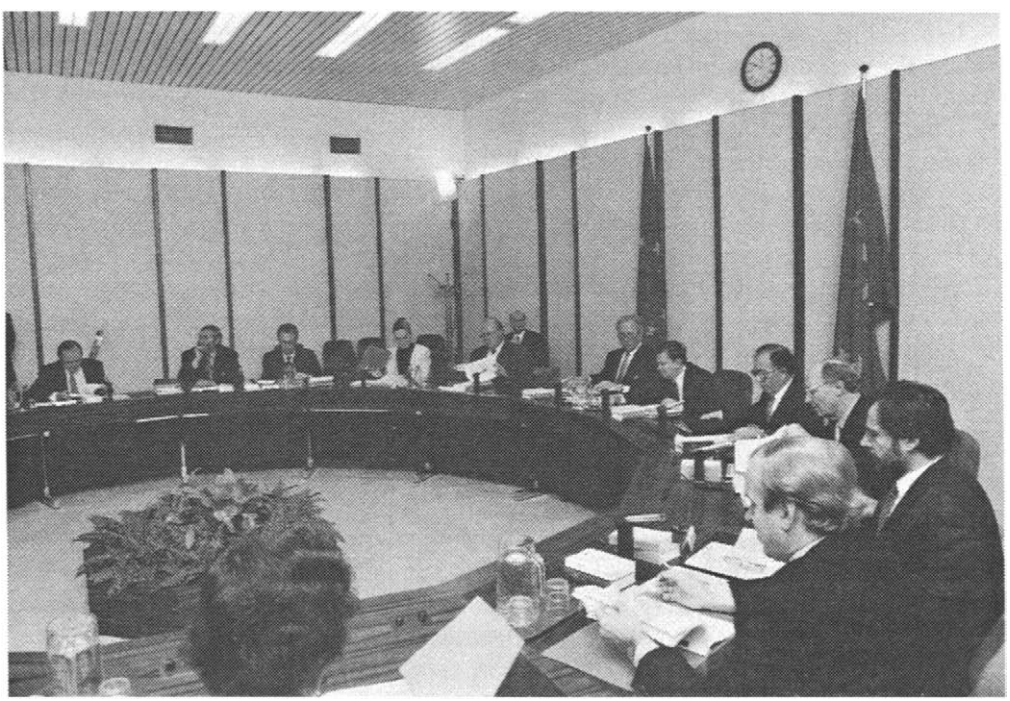


Plate 5.1 Brussels, 16 December 1994. A preparatory meeting of the new European Commission chaired by Jacques Santer. Photo: European Union

The first period (Section 5.2) covers the period from the Treaty of Rome (1957) until 1972. Environmental policy was non-existent during this period. The second period (Section 5.3) begins with the first Environment Action Programme and runs through until 1986, covering the second and third action programmes. During this period an official environmental policy was developed but progress was slow, geared to the most reluctant member states. The third period (Section 5.4) starts with the Single European Act (SEA) of 1987 and ends in December 1993 when the Maastricht Treaty came into force, creating the European Union. This period embraced two major additions to the original treaties and was affected by the globalisation of environmental policy, encompassed in the Brundtland Report of 1987 and the Rio Conference of 1992, which is reflected in the EC's Fifth Environment Action Programme, *Towards Sustainability* (Commission of the European Community, 1992). The fourth period runs from late 1993 and continues at the time of writing (Section 5.5). Various developments such as the Fifth Environment Action Programme are examined and possible future trends in the environmental policy of the European Union are presented, leading to the final summary of constraints and opportunities (Section 5.6).

5.2 The first period: 1957–1972

During the Second World War, not only were the allied governments in close contact with each other but several of them also lived in exile in the same city: London. It was there that the idea of some form of close post-war co-operation was first conceived. Immediately after the war, the United Nations was founded as a global forum and the Benelux (consisting of Belgium, the Netherlands and Luxembourg) was created as a customs union in Europe.

Ten years later, once the Marshall Plan had had its intended effect of placing Western Europe on the road to economic recovery, further steps were considered. These were based partly on a desire to intertwine the national European coal and steel industries so closely as to virtually rule out the possibility of one of them being instrumental in preparing for a new war and partly on a wish to improve the economic position of the Western European countries by creating a common European market.

The first European community, established in 1951 by France, Germany, Italy and the three Benelux countries, was the European Coal and Steel Community (ECSC), the aims of which were to modernise the industry, increase production and create a common market for coal and steel.

The European Economic Community (EEC) was founded in 1957 under the Treaty of Rome. Article 2 of the Treaty formulates its aim as 'the creation of a common market ... the harmonic development of economic activities, a continuous and balanced expansion, an increased standard of living ...'

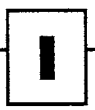
At the same time a third community, the European Community for Atomic Energy (EURATOM) was established, designed to promote the rapid development and expansion of the peaceful use of atomic energy. It was based on the commonly held notion of the time that nuclear energy would be the most important resource for ensuring the development and modernisation of production.

Looking at the aims of the three communities, it is clear that economic development was the main priority. Environmental protection was not an issue at this time. Not surprisingly, therefore, no environmental protection measures were taken by the communities during the first 15 years of their operation. Whilst it is true that a number of the measures taken during this period had environmental effects, they were initially taken with the aim of harmonising national product legislation.

The treaties created various institutions and defined their responsibilities and competences. Many of these remain unchanged and for easy reference the institutions as they exist within the European Union are set out in Box 1.

5.3 The second period: 1972–1986

In the late 1960s, awareness of environmental deterioration was growing. The United States adopted a National Environmental Policy Act (NEPA); the United Nations prepared for a new conference and convened it in Stockholm in June 1972. In the same



The institutions of the European Union

The decision-making body of the European Union is the Council of the European Union (the Council), in which each member state is represented by one person. For general, political affairs, the ministers of foreign affairs form the Council; for more technical areas (such as agriculture and the environment), the Council is made up of the competent, national ministers. The European Summit consists of the President of France and the Prime Ministers of the other member states.

Council decisions must be based on proposals made by the European Commission (the Commission), except in relation to a number of new policy areas. The Commission acts as one coherent body and is the only institution with a right of initiative. Each member state nominates one Commissioner, the four larger ones (Germany, Italy, France and the United Kingdom) an additional one each. Each Commissioner is responsible for one or more of the Directorates-General and/or Staff Departments, of which there are over 20.

The European Parliament (EP; an elected body since 1979) originally had only limited (if far-reaching) decisive powers: it could dismiss the Commission as a whole and reject the budget. For the rest, however, it was merely an advisory body. Its powers have gradually increased in the course of time, although it is on no occasion empowered to overrule a unanimous Council decision.

The Economic and Social Committee (ECOSOC) is an advisory body of tripartite composition: employers, trade unions and 'the public interest'. Its members are nominated by the member states, which have so far refused to nominate representatives of environmental interests. There is one exception: one German member out of 185 represents a federation of environmental groups.

Any conflict between the institutions and/or the member states and/or EU citizens regarding activities performed under the treaties may be brought before the European Court of Justice. Until recently, the Court had no sanctions available to it by which it could enforce its verdicts.

The Court of Accounts and the European Investment Bank complete the list of institutions.

context, the European Community also decided to embark on an environmental policy. The European Commission had already published a 'First Communication' on 22 July 1971 and this was followed by a draft First Action Programme on 24 March 1972.

The decision to embark on a common environmental policy was taken formally at the European Summit Meeting of October 1972, in Paris. The first 'Environmental' Council meeting was held on 19 July 1973 and the principles of a common environmental policy were agreed. On 22 November 1973 the Council passed a resolution adopting the First Action Programme of the European Communities regarding the Environment (see Box 2). It was agreed that the action programmes would cover a five-year period, the first of which was to end on 31 December 1976.

During this period three new members joined the Community: Denmark, Ireland and the United Kingdom.

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The First Action Programme

Although the programme is too complex to be discussed in its entirety, there are a number of principles which are worth mentioning.

In the first place, the programme stresses the importance of prevention rather than cure. The idea is that this should apply to both technical and political decisions: any measure which is under consideration at a national or Community level should be preceded by a study of its impact on the environment. This notion was clearly inspired by the introduction of environmental impact assessments under the NEPA in the United States and was strongly recommended by the Organisation for Economic Co-operation and Development (OECD).

Secondly, it refers to the polluter pays principle, under which the cost of any measures taken to prevent or abate pollution and nuisances should be paid for by the polluter and not by the state. The programme does, however, leave open the possibility of ignoring this principle during the first stage of environmental policy, provided that this does not result in a distortion of competition between manufacturers in the member states.

Another important principle rules that member states should neither cause transboundary problems nor create problems for the economic development of Third World countries.

Although not explicitly formulated, the programme implies that there is a need to respect the so-called 'stand-still' principle, i.e. the overall situation should not worsen in the future and problems should not be 'solved' by shifting pollution from problem areas to relatively clean areas.

The programme also stresses the importance of public participation, although the need to inform and educate the public is given much more attention than the need to involve the public in decision making.

Finally, there are two principles that are particularly interesting in the light of recent discussions and to which we shall be returning later on in the chapter. The first is that the level of action (i.e. local, regional, national or Community) should be determined carefully, in order to secure maximum efficacy and efficiency. In fact, this is what has since been referred to as the principle of 'subsidiarity'. Secondly, the programme underlines that Community policy should be based on a long-term strategy.

Source: *Official Journal* C 112, 20 December 1973.

The First Action Programme

When considering European environmental policy, it is important to remember that its introduction was not formally written into the original treaties (i.e. the ECSC, EURATOM and EEC treaties). Environmental policy therefore remained subordinate to the basic goals of these treaties and had to be based on existing articles in these treaties.

Two of these in particular were usually cited as grounds for environmental measures. Article 100 mandates the Council to *harmonise national measures* regarding production and products which might distort competition. The other, article 235, is a general mandate under which the Council is empowered to take measures which, although not provided for by the treaties, contribute to the promotion of the treaties' basic goals. In both cases, decisions have to be unanimous.

As article 100 could be applied only when a member state had taken the lead in initiating new legislation, one of the earliest actions was the creation of an Information Agreement on 5 March 1973. This agreement compels the member states to inform the Commission immediately of all drafts of national legislation, administrative measures or international initiatives such as may directly influence the functioning of the common market or have an effect on the Community's environmental legislation or programmes. The Commission is subsequently bound to inform all other member states (see Box 3).

Additional general rules and clarifications were published during the course of the First Action Programme, for example on the polluter pays principle, but formal legislation remained thin on the ground. The legislative instruments include directives, regulations and decisions. Directives are a form of binding legislation that is directed at all the member states. In order to become effective, a directive has to be implemented, i.e. the member states have to adopt national legislation that complies with all the demands contained in the directive. As a rule, a maximum period of two years is

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The consequences of the Information Agreement

The member states are obliged to postpone the decision in question for two months in order to allow the Commission to consider Community-wide measures. If the Commission then announces an intention to draft measures at a Community level, the member state in question must postpone its decision for a further five months, in order to give the Commission enough time to submit the necessary texts.

Similar procedures apply to the way in which member states should take positions on international initiatives, the intention being that the Commission can try to forge a common position.

Formally, the Information Agreement is not a Community measure, but a voluntary agreement between the member states and the Commission, made during an Environment Council (outside an official session and without full Council status).

Source: Agreement (...) on information for the Commission and for the Member States with a view to possible harmonisation throughout the Communities concerning the protection of the environment. Official Journal C9, 15 March 1973, p. 1; supplemented by Official Journal C86, 20 July 1974, p.2.

allowed for implementation. A regulation is also a form of binding legislation but is directly applicable, while a decision is similar to a regulation but has more limited scope (for example, it may address a specific group (such as farmers) or be of limited duration).

Although a directive on waste was adopted in the course of 1975, most texts have concerned water only and have been issued in part in order to enforce international conventions. Among the earliest measures were the directives on the quality of bathing water and of surface water intended for the abstraction of drinking water. Both directives have caused problems and feature on the British 'hit list for repatriation' (see Section 5.5). They are presently under revision.

A third problematic directive is that on 'pollution caused by certain dangerous substances discharged into the aquatic environment of the Community'. This directive provides a framework for 'subsidiary directives' on the release of more than 100 substances into inland waters and the territorial seas and is intended to ensure that international conventions are implemented consistently throughout the Community.

Before this directive could be adopted, however, there was a fierce debate on standard setting between the United Kingdom and the continental member states. As an island in the Western part of the Community, the UK did not suffer from transboundary water pollution (and suffered relatively little from air pollution). It felt that its manufacturers and farmers should be able to benefit from this situation by being allowed to discharge certain substances into the rivers and the sea as long as this did not cause any problems. It hence opted for the use of *quality standards*.

Most of the continental member states and the Commission, on the other hand, preferred the use of *emission standards*. The environmental argument was that 'black list' substances were so dangerous that they should not be allowed to enter the environment at all and that any quality standard other than zero would therefore be unacceptable. This meant that uniform emission standards would have to be applied, based on the best available technologies. In addition, emission standards had the advantage of not distorting competition.

As a compromise, the member states accepted the possibility of using both types of standard and the conditions and mutual relationships were formulated on complex but non-committal lines. Hence the debate simply continued when the first subsidiary directive was published in draft form and it took another six years before it was adopted. Although further progress has been made since then, standard setting has remained a much debated issue.

The Second and Third Action Programmes

In the light of the above, it is hardly astonishing that the Second and Third Action Programmes neither reflected any spectacular successes nor announced any challenging new initiatives. During the Second Action Programme, which ran from 1977 to 1981, guidance was given on the evaluation of the cost of pollution control to industry. The first substantial air quality directive was adopted in 1980; it concerned sulphur dioxide and suspended particles. With regard to water quality, directives on the quality of fresh water needed to support fish life, shellfish water and drinking water completed the already existing set, together with legislation on sampling, monitoring and information

exchange. The Community also implemented several international conventions and adopted a directive on groundwater protection. With respect to waste, a directive on dangerous waste was added.

Chemical substances in general became a major issue in EC policy making. This was partly due to the fact that the United States had produced a Toxic Substances Control Act (TSCA), under which manufacturers were required to submit pre market notifications of all new chemicals, for which purpose they were obliged to produce the results of a number of tests. It was accepted that the Community would have to consider adopting the American approach in order to avoid creating a need for a further series of different, costly tests. Yet, it was only after protracted debate that it finally proved possible to agree on some form of EC legislation. This took the form of an amendment to an existing directive originally issued in 1967; for this reason it became popularly known as the 'Sixth Amendment'.

In the meantime, a number of serious accidents with chemical plants had occurred both in Europe (at Flixborough in the UK, Geleen in the Netherlands, Basel in Switzerland and Seveso in Italy) and elsewhere (Bhopal in India being the most notable example). The Commission responded by issuing a directive on major accident hazards, usually referred to as the *Seveso Directive* that was eventually ready for implementation in 1982. The slow development of EC environmental policy making during the second stage was neither unusual nor limited to pollution-related issues.

Plate 5.2 'Dead march for the River Rhine'. The Sandoz disaster in 1986 heightened international awareness of industrial pollution and gave rise to fierce protests. Photo:ANP Foto

Two examples illustrate the tardiness of the policy process: environmental impact assessments (EIAs) and bird protection. Though very different as environmental issues, they have a great deal in common in terms of the problems they have caused in the decision-making procedure. It was felt by some member states that legislation on bird protection and EIAs could well restrict the extent to which they would be able to make use of their own territories and thus affect domestic physical planning. It was particularly difficult to relate the interests of bird protection to the basic goals in the treaties. More importantly, however, any new legislation on bird protection would have to include rules on the protection of habitats. Several member states, Denmark in particular, were extremely reluctant to extend the jurisdiction of the Community to this domain. The bird directive was agreed in 1979, albeit without a section on habitats. It was not until more than ten years later that this was added. In the case of EIAs, France feared considerable national and transboundary problems in the event of EIAs having to be applied to the large number of nuclear plants it was planning to build, many of which were to be located in border areas. It therefore took many years and over 20 (internal) drafts before a formal Commission proposal was formulated in 1985.

The Third Action Programme, covering 1982–1986, also lacked inspiration. In the meantime, Greece had joined the Community, which meant the accession of another poor member state (after Ireland) and the need to pay more attention to typically Mediterranean problems. The Community's economic position was poor at this time, with high rates of unemployment. For this reason, the programme emphasised the possibility that environmental protection might create jobs.

It also became clear that the adoption of Community measures was no guarantee that they would automatically become effective. Implementation and enforcement were often poor. Beside stressing the importance of timely and complete implementation, the programme also underlined the necessity of integrating environmental concerns into other policy areas.

In addition, two areas of increasing concern underlined the need for new areas of Community action. Firstly, it became apparent that a process of acidification was causing serious damage to the forests of the Northern part of the Community, particularly in its most powerful member state, the Federal Republic of Germany. Germany itself reacted immediately. Its budget for environmental research was considerably increased, to a level above that of the United States; resources were targetted primarily at studies on air pollution problems (Vonkeman, 1989). The Federal Republic also drafted powerful legislation on emissions from large combustion plants and became a strong supporter of the installation of catalytic converters in cars.

Secondly, it was a time when waste scandals mushroomed all around the world, resulting not only from irresponsible dumping in the past (such as the seepage of chemical wastes in residential areas at Love Canal in the United States and in Lekkerkerk in the Netherlands), but also from the dubious practice of 'waste tourism', often involving developing countries as the hosts (these problems of hazardous wastes are covered in Blowers, 1996).

Despite the attention which the Community gave to environmental problems, such as air quality and waste management, the results were disappointing from an environmental point of view (see Box 4).

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Conflicts over waste control, and air and water pollution

Progress was slow in the domain of air quality. On the one hand, the United Kingdom was very reluctant to accept sulphur dioxide legislation for its many coal-fired power stations. On the other hand, the Mediterranean states regarded acidification as a problem affecting primarily the Northern (i.e. rich) part of the Community. For a while, the Commission attempted to put together a package deal, combining acidification abatement with forest fire control in one draft directive. However, it was later forced to drop this approach. Ultimately, a directive on large combustion plants was agreed in 1984. Air quality standards for nitrogen dioxide were set in 1985. As far as car exhaust emissions were concerned, although a directive on the lead content of petrol was likewise agreed in 1985, it was not until after the introduction of voting by qualified majority that emission standards were adopted that required the installation of catalytic converters.

In the field of dangerous waste, a directive on transfrontier shipments within the Community was agreed at the end of 1984. The problems of 'waste tourism' had to be tackled at a higher level, in the framework of the Basel Convention that was agreed much later (see Chapter 1 and Blowers, 1996).

In the water sector and again after difficult and lengthy negotiations, subsidiary directives were agreed for cadmium, mercury discharges outside the chloro-alkali industry, hexachlorocyclohexane and various other substances.

The situation in the mid-1980s

It is clear from the above that, up to the mid-1980s, the European Community failed to demonstrate any significant leadership qualities in the field of environmental protection. To a large extent, this was a deliberate choice.

As in the United States, European scientists and businessmen began to meet in the late 1960s in order to discuss the future of the environment. Although the first meeting place was in Greece, the group later came to be known as the Club of Rome. Its first publication, entitled *The Limits to Growth* (Meadows, 1972), received more attention in Europe than in the United States (see Box 5).

The Community remained devoid of any vision for a further ten years. In the meantime, there were a number of reports including 'Global 2000' (US Council on Environmental Quality and Department of State, 1980) in the United States, the Interfutures Report of the OECD (US Council on Environmental Policy and Department of State 1981), the Brandt Commission's report on the development of the Third World (Independent Commission on International Development Issues, 1980) and a 'World Conservation Strategy' produced by the World Wildlife Fund (WWF), the International Union for the Conservation of Nature and Natural Resources (IUCN) and the United Nations Environment Programme (UNEP) (IUCN, UNEP, WWF, 1980). None of these documents, all of which were aimed at building a long-term strategy, had much of an impact on Community policy.

5

A vision of the future

The late Dr Sikko Mansholt, a European Commissioner for agriculture and vice-chairman of the Commission, developed a great interest in the ideas of the Club of Rome. In February 1972, he sent his fellow Commissioners a letter in which he suggested that the Commission should draw up a 'last will and testament' for its successors, in which it addressed a number of major problems of global importance. (The term of the Commission was due to expire at the end of that year.)

Noting that no single government in the world was apparently capable of coping with the current economic problems of employment, inflation and monetary control, Mansholt wrote that even more fundamental and formidable problems were emerging: the growth of the world population, food scarcity, industrialisation, pollution and the depletion of natural resources.Among the solutions to these problems were meaningful employment, true democracy, equal opportunities for all and the rapid development of the Third World. Mansholt felt that neither the United Nations nor the United States would provide the necessary leadership: this would have to come from Europe.

He then went on to suggest that:

1 priority be given to food production and investments also made in 'uneconomic agricultural production'
2 resource consumption per capita be considerably reduced and offset by an increase in non-material consumption
3 the lifetime of products be increased, resource wastage prevented and the production of 'non-essential products' stopped
4 pollution and the depletion of the stock of raw materials be reduced.

He concluded that society could not be based on material growth alone and proposed the replacement of the gross national product as a key indicator of prosperity by the 'gross national happiness' (Bonheur National Brut, BNB). The Community, he said, should develop a strict 'European economic plan' directed at maximising BNB and a five-year programme for developing a production system that was clean, based on the recycling of raw materials and which yielded products with a long lifetime. Economic and financial incentives should be used as additional instruments.

Mansholt raised these important issues 20 years or more before they were recognised as fundamental to economic and environmental health. He was given little support at the time. In fact, the only response which he initially received from his colleagues was a question as to whether he wished 'to transform them all into hippies' (Mansholt, private communication).

Only one of the French Commissioners, Raymond Barre, reacted. In a letter dated 9 June 1972, he expressed fierce opposition to Mansholt's scheme. Barre made clear that he believed firmly in technological innovation, including the massive introduction of fast-breeder nuclear reactors and in the ability of the market to provide the right response in the event of certain problems becoming too serious. Mansholt's initiative was ignored.

This lack of vision and inertia was not restricted solely to the domain of environmental policy. In fact, most Community policies came under increasing criticism and the Community found itself labouring under an almost complete lack of decisiveness and progress. When it gradually became apparent, in the early 1980s, that the planned

accession of Portugal and Spain, which were recognised as being 'difficult' countries, might bring the decision-making process to a complete standstill, the Commission finally took measures to break the deadlock and create a new momentum. In the first place, it commissioned a study of 'the costs of non-Europe' or rather, the advantages of a single, open, internal market. The resulting, 17 volume Cecchini Report sketched a very rosy picture of an 'open market' (see Box 6).

Taking the Cecchini Report as its starting point, the Commission then produced a 'white paper on the internal market' (EC, 1985). It summarised the advantages of a single market, listed the almost 400 Community measures which would be needed in order to give effect to a single market and highlighted the inadequacies of the decision-making system. It identified the legislation that would be needed to remove the physical, technical and fiscal barriers to an open internal market. The Commission urged the member states to make firm commitments towards completing the single market and to changing the rules on decision making. The latter would clearly necessitate a change in the treaties. The occasion should also be used, the Commission argued, to 'legalise' a number of existing Community policies, notably in the area of environmental protection and research and technology. Initially, the completion of the single market and the amendment of the treaties formed the subjects of two separate texts. These were later combined in the European Act, referred to in some countries as the Single European Act or the Acte Unique.

The second period, during which the first Community-wide environmental legislation was drafted, was characterised by slow progress and poor results. The former was due to the fact that all Council decisions were required to be unanimous, which implied that reluctant member states could block any decision to which they were opposed. Negotiating a compromise which was acceptable to all and yet still had some force therefore became a lengthy process.

The need for unanimity was also the cause of the ineffectiveness of the legislation. Given the fact that several countries (most of them from the Mediterranean region) had not developed any environmental legislation of their own, the Council usually preferred weak legislation to no legislation at all. In these circumstances and in spite of the criticism of the (powerless) European Parliament, the Commission generally drafted legislation which already took account of a possible final compromise.

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The Cecchini Report

The report concluded that the present, fragmented state of the European market represented an annual loss of at least ECU 200 billion. If all the major barriers were swept away and firms and organisations in the EC made full use of the new opportunities, the result would be an average increase of 4.5% in the EC's gross domestic product, in combination with an average reduction of some 6% in consumer prices, a reduction in public expenditure, an improvement in the EC's overall balance of trade and the creation of nearly 2 million new jobs. The Report barely mentioned the word 'environment'.

Source: Cecchini, P. 1992: *The European Challenge*, Børsen International Publishers.

Another constraint was that all legislation had to be based on the original treaties, which did not contain any provisions in relation to the environment. For this reason, reluctant countries could easily claim that environmental legislation was hampering their economic development and hence threaten to lodge an appeal at the European Court.

5.4 The third period: 1987–1993

The Single European Act

The inception of the third period is marked by the coming into force of the Single European Act (SEA) on 1 July 1987. The member states (which now also included Portugal and Spain) committed themselves to completing an open internal market by the end of 1992 (although this was not a legally binding date). Article 13 of the SEA defines the open internal market as follows (via an amendment to article 8a of the EEC Treaty): 'The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty'.

Most of the measures included in the SEA are subdivided into further categories. Further on in this chapter, we shall discuss their possible effects on the environment. These may be either direct or, where they result in a shift in economic activities, indirect.

The SEA has affected the environment policy of the Community in at least three ways:

1 directly, by giving environment policy a legal basis and creating a number of instruments for implementing it
2 semi-directly, by defining changes in the decision-making procedures of the EC institutions in relation to points that had previously formed important stumbling blocks for environmental decisions
3 indirectly, since environmental policy in an open internal market was bound to differ from that in the former situation.

Basically, the SEA makes environmental protection a Community goal in its own right. The main objectives and principles of an environmental policy are listed in article 130R: environmental policy is intended to preserve, protect and improve environmental quality, contribute towards the protection of human health and realise a prudent and rational utilisation of natural resources. It is to be based on the principles of preventive action, the rectification of damage at the source and the polluter pays. Environmental protection requirements should become a component of other EC policies (particularly with respect to the common agricultural policy and the regional, social and development policies); this is a process known as 'external integration'. EC environmental policy should take account of scientific and technical data, regional environmental conditions, the potential benefits and costs of both action and the absence of action and economic and social development. Finally, the principle of *subsidiarity* (already introduced in the First Action Programme) was now formally extended to environmental policy, implying the necessity of taking action at the most appropriate level.

The main obstacle with regard to decision making on environmental matters has traditionally been the demand for unanimity. In practice, this has meant that legislation has always been a compromise and that it has tended to gravitate towards the slowest-moving country in the Community. This is frequently referred to as the 'convoy principle'. Under article 130S, the SEA has the effect of prolonging this situation in relation to measures based on environmental protection in its own right. However, the Council may now decide to vote by qualified majority, although such a decision has to be taken unanimously.

A second point is that many environmental protection decisions are now considered as harmonisation measures, in the framework of the completion of the single market. One of the articles in the SEA, article 100A, is intended to speed up such measures. It states that such decisions are to be taken by qualified majority, which means that one single member state can no longer block a decision. A further aspect of this particular point is that the European Parliament has a crucial role to play in these cases. The European Parliament has traditionally been more 'environmentally friendly' than the Commission or the Council. This should not be seen as some sort of value judgement, for there are very practical reasons for this. As the Commission has to propose realistic legislation, it always starts by making a proposal that is somewhat tougher than the final compromise which it expects will ultimately be reached. The demand for unanimity in the Council usually weakens this carefully worded Commission proposal. In the past, the European Parliament used to demand stricter standards than the Commission. It was often said that the Parliament could easily afford to be environmentally friendly because its attitude had no direct consequences. It has now become clear, however, that the Single European Act has not changed the Parliament's attitude towards environmental protection.

The European Parliament's new powers are as follows. If the Council wishes to decide on a Commission proposal and in doing so to ignore a recommendation made by the Parliament, it is obliged to make its decision provisional and then return it to the Parliament for a second reading. The Parliament is then entitled to draw up a formal amendment based on its views. If it does so, the Commission has to set out its own position on such an amendment, because the Commission is the only body that can make proposals to the Council. In such a situation, however, the Commission is under pressure to be at least as 'environmentally friendly' as the Parliament. The final decision rests with the Council. However, if the Parliament has amended the proposal in question, the Council may reject the amendment only by unanimous vote. This is a very important point, as is illustrated by the case of car exhaust emissions (see Box 7).

Article 100A is likewise important in that it states that, where health, safety or the protection of consumers and the environment are concerned, the Commission will base any decision on a high level of protection. Article 100A's field of application is not limited to the proposals listed in the White Paper alone. All other harmonisation measures, including those in the field of environmental protection, may be based on it. Once it has been decided to base a decision on article 100A, it then follows that voting is by qualified majority and that the European Parliament is guaranteed a strong role.

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The case of car exhaust emissions

Emission demands for car exhausts in Europe may be divided into three categories. As far as large cars are concerned, it was accepted that, as from a given date, American standards would apply and that the cars would have to be equipped with three-way catalytic converters.

The case of cars in the medium-size range had already been dealt with before the Single European Act came into force. There was a large majority in Council in favour of standards which were weaker than those applying in the US, with only Denmark, the Netherlands and Germany in favour of stricter standards. Unanimity had to be reached and the choice was between weak standards and no standards, as it was obvious that there would not be any unanimity on strict standards. The Netherlands and Germany decided to go for a compromise, but Denmark blocked the decision until the Single European Act came into force on 1 July 1987. In the same month, the question of car emission standards was again placed on the Council agenda, this time actually under the Danish presidency, but Denmark was outvoted under the new rules.

As a next step, the European Commission proposed standards for small cars. Again, these were much more lenient than those imposed by the United States government. This time, the European Parliament opted for much tougher standards during its first debate on the issue. After lengthy negotiations, the Council finally decided to adopt lenient standards, in a procedure in which Denmark, the Netherlands and Greece were outvoted. A number of other countries which were theoretically in favour opted for the compromise, since the choice was again between a compromise on lenient standards and no standards at all. Now, however, because the views of the European Parliament had been ignored, the European Parliament was entitled to give the Council's decision a second reading. It maintained its original position and formally amended the compromise with the effect that the standards imposed were effectively equivalent to those applying in the US.

Once the European Parliament had given its verdict, the Commission had to adopt a standpoint; it decided to back the European Parliament. This placed the Council in a difficult position. It could reject Parliament's amendments only by a unanimous vote and this was impossible because of the attitude taken by Denmark, the Netherlands and Greece (as well as Germany, in principle). On the other hand, it could accept the amendments by a qualified majority vote, but this would have required a handful of countries to change their minds. The third alternative was not to arrive at any decision at all within three months. In this case, the proposal would have been automatically rejected. If this had happened, there would have been no standards for small cars, a situation which would have met with strong opposition from the motor car manufacturers. In the event, the Council reached a compromise on American equivalent standards, which meant that, as from 1993, all new cars would have to be equipped with regulated three-way catalytic converters. Obviously, this also implied that the decision previously taken on medium-sized cars would have to be adapted.

The importance of the new Single European Act in this field has been in changing the nature of the alternatives facing the Council. Whereas, in the past, the Council had to choose between lenient standards and no standards at all, the options now are either tough standards or no standards at all. It is clear that the European Parliament has played a very important role in this respect in promoting the interests of the environment in Europe.

The Fourth Action Programme (1987–1992)

The Fourth Action Programme was drafted at the same time as the SEA was completed. It took advantage of the new opportunities offered by the SEA and listed five priority areas:

1 the implementation and enforcement of Community legislation
2 a substance-oriented and source-oriented approach to environmental policy, in particular in respect of pollution prevention
3 the dissemination of information, which meant in concrete terms the production of a kind of 'freedom of environmental information' directive and a thrice-yearly Community Report on the state of the environment
4 the relationship between environmental protection and the creation of jobs
5 the creation of new policy instruments (such as financial and economic incentives and communicative instruments) in addition to legislation.

The SEA not only created an atmosphere of economic 'Europhoria', but also fostered a revival in environmental thinking. During the European Year of the Environment, which lasted from 1 March 1987 to 1 March 1988, the Commission made a considerable effort to polish up its environmental image and create better links with both citizens and non-governmental organisations (NGOs) in Europe. The Commission also began to draft more and more of its own policies instead of simply responding to trends in the member states. Among the White Papers published were those on waste policy, traffic and transportation and industrial development.

The environmental consequences of the single market constituted a special problem. As we have already stated, whilst the Cecchini Report painted a very bright picture of the economic benefits of 1992, it did not devote any space to the environmental consequences. Not only were the economic forecasts the subject of some fierce criticism, some people also claimed that, however impressive the figures might look, they could only be achieved in a once-only setting and over a period of several years, which implied that they were of the same order of magnitude as common oscillations in the economy caused by cyclical and other factors. Unfortunately, no review or official study of the environmental consequences of the single market was available at the time. During 1988 a 'task force' was formed and, although there were problems and delays, it published a report towards the end of 1989 (Task Force Environment and the Internal Market, 1992). This swept away much of the euphoria caused by the Cecchini Report, but the Commission decided not to publish it as a Commission document. In spite of requests from the Council and the European Parliament, it also refused to formulate an opinion on the findings of the report.

Other important developments

As has already been stated, the Commission was very active during the period under review. It was widely recognised that many member states performed badly in implementing Community legislation, let alone enforcing it and so the question of implementation and enforcement became an important issue in EC environmental policy. The Commission itself concentrated its efforts mainly on implementation, i.e. the obligatory transformation of EC directives into national legislation in the member states. The Commission's activities led to an increase in the number of infringements

which were brought before the European Court and both citizens and NGOs were requested to notify the authorities of any infringements (European Environmental Bureau, 1994). How Community legislation was actually applied in practice (i.e. the problem of enforcement) was a more difficult issue.

During this third period the Community was active in environmental matters on a variety of fronts including the establishment of an Environmental Agency, the introduction of new policy instruments, the deployment of funds, the problem of communication, the identification of responsibility, the conservation of Nature and research and development, each of which is discussed briefly below.

European Environmental Agency

The discussions on the establishment of a European Environmental Agency had shown clearly that there was still great reluctance on the part of the member states to allow inspections by Community officials. The Commission therefore had very little room for manoeuvre and this problem was taken on board during the Dutch presidency of 1991. The Dutch Environmental Inspectorate commissioned a study on enforcement in all the member states; the issue was then placed on the agenda of the informal Environment Council meeting in Amsterdam (Ministry of Housing, Physical Planning and Environment of the Netherlands, 1991). A year later, the UK presidency followed up the meeting by inviting the national enforcement agencies to a meeting with the Commission. Regular contacts have been maintained since then.

Before the decision to create a European Environmental Agency was taken, lively discussions took place on its competences. It was decided that the work of the Agency should initially be limited to the collection of data and the co-ordination and standardisation of monitoring. The extension of its activities to countries of the European Free Trade Association (EFTA) or of central Europe was a matter which could be considered at a later stage, as well as a possible role in policy studies and recommendations. It was a long time, however, before the decision to create the Agency was formally taken, owing to the fact that France blocked any decision on the location of Community institutions as long as it had not been given a firm assurance that the European Parliament would continue to convene at Strasbourg. The affair was settled at the Edinburgh Summit of October 1993 in the wake of the creation of the European Union, where the location of a number of different institutions was presented in the form of a single 'package' and it was decided to base the Agency in Denmark.

The importance of reliable and standardised data was clearly demonstrated when the Commission published its State of the Environment Report (Commission of the European Communities, 1992). Although it was presented as part of the Fifth Action Programme, it was too late and too outdated to play a role in the preparation of the Programme itself. Interestingly, a number of the data used in this publication are taken not from official publications but from a study carried out by the Institute for European Environmental Policy in Brussels (IEEP-B) (Vonkeman and Maxson, 1991).

Additional policy instruments

The poor record of implementation and enforcement of Community legislation and the success of the application of strict principles of responsibility and liability in the

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Different types of environmental policy instruments

1 Legislative instruments, designed to set minimum levels of environmental protection, to implement wider commitments and to provide Community-wide rules and standards, where necessary, to preserve the integrity of the single market.
2 Market-based instruments, geared towards the internalisation of external environmental costs through the application of economic and fiscal incentives and disincentives and civil liability and aimed at encouraging the responsible use of natural resources, the avoidance of pollution and waste and 'getting the prices right', so that environmentally-friendly goods and services are not at a commercial disadvantage *vis-à-vis* polluting or wasteful competitors.
3 Horizontal, supporting instruments, including improved baseline and statistical data, scientific research and technological development, improved sectoral and spatial planning, public/consumer information and education, professional and vocational education and training.
4 Financial support mechanisms, including progressive insistence on the sustainability of development programmes and projects covered by the Community Structural Funds, support from the Community Financial Instrument for the Environment (LIFE) for practical demonstration models of sustainable measures and activities, for strengthening administrative structures, etc. and a new Cohesion Fund for the environment and the infrastructure, designed to deal with specific problems in the less prosperous countries of the Community, in the framework of the Maastricht Treaty.

United States, together with a growing lack of confidence in government action and a demand for deregulation, were among the factors that triggered the demand for additional policy instruments. These instruments are often divided into three categories: legal, economic and communicative. The Commission initially adopted these same headings. However, its Fifth Action Programme introduces a breakdown into four categories (see Box 8).

It has been the market-oriented instruments (see Box 9) which have been most in the public limelight during the past few years, not least because the possibility of a future climate change may lead to the introduction of a global or Community-wide tax on energy use. These instruments are by no means a panacea, however. Not only has a study, carried out on behalf of the European Commission (Huppes *et al.*, 1992), revealed that even the most promising of such instruments would be neither universally applicable nor without practical problems, the protracted and heated talks in the Council on the possible introduction of a Community energy tax have also shown how formidable the political resistance is to such taxes.

Structural funds

Right at the very outset of its existence, the Community created the Structural Funds with the aim of promoting the development of less prosperous regions. There were initially

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Market-oriented instruments

Market-oriented instruments take a variety of forms:

Effluent charges	Charges paid on discharges into the environment and based on the quantity and/or quality of the pollutants discharged
User charges	Tariffs to cover the cost of collective or public treatment of effluents
Product charges	Fees imposed on products which pollute the environment
Administrative charges	Payment for authority services, for instance for the registration of certain chemicals or for the enforcement of regulations
Tax differentiation	Used to encourage the use of environmentally friendly products (such as unleaded petrol)
Subsidies	Grants, soft loans and tax allowances are used to provide an incentive for polluters to alter their behaviour or to assist firms facing problems in complying with standards
Deposit-refund systems	A surcharge is paid on potentially polluting products; it is refunded if the product or its residuals are returned to a collection system
Emissions trading	Artificial markets can be created, with the establishment of environmental standards and permits for polluters; pollution rights can be traded
Market intervention	The instrument of price intervention can be used to create a market in potentially valuable residuals
Liability insurance	Premiums reflect the probable damage or clean-up costs; the risk of incurring penalties or fines is transferred to insurance companies
Financial enforcement	Such fees are levied when polluters emit or discharge pollution in excess of levels permitted by regulations.
Non-compliance fees	These are refundable payments to regulatory authorities
Performance bonds	

Source: IEEP, Brussels/DRI McGraw-Hill.

three funds: a Regional Fund, a Social Fund and an Agriculture Fund (FEOGA). Other, more specific funds for such areas as environmental protection were added at a later stage. Even when taken together with the total budget for environmental protection, these funds are negligible compared with the Structural Funds and represent far less than 1% of the total Community budget.

When the SEA was negotiated, the peripheral member states expressed a concern that the economic benefits of '1992' would flow mainly to the central part of the Community, which was already the wealthiest region. As a compensation measure, the Structural Funds were virtually doubled in the framework of the SEA negotiations. An

additional financial compensation followed in the framework of the Maastricht Treaty (to be discussed later), when a Cohesion Fund was created to support environmental and infrastructural developments in those member states whose gross national product was under 90% of the Community average, i.e. Greece, Ireland, Portugal and Spain. In the meantime, the environmental funds had been combined to form one 'Financial Instrument for the Environment', abbreviated as LIFE on the basis of its initials in French.

Attempts have frequently been made, throughout the life of the Structural Funds, to use them for the purpose of environmental protection. Unfortunately, the extent of their use for this purpose has been far outweighed by that for infrastructure projects and the drainage of wetlands. During the term of the Fourth Action Programme, the Commission issued an order to the member states instructing them to draft an Environmental Impact Statement for projects for which support from the Structural Funds had been requested. However, the Commission does not have the requisite legal authority or instruments with which to put a stop to damaging projects or even to refuse to award grants from the Funds; it can at best delay their allocation.

On the other hand, various environmental protection measures would not have been accepted without the existence of the Structural Funds. The agreement on the Waste Water Treatment Directive, which will require the investment of billions of ECUs in sewer systems and treatment plants in the Mediterranean region, is a clear example of this.

Communication

The European Community is in many respects a closed, almost inaccessible and undemocratic system. As the Chairman of the European Parliament's Environment Committee, Ken Collins, put it during a seminar organised by the Centre for European Policy Studies in Brussels in April 1992, 'If the European Community had been a state, it would never have been accepted as a Community member, because of its lack of democracy'. Both its legislation and the attitude of its bureaucracy reflect many tendencies of the Franco-German systems. This is entirely contradictory to the principles of environmental policy: the environment is everybody's concern, decision making on the environment should be open and accessible and the fact that decisions usually result in irreversible effects and irreparable damage necessitates both an open debate on all available data and the application of the precautionary principle: in other words, it is best to err on the safe side.

In the light of this situation, it is no surprise that it took such a long time to reach agreement on the above-mentioned Environmental Impact Assessment directive and that the same thing happened with regard to the directive on access to environmental information, which had been announced in the Fourth Action Programme. Although the initiative for the latter came from the European Parliament, the draft text from the Environment Committee failed to pass its plenary reading. The Commission subsequently drafted a much weaker proposal and this was adopted by the Council in 1993.

Concurrently with this, the Commission started work on eco-labelling and environmental auditing. After lengthy discussions, legislation to create a (voluntary) EC eco-label was adopted in 1993. As several member states had in the meantime

introduced their own, national labels, it remains to be seen whether the EC label will have a positive impact on consumer information and behaviour. Whatever the case, it is already clear that its success will require considerable manpower and finance.

When they were introduced, *environmental audits* were designed to be compulsory, the intention being that each audit should become a public document. Since there was not a single member state which had such a compulsory system in operation, however, the scheme was doomed to fail. In fact, making such a system obligatory would have contravened the basic principles of environmental auditing. An environmental audit is an instrument which forms part of a company's internal system of environmental quality care, as promoted for some time now by the International Chamber of Commerce (ICC), which has designed an outline Code of Conduct for this purpose (International Chamber of Commerce, 1991). Where the management of a company has adopted an environmental quality care system, the company in question is committed to 'good environmental housekeeping'. Environmental audits are then used to identify any weak spots, either in the company's management and organisation or in its practical behaviour. Not surprisingly, companies do not want such audits to be made public.

The industrial lobby put a great deal of pressure on the Commission during the drafting phase. The result was the formulation of a proposal which made environmental auditing a voluntary system. Companies that adopt environmental auditing and publish acceptable results are entitled to display a special EC label on their buildings, letterhead, advertisements, etc. Here too, the environmental benefits as compared with the cost and effort have still to be proven. The relevant regulation was likewise agreed in 1993.

Responsibility and liability

The Commission has placed great emphasis during the past five years on the fact that the responsibility and liability of producers extends from the cradle to the grave. This is reflected, for example, in the lengthy talks that took place before a directive on packaging waste was adopted. The desire to adopt a 'cradle to grave' approach is also reflected in the recent directive on integrated pollution prevention and control (known as the IPCC Directive). In issuing this proposal, the Commission acted in accordance with the recommendations previously made by the OECD environment ministers.

With respect to liability, the Commission has produced a directive on liability for water pollution and has formulated a more general strategy in close consultation with the Council of Europe (Devos, 1991).

Nature conservation

The SEA greatly facilitated Community activities in the area of nature conservation by providing them with a legal basis. Until then, most European activities in this field had been initiated by the Council of Europe. A habitat directive has now finally been agreed. Under the Dutch presidency, the Dutch Minister of Agriculture, Nature Management and Fisheries, after examining the results of a study performed by the Institute for European Environmental Policy (Bennett, 1991), suggested creating a

European Ecological Network. This proposal was followed up within the EC by the Nature 2000 Project. A European Centre for Nature Conservation was set up at the University of Tilburg, the Netherlands, as a national nature conservation centre under the aegis of the European Agency.

Research and development

Although the Directorate-General for the Environment, Nuclear Safety and Civil Protection (DG XI) has supported its work with its own research programmes, most of the Community research and development budgets are funnelled through the Directorate-General for Science, Research and Development (DG XII). Not all funds and programmes with environmental relevance are DG XII programmes, but it is becoming increasingly common for them to be co-ordinated through the so-called Framework Programmes.

In 1990, IEEP Brussels reviewed the budgets and programmes of the member states in relation to the two leading environmental research programmes of the day: Science and Technology (STEP) and European Programme on Climate and Natural Hazards (EPOCH). It concluded that almost all funds were being spent on research projects in technology and the natural sciences and, more particularly, on conventional research in support of existing policies. It therefore strongly recommended that there should be a shift in emphasis towards socio-economic research. The Commission responded by creating a programme for socio-economic environmental research (known as the SEER Programme), which was endowed with a substantial budget and was later continued in the Fourth Framework Programme. It is now up to the scientific world to use the funds which are available for innovative research into the real causes of environmental problems: our social and economic structures and our culture.

Summary

The third period was characterised by the removal of major barriers and constraints in relation to both the legitimisation of EC environmental policy and decision making on environmental matters. The role of the European Parliament was significantly strengthened during this period. The time was evidently ripe for the adoption of key legislation, much of which had been under discussion for many years. The Commission took advantage of these new opportunities both to propose new legislation and to formulate its own policies and standpoints in a series of White Papers.

5.5 The fourth period: from 1993 to the present day

The globalisation of environmental problems

The last five years of the third period may be described as the years of the globalisation of environmental problems. The Brundtland Report, *Our Common Future,* which stresses the interdependence of the environment and development, had a tremendous impact. It introduced the concept of sustainable development, which was accepted all

over the world, albeit perhaps because it was suitably vague. The United Nations (UN) decided to organise a world conference on the environment and development (UNCED) and this was held in Rio de Janeiro in 1992. The UN members committed themselves to drafting national reports before that date.

An important element of *Our Common Future* was the emphasis it placed on public participation and the involvement and support of all societal actors. Environmental and developmental NGOs, businesses, scientists and many others took part in the preparation of the report and staked out their positions. Although UNCED did not produce many tangible results, its impact is easy to underestimate (Vonkeman, 1992). Agenda 21 is a remarkable inventory and analysis of the global problems that are facing us; the Rio Declaration is an important guide for future policies. The big problem, however, is that few firm commitments were made and no in-depth analysis was presented of what sustainable development was actually intended to mean in practice (Vonkeman and Maxson, 1994). The relative success of the Rio conference can be attributed in part to the slackening of the tension between the West and the East power blocs that had dominated and frustrated international decision making for such a long time. The disintegration of the communist system has, however, produced unexpected problems. It has placed the deplorable environmental situation in Central and Eastern Europe firmly on the agenda of the Western world and it has replaced the East–West security conflict with the problem of environmental security.

In other words, intolerable situations with regard to the environment and economic development may yet cause international armed conflicts, either directly or indirectly via massive, environment- or development-induced migrations (Perelet, 1994), thus creating a genuine threat to global security. The importance of principle 25 of the Rio Declaration, which states that the environment, development and peace are interdependent and indivisible, cannot be sufficiently stressed. Both the developments in Central and Eastern Europe and the Rio conference have had a profound impact on EC environmental policy.

The EC and Central and Eastern Europe

Immediately after the fall of the Berlin wall, a number of Central European countries sought contact with the EC. The reunification of Germany even brought the considerable environmental problems of the former GDR directly within the Community. To a certain extent, this meant that justice had finally been done, as the EC member states had been exporting hazardous waste to the GDR for many years. Various initiatives were taken and/or supported by the Community. In 1990, environment ministers from Central Europe attended the Environment Council in Dublin. This was followed up in June 1991 by a similar conference in Dobrics, in Czechoslovakia as it was then called. There it was decided that further activities would be developed within the framework of the UN Economic Commission for Europe (UN ECE), on which both the United States and Canada have a seat. This resulted in a third conference held in Lucerne, Switzerland, in 1993 and a fourth held in Sofia in October 1995.

In the meantime, the EC had started providing bilateral environmental support to countries such as Poland and Hungary (under the Phare Programme), had added an eastern European branch known as Tempus to its teacher and student mobility

programme (Erasmus) and had co-founded the East European Development Bank and the Regional Centre in Budapest. (The next chapter explores relations between the EU and Eastern Europe in more detail.)

In the long term, a number of Central European countries seem likely to join the Union. Commitments have already been made to the Czech Republic, Hungary, Poland and the Slovak Republic (known as the Visegrad countries), as well as the Baltic states of Estonia, Latvia and Lithuania. Before these countries can actually join, however, various fundamental changes will have to be made in both the Union and the countries involved. It is evident that decision making in a Union with over 20 member states will not work under the present rules. In addition, institutions like the Commission and the European Parliament will become unmanageable if the existing rules of representation are maintained. The costs will also become a barrier, not only because of the excessive size of the Community institutions (and a virtual doubling of the number of official working languages), but more particularly because the Common Agricultural Policy will cost a fortune if it is extended to the Central European countries.

As new member states have to respect all existing Community legislation and rules (under a principle known as the 'acquit communautair') and can at best only negotiate a state of temporary absolution, the process of adaptation will require a huge effort on the part of all those involved (see Box 10).

The EC and developing countries

Although we cannot go into any great detail, it is worth mentioning at this juncture that the EU maintains close relations with its member states' former colonies in Africa, the Caribbean and the Pacific: these are known as the ACP countries (there are about 70 of

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Incorporating Central European countries into the EU

A strategy for preparing Central and Eastern European countries for future accession to the European Union was formulated by the General Affairs Council and adopted at the 'Essen Summit' of government leaders of the member states in December 1994. It contains provisions for a structured relationship with the presently associated C&EE countries and announces a long series of meetings that are planned to take place at regular intervals from 1995 onwards. Naturally, the document concentrates on the consequences of these countries entering the single market. Regarding the environment, the document stresses the importance of the 'Environment for Europe' process and the 1995 Sofia conference and states that Central and Eastern European countries should work in close co-operation with the Environment Agency. The need to ratify and implement the UN Framework Convention on Climate Change and further extend its commitments is also emphasised, as is the 1996 UN ECE Conference on transport and the environment. The document assumes that the central and eastern European countries will continue to receive assistance from the Phare Programme, which should also be financially supported by other donors.

them). These relations have been formalised in the Lomé Treaty and are supported by a number of special financial facilities.

In parallel with the general trend, environmental considerations have found their way into later texts of the treaty, particularly into the present one, Lomé IV and its recent amendment following a mid-term review. There is a complicating factor in that vital elements of the Lomé Treaty cannot be maintained in the future due to their incompatibility with the new rules of the World Trade Organisation (the successor to the General Agreement on Tariffs and Trade, GATT). The relations will therefore have to be reconsidered fundamentally when Lomé IV expires at the end of this decade.

Towards a European Union: the Maastricht Treaty

Important developments have also taken place within the EC during the period under review. During 1991, the basic treaties were again adapted, on this occasion with the aim of creating a European Union (EU). The goals of the Community were fundamentally expanded in the Maastricht Treaty, which incorporated a Common Foreign and Security Policy and a Home Affairs and Justice Policy. All decisions affecting the new domains will be decisions taken by the European Union. Although new decisions taken under the (amended) Treaty of Rome remain decisions of the European Community (EC; the Maastricht Treaty states that 'EEC' is no longer the correct term), they are at the same time EU decisions.

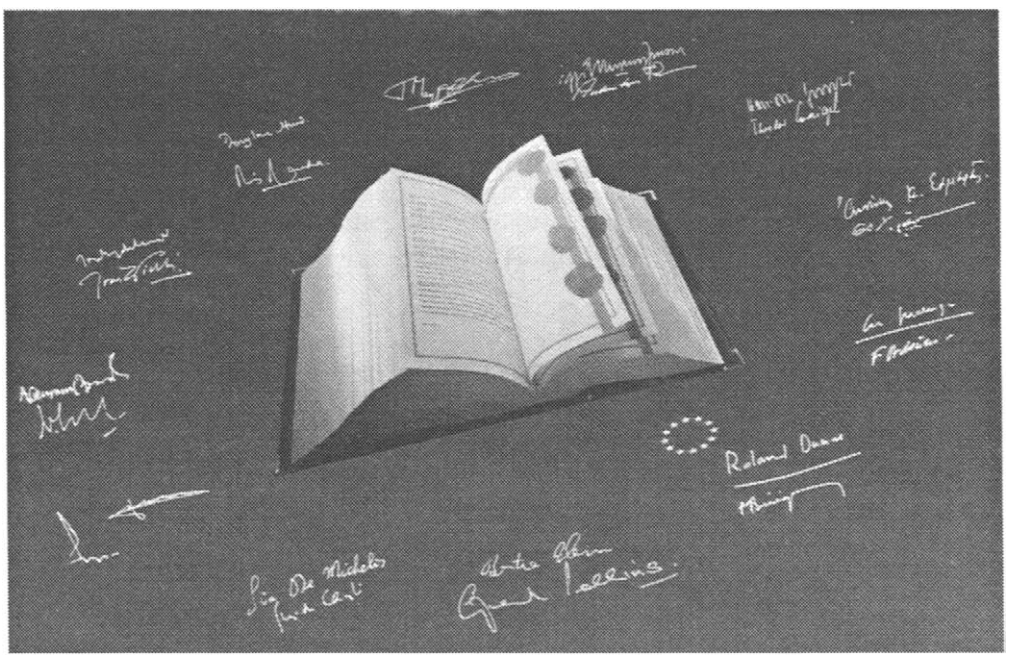

Plate 5.3 In 1992, the heads of government of the 12 member states of the (then) European Community signed the Treaty of Maastricht, the aim of which was to bring about a political, economic and monetary union in Europe. Photo: European Union

The new names of the European institutions are formally set out in an amended article 4 of the Treaty of Rome and include the 'Council' and the 'Commission'. However, the Council has decided to call itself the Council of the European Union and the Commission has decided to call itself the European Commission.

As was the case with the SEA, additional funds have been made available for the least prosperous regions, this time through the Cohesion Fund. The subsidiarity principle has now been extended to all EU policies. This should not affect environmental policy, because the principle was already mentioned in the First Action Programme (although the word 'subsidiarity' was not actually used to describe it) and was introduced formally in the SEA. However, the Maastricht Treaty triggered a great deal of anti-Community feeling in several member states and there is now a current of opinion in favour of 'repatriation', i.e. the restitution of EC competences to the member states coupled with the abandonment of existing Community legislation. In this context, a number of countries, notably the United Kingdom and France, have argued for the 'repatriation' of certain environmental legislation.

Important changes have also been made in the decision-making procedures and in the role of the European Parliament. However, each member state has retained its right of veto on key issues (see Box 11).

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Procedures for environmental decision making

Environmental protection was not initially one of the EC's formal policy areas. The EC was, however, able to give effect to an environmental policy through one of two roundabout routes. The first was article 100 of the Treaty of Rome, which empowered the Council to take decisions in areas that were not mentioned in the treaties, provided that such measures were in line with the spirit of the treaties and did not counteract any official goals. Secondly, where any domestic measures inspired by a country's national environmental policy damaged that country's domestic industry by reducing its international competitiveness, the Council could use article 235 to harmonise legislation at a Community level.

In both cases, the Council had to decide unanimously and the European Parliament fulfilled a purely advisory role (i.e. there was a consultation procedure). The Single European Act contains a provision, included in article 100A, to facilitate decisions that had to be taken in order to create a single market. These decisions could be taken by a qualified majority, in a so-called co-operation procedure with the European Parliament. Environmental decisions that have no impact on the single market are based on article 130S and remain subject to the consultation procedure.

The Maastricht Treaty further extended the opportunities for decision making by qualified majority and stepped up the role played by the Parliament by introducing a so-called co-decision procedure. The latter implies in principle that, if there is a prolonged dispute between the Council and Parliament, these two bodies must nominate a conciliation committee that must try to arrive at a compromise (see also Verhoeve *et al.*, 1992).

The Fifth Action Programme: Towards Sustainability

The Fifth Environment Action Programme was drafted in parallel with the preparation of the UNCED conference. It was decided to use the Dutch National Environmental Policy Plan (NEPP) as a model (Ministry of Housing, Physical Planning and Environment, 1988). An important characteristic of the NEPP, which covers a period of five years, is that it is based on an independent study of the state of the environment, focusing on the expected trends during the next 20 years and the probable effects of existing policies. This study is updated every five years.

The Commission tried to follow the same approach, but its State of the European Environment was published too late to influence the contents of the Programme and was also hampered by a marked lack of sufficiently recent data.

The Programme itself, entitled *Towards Sustainability*, is built on a philosophy which is entirely in keeping with the spirit of the Brundtland Report and Agenda 21. As such, it is an interesting and important document. It stresses the need for sustainable development and major change in all areas of society and personal lifestyles. This need requires the integration of environment policies and goals in all other common policy areas. Agriculture, energy, industry, transportation and tourism are cited as being crucial sectors in this respect. Given that legislation will not be the most effective instrument for inducing such changes, there will be a need to adopt market-oriented policy instruments to complement and partly replace the traditional instrument of legislation.

Although the Programme stresses the need for formulating long-term goals, which should be achieved via concrete, short-term and medium-term intermediate stages and formulated in such a way that they can be checked and evaluated, very few such goals are actually specified in the Programme. The Programme proposes that the formulation of concrete policies should be postponed to a later date; these would then be published in a separate document. In spite of the good intentions of the Programme and its much more fundamental approach to the problem, the absence of concrete policies was generally viewed as a regrettable omission. Although previous programmes were often described as incoherent shopping-lists, drawn up by individual sections of the Environmental Protection Department, these lists did contain concrete information on what could be expected in the coming years. In spite of this, the importance of *Towards Sustainability* as a fundamentally new approach to the Community's environmental policy should not be underestimated.

New developments

There have been a number of important new developments in the recent past in both the Community and its environmental policy; some have been favourable, others detrimental. The single market has been completed and the establishment of a full European Union is well under way. Austria, Finland and Sweden joined the Community on 1 January 1995 and other potential new members are waiting on the doorstep. Several of these are former members of the former communist bloc of Central and Eastern European countries. Of course, this process is the subject of regular criticism and not all developments will have a beneficial effect on the European environment. Yet it is beyond doubt that the Union will become an increasingly important factor in environmental policy decisions.

On the other hand, it is hard to deny that the political focus is moving away from the environment, particularly because of the worrying employment situation in Europe. A clear example of this shift was the publication in December 1993 by the then Commission President, Jacques Delors, of a White Paper on Growth, Employment and Competitiveness (European Commission, 1993). This document not only contains a strong plea for the promotion of economic and industrial growth and the enhancement of the competitiveness of EC industry on the international market (without stopping to wonder whether this is in line with the demands of sustainability). It also suggests that these goals should be attained by a multibillion ECU investment programme in both the conventional infrastructure and the new information infrastructure. Needless to say, it is precisely the infrastructure that generally remains in place for decades, if not centuries and hence determines the long-term development of the many sectors that make use of it. In this way, it actually militates against fundamental change. Another, equally worrying factor is that the high unemployment rate in Europe is not a temporary phenomenon caused by a dip in the economy, but the result of a trend which has been in evidence for many decades now. As a recent OECD study shows, competition from the low-wage countries outside the OECD has only a marginal effect: it is the Western industrial and market system itself that lies at the root of the problem (OECD, 1995). Like earlier Commission papers, the White Paper contains a powerful argument in favour of the use of market-oriented instruments. However, the ongoing problems that have been encountered in connection with the proposed introduction of a Community-wide energy or CO_2 tax show how difficult this process is. At the same time, the use of the Community's traditional instrument, i.e. legislation, remains at least as difficult (see Box 12).

12

The Molitor Report

In mid-1995, an 'independent' commission dominated by representatives with commercial and industrial interests produced a document which became known as the Molitor Report. Although it does not contain any analysis of the development of unemployment and its causes, it assumes that many new jobs will be created if the competitiveness of EU firms on the world market is improved and that it is necessary to both reduce and simplify EU legislation (including environmental legislation) on a significant scale. Although the report has met with severe criticism, it is illustrative for the pressures under which national and international decision makers have to work.

Source: Commission of the European Communities. Report of the group of independent experts on legislative and administrative simplification (Molitor Report). COM (95) 288 fin., Brussels, 21 June 1995.

5.6 Constraints and opportunities on environmental policy making

Owing to the economic recession and the overriding concern about the level of employment, a paradoxical situation has developed. Ever since a number of major constraints on environmental policy making were removed and a fundamental strategy was formulated in *Towards Sustainability*, the Commission has refrained from taking any initiatives whatsoever that would lead to the industrial, agricultural or transport sectors having to make sacrifices for the sake of the environment. Almost all recent Commission texts have been either White Papers without any tangible impact or draft legislation introducing voluntary measures such as eco-labelling and environmental auditing.

Even if the member states had the political will to move 'towards sustainability', the road would still be very difficult. Very few member states have developed legislation and instruments which would allow them to interfere with production, products, the use of capital, access to markets, competition, etc. At an international level, even the regimes that could consider the introduction of such measures are virtually non-existent. This is an extremely serious problem, because of the complete internationalisation, if not globalisation, of industrial production, production factors, markets and capital flows.

An even greater problem is that it is difficult to imagine how the Western world's ever-increasing production and international market share could be reconciled with the demands of sustainability, let alone with those of equity and the redistribution of wealth. It is often argued that these problems will be solved by technology. Yet studies on 'sustainable technology' (Weterings and Opschoor, 1992) indicate that this implies the introduction of entirely new technologies and infrastructures, with ten-fold to 50-fold efficiency improvements; these are not available yet and will take many decades to develop. In these circumstances, it is not surprising that several recent studies have asked whether the present 'psychosis' of growth and competitiveness can continue much longer and have also suggested that there is an urgent need for an entirely new set of international regimes.

Whatever the case, the problems caused by the Western economic system will not easily be solved and high unemployment will remain with us for a very long time. In a general sense, this means that we should not rely on measures that support the existing systems and sectors, which have consistently reduced the role played by labour as a production factor, but that we should reconsider the redistribution of labour and its role in both the manufacturing sector and other sectors, particularly as the service and information sectors are displaying the same tendency of reducing the role played by labour. As far as environmental policy is concerned, we shall remain in a situation in which the unemployment issue overshadows all other concerns. The best policy here might be to try and link employment and environmental problems as much as possible and to develop creative solutions which are beneficial to both (see also Vonkeman, 1995a, 1995b).

This chapter has described the development of a unique, supranational regime, now called the European Union and the position of environmental policy within it. More

and more decision-making powers have gradually been transferred from the member states to the Union, although the debate as to whether the final structure should be a federation or should remain an intergovernmental co-operation framework will probably continue for a long time. We have also noted that the area covered by the Union's activities has constantly expanded during the period under review, although its basic character remains that of an economic community, geared to the creation of a common market. This is particularly evident from the allocation of the Community's budget and the staffing of the Community's institutions: only a few per cent of both are devoted to environmental protection.

In spite of this, an impressive body of Community environmental legislation has been developed, whose impact on the Community as a whole is easy to underestimate. In a number of member states, 80% or more of domestic environmental legislation is based on Community texts, without which there might not have been any such legislation at all. In addition, the Community funds play a key role in assisting the poorer member states, as well as Central and Eastern European and developing countries, to improve their environmental situations. On the other hand, poor results in the implementation and enforcement of legislation and the counteractive effects of the much larger Community funds for economic development have unfortunately reduced their impact.

Global problems relating to the environment and development overshadow and affect the situation within the Community. They have led to an awareness that the environment, development and peace are interdependent and indivisible. In the context of the Community, this implies that the combination of the degradation of the environment and a paucity of economic growth will lead both to an unacceptable situation in society and to political instability.

Given this situation and particularly the continuing high rates of unemployment in the member states, the spotlight will continue to be focused predominantly on economic rather than on environmental problems in the Union during the coming decades. As a consequence, environmental policy will have to be positioned in the context of economic development. In other words, innovative strategies and instruments will have to be designed which make full use of the facilities offered by the Community's research programmes and funds.

Potentially, the regime of the European Union and its resources offer opportunities for the development of an international environmental policy of unprecedented dimensions that could act as a model for the rest of the world. An important precondition, however, is that the citizens of Europe and their political, governmental and non-governmental representatives not only learn to think at least at a European level, if not globally, but continue to act locally as well.