

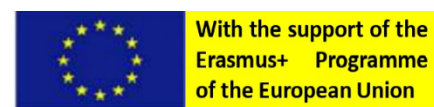
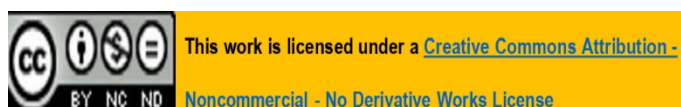
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Article 37 of the Charter of Fundamental Rights of the European Union on the Protection of the Environment

In this paper, I discuss the protection of the environment in the Charter of Fundamental Rights of the European Union.

Environmental quality is fundamental to our health, economy, and well-being. However, the EU faces several major challenges, including climate change, unsustainable consumption, and production, as well as different forms of pollution.

For this reason, we are going to learn about the content of the precept that regulates environmental protection in the Charter of Fundamental Rights of the European Union (CFREU). Thus, Article 37 states:



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“That the policies of the union shall integrate and ensure, in accordance with the principle of sustainable development, a high level of environmental protection and improvement of the quality of the environment”.

A variety of general considerations are worth highlighting from this article.

Firstly, the provision speaks in a broad and indeterminate manner about the protection of the environment, and therefore refers to a whole without expressing any delimitation.

Secondly, the article makes express mention of the Principle of Sustainable Development, taking as its legal basis the provisions set out in Article 3.3 of the Treaty on European Union, and Articles 11 and 191 to 193 of the Treaty on the Functioning of the European Union.

However, according to Article 4 of the Treaty on the Functioning of the European Union (TFEU), the EU and its member states have shared competences that apply to all areas of environmental policy, so that the European Union does not have exclusive competence in this area.

We are therefore talking about an integrating and guaranteeing principle of environmental protection in EU policies, but not about a subjective right to a healthy environment.

It is necessary to insist on the overlap between environmental protection and the enjoyment of fundamental rights such as the right to life, human dignity, the right to respect for private and family life, and the right to health.

The EU has some of the highest environmental standards in the world.

Since the concept of 'environmental protection and improvement of the quality of the environment' is extremely broad, it is appropriate to delimit the areas covered by this safeguard.

EU environmental policies and legislation protect natural habitats and biodiversity, maintain atmospheric protection, and promote the fight against climate change. They also ensure the safety and proper management of water, guarantee the proper disposal of waste, improve knowledge

about toxic chemicals, and promote sustainable development and the circular economy.

As we can see, the content of environmental protection covers an infinite number of areas. However, in view of the current climate emergency declared by the European Parliament, it is worth making a very brief reference to climate change. In accordance with Article 191 of the TFEU, the fight against climate change is an express objective of European environmental policy. Moreover, the adverse effects associated with this phenomenon have led to the adoption of the European Green Pact as a strategy integrating all key areas of environmental protection and aiming to achieve climate neutrality by 2050 at the latest.

Another important issue concerning environmental protection is the abundant case law of the Court of Justice of the European Union (CJEU) on air and water quality, conservation of resources and biodiversity, waste management, and even on the prevention of energy shortages and state aid such as:

The Judgment of the CJEU (Grand Chamber) of 22 September 2020. Case C594/18 P. Republic of Austria v European Commission:

By decision of 8 October 2014, the European Commission approved the aid which the United Kingdom plans to grant to Unit C of the Hinkley Point nuclear power station in Somerset, on the coast of the United Kingdom, to promote the creation of new nuclear energy production capacity. The unit is scheduled to come into operation in 2023 for a period of 60 years. The aid, which is divided into three parts, is granted to the future operator of Unit C, the NNB Generation Company Limited.

Among the measures at issue, the appellants argued that:

1. a contract for differences had been concluded;
2. an agreement between NNB Generation's investors and the UK Secretary of State for Energy and Climate Change, which guarantees compensation in the event of early closure of the nuclear plant for political reasons.

3. a UK credit guarantee on bonds issued by NNB Generation, the purpose of which is to ensure the timely payment of principal and interest on eligible debt.

For its part, the European Commission qualified these three measures as state aid compatible with the internal market based on Article 107(3)(c) TFEU. Under this provision, aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the internal market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

Austria sought the annulment of that decision before the General Court, and its action was dismissed by judgment of 12 July 2018. Austria appealed to the CJEU, which essentially had to answer the question, unique in the case law, as to whether the construction of a nuclear power plant can receive state aid approved by the Commission under Article 107(3)(c) TFEU. The Court of Justice dismissed the appeal and answered this question in the affirmative, on three main grounds:

1. the construction of a new nuclear power plant is an objective of common interest;
2. in the absence of specific rules in the Euratom Treaty, both the CFREU and the TFEU, as well as the principles derived therefrom, should apply in the nuclear energy sector;
3. to verify the compatibility of the measures at issue with the internal market, neither the Commission nor the General Court was required to classify them formally as 'investment aid', which may satisfy the conditions for the application of Article 107(3)(c) TFEU, or as 'operating aid', the authorisation of which under that provision is in principle excluded.