

# BASICS OF THE EU ENVIRONMENTAL LAW

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

THE ROLE OF THE ENVIRONMENTAL ACTION  
PLANS



27 September 2023

JUDr. Vojtěch Vomáčka, Ph.D., LL.M



Events | e-Learning | Resources and Projects | About ERA

Home

## Our programme

### September 2022

26 September 2022 - 27 September 2022 | Trier/Online

#### Annual Conference on Law and Sustainable Finance in the EU 2022

- Novelties in the regulatory framework
- Implementing sustainability standards
- ESG risk disclosure and management



### October 2022

5 October 2022 - 7 October 2022 | Trier

#### Intensive Course on EU Environmental Law

- Workshop for the EFTA Surveillance Authority (ESA)



17 October 2022 - 25 October 2022 | Online

#### National Judges and EU Water Legislation

- Focus on Access to Justice
- Online workshop for judges and prosecutors



17-18 October 2022 - 08:45-13:30 CEST  
24-25 October 2022 - 08:45-13:00 CEST

### SEARCH

Keyword:

Period:

Venue:

Language:

Level:

### MAILING LIST

Keep up-to-date with ERA and sign up to our information services.

## 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. Harmonisation of environmental requirements. The role of the national courts and the CJEU. Case law and guidance: Where to get more information?**
- 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. Global climate change in EU environmental policy**
- 7. Air protection.**
- 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. Environmental protection and human rights.**

## Requirements

**Credit requirements: 1. presentation, 2. written test, 3. participation in lessons**

**The examination in the form of a written test (open book, 8 open questions)**

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

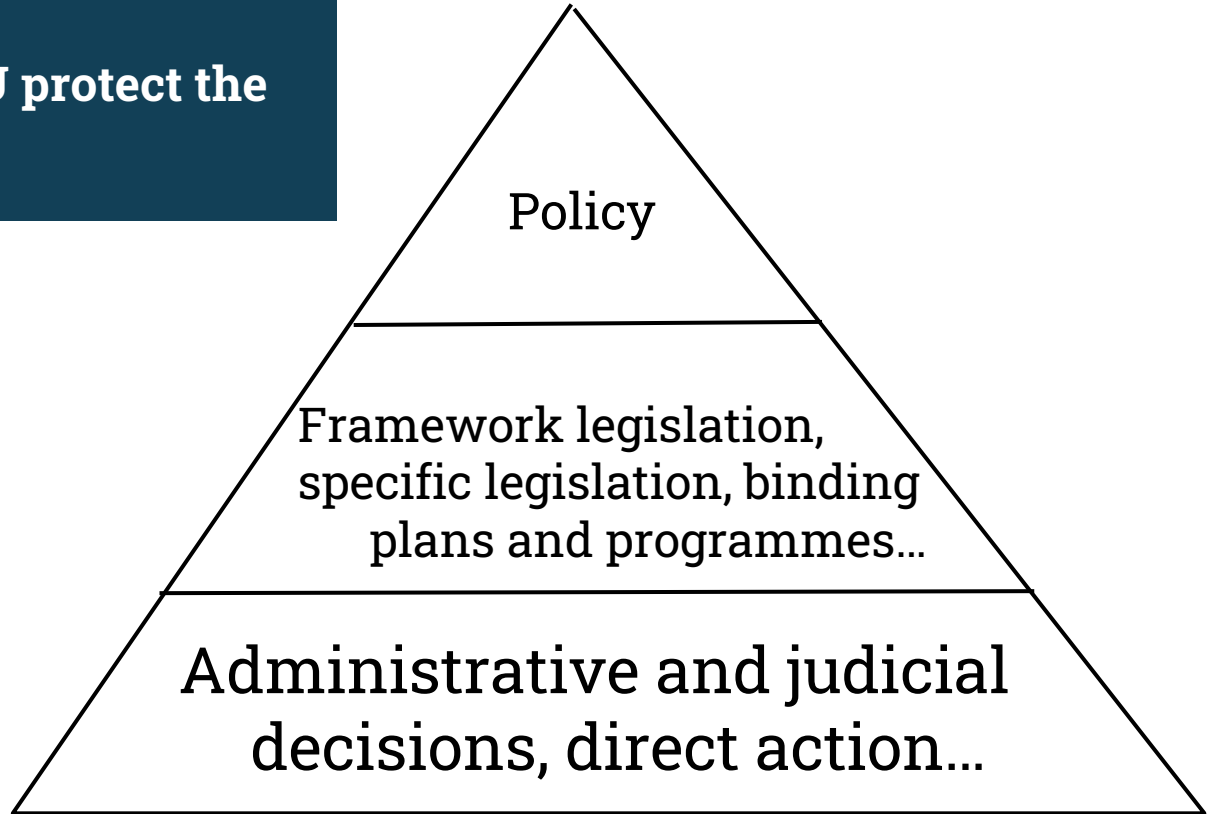
## Structure and Contents

- **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?**



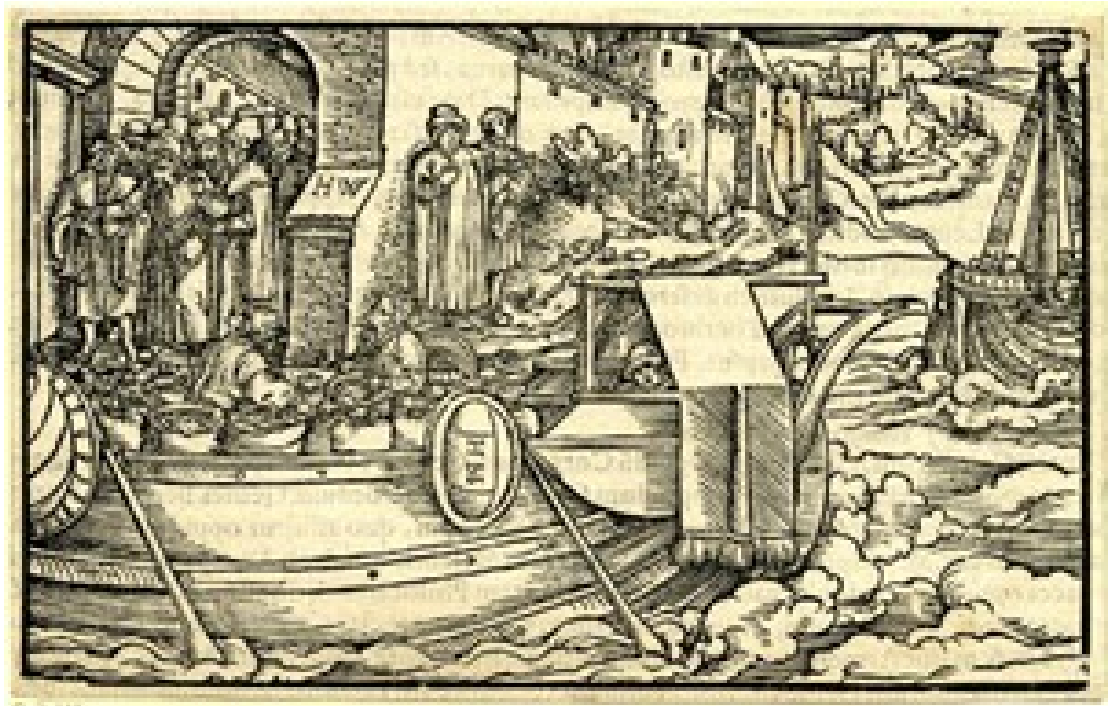
**What is environmental policy?**

## Why does the EU protect the environment?





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



## Golden toad





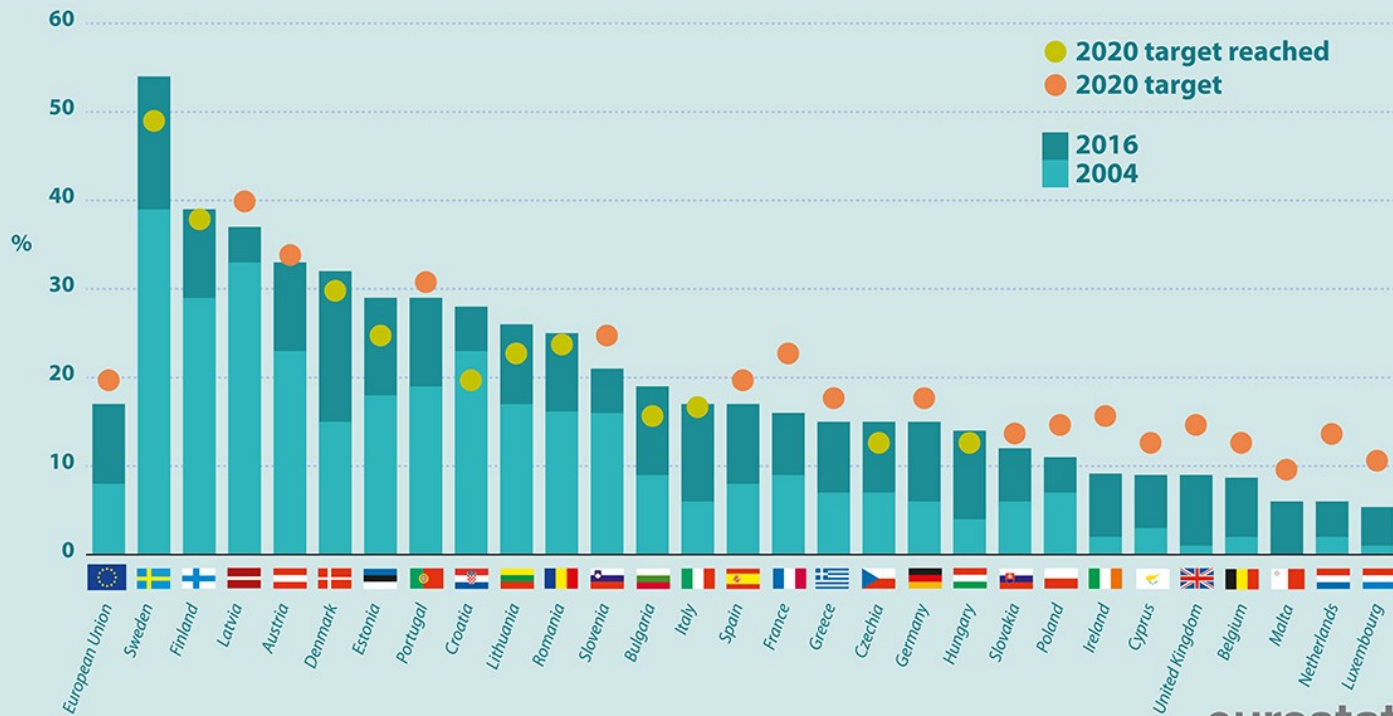


Clean energy for all Europeans package - state of play (1 January 2019)

	European Commission Proposal	EU Inter-institutional Negotiations	European Parliament Adoption	Council Adoption	Official Journal Publication
Energy Performance in Buildings	30/11/2016	Political Agreement	17/04/2018	14/05/2018	19/06/2018 - Directive (EU) 2018/844
Renewable Energy	30/11/2016	Political Agreement	13/11/2018	04/12/2008	21/12/2018 - Directive (EU) 2018/2001
Energy Efficiency	30/11/2016	Political Agreement	13/11/2018	04/12/2018	21/12/2018 - Directive (EU) 2018/2002
Governance	30/11/2016	Political Agreement	13/11/2018	04/12/2018	21/12/2018 - Regulation (EU) 2018/1999
Electricity Regulation	30/11/2016	Political Agreement	Pending	Pending	-
Electricity Directive	30/11/2016	Political Agreement	Pending	Pending	-
Risk Preparedness	30/11/2016	Political Agreement	Pending	Pending	-
ACER	30/11/2016	Political Agreement	Pending	Pending	-

# Share of energy from renewable sources in the EU Member States

(in % of gross final energy consumption)



- All coal power plants
- Dirty 30: Worst CO2 emitters
- Toxic 30: Most damaging to health
- Plants burning lignite
- Plants under construction
- Plants announced to retire?
- Plants retired since Jan 2016

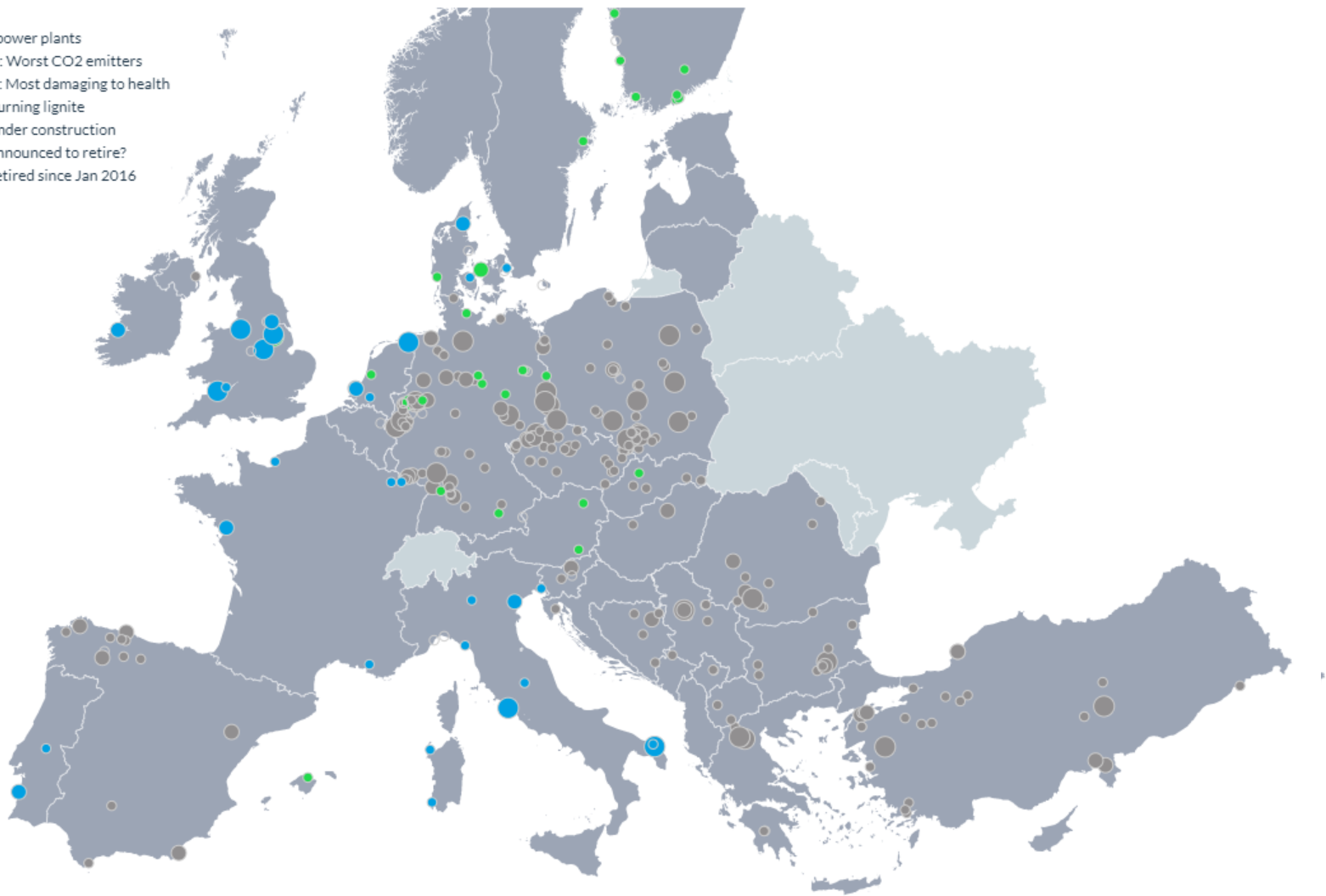


Chart – Energy consumption of electrical appliances

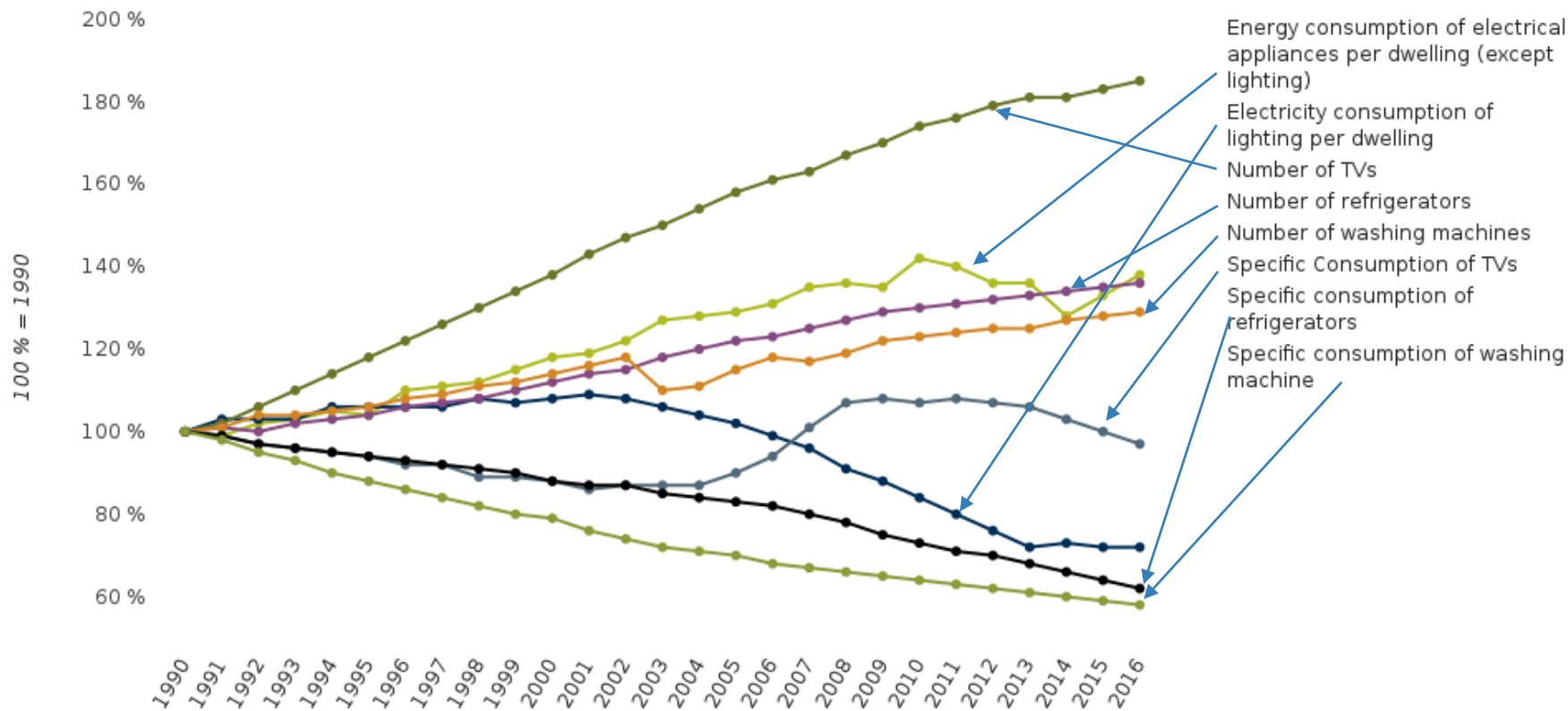
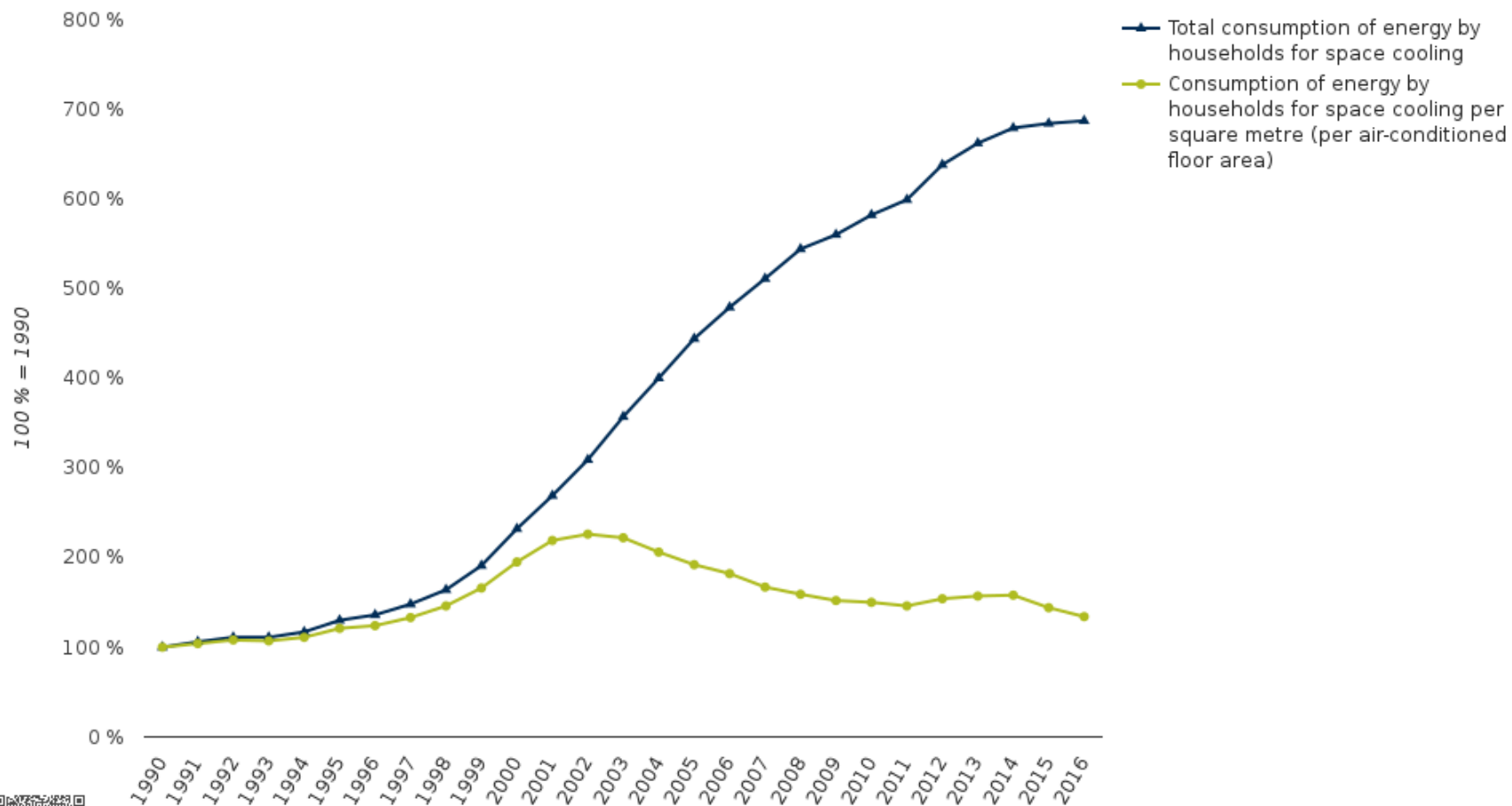
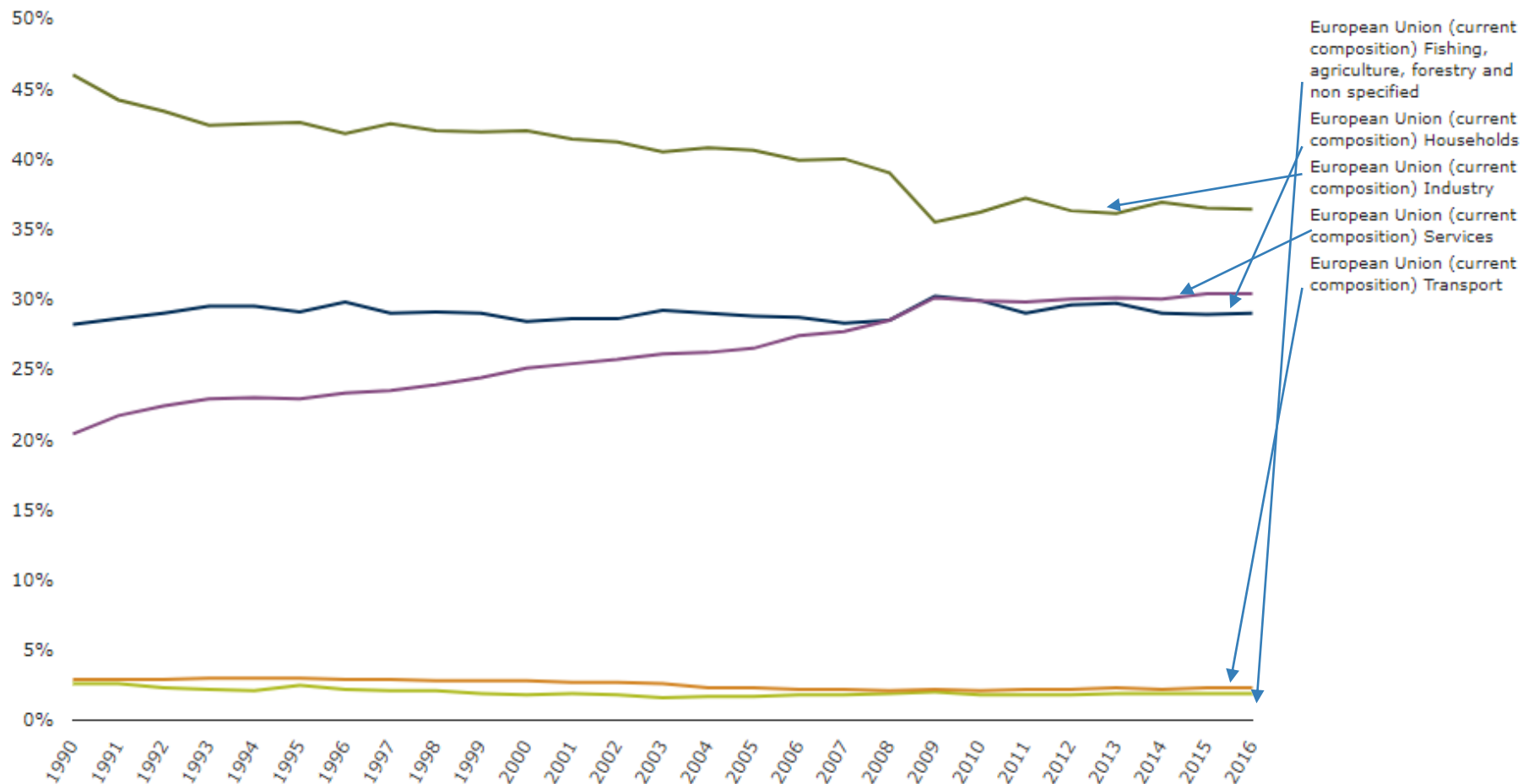




Chart — Cooling energy consumption

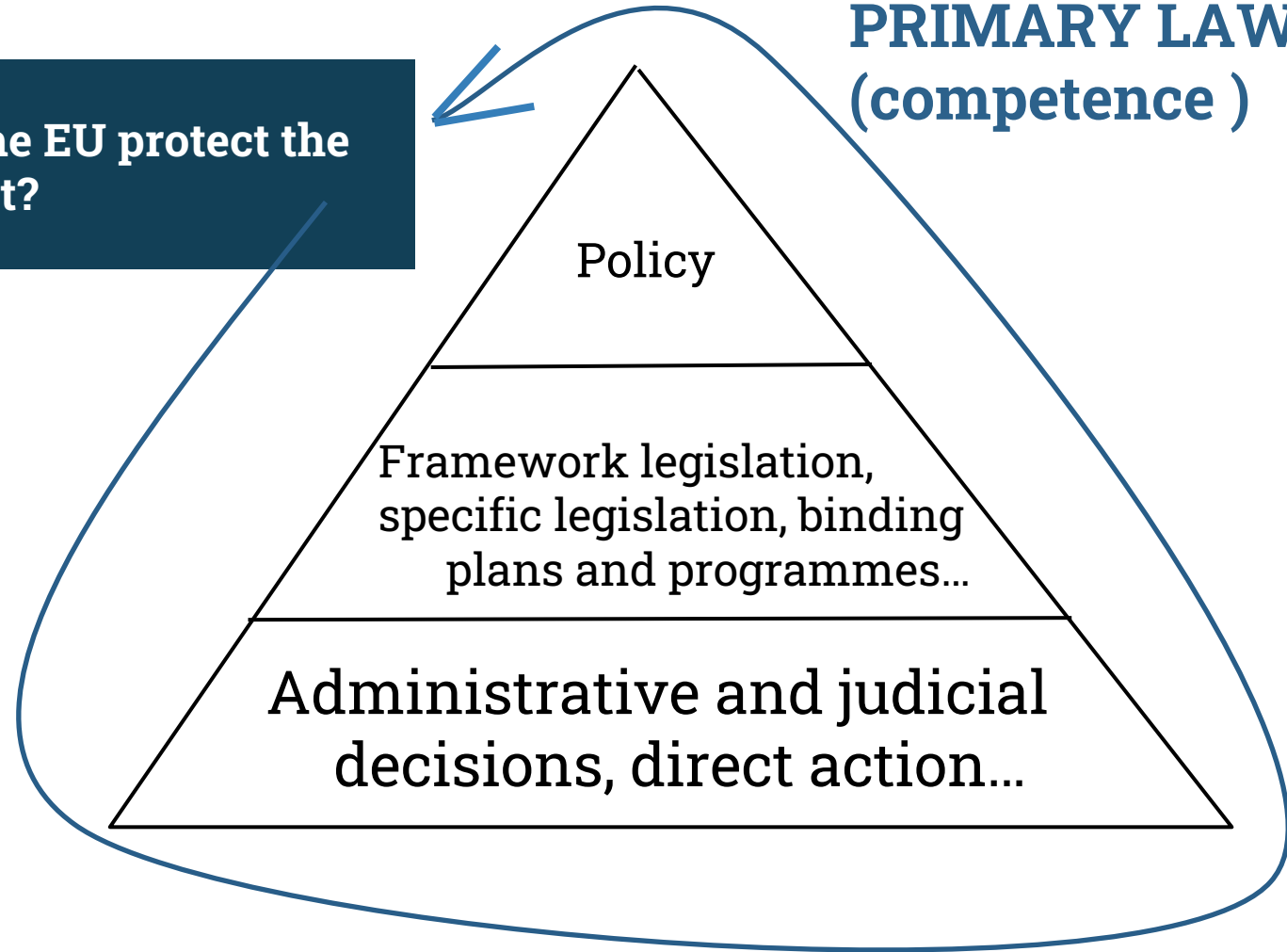


## Shares — Final energy consumption of electricity by sector



**Why does the EU protect the environment?**

**PRIMARY LAW  
(competence )**



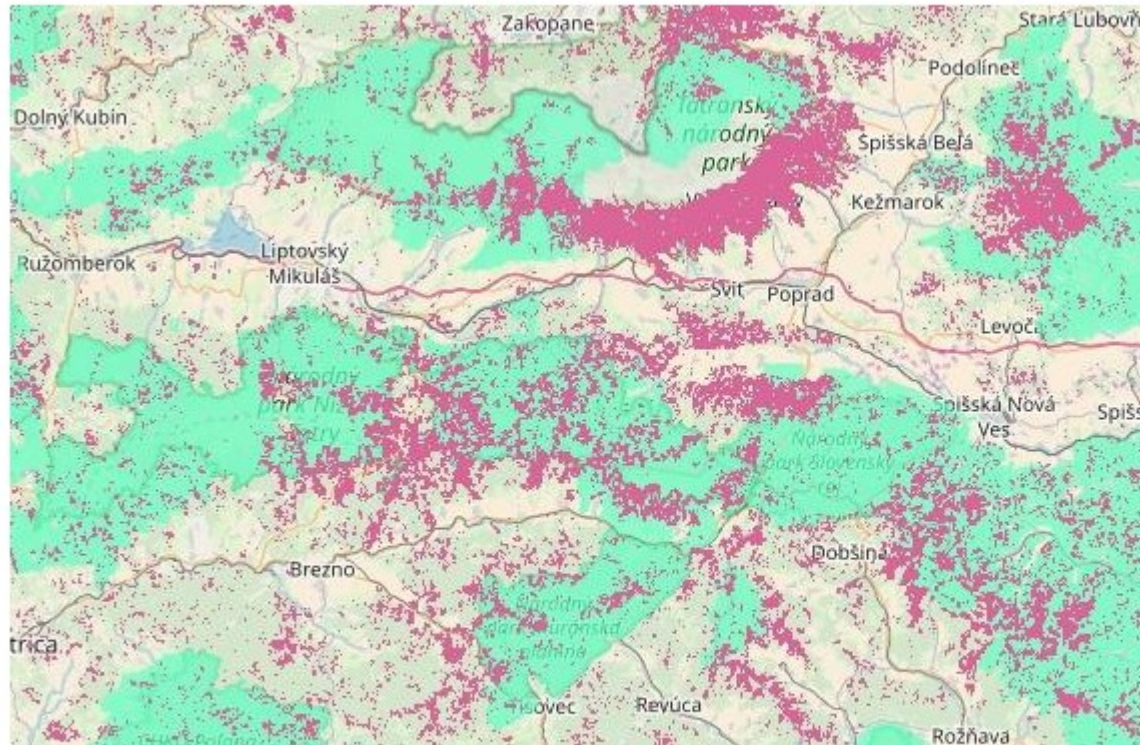


# The increasingly rare wood grouse is being driven out of Slovakia's forests

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 involving, if need be, development plans, ecological requirements

2. Member States shall natural habitats and designated, in so far

**3. Any plan or project likely to have a significant effect on the conservation objectives of the site and subject to the plan or project site concerned and**

**4. If, in spite of alternative solutions, overriding public interests require the site to be developed, the Member State shall take all compensatory measures to be protected. It shall**

Where the site concerned is of importance for the conservation of the site, the Commission, to ot



### PRESS RELEASE No 107/22

Luxembourg, 22 June 2022

Judgment of the Court in Case C-661/20 | Commission v Slovakia (Protection of the capercaillie)

**Protection of the capercaillie (*Tetrao urogallus*) and the Natura 2000 areas hosting the habitat of that wild bird: the Court finds that Slovakia has infringed the Habitats Directive and the Birds Directive**

*In addition to failing to submit certain plans and projects with significant effects in those areas to an appropriate assessment, that Member State has failed to take the necessary steps to conserve the habitats of that species.*

In 2017, the Commission received several complaints reporting that forests were being overexploited in the 12 SPAs designated for the conservation of the capercaillie (*Tetrao urogallus*) in Slovakia and that overexploitation allegedly affected the conservation status of that protected species.



The Commission subsequently brought an action against Slovakia before the Court of Justice based on infringements of the Habitats Directive and the Birds Directive so far as concerns the conservation of the

conservation measures or integrated into other which correspond to the ex II present on the sites.

ation, the deterioration of which the areas have been es of this Directive.

**gement of the site but on with other plans or site in view of the site's he implications for the thorities shall agree to ect the integrity of the eral public.**

**und in the absence of imperative reasons of he Member State shall ence of Natura 2000 is ted.**

**ority species, the only lic safety, to beneficial an opinion from the**

# 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 50 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**

## 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.

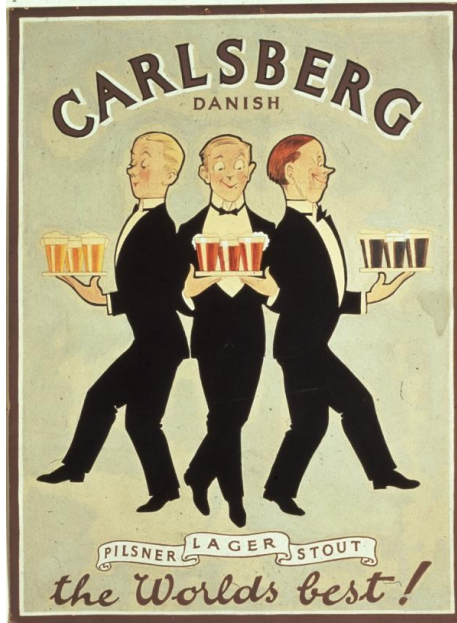
1981 The European Commission creates its **Environment Directorate-General**.

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 C-302/86 (*Dannish bottles*)**

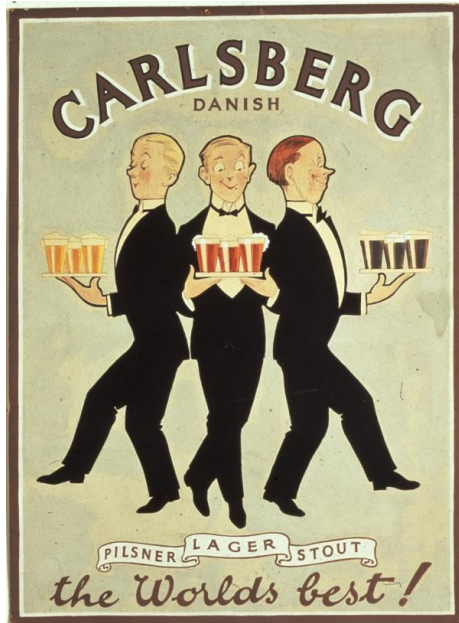
**Dannish Order No 397 of 2. 7. 1981:**

***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 C-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**



<b>Before 1986 (Treaty of Rome)</b>	<b>Single European Act (1986)</b>	<b>Maastricht Treaty (Treaty of the Union - 1992)</b>	<b>Amsterdam Treaty (1999)</b>	<b>Lisbon Treaty (2009)</b>
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



# ENVIRONMENT

European Commission > Environment DG

Home

About us ▾

Policies ▾

Funding ▾

Legal compliance ▾

News & outreach ▾



## 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](#)

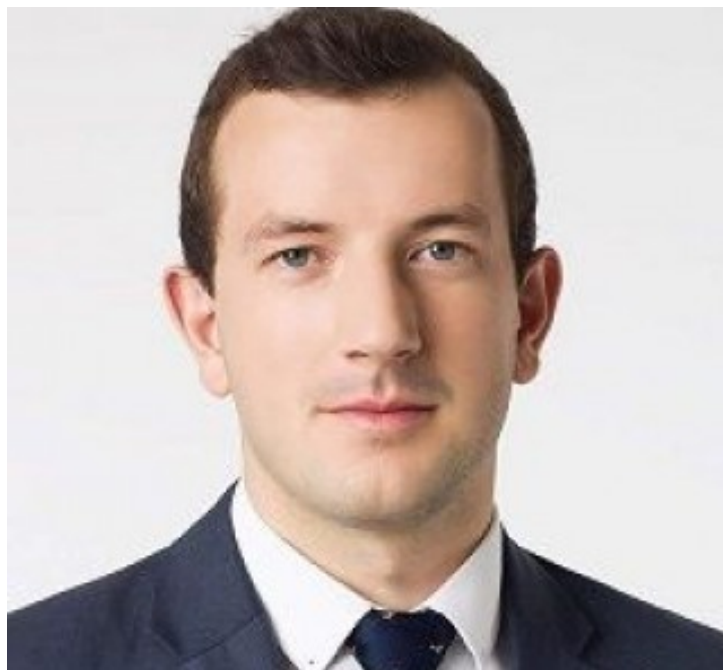
[Search for staff](#)

[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





Virginijus Sinkevičius

---

## **Secondary law:**

- **Around 1000 pieces of legislation**
- **Highest number of infringements, petitions, citizen initiatives**
- **80 % of national law**
- **Addressee – both EU and member states**
- **Not a comprehensive system – specific EU law**
- **Regulation x Directive**
- **EU administration**

## 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,**

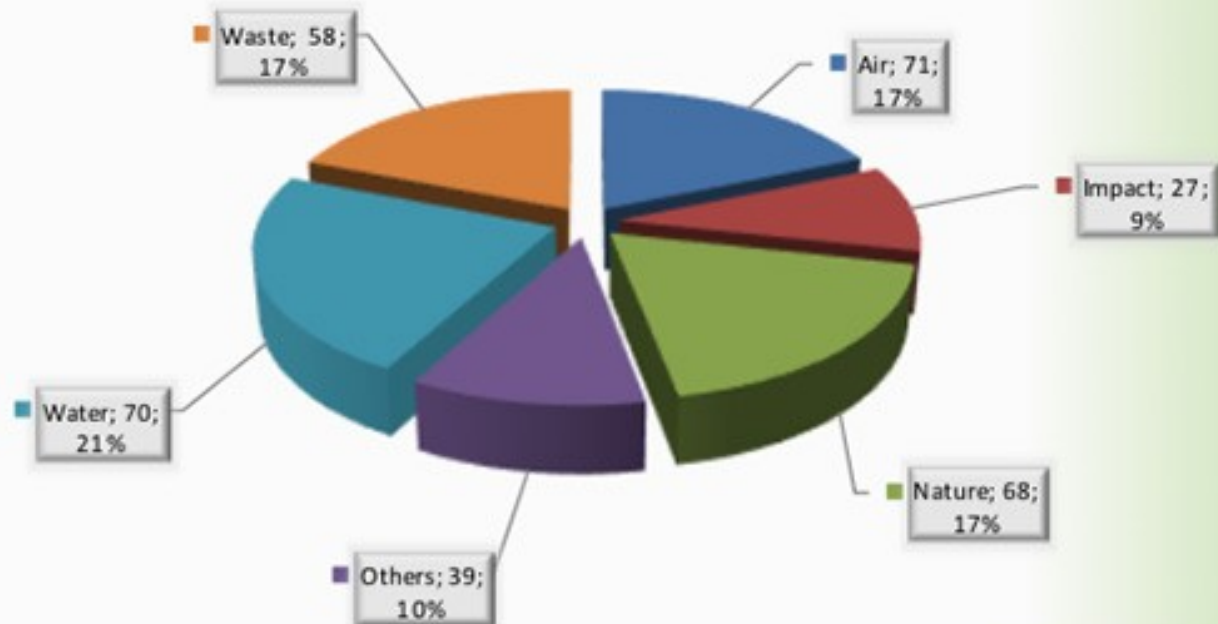
**Public access to environmental information, participation in proceedings, access to justice,**

**Environmental liability,**

**Integrated pollution prevention and control,**

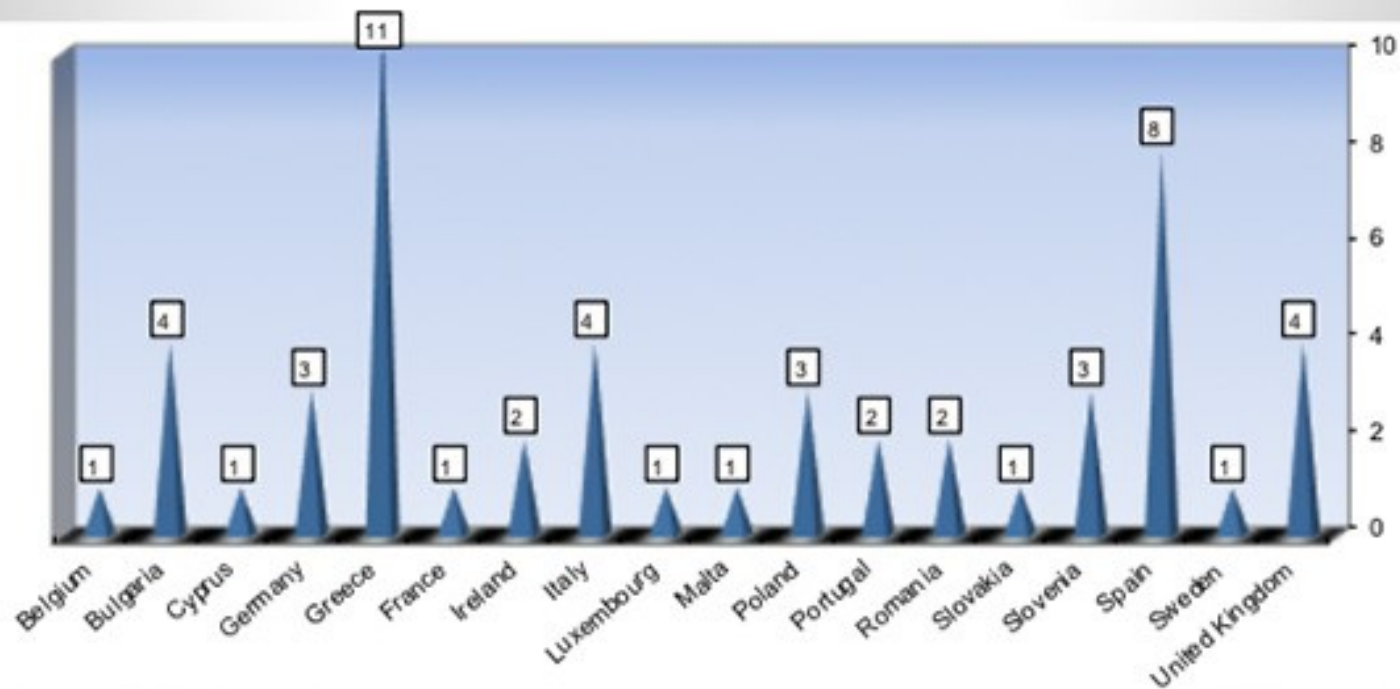
**Reports on the implementation.**

### Infringements by sector in 2018



**Total: 333**

### Article 260 Cases (end 2018)



Total: 53

# 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?**





## Too vague? Example – air quality

The 5th EAP: “WHO values [on air quality] become mandatory at EU level” by the year 2000.

The 6th EAP declared that WHO standards, guidelines and programmes “will be taken into consideration”

The 7th EAP declared that by 2020, “outdoor air pollution is significantly improved”, without mentioning that the binding limit values had to be respected by 2010 already (by 2015 for PM2.5).

Question of **nuclear safety** and radiation protection, discussed in the 5th EAP, were altogether omitted in the 6th and 7th EAP, in the same way as specific measures aiming at **industrial, agricultural, transport, energy and touristic activities** which had been discussed in some detail in the 5th EAP. The 7th EAP vaguely referred to integration and coherence in general.



# What will we do?

## CLIMATE

The EU will be **climate neutral in 2050**

The Commission will propose a European Climate Law turning the political commitment into a legal obligation and a trigger for investment.

**Reaching this target will require action by all sectors of our economy:**

## ENERGY



Decarbonise the energy sector



The production and use of energy account for more than **75%** of the EU's greenhouse gas emissions

## BUILDINGS



Renovate buildings, to help people cut their energy bills and energy use



**40%** of our energy consumption is by buildings

## INDUSTRY



Support industry to innovate and to become global leaders in the green economy



European industry only uses **12%** recycled materials

## MOBILITY



Roll out cleaner, cheaper and healthier forms of private and public transport

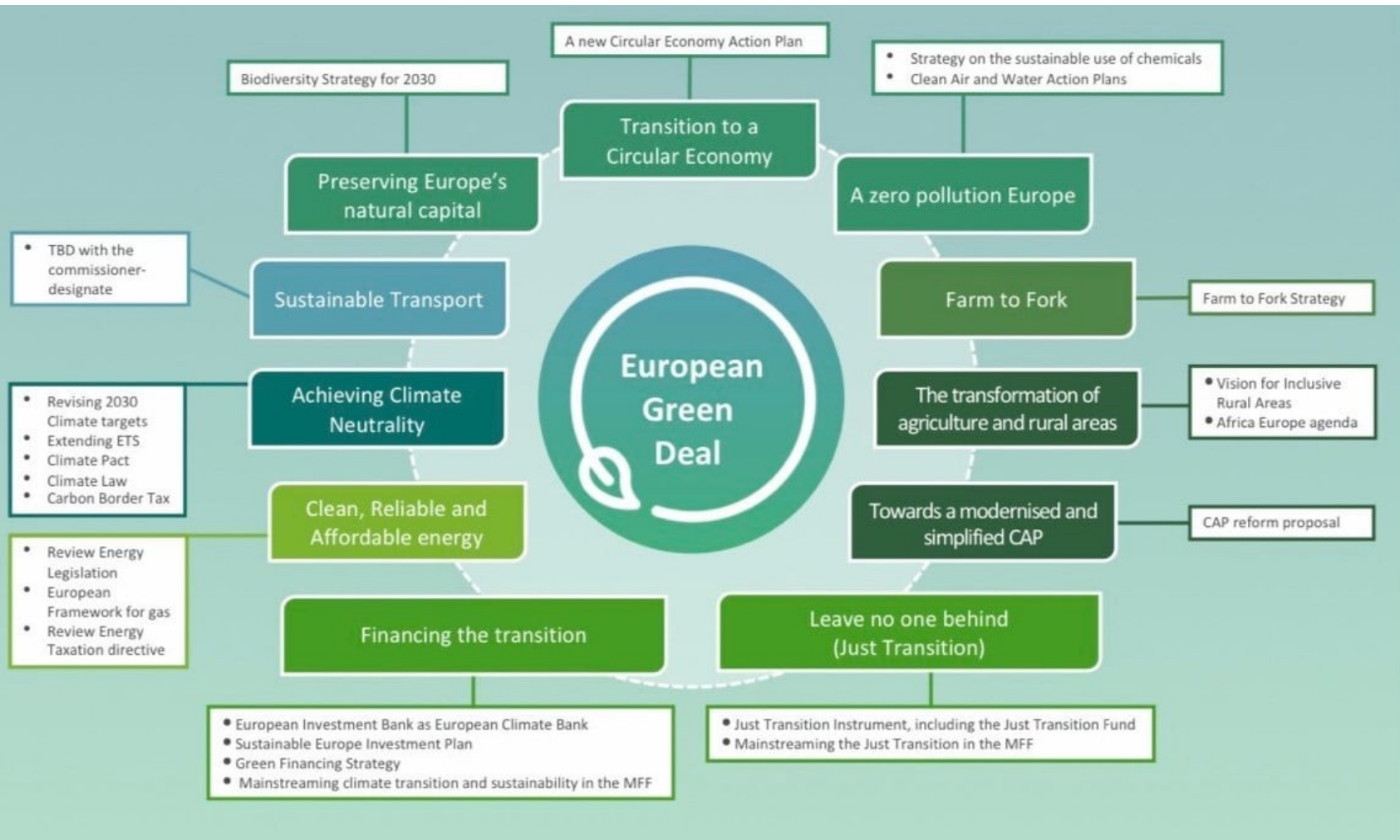


Transport represents **25%** of our emissions



PAR  
EC

The  
EU  
pl  
Th  
Be  
cl  
by







## European energy autonomy „RePower EU“

Energy  
savings



Diversification of  
energy supply



Acceleration of energy  
transition



Smart investments and  
reforms



# Environment action programme to 2030

The 8th Environment Action Programme will guide European environmental policy until 2030

On 2 May 2022 the [8<sup>th</sup> Environment Action Programme](#) entered into force, as the EU's legally agreed common agenda for environment policy until 2030.

The action programme reiterates the EU's long-term vision to 2050 of living well, within planetary boundaries. It sets out priority objectives for 2030 and the conditions needed to achieve these. Building on the [European Green Deal](#), the action programme aims to speed up the transition to a climate-neutral, resource-efficient economy, recognising that human wellbeing and prosperity depend on healthy ecosystems.

The 8<sup>th</sup> EAP calls for active engagement of all stakeholders at all levels of governance, to ensure that EU climate and environment laws are effectively implemented. It forms the EU's basis for achieving the United Nation's **2030 Agenda** and its **Sustainable Development Goals**.



© Getty Images / bluejayphoto

# Objectives

The **long-term priority objective** is that, by 2050 at the latest, Europeans live well, within planetary boundaries, in a well-being economy where nothing is wasted. Growth will be regenerative, climate neutrality will be a reality, and inequalities will have been significantly reduced.

There are six priority objectives to 2030

- achieving the [2030 greenhouse gas emission reduction target](#) and [climate neutrality by 2050](#)
- enhancing [adaptive capacity](#), strengthening **resilience** and **reducing vulnerability to climate change**
- advancing towards a **regenerative growth model**, decoupling economic growth from resource use and environmental degradation, and accelerating the transition to a [circular economy](#)
- pursuing a [zero-pollution ambition](#), including for air, water and soil and protecting the health and well-being of Europeans
- protecting, preserving and restoring [biodiversity](#), and **enhancing natural capital**
- **reducing environmental and climate pressures** related to production and consumption (particularly in the areas of energy, industry, buildings and infrastructure, mobility, tourism, international trade and the food system)

# Objectives

The **long-term priority objective** is that, by 2050 at the latest, Europeans live well, within planetary boundaries, in a well-being economy where nothing is wasted. Growth will be regenerative, climate neutrality will be a reality, and inequalities will have been significantly reduced.

There are six priority objectives to 2030

- achieving the [2030 greenhouse gas emission reduction target](#) and **[climate neutrality by 2050](#)**
- enhancing [adaptive capacity](#), strengthening **resilience** and **reducing vulnerability to climate change**
- advancing towards a **regenerative growth model**, decoupling economic growth from resource use and environmental degradation, and accelerating the transition to a [circular economy](#)
- pursuing a [zero-pollution ambition](#), including for air, water and soil and protecting the health and well-being of Europeans
- protecting, preserving and restoring [biodiversity](#), and **enhancing natural capital**
- **reducing environmental and climate pressures** related to production and consumption (particularly in the areas of energy, industry, buildings and infrastructure, mobility, tourism, international trade and the food system)

# Enabling framework

In line with the European Green Deal's oath to 'do no harm,' the 8<sup>th</sup> EAP supports an integrated approach to policy development and implementation. [Article 3 of the action programme](#) sets out the enabling conditions needed to achieve the priority objectives. Among others, it highlights the need for

- a full **implementation** of existing legislation
- significantly **decreasing** the Union's **material and consumption footprints**
- achieving **environmental fairness**
- boosting **sustainable finance**
- making use of **economic and tax incentives** to facilitate the sustainability transition
- **phasing out fossil fuel subsidies**
- developing a summary '**beyond GDP**' dashboard
- uptake by and **cooperation** at all levels of policy-making between different levels of actors
- harnessing the potential of **digitalisation**
- ensuring that policy action is firmly anchored in **latest science and knowledge**

## Policy areas

- [Air](#): EU action to improve air quality and reduce air pollution.
- [Chemicals](#): EU action to ensure chemicals are safe, for health and the environment.
- [Circular economy](#): The EU's transition to a circular economy with a focus on green growth.
- [Industry](#): EU action to make industry more sustainable and reduce industrial emissions.
- [Marine and coastal environment](#): EU action to protect Europe's coasts, seas and oceans.
- [Nature and biodiversity](#): EU action on environmental conservation and protection.
- [Noise](#): EU action to reduce environmental noise pollution.
- [Plastics](#): EU action on plastic production and pollution to contribute to a circular economy.
- [Soil and land](#): EU action for the sustainable use of soil and land.
- [Sustainable development](#): EU commitment to sustainable development in Europe and worldwide.
- [Urban environment](#): EU action to promote the sustainability of European cities.
- [Waste and recycling](#): EU action on waste management, treatment and recycling.
- [Water](#): EU action on water issues, to protect water resources.

## Limits of law as a tool for harmonising 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'**

**THANK YOU FOR YOUR ATTENTION!**

[vomacka@mail.muni.cz](mailto:vomacka@mail.muni.cz)



department  
of environmental law  
and land law