

## Chapter 12

# Environment policy

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Since 1967, when the EU adopted its first environmental legislation (Council Directive 67/548/EEC, on the classification, packaging and labelling of dangerous substances), environmental policy has featured prominently on the EU's agenda. However, it was not until the 1972 Paris Summit when the heads of government directed the Commission to draw up an action programme for environmental protection, that we can point to a European environmental policy (Tosun, 2018, p. 266). The EU has since pioneered many different types of environmental policies – ranging in nature from the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation (EC 1907/2006) to a variety of climate change policies that have set ambitious and innovative standards. The Commission and EP have been at the forefront of climate change policy, with the former early on signalling its seriousness about climate change action when, in 2010, it established DG Climate Action (CLIMA) carved from DG Environment's (ENV) remit. The European Environmental Agency (EEA), established as one of the earliest information agencies, is a further proof of the EU's seriousness about the Europeanization of environmental policy. The EU further signalled its commitment to tackling climate change when the 2019–2024 Ursula von der Leyen Commission presented a comprehensive package of climate change legislation – the 'European Green Deal' (GD) – to the Council and Parliament in the first 100 days of her commission (European Commission, 2019aa). Von der Leyen further demonstrated her commitment to European climate action policy by appointing an experienced and effective commissioner, the Dutch national Frans Timmermans, as Executive Vice President whose sole responsibility is the European GD. In her 'mission letter' to Timmermans, von der Leyen (2019a, p. 4) confirmed the goal she expressed to the EP in her confirmation hearing of the GD to become 'Europe's hallmark policy, with its signature goal of making Europe's the world's first 'climate-neutral continent'. The Timmermans portfolio – which includes DGs climate, environment, energy and transport – also exemplifies the Commission's longstanding approach to environmental policy – its interconnectedness with other policies that impact the environment. For example, as we saw in Chapter 11, the EU has tightly integrated agriculture and environment policy with its farm to fork strategy – and Timmermans is responsible for overseeing this continued effort for sustainable food production. As part of his new role as European GD czar, Timmermans is also responsible for leading international negotiations on climate change, which – as will be discussed later in this chapter – has been a defining role the EU has taken upon itself. Finally, the EU's global leadership in environmental policy exemplifies (as will be discussed in Chapter 18) its adoption of 'soft power' as its principal strategy in global negotiations.

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This chapter examines the EU's environment policy. The first part of this chapter considers the development of environment policy. We then examine environment policy leaders, key environment policy features (such as the EU's ambitions to provide global environmental policy leadership), before turning to a discussion of environment policy processes. The chapter then considers climate change policy, including the European GD, before offering some general conclusions.

## The development of environmental policy

As with so many of the EU's 'positive' integration policies, much of the justification for EU environment policy derives from 'market failure' and the resulting need to harmonize environmental practices that affect cost/pricing structures in the single market. States that 'free ride' on the environment by, for example, having low air and water quality standards, pass on mitigation and healthcare costs to states with stringent regulatory standards and their polluters have unfair trading advantages. As is often the case with regulatory policy aimed at mitigating market failures, such policies must be promulgated at the highest government level (in this case, Brussels) to ensure system-wide compliance.

A second factor influencing environmental policy at the EU level is the broad acceptance among Europeans of scientific opinion, with, for example, research findings on the role of acid rain in killing aquatic life and trees being crucial to the adoption of clean air quality directives. Research on the science of biodiversity has been crucial to the adoption of directives on the protection of fauna, flora and habitats. So, too, Europeans are climate change believers regardless of political party affiliation, which is in marked contrast to the US where climate change believers tend to be Democrats and deniers tend to be Republicans.

Specific environmental incidents and mishaps represent a third factor with respect to advancing policy, by highlighting problems that cross borders and/or that cannot be tackled fully by a single member state alone. A notable incident in this respect was the 1976 Seveso dioxin crisis in Italy, which led in 1982 to the Seveso Directive on industrial safety and the 'need to know' principle in environmental law.

Hildebrand (2005) identifies three phases in the history of EU environmental policymaking. The first period (1957–71) is characterized by 'incidental measures' with the adoption of nine directives and one regulation. These measures were tied mainly to the harmonization of laws designed to reduce barriers to trade in the internal market. The 'responsive period' (1972–86) corresponds with

the watershed event of the Council agreement authorizing the Commission to draw up the first Environmental Action Programme (EAP), which came into effect from 1973. It and subsequent EAPs have served as strategic plans for EU environmental policy. The 'initiative phase', since 1986, has been marked by expanding the types of environmental policy concerns with which the EU is involved and by a movement away from the policy operating independently to being integrated with other policy areas from enlargement to the CAP (Zito, Burns & Lenschow, 2019, p. 197).

Prior to the SEA, there were around 60 pieces of environmental legislation in place, with most of them focused on reducing impediments to the internal market. After the inclusion of an environmental title in the SEA, the pace of environmental legislation quickened to such an extent that the EU adopted far more environmental legislation just between 1989 and 1991 than it had done in the previous twenty years. The explicit internal market linkage requirement prior to the SEA – lest the legislation be vulnerable to challenge in the ECJ – no longer constrained EU policymakers, with the result that policy now includes such diverse matters as GMOs, protection of natural habitats and animal species, sewage treatment and climate change (Jordan, 2005, p. 6).

Zito et al. (2019, pp. 198–202) add two additional phases to those identified by Hildebrand. In the years 1999–2008 EU's environmental policy experienced 'incremental change' in a period when other EU priorities displaced environmental protection and 'non-legislative instruments based on shared responsibility' become the norm. Climate change came to supersede the 'old' environmental issues of air quality and clean water, epitomized by the EU's most ambitious goal agreed by the European Council in March 2007 to reduce greenhouse gas (GHG) emissions: its 20–20–20 targets, which were to be achieved by 2020 – to reduce GHG emissions by 20 per cent (based on 1990 levels), increase the share of renewable energies to 20 per cent, and increase energy efficiency to save 20 per cent in energy consumption – were all goals that handily integrated with other EU policies, particularly energy and competitiveness in new growth sectors.

The second phase identified by Zito et al. is the current phase of 'the uncertain future', which started in 2008 with the Great Recession. It is characterized by the Commission's entrepreneurship regarding climate change policy and its drive to promote renewable energy alternatives, new member state coalitions brought about by enlargement, the European Council's increased involvement in environmental policy and the EU's attempts to be a global environmental leader.

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As the federal integration model predicts, EU environmental policy has developed in a distinctly federal manner. Looking at the accumulation of EU environmental policy content and processes, it has become a more centralized policy than even exists in such federal states as Canada and the US. Simeon and Radin (2010, p. 361) explain that because conservative governments controlled the executive at the national level in Canada and the US for many years, it 'left political space for both states and provinces to occupy, and the response in both countries has been similar. In climate change policy, for example, the lead in both has recently been taken by states and provinces – with interesting cross-border alliances between them.' These included the 2001 Climate Change Action Plan signed by the governors and the premiers of the New England states and the Canadian Atlantic provinces and Quebec (Henrik Selin & VanDeever, 2011, p. 11) and, in 2019, the State of New York enacted the the Climate Leadership and Community Protection Act – the most far-reaching climate change legislation in the US (Cuomo, 2019; Kaufman, 2019). Another example is the agreement among several governors in the US to abide by the Paris Climate Accord despite the Trump Administration's decision to withdraw from the agreement. Similarly, Vogel et al. (2010, p. 38) explain that while in the EU packaging waste and climate change responsibility is shared between the EU and member states, it is a state responsibility in the US. Also, while the regulation of auto emissions is centralized in the EU, it is shared between the national and state governments in the US. California's right to set higher standards is included in the 1970 Clean Air Act, with the constitutionality of this exception having been upheld by federal courts for over 50 years – a derogation, incidentally, which the Trump Administration challenged (see Bergquist, 2019; Tabuchi & Davenport, 2019).

So, the EU has been, in important respects, more successful than some other 'far-flung' federal systems in achieving consensus and promulgating uniform environment standards throughout its constituent regional units (the member states).

## Policy leaders among EU member states

Much has been written about the differences in member states' attitudes towards the direction and pace of environmental policy. As Börzel (2005) has put it, there have been 'pace setters, foot draggers, and fence sitters', or, as Liefferink et al. (2009) have described it, there have been 'leaders' and 'laggards'. Enlargement has had

a crucial impact on the direction of EU environmental policy. The 'green troika' of Denmark, Germany and the Netherlands led in the formative years of environmental policy, and they were joined, following the EFTA accessions, by Austria, Finland and Sweden as the EU's environmental leaders. Indeed, Selin and VanDeever (2015) argue that the EFTA accession decisively shifted the EU towards being a greener environmental policymaker. The accession of Greece, Ireland, Portugal and Spain admitted laggards into the EU, a group to which the CEECs were added after they became members. The list of 'neutrals' usually includes Belgium, France, Italy, Luxembourg and the UK (Liefferink & Andersen, 2005, p. 63).

Sweden is arguably the greenest of the leader states. This is, at least in part, because of its experience with acid rain falling on Swedish lakes, which scientists in the 1980s and 1990s increasingly suggested originated in emissions from industrial and power plants operating in the UK and Germany – a charge that these countries originally refused to accept. Sweden turned to international forums to plead its case that the high smokestacks Germany had built to improve domestic air quality were dispersing sulphur particulates over long distances (Schreurs, 2003, p. 93).

Germany's path to the green coalition was different from Sweden's, with a key factor being domestic politics. For years, German governments had resisted international pressure to reduce sulphur emissions, but in the 1980s much of the German public came to agree with the hypothesis advanced by the German scientist, Bernhard Ulrich, that German forests were dying from acid rain or, literally, 'forest death' (*Waldsterben*). As a partial consequence of this, the Green Party began to achieve electoral successes at both national and regional levels: an achievement that included Greens entering, for the first time, coalition governments at the federal level between 1998 and 2005. The environment thus came to be placed firmly on the German political agenda and this green 'conversion' set the stage for German governments to use their political strength generally (though not invariably) to push for more stringent environmental laws at the EU level (see Schreurs, 2003, pp. 96, 100–1).

In addition to promoting higher standards, the Green sextet has also led in ensuring that EU law does not prevent them from adopting, if they so wish, higher domestic standards than those provided in EU law – the so-called 'environmental guarantee'. The guarantee is, however, not absolute because it is subject to interpretation by the Commission and the Court (which is the same federal arrangement in the US with respect to permitting more stringent environmental



protections at the state level – US states also regularly sue the federal government over lax environmental enforcement from clean air standards to certifying former brownfields as safe).

As CEEC accessions approached, the greener member states were concerned that cash-strapped CEECs saddled with the industrial relics of communism, would join with less environmentally progressive member states to undermine environmental policy gains. So, in the accession negotiations, the EU required the CEECs to transpose virtually the entire *acquis* of EU environmental law before accession. Cohesion funds, as discussed in Chapter 13, also became more closely linked to environmental projects, partially in the hope that this would help CEECs to implement EU environmental law.

Naturally, the member states' green coalition does not always act or hold together. There are areas where one member state, as a result of domestic pressures and its own circumstances and vulnerabilities, will lead in a particular area. So, for example, the Netherlands, driven by its vulnerability to rising sea levels, provided early leadership in the late 1990s on climate change policy, and Germany, reacting to strict US air quality standards that had a negative impact on German vehicle manufacturers' prices, took the policy lead in the 1980s and early 1990s in requiring that cars manufactured in the EU include catalytic converters.

## Key features of environmental policy

### Objectives and principles

The TEU and TFEU address environmental policy in several places. The TEU (Article 3) covers the broad issue of sustainable development, while the TFEU covers more specific matters in Title XX: Environment, which the Lisbon Treaty brought over largely intact from the TEC. The major objectives of environment policy, set out in Article 191.1 of the TFEU, cover a wide range of environmental policy matters, including preserving the environment, protecting human health, managing natural resources and – newly established by the Lisbon Treaty – a commitment to 'promoting measures at the international level to deal with regional and worldwide environmental problems, and in particular combating climate change'.

EU environmental policy is based on several principles, most notably 'the polluter pays', preventative action, a focus on the pollution media (air, water, soil and so on), and the precautionary principle. While the first three of these are commonly accepted

environmental policy principles among advanced industrialized democracies, the precautionary principle sets the EU apart, particularly from the US. The general meaning of the principle is that if a policy or action has a suspected risk but the scientific evidence is not clear, the burden of proof that the policy or action is not harmful falls on those proposing the policy or action. In practice, this initially engendered substantial confusion as to its effect and application, especially when the ECJ began to apply the principle to food safety cases. The Commission attempted to clear up some of this uncertainty with its 'Communication on the Precautionary Principle' (European Commission, 2000): nevertheless, the principle remains subject to interpretation. What, however, is not subject to interpretation is that the principle informs *all* EU policies dealing with health and wellness, which contrasts with the US, where, as Applegate (2000, p. 213) notes, there is a 'precautionary preference' or 'precautionary approach' rather than the stricter management implied by the precautionary principle.

### Environmental action programmes

EU environmental policy is advanced through EAPs, which are periodic strategic plans put forward by the Commission after extensive consultation with all key actors, and are adopted by decisions by the EP and the Council. EAPs focus on specific priorities for the stated time period. EU environmental policy is an accumulation of the EAPs that have been in place since 1973, with the key aspects of current environmental policy having been established through earlier EAPs. So, rather than overturning previous policy, EAPs have had a cumulative effect.

The 7th EAP – 'Greening Europe, 2050 Vision' (European Commission, 2014c) covers the period from 2014 to 2020, but also includes goals extending to 2050. The 7th EAP was built around nine priority objectives divided according to thematic priorities, including an enabling framework and meeting local, regional and global challenges. There is also a strong emphasis on taking leadership on green technology and other aspects of environmental policy that promise to combine economic growth and green practices synergistically. The 7th EAP, however, was criticized as, 'an action programme without actions' (Krämer, 2019, p. 660). Supporting the critical theory interpretation of the EU as a business-friendly construction (see Chapter 2), Krämer (2019) argues that the Juncker Commission was not particularly concerned about environmental protection (with the exception of climate change policy) as illustrated by very minimal annual work programmes and the Commission's mid-2019 evaluation



of the 7<sup>th</sup> EAP being heavily weighted to achievements judged against Better Regulation objectives (see Chapter 7) rather than wholly environmental objectives. While the Commission reported implementation of 60 per cent of the 7<sup>th</sup> EAP, Krämer (2019, p. 669) considers this assessment 'too optimistic'. Some observers might argue that an 8<sup>th</sup> EAP is not necessary given the Commission's comprehensive GD (see below), but Krämer (2019) argues in favour of an 8<sup>th</sup> EAP because he thinks it would highlight environmental issues not directly related to climate change (such as biodiversity, waste recycling, restrictions of plastics, noise pollution), would shine a spotlight on the lack of citizen access to EU courts for environmental matters (see below), could strengthen environmental administration and expertise in EU institutions, would promote integration of environmental policy with other EU policy sectors, and could send a message to EU citizens that the EU strives to protect the health and well-being of its citizens. However, Krämer recognizes that an important shortcoming of previous EAPs has been the problem of implementation – specifically, why should the Commission expend such effort on EAPs when the real problem is uneven national implementation (discussed below)?

### Global leadership

The EU seeks to be a leading international environmental policy actor. In terms of its ambitions, if not always its achievements, by the 2000s the EU had become a leading international environmental advocate and innovator (Kelemen & Vogel, 2010; Christoph Knill & Tosun, 2009). One measure of the EU's intent here is that it is party to 29 multilateral environmental agreements (MEAs). (See European Commission, 2017f for the latest list of MEAs to which the EU is a party or signatory at the time of this writing in mid-2020.)

The EU led, and its member states signed, the Kyoto Protocol dealing with climate change (which the US neither led on nor signed). The EU has also pioneered the global emission trading system (ETS), which is a carbon trading scheme that the US federal government had first championed during the heyday of replacing regulations with market-based instruments (MBIs), but was never able to overcome the objections of the fossil fuel lobby, whose relationship with Congress and the executive bureaucracy has been, if not configured as an iron triangle, certainly seen to manifest elements of regulatory capture. Finally, the EU was a major actor in the Paris Climate Accord (which replaced the expired Kyoto Protocol), the first global, legally binding, climate deal. Particularly intriguing is the way in which the EU has been able to build climate change

coalitions directly with large, influential green states such as California, 'blue states' which were able to work around the Trump Administration's assault on climate change policy by working directly with the EU on global policy initiatives (Keating, 2018)

However, being an environmental champion and innovator can place domestic manufacturers at a disadvantage, so the EU has pursued twin strategies of 'greening' international organizations and steering external trade policies to focus on the nexus of competitiveness and green initiatives (Kelemen & Vogel, 2010). We will see later in this chapter how this twin strategy has shaped the EU's GD.

## Environment policy processes

Environmental policymaking exhibits several distinctive policymaking features that merit comment. Here we consider environmental policy processes in terms of the policymaking cycle presented in Chapter 7.

### Policy decision-making

Regarding environmental lawmaking, most EU environmental laws are enacted as directives to facilitate maximum flexibility when transposing into national law. Since the Maastricht Treaty, environmental policy has been subject to qualified majority voting and co-decision. There were two consequences of the Maastricht changes: QMV strengthened the ability of member states with higher standards to impose these standards at the EU level (Kelemen, 2004), and as Weale (2005, p. 336) suggests, the EP gained even more influence on environmental measures than national parliaments exercised in EU member states. The EP's committee system has enhanced its influence in environmental policy because it encourages MEPs to specialize in particular spheres of EU policy such as the environment. Coupled with the longevity of many MEPs with respect to re-election, it has enabled several of them to establish solid environmental policy credentials (Burnes, 2005). Thus, the key institutional actors in EU environmental policy are the Commission, the Environmental Council and the EP. However, the European Council is very much involved at key junctures of the process because environmental policy – such as agreements on GHG emissions – impact directly on the member states' economies (Wurzel, Liefferink & Di Lullo, 2019).

Undoubtedly, the EP's interest in environmental policy has been influenced by Green political representation. The importance of this representation in previous



EPs, however, should not be overstated as 'Les Verts' have always been dwarfed in numbers by the larger political groups, and have seen their potential influence further weakened by being split into two political groups (GUE-NGL and the Greens-EFA) in the 2004–9, 2009–14 and 2014–19 Parliaments. Nevertheless, the Greens' presence is certainly felt, and is assisted by the adoption of green platforms by many major political parties in member states, ensuring that the EP's main political groups pay close attention to environmental concerns. Significantly, the Greens posted important gains in the 2019 EP elections, finishing second in Finland and Germany and third in France and Luxembourg. With the EPP and S&D losing control of their governing majority in the elections and with the Greens – who are the largest component part of a 'convenience' coalition group of MEPs (Greens/European Free Alliance) – slightly increasing their representation in the EP (the Greens/EFA group increased from 52 to 67 MEPs) – it is possible that in the 2019–24 EP the Greens will be able to exert more influence than in any time in the EP's history. Early signs of this influence were evident in von der Leyen's confirmation hearings, where the climate change challenge figured prominently (discussed below). Indeed, when the 2019 EP election results were announced, Bas Eickhout, the leader of the Greens' group, commented on the cost of Green support in any future EP 'governing' majority: 'We will need to see much more serious climate action, a real change in attitude: a price on CO<sub>2</sub>, properly tackling aviation, the greening of agriculture' (Henley, 2019). Nevertheless, gains among the Greens was not uniform across Europe. Green parties won just two seats in Central Europe and none at all in Eastern Europe. (However, it should be noted that centre-left parties in the CEECs, which performed well in the 2019 EP elections, are associated with green environment and climate change policies.) With the exception of the UK, where the Greens polled higher than the Conservative Party for reasons having more to do with Brexit than the environment (European Greens are pro-EU), the strong Green showings in the EP election occurred in those member states where national Green parties have a strong domestic presence (as, for example, in Germany, where Greens were in governing coalitions in nine länder at the time of the 2019 EP elections) (Buck, 2019), and have been challenging the traditional centre-left party in the national parliaments of EU member states with respect to embracing the EU, promoting social justice and multiculturalism. Due to the factors explained above, the EP is considered the greenest of the three key EU institutions involved in the legislative process (Gullberg, 2008, p. 2967).

### Interest articulation

Interest groups and civil society organizations are also heavily involved in environmental policymaking, which interest group specialist Justin Greenwood (2011) describes as following pluralist patterns and with some environmental NGOs being very well resourced. The major environmental NGOs concerned with EU environmental policy are the European Environmental Bureau (a network of 150 European civil society organizations), Friends of the Earth Europe, Greenpeace International and the World Wide Fund for Nature (WWF). In addition to these groups and the EEB coalition, there are the 'Green Ten', which comprises CEE Bankwatch (green groups from the CEECs), Birdlife Europe and Central Asia, Climate Action Network (comprising 140 member organizations in 30 European countries), Friends of the Earth Europe, Greenpeace European Unit, Health and Environmental Alliance, Naturefriends International, Transport & Environment (which focuses on cleaner transport) and the WWF European Policy Office. The ability of these groups to form effective coalitions on key environmental legislation and engage in informational lobbying is thought to have increased the voice and power of the environmental lobby (Orach, Schlüter & Österblom, 2017).

Most of these groups receive 'core' funding from the Commission as well as funding for specific projects (European Commission, n.d.-f). Such groups have become particularly important in the environment sector because, as Hofmann (2019, p. 342) points out, over the past 25 years the Commission has been 'outsourcing' enforcement of environmental legislation to NGOs by 'systematically promoting access for such groups to national courts' (discussed in more detail, below). Furthermore, some case studies suggest the EU's environmental lobby has become more successful in attaining its aims since the EP's increased power of co-decision granted in the Lisbon Treaty, which has had the impact of somewhat offsetting the power industry wields in the Council (Gullberg, 2008, p. 2967).

### Innovative policy instruments

Environmental policy in the EU is made through a combination of traditional 'command-and-control' regulation (mainly through directives), MBIs and voluntary agreements.

The EU has increasingly adopted MBIs (sometimes referred to as 'new environmental policy instruments'), which use markets, price and other economic variables to provide incentives for polluters to reduce or eliminate pollution. MBIs can be voluntary or



**Box 12.1****Examples of market-based incentives in environmental policies**

- The deposit-refund system, for example, is mandated in national legislation of eight EU member states (and, therefore, not voluntary), but relies on the market (consumers or bottle collectors returning the container for a refund) (Condamine, 2019)
- The fuel tax is a long-standing MBI, having first been levied in the UK in the early twentieth century. The EU requires all member states to levy a minimum excise tax on gasoline (€0.36 per litre) and diesel (€0.33 per litre), 2019 rates, with some states levying a rate much higher than the minimum (e.g. the Netherlands collects €0.79 per litre of gas) (Asen, 2019).
- The EU ETS has become a large-scale application of an MBI with incentives for industries to reduce their GHG emissions (discussed below).
- The Ecolabel, which involves the EU permitting the affixation of this label on products meeting EU environmental standards, is an example of a voluntary MBI.

mandatory – the difference between traditional command-and-control is the market-based incentive. Since the Great Recession of 2008, the EU has increased the trend of using MBIs and flexible policy instruments to build ‘complementarity between hard and soft policy tools and financial incentives’ (Domorenok, 2019, p. 293). (Box 12.1 provides examples of MBIs.)

**Policy implementation and evaluation**

There are two main ways in which EU environmental policies are implemented.

The first is via EU law (see Chapters 6 and 8). Most important new law is issued in the form of EU directives, which only have legal effect after appropriate national measures have been taken to transpose them (that is, to incorporate them). The Commission usually issues the more specific and technical (administrative) laws, which do not require national incorporation to take legal effect.

The second way is via the day-to-day ‘front-line’ application of policies and laws that is the responsibility of numerous officials across the member states. A

crucial role is played by the EEA, which as an ‘information agency’ manages European environmental information and acts as an observation network of national officials and experts to monitor environmental issues. The EEA is also responsible for providing the Commission with data, analytical reports, and a ‘state-of-the-art environment report’, the latter being produced every five years (Martens, 2010, p. 889). Prominent among the reasons for implementation gaps in EU environmental policy are:

- cost (environmental legislation dealing with such topics as clean air and clean sea-bathing water can involve heavy capital expenditure);
- cross-border liaison (many environmental problems are not confined within national borders);
- lack of administrative capacity;
- cultural opposition (there are very differing attitudes within member states towards such issues as the preservation of wildlife and the disposal of waste materials); and
- powerful national interests that oppose the legislation (Hofmann, 2019, p. 343).

The number of national actors involved with implementation – from legislators to street-level bureaucrats – makes environment policy particularly difficult to implement according to the legislators’ (Commission, Council, and EP) intent (Hofmann, 2019, p. 343). The Commission has explicitly recognized the value of policy networks (see Chapter 7) in EU environmental policy, particularly the European Union Network for the Implementation of Environmental Law (IMPEL), an international non-profit association established in 1992 as an informal network of European regulators and authorities from the EU member states, candidate countries of the EU, EEA and EFTA countries, concerned with the implementation and enforcement of environmental law (IMPEL, n.d.). IMPEL and the Commission have been working closely together since the mid-1990s, with the Commission providing financial support for IMPEL’s projects. Another example is a transnational municipal network (TMN) – the Covenant of Mayors programme – which the Commission launched in 2008 to promote and support local implementation of sustainable energy policies (Domorenok, 2019, p. 294).

The EU treaties provide for national compliance with EU law through a Commission-initiated infringement proceeding or permitting citizens, companies or groups to initiate legal proceedings against non-complying national authorities before national courts. Despite these safeguards, the environmental



policy area is notorious for member states delaying or improperly transposing EU directives and for not fully or correctly applying policies and laws (Lenschow & Sprungk, 2010). The most publicized attempt by a company to circumvent environmental regulations was 'Dieselgate', which began when the US Environmental Protection Agency (EPA) served a 'Notice of Violation' on Volkswagen (VW) Group in September 2015 charging that VW had installed 'defeat devices' since 2009 on its diesel engines in VW and Audi cars sold in the US. During emission tests, the engines entered a safety mode that reduced performance (and thus emissions), but out on the road, emissions of nitrogen oxide was up to 40 times the limit. VW later admitted that the emission cheating devices had been installed on 11 million diesel engines, including 8.5 million in Europe and 600,000 in the US (The Local de, 2019). As EU member state governments and the EP began opening their own investigations, the Commission, too, was implicated – with Commission documents and testimony indicating DG Enterprise had been warned both by its science service (Joint Research Centre) and DG ENVIR of potential cheating by a car maker (European Parliament, 2016; Neslen & Harmsen, 2016). The EP's Committee of Inquiry into Emission Measurements in the Automotive Sector (European Parliament, 2016) concluded that emission discrepancies applied to 'most Euro 3–6 diesel cars ... not limited to the Volkswagen vehicles equipped with the prohibited devices'.

Dieselgate offers interesting lessons with respect to EU environmental policy implementation. First, it demonstrates the difficulty auto manufacturers experience in obtaining two ambitious environmental policy goals – lower emissions, but also greater fuel efficiency. Second, it underlines the persistence of regulatory capture in administrative agencies – with DG Enterprise ignoring warnings about automotive manufacturing cheating. Third, Dieselgate suggests that the oversight system in the EU's separation of powers does not work to protect European citizens – with the Commission exercising its oversight responsibilities through its emissions measurement inquiry. Fourth, it exemplifies the difficulty in developing trust between American and European regulatory agencies – each with the authority to protect its national champions – and perhaps explains the enormous difficulty European and American representatives experienced in negotiating the abandoned Transatlantic Trade and Investment Partnership (TTIP), a behind-the-border trade agreement that envisaged mutual recognition of regulatory standards.

Despite the regulatory debacle exemplified by Dieselgate, the Commission has developed several

measures to improve member state implementation of EU environmental law, including through:

- Reports submitted by member states as required by many environmental directives.
- The Commission investigates complaints from EU citizens and civil society organizations – with the Commission having set up a central registry (CHAP) in 2009 to take complaints of violations of environmental directives. In 15 member states, the Commission refers the complaints directly to the member state, which in turn keep the Commission informed as to the progress of complaint investigations.
- Citizen petitions to the EP. TEFU Article 227 provides the right for EU citizens and organizations to petition the EP concerning the application of EU law. The EP's Petitions Committee assesses petitions and asks the Commission to investigate on its behalf. Over one-third of the petitions referred deal with the environment (European Commission, 2019x).
- Questions from MEPs – DG ENV receives 'considerable numbers of written questions' from MEPs (European Commission, 2019x).

If a member state refuses to comply with EU environmental law, the Commission can begin an infringement procedure under TFEU Article 258. Historically, environmental policy infringements have outweighed all other Commission infringement cases – between 1999 and 2006, environmental law infringements constituted 80 per cent of the total, and while this percentage has since fallen, it still is 20 percentage points above the average (Hofmann, 2019, p. 344). Moreover, the EU wins almost all the cases it brings before the CJEU. (There were 333 open ENV infringement cases at the end of 2018 – see European Commission, 2019x.)

Article 279 TFEU allows temporary relief against member state activity before judgement is given where such member state action can cause irreparable harm. This mechanism has been used in a variety of cases (for example, in a 2007 case against Poland, the Commission asked the Court to halt the 'imminent construction of a road ... which threatened important nature habitats') (European Commission, 2016g).

TFEU Article 260 applies when a member state fails to comply with a judgement of the CJEU (European Commission, 2019x). If the member state does not fully comply with the Court's judgement, the Commission can bring the case to Court again, with the latter able to impose fines for non-compliance.



One of the more recent developments and controversies with respect to member state implementation of EU environmental law is the role of private citizens and NGOs (Zito et al., 2019, p. 200). Private citizens and NGOs face numerous obstacles erected by national governments to gaining access to national courts. The Aarhus Convention (Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters), agreed by The United Nations Economic Commission for Europe, attempts to remedy this situation (European Commission, 2019a). The first two aspects of the Convention – the right of European citizens to receive environmental information held by public authorities and the right to public participation in environmental decision-making have been transposed into EU law (Directive 2003/4 on public access to environmental information and Directive 2003/35 on public participation in planning processes). The third – access to justice (to litigate in national courts) – has not been implemented because both the EP and the Council could not agree on the Commission's 2003 directive permitting interest groups to litigate in national courts in member states against public authorities regarding environmental law (Hofmann, 2019, p. 352). Consequently, the Commission withdrew the directive in May 2014 even though studies suggest member state national courts continue to diverge in a number of areas: who has standing to appeal, what types of decisions can be appealed, what arguments are admissible, how long do procedures take, what remedies are available, and the costs of the proceedings (Hofmann, 2019, p. 352). So, for example, the Aarhus Convention Compliance Committee found the EU does not comply with the access to justice provisions of the Convention 'because of insufficient mechanisms to ensure review of EU acts' (European Commission, 2018), triggering the Commission to launch a public consultation (20 December 2018–14 March 2019) as part of a study on access to justice in environmental matters (European Commission, 2019m).

While the Commission frequently expresses its displeasure in its annual internal market scorecard regarding aspects of environmental policy implementation, the record is not as bad as it is often portrayed. Specifically, the record of EU environmental policy implementation was quite good in a comparative time-series study of 21 European countries, Japan, Mexico and the US on such causal variables as culture, economic development, institutional structure and EU membership. Indeed, the EU membership variable provided the highest explanatory value for strong domestic environmental outputs, suggesting

widespread adoption of EU policies (Liefferink et al. 2009). Furthermore, the EU is on target to meet the 20–20–20 climate and energy targets, with GHG emissions being 22 per cent below 1990 targets by as early as 2015 (European Environment Agency, 2018).

\* \* \*

As we discussed in Chapter 7, evaluation is now a crucial component of the EU policymaking cycle. Schoenefeld and Jordan (2019, p. 365) explain that the EU has committed 'substantial' human and financial resources to environmental policy evaluation – for example, the Commission itself published 200 evaluations between January 2015 and mid-October 2016. Furthermore, EAPs have evolved to include specific language guiding policy evaluations, with the 7th EAP calling for both ex-ante and ex-post evaluation information.

## Climate change and the European Green Deal

The importance the EU accorded climate change was signalled by its inclusion in the Lisbon Treaty, and by the splitting of DG Environment (ENV) into two DGs in 2010 – DG ENV and DG Climate Action (CLIMA). DG CLIMA's mission is to:

- formulate and implement climate policies and strategies;
- lead the Commission's task forces in international negotiations on climate and coordinate bilateral and multilateral climate change partnerships;
- implement the EU's Emissions Trading System (EU ETS);
- monitor national emissions from EU member states; and
- promote low-carbon technologies and adaptation measures

The 'cornerstone' of the EU's climate action policy has been the ETS, which operates as a single EU-wide 'cap and trade' principle. Companies receive or buy emission allowances they trade with other companies and can buy 'limited amounts' of international credits from ETS projects in other countries. At the end of each year, a company must surrender the allowances to the Commission or face heavy fines. If a company reduces its emissions, it can bank the spare allowances or sell them to another company. The purpose of this MBI is to recognize that companies need to pay a price for emissions, and, in so doing, will have an incentive to



reduce their CO<sub>2</sub>, nitrous oxide, and perfluorocarbons emissions (see European Commission, n.d.-b). Indeed, since adoption of the EU ETS, emissions are now 21 per cent lower than in 2005 and are expected to be 43 per cent lower (based on 2005 figures) in 2030 (ETS's fourth phase runs from 2021 to 2030).

The European Climate Change Programme (ECCP) of 2000 was the EU's first strategic programme to tackle climate change, followed in 2005 by ECCP II. Organized into six working groups, ECCP II centres around aviation, CO<sub>2</sub> and cars, carbon capture and storage, adaption and reducing greenhouse gas emissions from ships (European Commission, n.d.-e).

The language to describe climate change policy changed in 2019 when the term 'Green Deal' became synonymous with climate change policy. *New York Times* columnist and author Thomas Friedman (2007, 2019) had coined the term 'Green New Deal' in his 17 January 2007 column in which he argued that climate change action would require vast mobilization of government resources on a similar scale as that of US President Franklin Delano Roosevelt's New Deal programme during the Great Depression. His idea was subsequently picked up by a group of British economists and activists led by Ann Pettifor who published a Green New Deal (GND) proposal in 2008. Democratic candidate Barack Obama included the GND in his 2008 campaign platform, but it did not resonate at the time and received little attention. Subsequently, the Sunrise Movement, a youth movement seeking to implement the GND attracted the attention of 'rock star' New York State congresswoman Alexandria Ocasio-Cortez in early 2019 – and since then the terms 'Green New Deal' and 'Green Deal' have become household phrases in both Europe and the US. So, for example, in the UK's Labour Party's autumn 2019 conference, it included a GND in its party manifesto and in Germany the GND is a central feature of the Green Party's manifesto. But GNDs differ markedly. Pettifor's (2019) GND envisages a radical transformation of how we live (sewing our own clothes, eschewing flying, cycling for transport, making friends with our neighbours rather than travelling long distances to visit our friends, growing our own food and becoming vegetarians) in order to achieve a carbon-neutral planet. The GND legislation introduced in the 116th US Congress by Ocasio-Cortez (House) and Edward Markey of Massachusetts (Senate) and the UK's Labour Party manifesto, are examples of 'eco-socialism' (which in addition to climate change proposals, include social justice provisions such as universal job guarantees, expanding trade union rights and universal healthcare).

The Commission, on the other hand, proposed the EU's Green Deal (GD) focus on climate change action and targets (European Commission, 2019aa). It quickly became apparent the GD was going to be the von der Leyen's Commission signature policy when she referred to it as 'Europe's man-on-the-moon moment' (von der Leyen, 2019b) and appointed a 'heavy hitter' – Frans Timmermans – to head up the GD portfolio. The Commission published its proposal in December 2019 and in January 2020 the EP overwhelmingly supported the Commission's proposal (482 votes for, 136 against, and 95 abstentions).

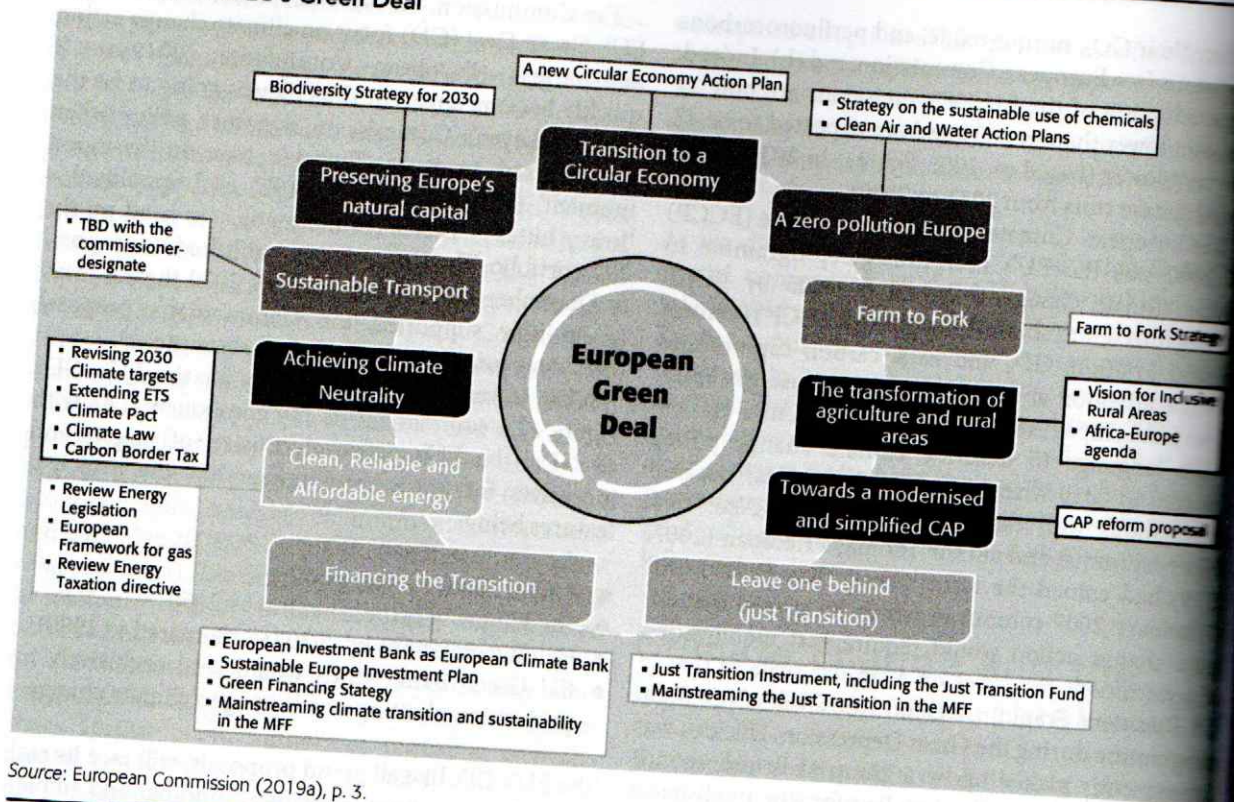
What is von der Leyen's vision for the EU's GD? Figure 12.1 summarizes its key components. As with all GDs, the EU's proposal consists of targets and incentives for green entrepreneurship, the principal features being:

- A €1 trillion, 10-year plan
- The EU being carbon-neutral by 2050
- Halving emissions by 2030 (as compared to 1990)
- EU Green Bank which would lend exclusively to projects combatting or adapting to climate change

The EU's GD, like all grand proposals, will face its real test with supporting legislation, funding, and implementation. Climate change has heretofore been tackled piecemeal. The trend – in the EU, in New York State, in the state of California and other governmental entities adopting comprehensive plans – is too recent to evaluate because it is a herculean task requiring legislation, funding and networks of public administrators building public-private partnerships to implement the GDs. There are many unanswered questions, too: for example, could the EU's GD be so costly as to impede economic growth and, could it then undermine European competitiveness? How will the Commission marshal the resources (estimated at €100 billion per year for 10 years) to implement this ambitious plan? In this respect, there are, naturally, the usual complaints of 'greenwashing' (see, for example, Varoufakis & Adler, 2020) – reshuffling from funds already being allocated in the EU budget for climate change and a lack of nimbleness and manoeuvrability in the member states in adopting climate change initiatives because of the Stability and Growth Pact (see Chapter 14). But either ironically or serendipitously, the coronavirus pandemic and the economic devastation it has wrought may be the opportunity GD supporters have been seeking because of the massive public investments that will be needed to re-employ people, some who worked for businesses that were bankrupted as a result of the pandemic.



Figure 12.1 The EU's Green Deal



Source: European Commission (2019a), p. 3.

Nevertheless, in taking the lead, the Commission may be advancing the cause of European integration because unlike in the US, where concerns about climate change are linked to political party identification (Funk & Kennedy, 2019), a 2019 Special Eurobarometer focusing on the environment found that 93 per cent of Europeans see climate change as a serious problem, and 92 per cent agree that GHG emissions should be reduced to make the EU economy climate neutral by 2050 (European Commission, 2019w). Furthermore, Millennials and Generation Zers more frequently identify climate change as 'the most serious problem facing the world as a whole' (26 per cent for ages 15–24 and 24 per cent for ages 25–39 as compared to 21 per cent for ages 55 plus) (European Commission, 2019w, p. 20), the very Europeans the Commission needs to bring on board to support the European integration project.

## Conclusions

This chapter and Chapter 11 have examined two internal policies – agriculture and the environment – which the federal integration model that was advanced in

Chapter 3 suggests are necessary to achieve economic union. Unlike the internal market stage of integration, which relies heavily on negative integration (in the form of the removal of artificial barriers to the circulation of goods, capital, people and services), the policies examined in this chapter and Chapter 11, plus some of the other policies covered in this book – including those covered in the following chapter – have required 'positive' action at the EU level.

Like so many of the EU's policies, environmental policy is constantly evolving and being revised. As part of this process, it can be expected that environmental policy will continue the now-established pattern of being tied closely to climate change and to energy efficiency and security. The Commission's GD explicitly ties climate change policy to green entrepreneurship – furthering the policy integration which characterizes both the CAP and EU environmental policy.

So, too, the challenge of implementation will continue, not least because the impact of climate change will affect member states differently. Among the future challenges include desertification in Southern Europe (and higher risk of droughts); diminishing water supplies due to dry spells (40 per cent of the Europe's



water comes from the Alps) will lead to water shortages and reduced hydroelectric capacity; and drought and heat waves will put dry areas at a greater risk of forest fires. Parts of Europe will also be at a greater risk of flooding. With a third of the EU's population living within 50 kilometres of the sea, rising sea levels will cause erosion and storm surges, and may also lead to a reduction of fresh water due to infiltration of sea water into underground water tables (European Commission, n.d.-a). So, too, the shift from fossil fuels to renewables will negatively affect those member states heavily dependent on coal (such as Poland)

and those without the financial means to transition to renewable energy.

Finally, climate change is a classic problem of market failure on a global scale that only global cooperation will be able to tackle. Can the EU continue to exercise global leadership on its own, a leadership which the US abdicated with its 2016 election of Donald Trump? The key question for students of European integration is whether the EU – a federal system rather than a sovereign state – can be more than a 'city on a hill'. Can the EU's governing structure produce the transition from a carbon-based to a renewable energy economy?

## Guide to Further Reading

One of the best ways to learn more about environmental policy in Europe is to access recent issues of the journal *Environmental Politics*, which since the early 1990s has been publishing studies of EU environmental policy. There are also chapters on EU environment policy in Bulmer et al. (2020), Cini and Pérez-Solórzano Borragán (2019), Nugent (2017), Wallace et al. (2015) and Zahariadis and Buonanno (2018). Delreux and Happaerts (2016) provide an excellent overview of EU environmental policy. Jordan and Adelle (2013) assemble contributions on the topic. Delreux (2011) and Wurzel et al. (2013) examine the EU's international environmental role and influence. Readers might also wish to access the resources at 'Earth System Governance' ([www.earthsystemgovernance.org/](http://www.earthsystemgovernance.org/)), a global research alliance focusing on governance and global environmental change, for working papers, reports, articles and books.

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