

BASICS OF THE EU ENVIRONMENTAL LAW

ENVIRONMENTAL POLICY OF EU, ITS HISTORY
AND DEVELOPMENT, AIMS AND INSTRUMENTS

THE ROLE OF THE ENVIRONMENTAL ACTION
PLANS



18. 2. 2019

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Course introduction

- 1. Environmental policy of EU, its history and development, aims and instruments. The role of environmental action plans.**
- 2. EU environmental law - sources of law, system of environmental regulation and relation to other EU policies, environmental law**
- 3. Human rights and environmental protection. EU environmental law and the ECHR: Complementing, competing, or co-operating regimes?**
- 4. Access to environmental information, participation of public in environmental decision-making and access to justice - the 3 pillars of Aarhus Convention.**
- 5. Environmental impact assessment.**

Course introduction

- 6. Air protection.**
- 7. Ozone layer regulation / Global climate change in EU environmental policy.**
- 8. Nature protection. Natura 2000.**
- 9. Biodiversity protection. / Regulation of trade in endangered species of animals and plants.**
- 10. Inland waters protection.**
- 11. Waste management.**
- 12. The role of the national courts and the CJEU. Case law and guidance: Where to get more information?**

Requirements

Credit requirements: 1. presentation (semester paper), 2. written test, 3. participation in lessons

The examination in the form of a written test (open book, open questions)

Reading assignments and cases necessary for discussions will be specified during the course.

Structure and Contents

- **Why does the EU protect the environment?**
- **What is the difference between the EU environmental policy and EU environmental law?**
- **What are the main characteristics of the EU environmental law?**
- **How does the EU engage in the global environmental protection?**



What is environmental policy?

Marcus Tullius Cicero, *De Officiis*: Famine at Rhodes



Golden toad



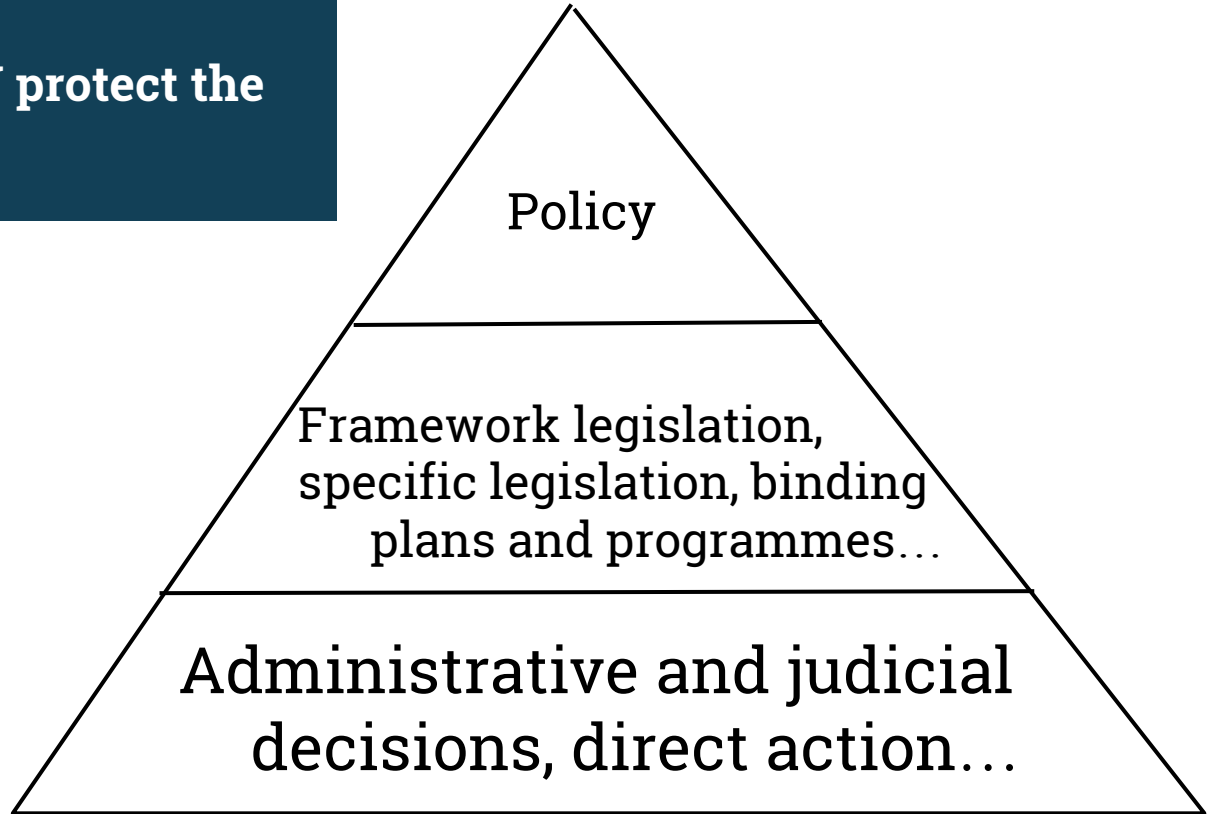




Why does the EU protect the environment?



Why does the EU protect the environment?



Why does the EU protect the environment?

**PRIMARY LAW
(competence)**

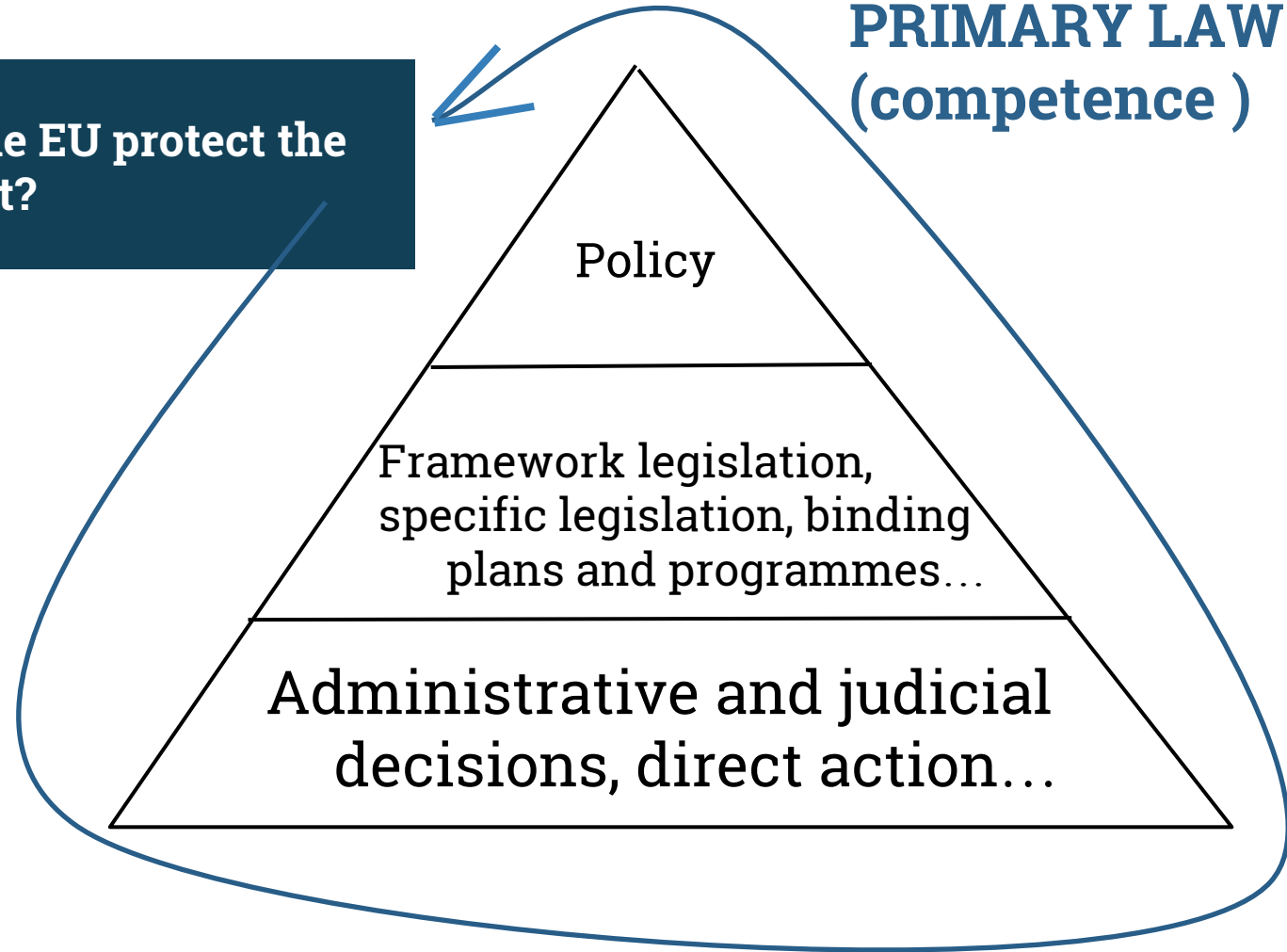




Foto – My sme lesy a Arolla Film

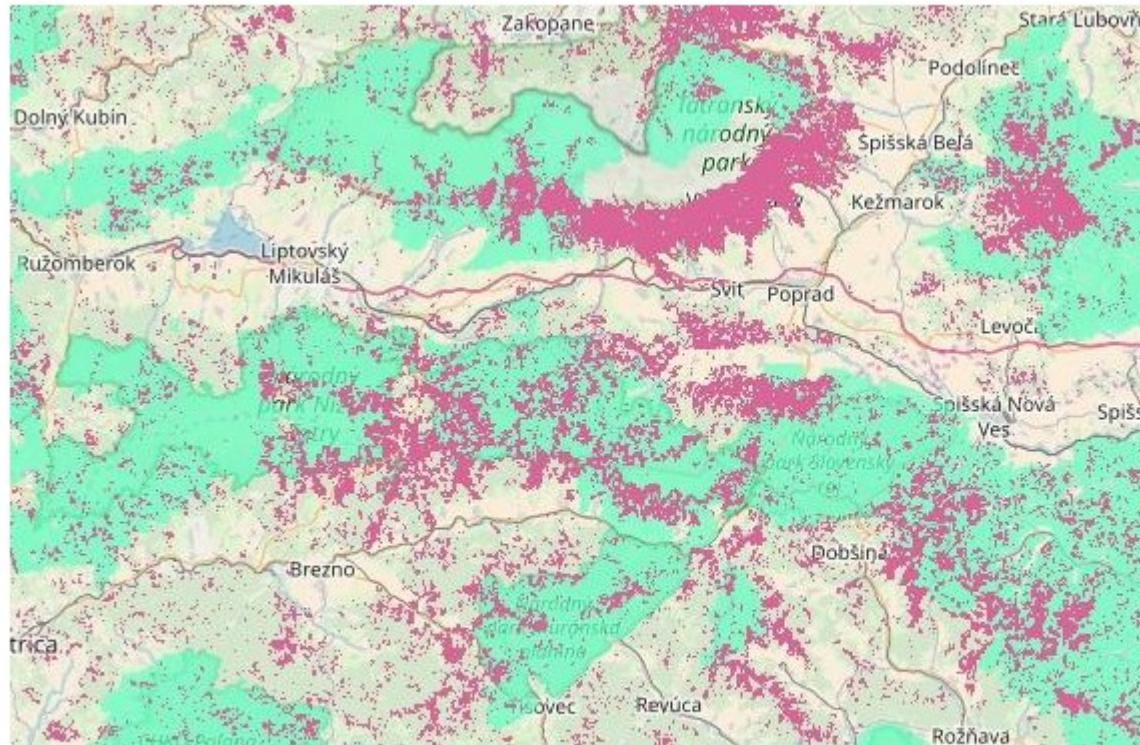


The increasingly rare wood grouse is being driven out of Slovakia's forests

Foresters plant too many trees in the habitat of western capercaillie



Wood grouse(Source: Courtesy of DK)



Map of Special Protected Areas (green) with high rate of deforestation (pink) in Western Carpathians (Central Slovakia) form 2001-2014.

Article 6

1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.



Conservation

Conservationists declare victory for wildlife as EU saves nature directives

EU president abandons plan to overhaul flagship birds and habitats directives following a huge public campaign



This article is 2 months old

3049 91

Arthur Neslen

Wednesday 7 December 2016 16.32 GMT



Swans on Lough Neagh in Co Antrim, Northern Ireland. Photograph: Radharc Images/Alamy Stock Photo

The European commission president, [Jean-Claude Juncker](#), has been forced to abandon an overhaul of flagship nature laws after an unprecedented campaign



European Commission

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European Commission - Press release

A New Start: European Commission work plan to deliver jobs, growth and investment

Strasbourg, 16 December 2014

Today the European Commission adopted its Work Programme for 2015 – setting out the actions the Commission intends to take over the next 12 months to make a real difference for jobs, growth and investment and bring concrete benefits for citizens. This is an agenda for change.

Citizens want less EU interference in their daily lives, especially where Member States are better placed to act and provide solutions. They expect the EU to make a difference on the big economic and social challenges, such as fighting unemployment and improving competitiveness. Citizens expect the EU to be more open about what it does and how it does it. The adoption of the Work Programme is a good starting point as it outlines in all transparency what the EU will and will not do in 2015.

President **Jean-Claude Juncker** said: *"This Commission was elected on the basis of a clear political mandate: the ten priorities set out in our Political Guidelines. Today's Work Programme is the translation of those ten priorities into concrete first deliverables. Citizens expect the EU to make a difference on the big economic and social challenges and they want less interference where Member States are better equipped to give the right response. That is why we committed to driving change and to leading an EU that is bigger and more ambitious on big things, and smaller and more modest on small things."*

First Vice-President **Frans Timmermans** said: *"What we are presenting today is a roadmap for getting Europe back to work, based on clear priorities. 2015 will be the year for delivering the announced Investment Plan to boost our economy, opening up the opportunities of the Digital Single Market for citizens and business, launching European Energy Union, and putting forward a new, balanced European Agenda on Migration."*

We need to **clear the decks** so political efforts are focussed on the real priorities: we have looked through every pending proposal currently on the table of the EU institutions and decided whether we want to maintain, amend or withdraw them. We want results on the ground, so where it is clear existing proposals will not be agreed in a way that meets our objectives, we will propose alternative approaches. This way we will make sure that our Union focuses both on what truly matters and on delivering concrete results for citizens. This time things really are different."

What is the European Union?

EU as an actor of International law:

- International Organization (with legal personality) of regional integration

EU law as a (self-contained) system of International Law:

- concessions of sovereign powers by Member States through the international treaties
- Set of independent rules
- Institutions
- Independent system of adjudication

The Union as a “sui generis” actor of international law:

- intergovernmental and supranational features
- Similarities with federal State (i.e.: division of competences)
- A political internal and external dimension

What is the European Union?

Set of principles and rules that regulate the relationship among the Member States of the European Union

It derives from:

international treaties: founding treaties of the 3 communities + following treaties and amendments (primary law)

legal acts of the EU institutions (secondary law)

<http://eur-lex.europa.eu/>

<http://curia.europa.eu/>

<https://www.youtube.com/watch?v=XgnXwrsMBUs>

- **European Union environmental legislation has developed over the last 40 years.**
- **Environmental policy was not regulated at the Community level in the beginning, the Treaty of Rome does not contain regulations regarding this. Economic integration was the focus.**
- **Awareness about environmental pollution began to develop because of:**
 - **Intensive economic growth**
 - **The fast growth of industrialization**
 - **Increasing energy consumption**
 - **on the international level + national level**

<https://www.youtube.com/watch?v=uTEMFKKuKxE>

Phase 1: 1958 - 1972

1958 EEC Treaty

No specific attention to development of environmental policy

Minor measures (common market based – dangerous chemicals, motor vehicles, detergents)

Phase 2: 1972 - 1987

European Council Summit in 1972: Heads of States and Governments decided that a Community environmental policy was necessary

The basis of the environmental policy was established in the **First Environmental Action Programme (1973)**. Basic goals, principles of environmental law, and activities regarding certain fields of the environment.

The main goal was the efficient operation of the Community and the Common Market – but **extensive interpretation of economic expansion**.

1970 The **US Environmental Protection Agency** is established.

1971 The international environmental organisation **Greenpeace** is founded in Vancouver, Canada.

1972 **The United Nations Conference on the Human Environment is held in Stockholm**. This leads to the creation of government environment agencies and the UN Environment Programme.

1972 The Club of Rome publishes **The Limits to Growth**. It stresses, for the first time, the importance of the environment, and the essential links with population and energy.

1973 In January, **Denmark, Ireland and the United Kingdom** join the European Community, bringing membership up to nine.

1973 A small **Environment and Consumer Protection Service** is set up and attached to the European Commission department for industrial policy and a Standing Committee on the Environment is created in the European Parliament.

1973 The **Arab–Israeli war** of October leads to an oil price shock and economic problems in Europe, sparking action on energy efficiency. Car-free Sundays are organised throughout Europe.

1974 Scientists suggest for the first time that chlorofluorocarbons (CFCs) may be causing a **thinning of the ozone layer**.

1975 The Community starts building its **body of environmental legislation** with the adoption of — among others — the Waste Framework Directive (1975), the Bathing Water Directive (1976) and the Birds Directive (1979).

1976 An explosion occurs on 10 July at a **chemical plant near Seveso**, north of Milan in Italy. A toxic cloud containing dioxin contaminates a densely populated area. In 1982, the Seveso Directive is issued to prevent major accidents with dangerous substances.

1978 Oil tanker **Amoco Cadiz** spills 68 million gallons off the coast of France.

1979 A partial meltdown of the **Three Mile Island nuclear plant in USA** puts the future of nuclear energy in question.

1979 **The first World Climate Conference** takes place in February in Geneva, Switzerland. A panel on climate change set up by the National Academy of Sciences in USA advises that 'A wait-and-see policy may mean waiting until it is too late' to avoid significant climate changes.

1981 The European Commission creates its **Environment Directorate-General**.

1985 First observation of an **ozone hole over Antarctica**.

1986 On 25 April, an uncontrolled chain reaction in a reactor in the **Chernobyl nuclear power plant**, 80 miles north of Kiev, blows off the reactor's lid. More than 31 workers die instantly and around 135 000 people are evacuated from the surrounding area. A plume of radioactive fall-out drifts over western Soviet Union, eastern and western Europe, and eastern North America.

1987 The **Brundtland Commission's report**, Our Common Future, defines sustainable development as 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs.'

Major role of the Court of Justice



For example **Case 302/86** (*Dannish bottles*)

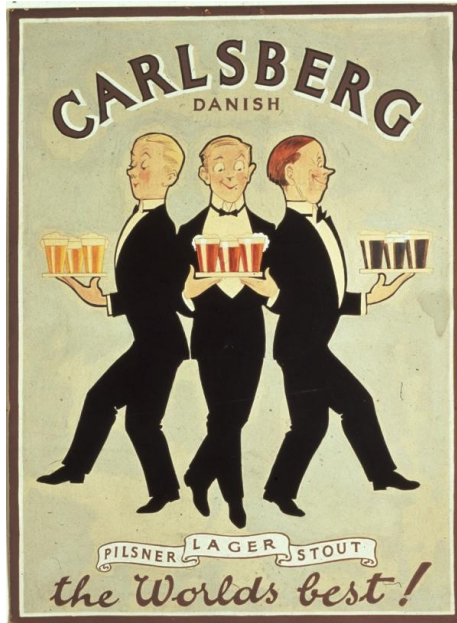
Dannish Order No 397 of 2. 7. 1981:

All containers for beer and soft drinks must be returnable and approved by a National Agency

(120/78, *Cassis de Dijon*): *Obstacles to free movement of goods must be accepted when:*

1. *There is no EC rule regulating the marketing of the product in question, and*
2. *The rules apply to both domestic and imported products with no discrimination,*
3. *The rules satisfy mandatory requirements recognized by Community law, and*
4. *The measures taken are proportionate and necessary in view of their aim.*

Major role of the Court of Justice



For example **Case 302/86** (*Dannish bottles*)

The protection of the environment is "one of the Community's essential objectives" which may as such justify certain limitations of the principle of the free movement of goods.

Article 35:

Quantitative restrictions on exports, and all measures having equivalent effect, shall be prohibited between Member States.

Article 36: The provisions of Articles 34 and 35 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the **protection of health and life of humans, animals or plants**; the protection of **national treasures** possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions **shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.**

Phase 3: 1987 - 2008

1987 Single European Act

Independent **title** of environment was accepted

1993 Treaty on the European Union (Maastricht)

Protection of the environment became **part of the internal common policy**. The scope of environmental policy was enlarged and supplemented it with new objectives.

1997 Treaty of Amsterdam

*„Environmental protection requirements **must be integrated into the definition and implementation of the Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.**”*

Phase 4: Lisbon and further

2009: Treaty of Lisbon

the 3 pillars structure disappears

TUE + TFUE (former TEC) + Nice into a single Treaty

Strengthened role of the EU Parliament

Broader Union's competences

Birth of the European External Action Service (EEAS)

EU Charter

DG Environment

DG Energy

DG Climate Action

Before 1986 (Treaty of Rome)	Single European Act (1986)	Maastricht Treaty (Treaty of the Union - 1992)	Amsterdam Treaty (1999)	Lisbon Treaty (2009)
Art. 100 Harmonization (internal market)	➔ Art 100a Harmonization + safeguard clause	➔ Art 100a Harmonization + safeguard clause	➔ Art 95 Harmonization + safeguard clause	➔ Art 114 Harmonization + safeguard clause
Art. 235 Objectives of the Community	Art. 235 (not in use any longer!)	Art. 235 (not in use any longer!)	Art. 308 (not in use any longer!)	Art.352 (not in use any longer!)
-	Art. 130r - Objectives - Principles - Grounds - Int. coop.	➔ Art. 130r - Objectives - Principles - Grounds - Int. coop.	➔ Art. 174 - Objectives - Principles - Grounds - Int. coop.	➔ Art. 191 - Objectives - Principles - Grounds - Int. coop.
-	Art. 130s Legal basis and procedure	➔ Art. 130s Legal basis and procedure	➔ Art. 175 Legal basis and procedure	➔ Art. 192 Legal basis and procedure
-	Art. 130t Minimum stringency	➔ Art. 130t Minimum stringency	➔ Art. 176 Minimum stringency	➔ Art. 193 Minimum stringency

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ENVIRONMENT

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Directorate-General for Environment

About us

The Directorate-General for Environment is the European Commission department responsible for EU policy on the environment. It aims to protect, preserve and improve the environment for present and future generations, proposing and implementing policies that ensure a high level of environmental protection and preserve the quality of life of EU citizens. It also makes sure that Member States apply EU environmental law correctly and represents the European Union in environmental matters at international meetings.

Leadership and organisation

DG Environment works under the political leadership of [Karmenu Vella](#), Commissioner for Environment, Maritime Affairs and Fisheries, and is managed by Director-General [Daniel Calleja Crespo](#).

DG Environment has approximately 500 staff members. It is organised in six directorates which are, in turn, divided into thematic units. It shares a resources directorate of around 90 people with DG Climate Action.

[Organisation chart](#)

[Search for staff](#)

[Information on meetings held by Director-General](#)

Mission statement

To develop and facilitate the implementation of policies and legislation that contribute to enabling EU citizens to live well, within the planet's ecological limits, based on an innovative, circular economy, where biodiversity is protected, valued and



Karmenu VELLA
Commissioner for
Environment,
Maritime affairs
and Fisheries



Daniel CALLEJA CRESPO
Director-General for
Environment

System and structure:

Sectoral legislation

Air pollution, Water pollution and quality, Waste, Chemicals, Nature and Biodiversity, Land and soil protection, Marine and Coast, Noise

Horizontal legislation - general environmental management issues rather than legislation regarding specific sectors, products or types of emissions.

Environmental impact assessment,

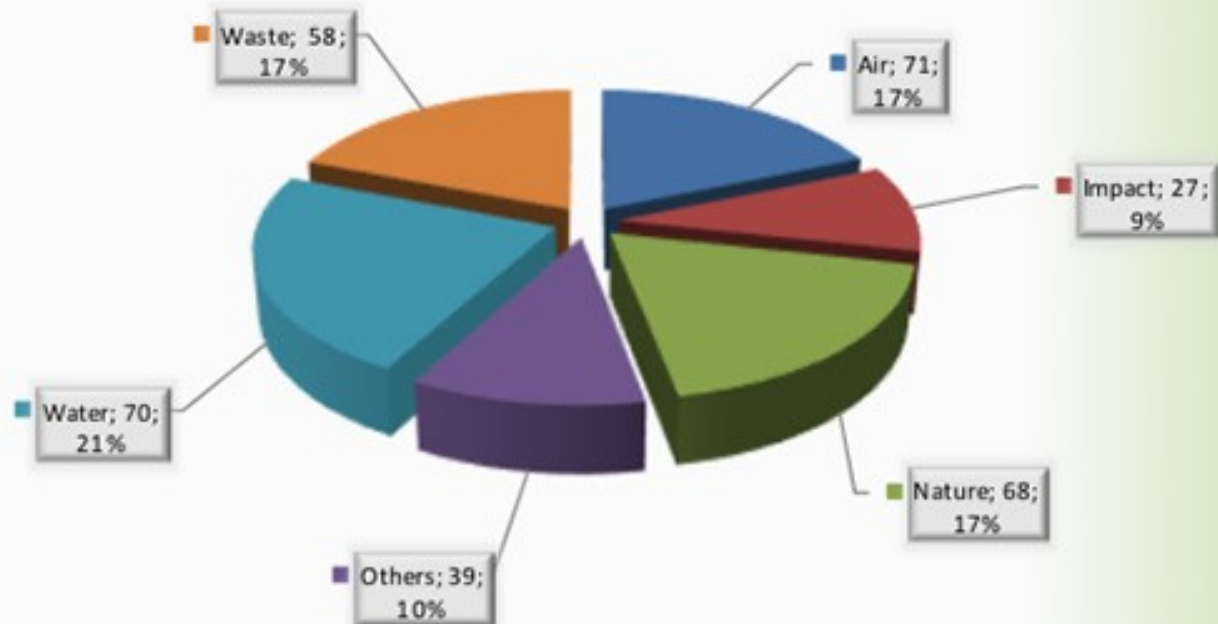
Public access to environmental information, participation in proceedings, access to justice,

Environmental liability,

Integrated pollution prevention and control,

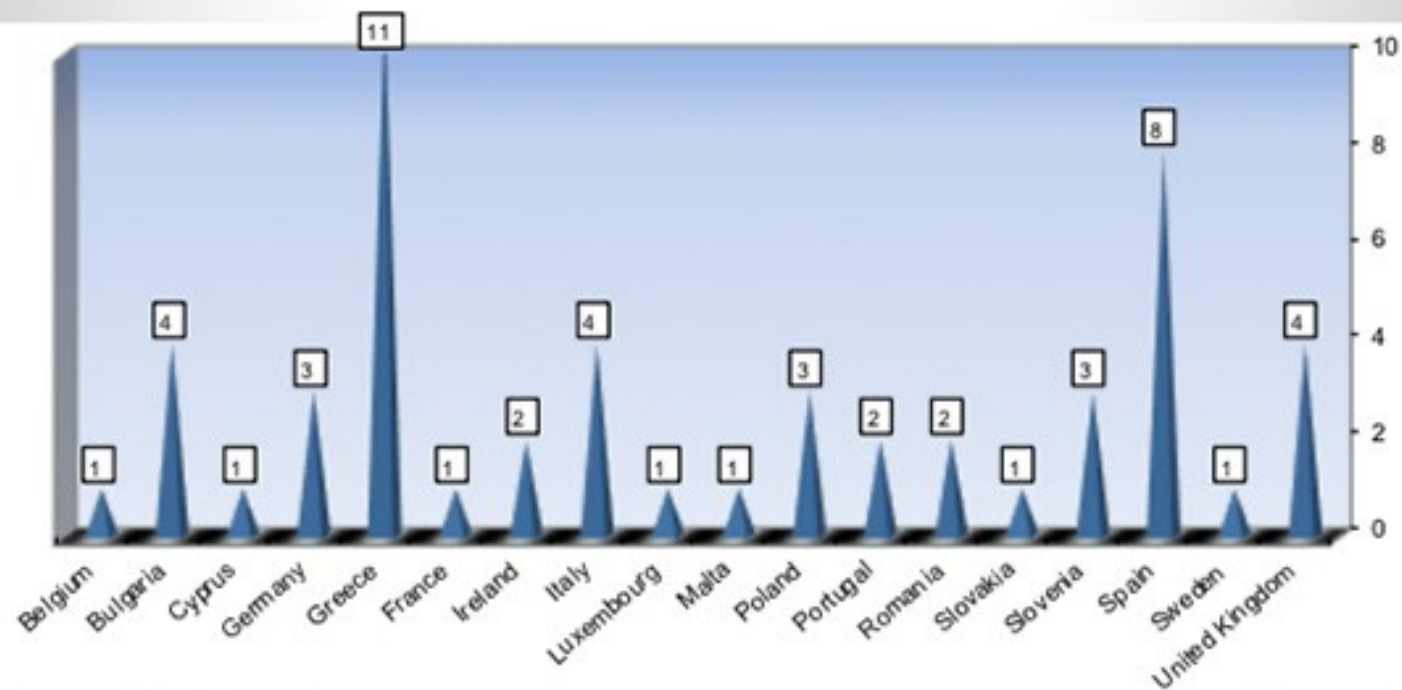
Reports on the implementation.

Infringements by sector in 2018



Total: 333

Article 260 Cases (end 2018)



Total: 53

Limits of law as a tool for harmonizing environmental policy in the EU

Formal law is limited in its capacity to harmonize environmental policy, e.g. of the different Member States in the EU

Political reasons:

difficulties of negotiating compromises that still have the capacity to harmonize, different cultures of public administration, different philosophies of environmental protection

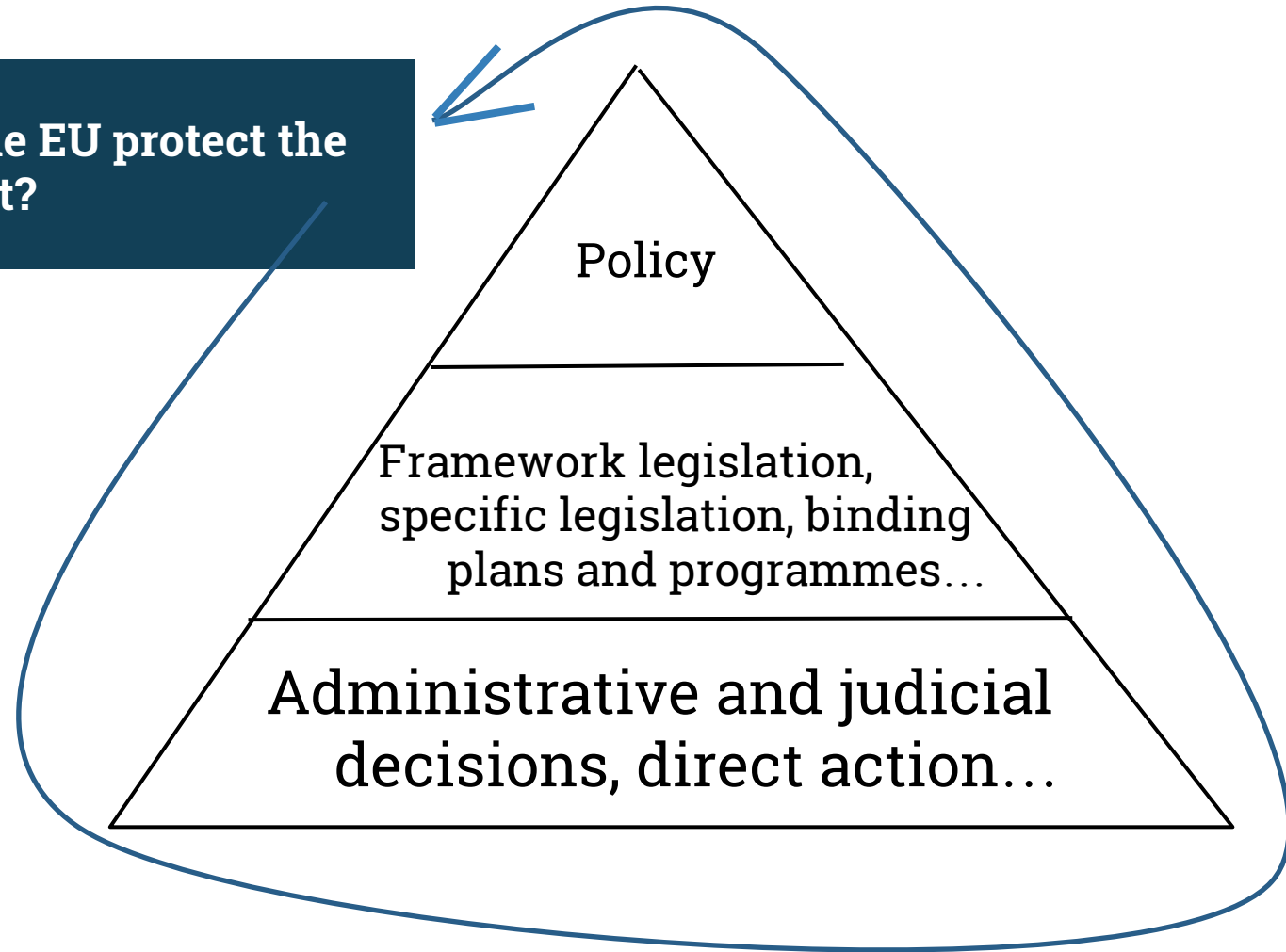
Legal reasons:

different legal systems (common law, civil law), different legal cultures (discretion vs. binding rules)

Sociological reasons:

- contrast 'law in the books' with 'law in action'

Why does the EU protect the environment?



Environmental Action Programmes

= political declarations

EAPs define the framework of the EU environmental policy. They set up the challenges and priorities for a given period and create a frame for EU measures on the environment

The First Action Programme (1973 - 1977)

- need for a comprehensive assessment of the impacts of other policies**
- ideas behind sustainable development**

The Second Action Programme (1977 - 1981)

- priority of the protection of water, air and noise**
- rational use of land, environment and natural resources**

Limited success, critical evaluation, economic recession (75 - 78, 81 - 83)

Principles introduced, number of framework directives adopted (water and waste)

The Third Action Programme (1982 - 1986)

- **Change in emphasis from pollution control to pollution prevention**
- **Land use planning (a tradition of strategic environmental planning from the Netherlands)**
- **Integration of environment into other EC policies**
- **Emissions control policy (Germany)**

The Fourth Action Programme (1987 - 1992)

- **Emphasizes the analysis of benefits and cost, the *polluter pays principle*, responsibility in the environmental field**

The Fifth Action Programme (1993 - 2000)

- **Sustainable development, sectoral approach**
- **Public participation**
- **Medium and long-term objectives**

The Sixth Action Programme (2001 - 2010):

- **Climate change as an outstanding challenge**
- **Protecting, conserving, restoring and developing the functioning of natural systems, natural habitats, wild flora and fauna**
- **Contributing to a high level of quality of life and social well being for citizens**
- **Better resource efficiency and resource and waste management**
- **More stringent objectives**

Critical review in 2007

Financial crisis

And then?

THANK YOU FOR YOUR ATTENTION!

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department
of environmental law
and land law