

# EU environmental policy – what's next?



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An outcry went up from environmental non-government organizations in June this year, when the European Commission announced that it would postpone the adoption of several environmental policy documents (seven thematic strategies listed in the Community's Sixth Environmental Action Programme: soil protection, marine environment, pesticides, air pollution, urban environment, sustainable use of resources, and waste recycling) pending an internal discussion regarding new environmental policies and legislation in the face of doubts concerning the EU's ability to recover from economic stagnation, large unemployment figures, ever-increasing public deficits, and competition from old and new economic powers such as the US and China. Is Europe in a position to continue to demand ever-higher environmental and manufacturing standards from its industries, such as the new EU chemicals legislation, REACH, and combating climate change, when others don't? Or should it slow down on lawmaking and concentrate on better enforcement and implementation of the existing legislation?

The brainstorming lasted only as long as three weeks. At the end of July, it was back to business as usual. The pending strategies would move forward. Public internet consultations were launched on a Flood Prevention Directive, urban environment, tighter emission limits for cars, and the soil thematic strategy. There is of course no sign of the Commission withdrawing its REACH proposals, which the Council and European Parliament will decide upon later this year. And bets are open as to when, but no longer if, the Commission will adopt the remaining thematic strategies.

How could this all happen? Why is environmental policy-making still going strong?

It is partly to do with the EU system itself: the way the institutions are set up and relate to each other. Under Articles 175 and 95 of the EC Treaty (the ECT), the provisions most used as legal bases for environmental legislation, the Commission has the exclusive right to propose legislation that must then be jointly adopted by the Council and the European Parliament.

It has proved quite easy in the past for environment commissioners to get their proposals adopted by the Commission for passage to Council and European Parliament because, if push comes to shove, the environment commissioner just needs to obtain a simple majority of commissioners present in the respective weekly Commission meeting (Article 219 ECT). Of course, Article 217 ECT stipulates that the Commission should work under the political guidance of its president, who decides on its internal organization to ensure that it acts consistently, efficiently and on the basis of collegiality. But this *Leitlinienkompetenz* will naturally be used with caution by a commission president, appointed in consensus by all member states, when facing the commission colleagues from all those member states that appointed them. Past attempts to install additional scrutiny steps (for example, extended business impact assessment to assess new draft legislation at the Commission drafting stage) have not brought about results.

If, once born, a draft policy or legislative proposal can be smoothly moved up through the ranks and waved through at the Commission weekly meeting, it would be for the member states meeting as Council and the European Parliament to correct or reject the draft legislation and policies. Both should scrutinize the proposals in depth, because members of the European Parliament would face their local national voters if things go wrong and member states would have to implement, execute, and not least fund the transposition of the legislation they have adopted in Council.

Alas, these potential corrective factors do not work fully, again for reasons inherent in the system. First, environmental policy proposals, for the most part (the most notable exception being environmental taxes) can be passed in Council by a qualified majority (232 votes in favour out of 321, cast by a majority of member states (at this point 13), and rejected or amended without the Commission's consent only by unanimity (Article 250 ECT), a practical impossibility given the multitude of member states).

Second, the ministers negotiating for their member state in Council are the respective ministers and secretaries of state with the environment portfolio who are naturally open to environmental concerns and, because things are happening in Brussels, seem to a certain extent removed from national government scrutiny.

Third, as far as the European Parliament is concerned, regardless of the political party, those members that are *rapporteurs* on particular environmental proposals and are members of the Parliament Environment Committee (taking the lead on environmental matters) also tend to be favourable to environmental issues and, again because of sheer distance to their local constituency, quite relaxed about views at home.

Fourth, environmental focus groups are well organized and trained and so are successful in their advocacy efforts with the European Parliament in representing what is perceived to be a good cause.

Fifth, when it comes to negotiating legislative texts between the institutions involved, the Article 251 ECT procedure is such that it favours the Parliament and the Commission to build informal alliances against the Council. For example, if the Commission issues a negative opinion on one of the Parliament's amendments to a legislative text, the Council would have to adopt this amendment by unanimity (Article 253 (3) ECT); also, the European Parliament is entitled to reject a Council common position by an absolute majority of its members, in which case the proposed act will be deemed not to have been adopted (Article 251 (2) (b) ECT). This leaves the Council as the weaker part of the three.

Lastly, as well the inherent reasons in the constitutional system, two other factors contribute to the race for environmental legislation. The so-called Standstill Directive (Directive 98/34) requires member states to notify draft national technical regulations to the Commission before their adoption. The Commission and the other member states must take a view whether they consider this particular national legislation acceptable or whether it might restrict trade between member states, in which case they may raise objections. In such case, the Commission may also come forward with Community legislation to avoid the effects of the national legislation. This is a strong foothold for those member states that champion particular environmental causes and is heavily used to push environmental causes. If not through the Standstill Directive, individual environmental champion member states push their agenda in the international context and await the international commitments trickling down to Community level.

Of course, the above scenarios leave member states grumbling from time to time, as a result of which the number of infringement proceedings (because of non- or incorrect implementation of EU legislation) launched by the Commission against member states is high, and the national enforcement mentality can at times be low. Whether these corrective attitudes are ethically acceptable is a totally different story. Never mind, EU environment policy is moving along as ever. Watch what's next.