

INTERNATIONAL ENVIRONMENTAL LAW

Teaching materials

Academic Course: 2021-2022



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Unit 9. The EU environmental policy (I)

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9.1. General aspects

- * A brief commentary on EEA's history: the silence of the original Treaties
 - In the original Treaties that established the European Communities, there was no precise legal basis for the establishment of a Community environmental policy.
 - The EC started its environmental policies with an ambitious programme after the first UN Conference on the Environment in Stockholm in 1972.
 - The first meeting of the Heads of State and Government, held in Paris in October 1972, already proclaimed the need to formulate a Community environmental policy.

- * Legal action from European institutions
- * After 1972, the EEC established joint action in the fields of environmental, regional, social and industrial policy.
- * The precise legal bases on which the Community institutions relied for the adoption of legislative acts in this area were, depending on the case, Article 100 of the EEC Treaty, Article 235 of the EEC Treaty, or both simultaneously.

✳ **Article 100 EEC Treaty:**

- ✳ "The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such laws, regulations and administrative provisions of the Member States as directly affect the establishment or functioning of the common market."
- ✳ The application of this article enabled the European Institutions to initiate action for the harmonization of Member States' environmental legislation when this could jeopardize the proper functioning of the common market.

✱ **Article 235 EEC Treaty:**

- ✱ "Where action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, and this Treaty has not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall adopt the appropriate provisions".

- * The crucial step in this field was taken by the Single European Act of February 17, 1986, which incorporated into the EEC Treaty a new Title VII on Environment, consisting of Articles 130R, 130S and 130T.

- * The Maastricht Treaty of February 7, 1992, known as the Treaty on European Union, updated the Community's objectives and definitively institutionalized the Community's environmental policy.

- * The Treaty of Amsterdam of October 2, 1997 introduced some relevant reforms, such as including "sustainable development" among the Union's objectives (TEU, Art. 2) and adding a new Article 6 to the EC Treaty requiring the integration of environmental protection into the definition and implementation of Community policies and actions.

The Treaty of Lisbon of December 13, 2007, amending the Treaty on European Union and the Treaty establishing the European Community, entered into force on December 1, 2009. According to the new Treaty system, the provisions relating to the environment are to be found in both the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).

- Article 191 of the TFEU defines the central elements of the Union's environmental policy, establishing its objectives, principles and parameters, as well as the criteria for the exercise of shared competence for external action in this area.

9.1.1. EU's environmental policies timeline

- * Policies have a key role in determining, and improving the state of our environment.



The First Environmental Action Programme (EAP) was decided upon in November 1973 —> landmark programme

This programme established the argument that economic development, prosperity and the protection of the environment are mutually interdependent.

Most important objectives:

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

- The **Second EAP** (1977-1981) was essentially a follow up to the first in terms of approach and objective, with simply a greater range of problems to be dealt with.
 - European concern about the quality values of water and air.
 - The quality objectives for drinking water were very strict – those for air could be achieved without strong policy intervention.

- The **Third EAP** (1982-1986) and partially the Fourth (1987-1992) reflect a change in policy approach as a consequence of the environmental dimension of the EU internal market.
 - Environmental emissions standards needed to be harmonised to avoid distortions to industry competitiveness. Product regulations had to be harmonised to avoid non-tariff barriers emanating from different national product norms.
 - The Third EAP shifted from a quality approach to an emission-oriented approach. It proposed formulating emission limit values for stationary, as well as mobile, sources.

- The connections between the common internal market and environmental protection appeared in connection with the implementation of Article 36 of the EEC Treaty.
- This article allowed for certain exceptions to the abolition of restrictions on the free movement of goods between Member States when such restrictions were justified, among other causes, "for reasons of protection of health and life of humans, animals (or) preservation of plants..."
- Restrictions on import and transport of goods within the Schengen zone.

- The **Fourth EAP** marks a further change in the approach to environmental policy. The shortcomings of the earlier approaches (i.e. quality policy, emissions orientation) were recognised.
 - In this period it was acknowledged that, an approach which focussed on emission controls for stationary sources was unlikely to achieve certain ecosystem or health based quality objectives.
 - This was an initial commitment for the strategic reorientation of environmental policies in the EC, which gradually took place between 1989 and 1994.

- **The Fourth EAP was an initial commitment for the strategic reorientation of environmental policies in the EC, which gradually took place between 1989 and 1994.**
- The change of the Fourth EAP is often characterised as a “paradigmatic change”, a change from “trade orientation” to a “sustainability frame”. Environmental policy is less perceived as an additive policy and more as an integrated part of economic decision-making.. “Sustainable development” gradually became a normative reference for environmental policy in the EU from the beginning of the 90s onwards.
- The climate change debate has some inherent characteristics that require environmental policies beyond end-of-pipe technologies

- At the end of the 1980s, a new regulatory approach for environmental policies was promoted by the Commission (especially the use of indirect, economic instruments).
- The different initiatives of the Commission became authorised by the "Dublin Declaration" of the European Council from June 1990, which asked the Commission to prepare a communication on "economic instruments".
- At the end of the 1980s, there was a mounting wave of environmentalism. Green parties were popular in several EU countries, and achieved good results at national level and in the European Parliament

- **The Fifth EAP** (1992-1999) brought interesting and innovative elements such as:
 - The principal aim of sustainable development according to the definition of the Brundtland Report.
 - Reference to the sectoral approach, which integrates an environmental dimension into the most polluting sectors (transport, energy, agriculture, etc.), and the limits of old end-of-pipe approaches.

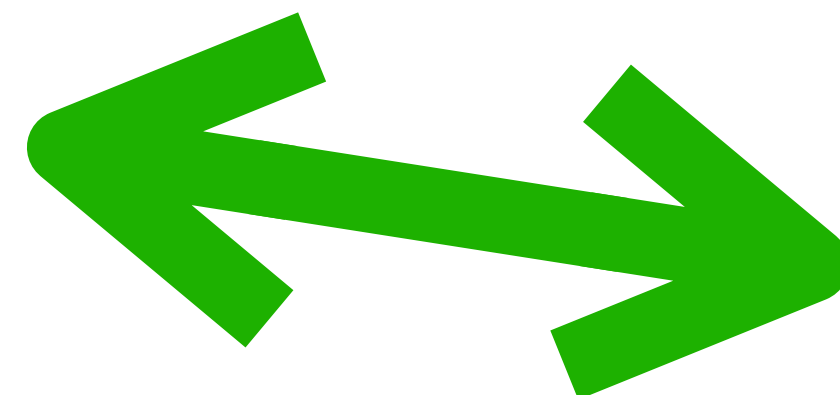
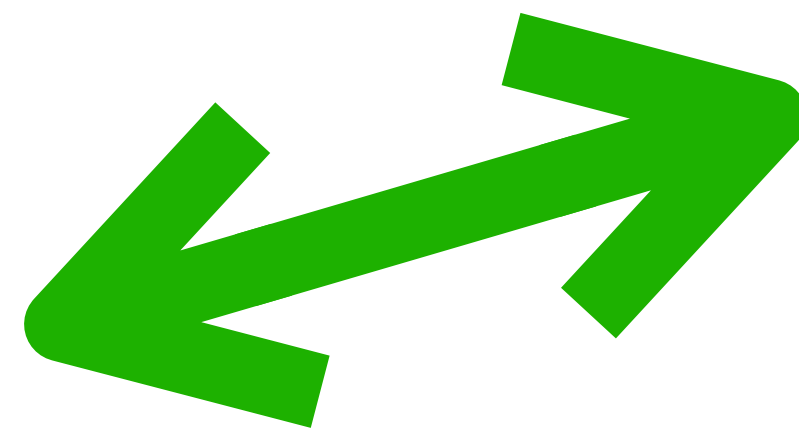
- The emphasis on new instruments, especially on market-oriented instruments such as fiscal incentives or voluntary instruments, which strengthen producers and consumers own interests in environmental decision-making.
- The new consensus-oriented approach taking into account the crucial role of non-governmental protagonists and local/regional authorities to represent the general interest of the environment. This may contribute to innovative concepts, raise public awareness, and enforce the implementation of EU directives.
- The setting of medium and long-term objectives for the reduction of some pollutants, and proposed instruments to achieve these objectives.

- **The Sixth EAP** (2002-2012), also called “Our choice, our future” had as a starting point that some environmental problems, such as climate change, biodiversity degradation or over-consumption of renewable and nonrenewable resources, require a much broader approach, not only from a legal standpoint.
- Environmental Action Programme 6 identified four priority areas: a. Climate change; b. The nature and biodiversity; c. The environment, health and quality of life; d. Natural resources and waste.

- **Current Seventh EAP (2013-2020), called “Living well within the limits of our planet”.**
- The European Union has “agreed to make greater efforts to protect our natural capital, stimulate growth and innovation characterized by resource efficiency and low-carbon and protect the health and welfare of humans – within the planet’s natural limits”.
- Three priority areas where action is needed were identified in the Environmental Action Programme 7: a) human capital; b) efficient use of renewable and non-renewable natural resources used in the European Union economies and pollutant emissions reduction from the same economies; c) the risks that health and peoples’ well-being are facing.

Towards the Eighth EAP - Recently adopted! pending intro into force (May 2th, 2022)

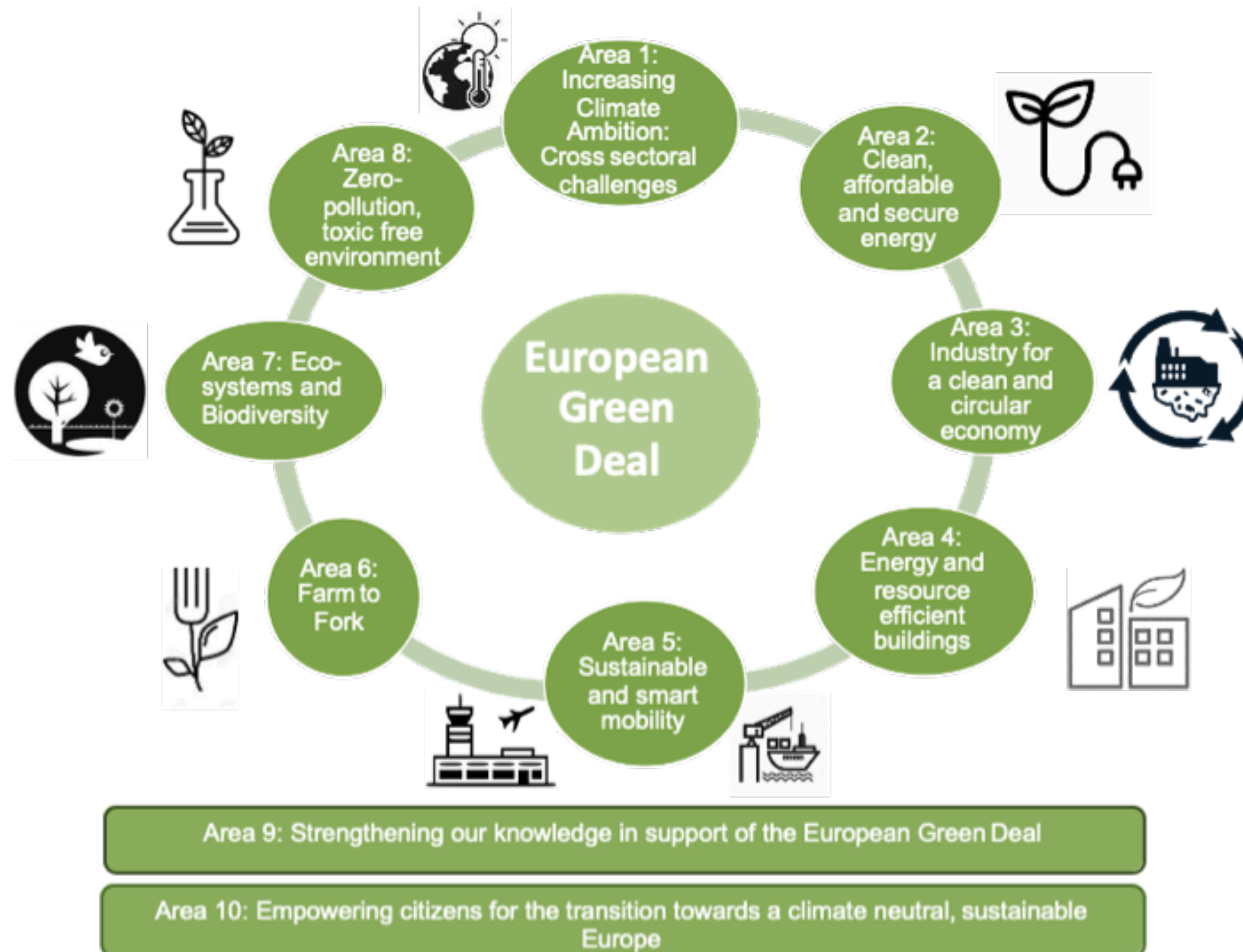
8th EAP
Decision 2022/591 of the European Parliament and the Council on a General Union Environment Action Programme to 2030



9.2. The EU Green Deal (Introduction)

- **What is the EU Green Deal?**
 - Long term strategy to achieve the climate neutrality up to 2050.
 - The European Green Deal is the plan to make the EU's economy sustainable. The main objective of the EGD is to turn climate and environmental challenges into opportunities, and making the transition just and inclusive for all.

9.2.1. How the EU Green Deal is going to achieve its goals?



1. Increase of ambition and adoption of Regulations (binding documents)
2. EU Climate Policy Mix (Intervention in different sectors, i.e. energy, industry, buildings...)
3. Just Transition Mechanism
4. Civil Society Pillar

9.2.2. Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law')

- It is recognised as the "first fundamental legal expression of the EU Green Deal's political commitment to a climate-neutral economy" (Pérez de las Heras, 2020).
- European Climate Law? -> No "European laws" -> greater impact.

Some questions:

Increased ambition?

Is it a gateway to climate litigation?

Terse regulation = Preamble + 14 articles; sufficient?

- * Binding long-term and medium-term objectives, respectively (Article 2):
 - * (i) Long-term goal -> achieve climate neutrality by 2050 at the latest, and;
 - * (ii) Intermediate target -> achieve a domestic GHG reduction of at least 55% compared to 1990 levels by 2030.
- * Article 4.5 of the Regulation -> 2nd interim target -> 2040 -> unspecified

- * **Evaluation and monitoring of objectives**

- * Target date: 30 September 2023 + every five years

- * Assessment of the mitigation target;

- * Progress made on adaptation.

- * **IMPORTANT:** Conclusions of the assessment together with the State of the Energy Union report = European Commission -> European Parliament + European Council.

- * What if a Member State does not meet the goals? Facilitative framework = recommendations (6m.); if recommendations are not followed, reasons for non-compliance must be communicated —> **NO sanction.**

* **And in the international sphere?**

* The operation of the 2021/1119 Regulation will be reviewed within **six months of each global stocktake** in accordance with Article 14 of the Paris Agreement **(2023)** and, in any case, should take into account:

- * (i) the best available and most recent scientific information, including the latest reports of the IPCC and the Advisory Council; and
- * (ii) the Commission's assessment, which may be accompanied by policy proposals to amend this Regulation.

*** Amendments introduced by Regulation 2021/1119 to Regulation 2018/1999 of 11 December 2018 on the governance of the Energy Union and Climate Action:**

- * Article 11 -> Multi-level dialogue -> citizen participation (EU Climate Pact Ambassadors).
- * Article 45 -> Assessment on the contribution of Regulation 2021/1119 in the governance of the Energy Union -> Every 6 months after the global stocktake (2023).

- Increased ambition?
- Is it a gateway to climate litigation?
- Is the Regulation sufficient to address mitigation and adaptation?

9.3. Just Transition Mechanism

- * Achieve goals set by EU Green Deal = investment needs.
- * The EU will also provide financial support and technical assistance to help those that are most affected by the move towards the green economy. This is called the Just Transition Mechanism. It will help mobilise at least €100 billion over the period 2021-2027 in the most affected regions.

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