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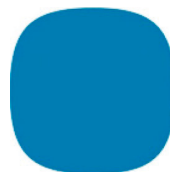
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## **Environmental Protection Policy in the European Community: Development and Problems**

**Helmut Weidner\***

### **I. Introduction: International Environmental Problems Need International Solutions**

Pollutants dangerous to humans and the natural environment usually do not respect national frontiers. This simple fact did not matter much in earlier years when pollution sources were few and the emissions of pollutants still low. However, as industrialization, energy production, urban areas and traffic density have continuously increased, particularly since the Second World War, so have emissions of numerous pollutants from various sources and the concentration levels of these pollutants in the various environmental media (air, water, soil) as well as the transport of polluting substances over long distances.

The latter problem is currently highlighted as the Acid Rain problem which has become the primary issue of international environmental policy in recent years. However, many more problem areas exist, calling for international attention and solutions. To name just a few: the pollution of international rivers and seas, the pollution of soils, threats to human health as well as to plants and living creatures by toxic substances, damage to the global atmosphere by various air pollutants and the threat to the global environment by nuclear power plants not constructed and operated under the security and technical standards developed in accordance with the best technology available.

Furthermore, the field of international environmental concern has expanded beyond pollution to embrace a new range of critical resource issues. These include: the degradation of soils through erosion, salinization and deforestation; the loss of crop land and amenity areas through encroachment from other uses; the confined depletion of forests worldwide, especially in

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Asian and South American countries; the loss of wildlife habitat; depletion of marine natural resources and the loss of plants' biological diversity, essential to maintaining the genetic strength and survival of the world's crops and livestock (OECD 1984).

These problems raised complex issues of interdependence between sustainable economic development and practices to maintain the resource and environmental bases of world development. Many of these problems stem from the lack of effective policies in some countries, especially policies governing land-use planning and development control. Other problems originate in, or are aggravated by, development policies (for example, in agriculture, forestry and fisheries) that neither take sufficient account of their impact on the very resource on which they depend, nor possess a sound economic rationale themselves. While most of these problems are domestic in cause as well as effect, some arise from the incidental effects of economic, trade and other policies in the OECD region as a whole. Others, including some of those that have the greatest effect in the Third World countries, result from the impact of the material demands, especially of OECD economies on countries that lack the laws and policies needed to protect their own environment. Finally, the environmental consequences of economic growth in the coming years will be far from negligible, especially if current trends toward higher growth can be sustained and extended worldwide. The introduction of new technologies, changes in the structure of economic activity, changes in patterns of consumption, investment and trade, and growth in per capita income will all have significant implications for trends in environmental pollution and resource development through the turn of this century. Such changes will also determine the need for, and cost of, improved new policies as well as the conditions under which they may be deployed (OECD 1984).

## II. International Activities

The new awareness of the environmental consequences of economic growth has attracted the attention of governments over the past decade and concerted measures are being taken to deal with the most pressing environment-related problems of modern society. Not only have national governments directed increasing attention and resources to the protection of the environment but international approaches to the problems have likewise been accentuated, especially over the past decade. By and large, it was acknowledged by national governments—as it is the case in so many other areas of activity—that environmental problems cannot be addressed only or adequately at the national or local level. They usually have an international dimension, whether bilateral, multilateral or global in scale.

Due to this growing awareness of the international dimension of many environmental problems not only national governments but also international organizations started activities in this area. In many cases they have even been ahead of national governments, at least in stimulating public discussion or in drawing the attention of governments to certain problem areas.

Possibly the most stimulating impetus for international activities in the area of environmental protection policy was provided by the United Nations "Conference on the Human Environment" held in Stockholm (Sweden) in 1972. That conference represented a break-through in changing the attitudes on environmental protection, not only of governments but also of the public. The issue then became institutionalized as a permanent task by the creation of the "United Nations Environment Program" (UNEP). Even before the UN conference the UN-associated Economic Commission for Europe (ECE) convened in Prague (CSSR) in 1971 the "ECE Symposium on Problems Relating to the Environment."

A new principal subsidiary body within the framework of ECE—the Senior Advisors to ECE Governments on Environmental Problems—was created at that time, a body still in existence. The work of the ECE as well as other national and international organizations has been profoundly affected by the Final Act of the "Conference on Security and Co-operation in Europe" concluded in Helsinki (Finland) in 1975. The final act contains detailed provisions concerning co-operation among the 35 participating states from Eastern and Western European countries in the field of environment, leading, later on, especially to international co-operation in monitoring and evaluation activities related to the long-range transport of air pollutants and environmental impact assessment.

In 1979, a high-level meeting within the framework of the ECE was held which adopted the "Convention on Long-range Transboundary Air Pollution" and the "Declaration on Low- and Non-waste Technology." Assessed on the basis of their actual influence in stimulating international co-operation and in shaping national governments' attitudes and behaviours on transboundary pollution problems the "Convention" has been the most decisive international policy on air pollution control. Presently (August 1986) the Convention is signed by 34 nations and ratified by 30 nations. The Convention came into force in March, 1983.

The Convention represents a basic legal instrument for negotiating solutions to problems posed by transboundary air pollution. It sets forth fundamental principles and establishes procedures for exchange of information, review of policies and strategies, co-operative research and consultation of the signatory states. The Convention is possibly the first legal instrument on an international level reflecting the "don't pollute your neighbour principle."

Within the framework of the Convention the "Co-operation Programme

for Monitoring and Evaluation of Long-range Transmission of Air Pollutants in Europe" (EMEP) was established, comprising more than 20 countries, to deliver the necessary data for creating rational and fair policy goals for air pollution control to be implemented by the signatory states as well as providing an information base for assessment of the activities implemented.

However, although the Convention was most decisive and stimulating for the beginning of international co-operation in environmental policies in Europe, it has not been very successful until recently in influencing the actual air pollution control policy—if assessed on the bases of emission trends of major air pollutants—of the Member States. The difficulties surrounding the Convention with respect to transforming their objectives mutually agreed upon into substantial, concrete measures, resulting in the reduction of total emissions in every Member State, are of high interest for students of international activities in the environmental protection area. The Convention is of outstanding interest for that kind of study because it was a large-scale measure undertaken for the first time to aim at commonly agreed on objectives for reducing national pollution loads and the transboundary fluxes of them, i.e. objectives the performance and implementation of which, in theory, could be easily supervised and assessed.

As already mentioned, until recently only in very rare cases have the objectives of the Convention been implemented into adequate policy measures by the signatory states. The primary causes for this "implementation deficit" will be (in a very abbreviated form) mentioned here because these problems also appear in a rather similar context in most other international co-operative activities on environmental protection measures, as could be learned, for example, from environmental policy in the European Economic Community (EEC), too.

The *key problem areas* involved in the implementation of the goals of the Convention appear to be the following:

The *objectives* of the Convention have been formulated only in broad and vague terms, as a result of the intervention of major emitter countries, including the Federal Republic of Germany (FRG). For example, the signatory states pledged only to "endeavour to limit and, as far as possible, gradually reduce and prevent air pollution." They also agreed to adopt the "best available control technology economically feasible" (emphasis added). No numerical goals, timetables, abatement requirements or enforcement provisions were included.

The provisions for *data gathering and exchange* were extremely weak. Especially the eastern countries were not willing to pool emission data, which could—as they claimed—disclose sensitive economic and energy information to the western competitors. But, also, many of the western countries took the same stand on data exchange. All in all, this resulted in data gaps and even in data-manipulation, the latter to show by unverifiable data a better performance than actually took place. Due to the missing or weak data bases a rational implementation of the Convention

was almost impossible.

The strong variations in the *general economic situation* and the resulting capability of spending money for additional pollution abatement measures between the signatory states made it very difficult to agree on clear-cut time tables for reducing emissions.

Strong variations in the *problem situation*, i.e. with respect to emission loads, concentration levels and damages through air pollution as well as the public awareness of the problem situation and the resulting willingness to pay for abatement measures.

Strong variations in the *problem structure*, i.e. emitter structure, fuels used, fuel supply elasticity, future developments and main emitter classes, economic position of the main emitting industries, etc.

Differences in environmental *policy approaches* established in the various countries (e.g. emission-oriented vs. ambient air quality management; react-and-cure vs. anticipate-and-prevent approach; regulatory vs. economic incentive instruments, etc.).

Differences in the organization of *environmental protection* in the various countries (e.g. central vs. decentralized systems; resources available for control and enforcement authorities; division of responsibilities among the various administrative levels, etc.) and

Lack of a "neutral" international body to supervise the nations' activities as well as "steering" the nations' performance by positive (e.g. subsidies, general economic incentives) or negative (sanctions) means. It should be mentioned that the ECE secretariat has extremely limited resources and its environment unit has only a few staff members whose responsibilities include a whole range of environmental protection matters besides transboundary air pollution.

The slow progress of the convention in reducing air pollution levels can be almost completely explained by these criteria. As will be shown below, these criteria also play a dominant role in the environmental policy of the European Economic Community (EEC). To make a long story short: the overall picture with respect to the attitudes of the signatory states changed significantly in the 1980's when many governments had become convinced that massive damage in central Europe, especially to forests ("Waldsterben" in German = dying of forests) were the result of air pollutants that are the principal components of Acid Rain. An increasing number of the Convention's signatories have become convinced that the benefits of abatement do outweigh the costs.

New impetus began with the 1982 multilateral Stockholm "Conference on the Acidification of the Environment" where several European nations including West Germany now supported the Scandinavian countries in their efforts to reach more effective international agreements on abatement measures. As one outcome of this conference and the following conferences on this matter in Ottawa (Canada) 1984 and Munich (West Germany) 1985, is that several countries (presently a total of 21) have joined the so-called 30-Percent Club. The Member Countries of this club have pledged to reduce their sulphur dioxide (SO<sub>2</sub>) emissions, including transboundary pollution, at the source by at

least 30 percent of the 1980 levels by 1993 at the latest.

However, several of the most polluting nations have refused to join the club: the United Kingdom, the United States, Poland, and Spain. Nevertheless, it can be expected that the new attitude of many European governments toward air pollution problems will lead to significant reductions in SO<sub>2</sub> emissions in many countries before the 1990's. Some nations already have achieved large emission reductions.

Not only the Economic Commission for Europe (ECE) but also other international organizations are involved in environmental protection matters by stimulating international cooperation, providing information, promoting research, and by preparing international agreements and conventions. The activities of OECD, WHO, FAO, UNEP, etc. are well known. Today, the list of international conventions and agreements on environmental protection matters is quite long; some of these have been reached without substantial problems but many only after hard negotiations. Although some agreements are more or less symbolic, others have made strong impacts on polluting activities or activities with detrimental effects on the environment. Only a few agreements have shown rather high positive performance rates, while many of them have rather large performance deficits. As international environmental policy in general is not the issue of this paper, the reader is asked to refer to the large bulk of studies presently available on this issue (for a comprehensive account of this development, see Caldwell, 1984; DeReeder, 1977; United Nations Environment Program, Register of International Treaties and Other Agreements in the Field of the Environment, Nairobi 1983).

The environmental policy of the EEC, however, is closely related to general international environmental activities, and it is an especially interesting case to be studied in order to get some specific insights into the basic problems of international environmental policy. Furthermore, it can be postulated that the problems which appear at the EEC level in activities related to environmental protection matters will possibly also show up, and in most cases, in a more distinct form, with policies developed by other international organizations which do not have comparable organizations, authorities, resources and controlling capacities as the EEC institutions.

Recently reaching a total of twelve nations, the EEC wields a level of authority unparalleled among multilateral organizations in Europe or other parts of the world, including the authority to establish pollution control directives binding upon Member States. The EEC relies on a unique, independent entity, the "Commission," to play a key role in the development, initiation, and implementation of EEC policies.

Before describing the basic features of the EEC organizational structures, authorities and activities related to environmental policy some basic information deemed to be necessary for a more complete understanding of this rather

complex supra-national body, on the EEC will be provided. A further chapter then discusses the EEC's environmental policy focussing on the most controversial issue, namely the abatement of transboundary air pollution. Finally, recommendations related to international co-operation in environmental policy matters are made.

### III. European Economic Community: General Information

At present, twelve nations belong to the European Economic Community (EEC): Belgium, Denmark, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom. There are rather great differences among the various EEC Member Countries in areas decisive for the establishment of common (harmonized) environmental policies which aim at avoiding transboundary pollution or "problem-shifting" across the borders.

At least the following basic criteria are influencing significantly the development and implementation of a common environmental protection strategy or of specific protection measures in the Community:

*The general economic situation*, including the current state of the economy, the development of the business cycle, the unemployment rate, the industrial structure, the energy situation, etc. There are enormous differences among the Member States regarding these criteria, e.g., there are rather poor (Ireland, Portugal, the Southern regions of Italy) and rich countries or regions (e.g., West Germany, the Netherlands). Some countries have a much worse economic situation (Portugal) than others; the same holds true for the unemployment rate. There are countries heavily dependent on foreign countries for their primary energy supply (e.g. Denmark), while others (the Netherlands) are almost independent from foreign supplies. In some countries the industrial structure is dominated by "high pollution" industries (i.e., Belgium, the UK); others have a relatively modern industrial structure (e.g. the Netherlands, West Germany);

*The social, political and cultural setting* including awareness of environmental problems, political pressure for or against environmental protection matters, the types of elected parties, participation in politics, institutional and bureaucratic arrangements and traditions, and policy styles. There are, e.g., Member States who care much less about environmental pollution (at least in specific areas) than others; some have an "open" (providing substantial participation of the public or environmental groups) while others have an almost "closed" political decision process; some have a centralized while others have a decentralized political structure, and there are states preferring flexible approaches to pollution control whereas others have established a rather detailed regulatory (command-and-order) approach relying on general statutory standards, permits and prohibitions;

The *environmental conditions*, including emissions, effluents by consumption or industrial activities, transport, etc.; concentration levels of pollutants in all environmental media; orographic, natural and meteorological conditions; population density and urban/industrial agglomerations; availability of natural resources; damages by pollutants; import or export relationships related to pollutants, etc. Some Member Countries are densely populated, having only few and small rivers, moderate winds, cold winters, etc., whereas others have strongly different conditions providing a much more favourable basis for pollution control at low costs.

The criteria listed above have proved, especially by studies directed toward implementation problems, to be highly influential in shaping the environmental policy process: the issue definition, the legislative and standard setting process as well as implementation and enforcement, at the EEC level.

*To sum up:* environmental regulations—which substitute the politically imposed legal requirement for an outcome that otherwise would be determined by market forces—take many forms and have varied purposes. Depending on the particular problem being addressed, they are usually intended either to prevent damage or harm to health, or to conserve or improve the environment and the life it supports. The environmental regulation systems in the Member Countries have been fashioned by unique geographic, climatological and historical factors, different economic structures and situations, legal traditions and political cultures. Therefore the need for, and the form and degree of, EEC intervention will vary.

The same criteria—the list above is not deemed to be complete but it is supposed that the major relevant categories are mentioned—are also responsible for setting favourable conditions or constraints for environmental protection activities by other international organizations. However, the *major difference* between such activities of international organizations (e.g. OECD, UN, ECE) and those at the EEC level is that the EEC is a formalized body with its own competences in policy and rule-making and with close, formalized relationships between the EEC institutions and the Member States. This is supposed to be a basic advantage, which can result in faster negotiations on common environmental protection measures and in clear-cut outcomes of this negotiation process. In general terms: the higher state of integration is supposed to facilitate co-operation on the subject of environmental protection. As will be shown in Chapter 7 this presumption does not always hold true in the area of air pollution control.

Before turning to this area, a short description of the very complex system of EEC environmental policy will be given.

#### IV. EEC: Pollution Control Policy

The European treaties, particularly the Treaty of Rome, which created the European Economic Community (EEC) in 1957, do not refer to environmental protection. However, there are now discussions underway on the reform of the European Community's founding Treaty of Rome. An inter-governmental conference has made proposals to streamline decision-making procedures and improve political co-operation within the Community. Some of the proposals would involve changes to the Community's environmental policy. For example, the amendments proposed aim to make environmental protection one of the EEC's formal objectives. With no references to the environment included in the founding Treaty, the Community's considerable body of environmental legislation has had to be based on article 100 of the Treaty—which allows the introduction of legislation to harmonize national laws which directly affect the functioning of the Common Market—and on article 235, which contains a power of last resort allowing the Council of Ministers to do anything for which specific powers are not included elsewhere in the Treaty.

Legislation under articles 100 and 235 can only be adopted by unanimous vote in the Council, providing opportunities for Member States to pursue delaying tactics. Concern has also been voiced that the need to harmonize national environmental standards when directives are based on article 100 can result in pressure to equalize pollution control across the EEC, when the aim of its environmental policy should be to take advantage of the varying capacities of different environments to assimilate pollutants. The Treaty amendments put forward by Denmark and the Commission would considerably enhance the status of the EEC's environmental policy. Denmark has proposed that environmental protection should be given prominence by inclusion in article 3 of the Treaty, which lists the Community's objectives. The Commission has proposed the addition of four new articles, one of which would state that preserving and improving the quality of the environment is an explicit Community goal. It also says that environmental protection should be an integral part of other Community policies, and adds that prevention rather than cure and the application of the "Polluter Pays Principle" should guide environmental policy. However, harmonization of national environmental standards remains a Commission objective. One of its proposals says that national measures should not upset the internal market, and while Member States would be permitted to introduce stricter laws than provided for in existing EEC legislation these, too, would have to be compatible with the functioning of the Common Market.

The Commission's main proposal for accelerating decision-making on environmental directives is that unanimous voting should be retained only for "framework" legislation laying down the principles of EEC action in a particular field. The adoption of detailed legislation within this framework could then

proceed by means of majority vote (ENDS 1986). However, no formal decisions on the above mentioned recommendations were made until autumn 1986.

The upsurge of interest in environmental matters in the EEC was primarily associated with the UN Environment Conference in Stockholm in 1972. Shortly after the Stockholm conference a meeting of the heads of state or government of the EEC countries declared that the EEC should adopt an environmental policy and called on the EEC-Commission to draw up a programme of action.

A first action programme was launched in 1973, to be followed five years later by a *second programme* designed to reduce pollution and nuisances, to improve the environment and the quality of life, and to promote Community action in international organizations dealing with the environment. In 1983, the EEC launched its *third action programme* (ending in 1986) which, unlike its two predecessors, did not put forward a series of detailed measures but presented rather a political framework to steer the second decade of EEC environment policy. Placing greater emphasis, therefore, on the long term, the programme stressed that resources must be safeguarded and considered environmental policy a key factor in economic development. One of its priorities was to integrate environmental protection into all the other EEC policies. For all these programmes there are *six basic goals*:

- (1) To prevent, reduce and, if possible, eliminate pollution and other harmful effects.
- (2) To keep a sufficient ecological balance to protect the biosphere.
- (3) To promote good management of all resources of the natural environment.
- (4) To lead development towards quality—more specifically towards improved living and working conditions.
- (5) To integrate environmental concern in all aspects of political planning.
- (6) To identify concerted solutions to environmental problems with countries outside the EEC.

Within the framework of these programmes the EEC had adopted a considerable number of laws applicable to the territory of the Member States. In addition, the Community is a contracting party to many conventions and several international agreements on various environmental aspects. Furthermore, the Community participates in a great number of meetings arranged by regional as well as international organizations. Within this latter framework the EEC, jointly with its Member States, signed the Convention and the Resolution on Long-range Transboundary Air Pollution in November, 1979 during a Summit Meeting in Geneva.

As the *third programme* ended in 1986, a new paper on new directions in environmental policy was adopted by the Commission in February, 1986. This document is expected to form the basis of the Community's *4th Environmental Action Programme* (1986-1990). The following criteria are recommended to guide the EEC's response to environmental challenges:

## Environmental Protection Policy in the European Community

- strict environmental policy is essential to and fully compatible with long-term economic growth;
- prevention is the key objective of the policy and to that end environmental requirements should be integrated into legislation and decision-making;
- the "Polluter Pays Principle" should be developed and applied more widely;
- the implementation of environmental policy in disadvantaged regions and declining industrial areas of the Community should be assisted;
- a "multi-media approach" to environmental problems should be increasingly developed so as to avoid the transfer of pollution between environmental sectors; and
- increasing attention should be paid to the effective implementation and enforcement of environmental policy and to its practical results.

Also included in the document mentioned above was a list of various priority areas on which early decisions were to be made. These should be reflected as priorities in the 4th action programme. Among others, the following priorities are mentioned: a substantial reduction of atmospheric pollution from all sources; development of and support for actions to reduce polluting emissions in seas; promotion of worldwide codes of practice regarding dangerous chemicals, wastes and industrial plants; adoption of environmental regulations for biotechnology; creation of a framework within which agriculture will respect the environment and conserve the heritage of landscapes and species; launching of a substantial program of demonstration projects to explore the job-creating potential of environmental policies; and to strengthen the Community's international role in environmental problems, especially in relation to the Third World incorporation at the European level (International Environment Reporter, (3/12/85)).

As mentioned earlier, some of the difficulties and shortcomings in achieving the objectives laid down in the EEC environmental action programmes must be attributed to the weak legal basis of the basic Treaty. Therefore, on February 18th, 1986, the European Parliament in Strasbourg recommended that the EEC Treaty should be amended to include the principle of environmental protection. The European Parliament furthermore recommended that environmental action should no longer be held back by the need for unanimity within the EEC's Council of Ministers. The European parliament also defined a number of main tasks for the Community. These include the creation of a habitable environment for the citizens of the Community; the common environmental policy shall serve to preserve, foster and restore the natural environment, protect human health, and ensure the optimum utilization and re-utilization of natural resources; a paragraph states that this policy shall be based on the principles of prevention of environmental damage, action against hazards at the source, the "Polluter Pays Principle," the integration of environmental protection into other policies, etc. What is important: indivi-

dual Member States shall be free to apply stricter provisions than those adopted at the Community level.

A further important constraint for an effective EEC environmental policy is seen in the EEC's limited competence in the area of implementation and enforcement. The EEC can establish general principles, it can commission studies and research, it can make grants from a (small) fund for environmental purposes, and it can legislate. However, it cannot directly administer its environmental policy since it has no staff in the Member States and no authority for doing this. Administration of the EEC's environmental policy is left to the Member States themselves. The EEC Commission has only the duty to ensure that obligations arising from EEC legislation are carried out.

Before providing an overview on the environment-related activities of the EEC, a short description of the EEC institutions relevant for environmental protection policy is given.

## V. The Institutions of the European Community

"European Community" is the name used to cover a combination of the European Coal and Steel Community (created in 1951), the European Economic Community and the European Atomic Energy Community (created by treaties in 1957). Since 1986 it has had twelve Member States.

The basic institutions of the European Community are:

- the Council of Ministers,
- the Commission,
- the European Parliament,
- the Economic and Social Committee,
- the Court of Justice.

The *Commission* has the sole power to propose legislation, and although other institutions can invite the Commission to act, they cannot formally initiate legislation. It is the *Council of Ministers* that has the power to decide on proposed legislation (although for some technical matters this power may be delegated to the Commission). The legislative body of the EC is therefore the Commission and the Council combined: the Commission proposing legislation, and the Council adopting it. The Parliament is therefore not a real legislature although it has the right to express an opinion on all proposed legislation and so can block legislation by failing to give an opinion. It also has some powers over the budget. The *Economic and Social Committee* can also express opinions on proposed legislation. The Commission has the duty to ensure that decisions of the Council are put into effect and can take individual

Member States before the *Court of Justice* for a judgment that the State has failed to fulfil its obligations. The Court cannot apply any sanctions, but all Member States have accepted the judgments of the Court.

The *Council of Ministers* is formally composed of the Foreign Ministers of the Member States, but specialist Ministers will represent them when discussing particular subjects. So for environmental matters it will be represented by the ministers of the environment. It is thus common to speak of the "Environmental Council." Many decisions have to be taken unanimously (76 votes) although the Treaty prescribes that certain decisions may be taken by a qualified majority (54 votes).

The *Commission* is formally composed of 17 individuals nominated by the Member States (two each from the four bigger countries, one each from the other countries) who have to undertake not to be influenced by national considerations. They are advised by the Commission's services consisting of officials organised into a number of Directorates-General. The Service responsible for environmental matters is the Directorate-General for the Environment, Consumer Protection and Nuclear Safety.

The *European Parliament* has 518 directly elected members. Eighty-one members are elected in each of the four bigger countries and proportionately fewer in the others. They organize themselves into political groupings, but for handling the business of the Parliament they are divided into specialist committees. When a Commission proposal on environmental matters is transmitted to the Parliament for an opinion it will be referred to the Environment Committee which will appoint a rapporteur from among its members to draft a report and resolution. The resolution is eventually voted in a plenary session.

The *Economic and Social Committee* has no power but is also able to express opinions on Commission proposals. Its members are nominated by national governments and represent various sectors of society. In general, it is composed of representatives of employers, employees (trade unions) and others (local authorities, consumer organizations, etc.).

## VI. EEC Legislation Related to Environmental Protection

The legislative instruments available to the EC are set out in the Treaty of Rome and comprise: Regulations, Directives, Decisions, Recommendations and Opinions. The latter two have no binding force. A *Regulation* is a directly applicable law in the Member States and is mostly used for rather precise purposes such as financial matters or detailed matters concerned with trade. It has only rarely been used for environmental purposes—an example being the ban on the import of whale products. A *Directive* is binding as to the results to be achieved, but leaves to the Member States a certain flexibility in accomo-

dating existing national procedures.

Directives are a form of legislation but as they are only binding as to the ends to be achieved, it is left to the Member States to introduce their own legislation or administrative means to achieve these ends. However, the Commission has to ensure that Member States introduce the necessary measures and so Directives usually specify a time period (often two years) and state that the governments of Member States must send to the Commission copies of these "laws, regulations and administrative provisions." Commission officials examine these and, if they are not satisfied, an exchange of correspondence will take place between the Commission and the Member State which may end with the problem resolved or, alternatively, may lead to a case being brought by the Commission before the Court of Justice. Several cases have come before the Court relating to environmental Directives.

Approximately 100 Directives have been agreed on by the Council of Ministers relating to environmental matters. These fall into six broad headings:

**-Water**

The medium heavily threatened by domestic and industrial pollution. It is involved in many essential human activities such as agriculture, fishing, industry, bathing, and, not least, the supply of drinking water.

*Actions:* Identification of more than 100 dangerous substances, quality objectives, reduction in waste from the titanium dioxide industry, protection of the seas and rivers from hydrocarbons, chemical waste-pollution.

**-Air**

Human health is affected by atmospheric pollution caused by industry, motor vehicles, air transport.

*Actions:* Directives for limits and guide values for sulphur dioxide, lead, nitrogen dioxide, carbon monoxide and hydrocarbons. Control of adverse effects on forests, aquatic ecosystems, ozone layer, buildings, crops, etc. Harmonisation of measuring techniques.

**-Chemicals**

Because of the use (and abuse) of chemicals, special emphasis is put on the fundamental principle of prevention.

*Actions:* Establishing Community standards for certain types of chemicals, regulating the use of certain substances, setting up preventive controls. Directives on the biodegradability of detergents, on the classification, packaging and labelling of pesticides, solvents, paints and varnishes.

**-Noise**

The socio-economic effects are important on an individual or a collective level.

*Actions:* Various Directives on setting maximum levels for construction machinery, for motor vehicles (including cars, trucks, buses, motorcycles, agricultural

machines), aircraft, helicopters and lawn mowers.

**-Waste**

2,000 million tonnes of waste are produced every year in the Community. Toxic and dangerous wastes represent one of the largest protection problems at local, regional, national, Community and international levels, because of quantity and special risks associated with certain chemicals, e.g. toxicity, health hazards, threat to water supply, risks of infection, explosion, fire, and corrosion hazards.

**Actions:** Assuring the proper treatment and reducing the quantity of unrecoverable waste, recycling and reusing waste, safe disposal of remaining non-recoverable waste, extraction of raw materials and energy, control of all aspects of dumping, tipping, labelling, licensing of storage, transport and transfrontier movement.

**-Actions:**

Assuring the proper treatment and reducing the quantity of unrecoverable waste, recycling and reusing waste, safe disposal of remaining non-recoverable wastes, extraction of raw materials and energy, control of all aspects of dumping, tipping, labelling, licensing of storage, transport and transfrontier movement.

In the period August 1985—August 1986, the EEC's ministers of the environment met on only three occasions. Though few in number, these meetings led to the adoption of important legislative texts, such as continuation of the embargo on baby seal skins, extension of the Community's information system to monitor the discharge of hydrocarbons at sea, restriction of the dumping of DDT, pentachlorophenol and carbon tetrachloride into EEC waters, better control of the export of dangerous wastes to third countries, reduction of the major risks of industrial accidents, utilization of sewage sludge in farming and improvement of the information system on fresh surface waters. In addition, a research and development programme concerning environmental protection, climatology and major industrial activity risks was adopted.

In July 1985, after a decade of deliberation, the Community adopted a Directive requiring environmental impact assessments for certain categories of major development projects in both the public and private sector which are likely to have significant effects upon the environment. The Directive was extensively modified prior to its adoption, as Member States of the EEC, in particular the United Kingdom, Denmark and France, sought to change provisions which were perceived to be against their national interest (Wathern, 1986).

The year 1986 will be remembered especially for the *Chernobyl nuclear reactor disaster* in the Soviet Union at the end of April 1986. This disaster triggered a heated debate in the European Parliament over the future of nuclear power in Western Europe. Representatives of ecological parties from

West Germany, Belgium and the Netherlands used the Chernobyl blast to renew their campaign for a stop to the use of nuclear power throughout the European Community. Although they were joined by the socialists, the Parliament's strongest political group, and some communists, the ecologists failed to win a majority in the Parliament for a resolution calling on the Member Governments to stop building new nuclear power stations and to phase out existing ones. Instead, the European Parliament adopted in May 1986 two resolutions appealing for common safety standards and the creation of an international safety inspectorate.

## VII. EEC Air Pollution Control Policy

Air pollution control has always been one of the major areas of the EEC's environmental policy. Furthermore, the importance of this policy area for EEC activities increased tremendously since the beginning of the 1980's when extensive damage to forests, which could plausibly only be attributed to air pollution, was discovered in the Federal Republic of Germany.

The Directives concerned with air pollution can be divided into four groups:

- those that specify the composition of fuels (lead in petrol, sulphur in gas oil)
- those that limit emissions from vehicles
- those that set air quality standards for smoke, sulphur dioxide, lead, and nitrogen oxides
- and one which sets a framework for limiting emissions from stationary plants.

The first two groups of legislation were originally proposed to prevent trade barriers that would result if different Member States had different standards, but they also have important environmental protection objectives. There are now proposals to tighten the standards for lead in petrol, sulphur in gas oil and vehicle emissions to prevent Acid Rain and other damage.

Especially the air pollution control policy of the EEC has been (and still is) surrounded by strong conflicts and disputes among the Member States on objectives, strategies, time tables and regulatory instruments to control air pollution. In general, the conflicts reflect the different basic preconditions in the various countries, i.e. the widely differing geographical, economic and environmental circumstances as well as the administrative traditions. These disputes have undoubtedly slowed down the introduction of effective regulations to cope with emissions of major air pollutants (especially  $\text{NO}_x$ ,  $\text{SO}_x$ ) from stationary sources as well as to reduce car emissions.

Regarding emission limits for large combustion facilities, there is a proposal for EEC legislation supported especially by the government of the

Federal Republic of Germany and the Netherlands. However, no agreement has been reached up to now (August 1986). In 1985, the Member Countries effected a very weak compromise regarding car exhaust standards. It is expected that the standards will contribute almost nothing or only very little to the protection of the environment and human health from car exhaust.

In order to reduce emissions from motor vehicles more effectively, in 1983 the West German government decided to adopt the car emission standards used in the United States and requested the EEC Commission to take similar action. After heated discussions, the EEC finally decided not to follow this request and proposed emission standards which were much lower than those recommended by the German government to be implemented within a fixed time limit. The EEC also raised concern about the German plan to grant tax relief for the promotion of catalytic converters and the purchase of so-called low-pollution cars, but, in the end, this measure was accepted. Nevertheless, the fact remains that the EEC, authorized by the Treaty of Rome to set, *inter alia*, product and car emission standards binding for all Member Countries, massively hindered the efforts of some countries to reduce air pollution caused by car emissions. Finally, all EEC Members, except Denmark, agreed on the compromise.

Denmark pursues an independent strategy in its attempt to establish stricter car emission standards. In July 1985, Denmark, Sweden, Norway, Finland, Switzerland, Austria, Canada and Liechtenstein signed a declaration to prepare as soon as possible national legislation on car emissions equivalent to the federal regulations in the United States. Thus, from a strictly formal point of view, the EEC directive is not effective as long as Denmark has not agreed to it.

The EEC has recently started negotiations on stricter emission standards for trucks and buses—a very urgent issue since these vehicles have a considerable share in air pollution. So far, however, there is no indication that the EEC will act as a “pacemaker” and carry through emission limits based on the best technology available as proposed in the United States.

All in all, if compared to measures already established at the national level in several Member States, or by international agreement (e.g. the so-called 30 Percent Club, the members of which promised to reduce their national SO<sub>2</sub> emissions by at least 30% before 1993) or compared to what has already been achieved by countries not belonging to the EEC (e.g. Switzerland, Austria, the United States, Sweden, Japan) in reducing effectively air pollution from stationary and mobile sources, the EEC's air pollution control policy cannot be labelled as being “pacemaking” or “state of the art.”

Although the EEC is, as mentioned above, of a unique character compared to other international organizations—because it possesses institutions able to create legislation binding on the Member States without further review

or ratification—it was in many cases not able to overcome the general constraints underlying international co-operation in the area of environmental protection. Similar in many respects to negotiations at other international levels the outcome of the negotiation process in the EEC is very close to a “lowest common denominator” on environment-related activities. However, in some cases EEC legislation has supported the introduction of better and stricter regulations in some Member Countries, or it has at least increased public awareness of environmental problems.

With respect to air pollution control the difficulties in reaching an agreement on stricter regulations deemed necessary by scientists, environmental groups, some politicians; etc. to effectively clean-up and save the environment in most cases arise from the different economic, political and environmental conditions of the Member States. Although the majority of the Member States suffer from pollution by other Member States, there are, on the other hand, strong differences in the pollution export-import-relationship. The large differences among the Member States suffering from “pollution imports” will lead to significant differences in the costs of decreasing “pollution exports” for individual countries. Furthermore, some countries (e.g. the United Kingdom, Belgium) would have to invest a huge amount of money in abatement technology to reduce emissions from old stationary sources typical of their industrial structure; others would also have to invest much money in abatement technology although they already have reduced SO<sub>2</sub> emissions substantially by altering the energy structure, especially by increasing the capacity of nuclear power plants (especially France, Belgium). Additionally, damage caused by air pollution varies widely among the Member States, especially with respect to forests. Concerning mobile sources, there is also large structural variation in the car industries of the Member States. So, for example, the bulk of cars produced in Italy, France and Great Britain is made up of small and medium-sized cars whereas in West Germany many more large cars are produced. These differences finally led to the “weak EEC compromise” on car emission standards, because Italy, France and Great Britain opposed strict standards—comparable to those in the United States—for small and medium-sized cars, claiming that this would result in economic disadvantages for their automobile makers and advantages for car producers in West Germany.

As can easily be imagined, this list of difficulties for agreeing on common standards and regulations in the EEC could be expanded by many examples and it could be shown that many of the difficulties have their “roots” in the various differences in the social, economic, political and environmental conditions in the Member States.

However, there often appear two further problems not directly caused by national differences. Firstly, there is the problem of agreeing on a common

basis for the activities to be undertaken by the single Member States which could be used as a reference when assessing the outcome of the measures taken. In the area of air pollution control, for example, the United Kingdom claimed that it was an arbitrary decision to take 1980 as the base year for reductions in annual emissions from combustion plants. It contended that it already had achieved tremendous reductions in the 1970's, that it would be very costly to meet the reduction rates now prescribed, and that the EEC was in favour of those countries having done less before 1980.

Secondly, the Member States vary greatly in their monitoring capacities and in their routines for reporting on monitoring data. These differences make it, in many cases, very hard to establish a sound data basis for common activities and to get the necessary data to supervise and assess the measures taken. It is of interest that even for such common pollutants as SO<sub>2</sub> and NO<sub>x</sub> many Member Countries have only a few continuously operated monitoring stations to measure concentration levels in the ambient air and even fewer appliances to monitor emissions directly at the source.

Although several studies have shown the importance of up-to-date, comprehensive, valid and reliable information for a rational and effective environmental policy, environmental monitoring and reporting still need substantial improvement in all EEC Member Countries.

These partly specific, partly rather general, observations on common air pollution control policies in the EEC are not supposed to provide a complete picture of the very complex situation in the EEC. However, the cases and points mentioned here indicate the most significant constraints in current EEC environmental policy. They are based on the results of a comprehensive empirical study of standard setting and implementation of air pollution regulations in major EEC countries, co-directed by the author (Knoepfel/Weidner, *Luftreinhaltepolitik—Stationäre Quellen—im internationalen Vergleich*; six volumes, Berlin 1985).

### VIII. Recommendations

Based on experiences within the framework of EEC environmental policy as well as on studies of environment-related measures by other international organizations in Europe, the following general recommendations can be supposed to increase the effectiveness and efficiency of multi-lateral co-operation in environmental protection matters:

- (1) Many more efforts should be made to establish a common base for international activities, taking into account the economic and social constraints of the co-operating states as well as the benefits for others prospectively resulting from

the implementation of the agreed on objectives. The EEC environmental policy, as well as the activities of other international bodies, show rather clearly that nations do not act internationally to the benefit of other nations unless they benefit from such action themselves.

- (2) Policy objectives should be concrete, clear-cut, and embedded into time schedules.
- (3) The data relevant for establishing an international policy and for supervising the performance of common tasks should be comprehensive, up-to-date and open to all participatory states, both for governmental authorities and the public.
- (4) Participation of non-governmental groups and institutions in the programme formulation and implementation processes should be increased.
- (5) Research activities should be better coordinated. In the area of Acid Rain, for example, many disconnected studies concerning the same topics have been undertaken not only in different EEC States but also within one country. This means not only doubling of work but also wasting of resources.
- (6) The instruments used to implement the commonly agreed on objectives should be as flexible as possible. Furthermore, only in very rare cases will there be a single one "best" instrument to solve a special problem in an effective and efficient way. Therefore, a "mixture of instruments," e.g. a combination of regulatory and economic measures, of ceilings or statutory standards, of charges on emissions and subsidies for certain activities, etc. often will be the most adequate approach. The decision on instruments to be used should be left, in turn, to the participatory states.
- (7) Problem shifting (or problem displacement) in its various forms should be avoided, e.g. cleaning up the air in urban areas by using the so-called high chimney strategy or filtering air pollutants from combustion plants and dumping the waste into waters, etc.
- (8) Cost-benefit analyses of environmental policies should give due consideration both to the benefits of stricter anti-pollution measures and to the costs of environmental damage that cannot be physically measured or calculated in exact economic terms (e.g., loss of amenities).
- (9) Although short-term restoration (clean-up) measures by conventional means (e.g. end-of-pipe technologies) are necessary for solving the most pressing problems, a long-term environmental policy should shift from the currently dominating "react-and-cure" to an "anticipate-and-prevent" approach. Studies on environmental policies in western countries have clearly shown that the "anticipate-and-prevent" approach in the long-run is the most environmentally sound and—even by conventional economic terms—the more beneficial approach. In spite of the fact that they are possibly more efficient and effective, anticipate-and-prevent strategies are often difficult to be implemented. This is because, unlike react-and-cure strategies, they have to be activated before remarkable damage to health, property and the environment has occurred and, hence, before public demand for action supports or stimulates political activities for such kinds of measures.

It goes without saying that many more recommendations could be added. Nevertheless, many problems are likely to occur if one tries to take these recommendations as the basis for international co-operation in environmental policy matters. No predictions can be made about whether there will be good chances for a positive response to these recommendations. However, according to a leading student of international environmental policies at least the following points seem to be certain with respect to international co-operation in environmental protection matters:

"In an uncertain world, one apparent certainty is that popular attitudes and governmental and intergovernmental arrangements are not yet adequate to cope with threats to the environment. There have been significant advances in the structural evolution of international environmental policy during the past two decades, and perhaps more importantly, measurable changes in public opinion. More of this evolution will be necessary if the quality of all life on the planet earth is not to be irretrievably impaired."

(Caldwell 1985: 12)

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