26. Environmental policy

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This chapter reviews EU environmental policy, a policy domain which the EU unexpectedly entered in the early 1970s and has been increasingly active in ever since. It opens by considering four perspectives useful for evaluating the success of EU environmental policy: impact on the EU polity, centrality to EU politics, emergence of a strong body of policies and their impact in practice. It continues by reflecting on the paradoxical rise of EU environmental action, sketching its travails from its humble beginnings as a hidden, ad-hoc policy to a central component of the EU's identity both externally and internally. It then discusses key current challenges EU environmental action faces: the European Green Deal puts the environment front and centre, which raises issues of credibility both in and outside Brussels. It finishes by suggesting some way forward to address these credibility challenges: centring social justice in environmental action and ensuring all EU external policies align with its environmental agenda.

PERSPECTIVES ON EU ENVIRONMENTAL ACTION

EU environmental policy started in the early 1970s, with the Paris Summit gathering Heads of State and Governments in December 1972. This first Summit focused on environmental matters followed from the UN Conference on the Human Environment the same year (Knill and Liefferink 2021). As we near 50 years since the EU first waded into environmental matters, it is now time to reflect on the success, and limitations, of half a century of EU environmental policy. As with many such evaluations, it is a matter of perspective. Whether the EU has been successful depends on whether we focus on *polity* and the inclusion of environmental action in the EU legal framework, *politics* and the changing political divisions underpinning it, *policies*, that is, the EU environmental *acquis* now spanning every environmental issue from water quality to ecosystems and the fight against climate change, and finally whether we step away from Brussels and consider its impact in *practice* on the environment in Europe and around the world.

Polity

The Treaty of Rome does not mention the environment. The mainstreaming of environmental action at EU level took decades – and such developments were, sometimes still are, bitterly contested (from the UK 'hit lists' against major EU green rules in the early 1990s (Golub 1996) to current Polish reticence to EU climate action (Biedenkopf 2021)). Yet, just as students of regulatory politics argued that the EU is an almost perfect example of 'regulatory state' (Majone 1996), today the EU ticks most of the boxes of what an 'environmental state' looks like. Duit et al. define it thus:

An environmental state has specialised administrative, regulatory, financial, and knowledge structures that mark out a distinctive sphere of governmental activity, while the environment and what governments should do about it has become an issue of ongoing political controversy (Duit, Feindt and Meadowcroft 2016: 6).

The EU has a specialised administrative and regulatory structure: DG ENV (set up as a five-person team as part of DG Industry in 1973, which had 448 staff in 2019) and, since 2009 DG CLIMA (189 staff in 2019), which focuses on climate action (Bürgin, 2021). It has knowledge structures both through the European Environment Agency and through EU research funding such as Horizon 2020. It has long struggled to adopt environmental taxes (which, together with planning, are rare areas of environmental action which still require unanimity) but this does not mean it cannot spend or collect funds on an environmental basis: see, for example, agri-environmental schemes under the Common Agricultural Policy (Feindt, 2010), and the recent proposal for a Carbon Border Adjustment Mechanism as part of the European Green Deal (EGD) (European Commission 2019). For the EU to be considered an environmental 'state' further requires the environment becoming an 'an issue of ongoing political controversy' at EU level (Duit et al 2016: 6). Whether to act on the environment, and at what level of ambition, has been a central element of EU debates since (at least) the late 1990s (Gravey and Jordan, 2016). Indeed, the fact that in the EU too, decision-makers are not always keen on more environmental action may be seen as another way in which the EU is becoming a 'normal' political system (Kreppel 2012) where ecology goes up and down the policitical agenda (Downs 1972). From a polity angle, EU environmental action has been a resounding success.

Politics

To understand the ongoing controversy on environmental matters at EU level we need to remember that EU environmental action, as in the US context, federal environmental programmes, can be criticised and supported both due to their policy focus, and the level of governance which created them (Gravey and Jordan 2019; Layzer 2012) (see Table 26.1 below). This can make for strange bedfellows. The Commission under Barroso and Juncker in the 2010s strove for an EU 'big on big' and 'small on small' matters – with environmental action seen as a 'small' issue whose repatriation or dismantling would be a price worth paying for saving the European project (Emerson 2014), aligning in many ways with recent demands from the Polish government, or those of the Cameron government in its renegotiation of UK terms of membership ahead of the 2016 referendum (Biedenkopf 2021; Gravey and Jordan 2021).

Current EU environmental politics are fraught with debates on how the costs of transition to a climate neutral EU will be shared. Other bitter, recurring debates, cutting across political groups and member states include the environmental impact of EU trade agreements (e.g., with the USA, Canada or the MERCOSUR), the environmental impact of agriculture, forestry or fisheries, and whether environmental rules stifle EU businesses (especially SMEs). If we consider a politic success as being frequently debated at the highest levels, then EU environmental policy increasingly fits this (Rosamond and Dupont 2021). If success requires political consensus, then it gets more complicated and differs between specific sectors of environmental policy.

Table 26.1   Typology of attitudes to EU environmental action

	Critics of Environmental Action	Proponents of Greater Environmental Action
Europhile	Environmental action prevents EU decision-makers from focusing on more important priorities. Businesses complain about unnecessary regulatory burdens: environmental action should be halted or reduced to garner greater societal/business support. EU should focus on where it has proper 'European added value'.	Environmental action offers a new positive narrative (after Peace) for the European Project, which speaks directly to EU citizens. Environmental objectives should be mainstreamed in other policies and be central to the EU's identity as a global actor.
Eurosceptics	Environmental action is example of EU over-reach, impinging on member states' sovereignty and another example of how out of touch eurocrats are with common Europeans.	Environmental action is more effective at another level of governance (local, national, global), competence should be repatriated, allowing for policies better tailored to local needs.

Source: Adapted from A. Gravey and V Jordan (2021) 'New policy dynamics in more uncertain times?'in Jordan and Gravey (eds), *Environmental Policy in the EU: Actors, Institutions and Processes* (4th edn) London: Routledge, p. 340.

Policies

The EU recently adopted its Eighth Environmental Action Programme (EAP). Looking back on five decades of EAPs shows how far the EU environmental *acquis* has come. It now comprises close to 200 legal instruments from air quality to chemicals and noise pollution (Gravey and Jordan 2021). Whereas the first EAP focused on narrow, technical actions (addressing water, air pollution) the priority objectives of the new Eighth EAP propose profound system change:

> The 8th EAP shall have the long-term priority objective that by 2050 at the latest, people live well, within the planetary boundaries in a well-being economy where nothing is wasted, growth is regenerative, climate neutrality in the Union has been achieved and inequalities have been significantly reduced. A healthy environment underpins the well-being of all people and is an environment in which biodiversity is conserved, ecosystems thrive, and nature is protected and restored, leading to increased resilience to climate change, weather- and climate-related disasters and other environmental risks. The Union sets the pace for ensuring the prosperity of present and future generations globally, guided by intergenerational responsibility. (Article 2.1 Decision (EU) 2022/591)

Policies thus appears one of the clearest signs of EU environmental success – yet this assumes that what is agreed in Brussels is actually implemented on the ground (whereas non or partial implementation keeps on plaguing EU environmental rules, as discussed below) and that they are sufficient to halt, or even reverse, environmental harm.

And in Practice

Yet in practice, EU environmental action, for all its successes (on acid rains, on bathing water, on the protection of migratory birds, etc.) is still failing to reach many of its objectives, as the recent State and Outlook of the European Environment report from the European Environment Agency shows (European Environmental Agency, 2019). This is in part due to the challenge

(discussed below) of non, or partial implementation of EU rules: regulatory changes in Brussels are not always followed by changes in practice across the EU (Zhelyazkova and Thomann 2021). But this is also due to the very nature of environmental action: as our understanding of environmental challenges grows, so does our realisation that more needs to be done. This means that EU rules, even when met, are often not enough to tackle the issue:

> The EU has committed to a range of long-term sustainability goals with the overall aim of 'living well, within the limits of our planet'. Achieving these goals will not be possible without a rapid and fundamental shift in the character and ambition of Europe's responses. (European Environmental Agency 2019: 9)

THE PARADOXICAL DEVELOPMENT OF EU ENVIRONMENTAL POLICY

In order to understand whether the EU is ready for such a fundamental shift, we must first understand how it developed as an environmental actor. The development of EU environmental policy is a perfect illustration of the non-linear, often surprising if not paradoxical nature of the European integration process. Its 'journey to centre stage' (Haigh 2015) started from humble beginnings and remains to this day precarious. Unforeseen in the founding treaties in the 1950s (environmental policy was not then recognised as a standard competence for governments around the world), EU environmental policy started without any explicit legal basis (Knill and Liefferink 2021). It developed in the shadow of the EU's (then EEC) spur to establish the internal market from the 1970s onward, with key pieces of environmental legislation such as the Bathing Water Directive (1976), the Birds Directive (1979) or the Seveso Directive (1982) more or less loosely justified as necessary to create a 'level playing field' between the Member States (Knill and Liefferink 2021). This exemplifies the first paradox of EU environmental action: while in later years environmental rules would be decried as creating unnecessary administrative and regulatory burdens for companies (or 'red tape') (Gravey and Jordan 2019), EU environmental action started as a tool to foster and hasten economic integration.

As such its early developments exemplify the EU's 'creeping competences' (Pollack 1994) and 'integration by stealth' (Majone 2014, 1218) whereby EU supranational institutions attempt to increase the scope of their competences beyond what is formally included in the Treaty, fostering spill-over. Yet once the EU Treaties were revised, environmental policy swiftly stepped out of the shadows. Out of the many Treaty changes of the 1980s and 1990s two stand out for the environment. First, the decision to include a new Environmental Title (and thus formal EU competence for environmental policymaking) with the Single European Act of 1986. Second, the choice to make environmental policy one of the first policy areas to test the new co-decision procedure granting greater legislative powers to the European Parliament in the 1992 Maastricht Treaty. Environmental policy became central to the day-to-day work of the European institutions – in the 1999–2004 Parliament, ENVI files represented up to 30 per cent of all co-decision files (Gravey and Jordan 2021) – and to how the EU was perceived by its citizens leading to what Lenschow and Sprungk called the 'myth of a green Europe' (2010). This brings us to the second paradox of EU environmental action: a policy which began as an afterthought, developed by stealth has become central to the EU's image both towards its citizens and as an international actor (Biedenkopf and Groen 2021; Manners and Murray 2016).

That myth would be sorely tested in the 2000s and 2010s. The EU's green star lost some of its shine, as the European Commission under both Barroso (2006–2014) and Juncker (2014–2019) responded to the failure of the 2008 Climate negotiations in Copenhagen, the Global Financial Crisis and the ensuing Eurozone crisis, by focusing on a narrower set of policy priorities, which did not include further environmental action, except in the field of climate change (and even there, with reduced ambition) (Burns, Tobin and Sewerin, 2019; Čavoški 2015). While the very consensual nature of the EU policy-making system made it extremely difficult to dismantle environmental policy outright (Gravey and Jordan 2016; 2019), the central role of the European Commission made it comparatively easy to turn off the tap for new environmental policy developments (Steinebach and Knill 2017). This led to a third paradoxical moment in EU environmental policy history: 'the increasing legal and institutional anchoring of EU environmental policy has coincided with the slowing down of its political dynamics' (Knill and Liefferink 2021: 25).

Recent years saw a tentative return to high environmental ambition. First, with Brexit. The EU negotiations with the UK brought into sharp relief the continued role of EU environmental policy in underpinning the EU internal market 'level playing field' (Burns et al. 2019). Even if the final UK–EU agreements do not make strong provisions for non-regression, the practical use of environmental standards for trade is once more high on the EU's agenda (Gravey and Jordan 2021). Secondly, the environment is becoming central to the von der Leyen Commission. While previous EU grand strategies such as the Lisbon Strategy or the Europe 2020 strategy paid only lip service to the environment, the European Green Deal is first and foremost an environmental strategy – putting climate, and environmental action, at the heart of the European integration process like never before (Dobbs, Gravey and Petetin 2021).

MAIN CONTEMPORARY CHALLENGES

The European Green Deal (EGD), announced in December 2019 as the main objective of the new von der Leyen Commission marks an apparent return to environmental ambition at EU level (Dupont, Oberthür and von Homeyer, 2020) – and could herald the 'fundamental shift' needed (European Environmental Agency, 2019). Yet delivering on this ambition will require the EU to properly address the challenges which have long plagued EU environmental action – and the new challenges specific to the EGD and to the depth of system change required to tackle the twin biodiversity and climate crises. These can be summarised as challenges in achieving credibility in and outside Brussels.

Credibility in Brussels

The EGD, which sees the EU 'striving to become the first climate-neutral continent' (European Commission 2021a) has 'a significant potential to make EU climate policy transformational' (Dupont et al. 2020: 1101). Dupont et al. (2020) argue this potential rests on three planks: first, the ambitious climate targets themselves (climate neutrality by 2050), second, a 'green oath' to 'do no harm' whereby 'all EU actions and policies should pull together to help the EU achieve a successful and just transition towards a sustainable future' (European Commission 2019: 19), third, a pledge to achieve a just transition leaving no Europeans behind. Delivering credibly on the first two planks requires confronting old challenges for EU environmental action:

resistance to environmental policy integration (Dupont and Jordan 2021) and potential for backdoor dismantling (Burns and Tobin 2020) or watering down through endless extensions.

Environmental policy integration, i.e., the principle that environmental aims should be integrated in the decision-making of other policy areas, has been an objective in the EU Treaties since 1986 making it 'very much a specialism of the EU' (Dupont and Jordan 2021: 203). But the principle has long lacked teeth, with key EU policies such as the Common Agricultural Policy (CAP) failing to diminish their negative environmental impacts (Alons 2017; Gravey and Buzogány 2021). As the rolling out of the EGD coincided with a new reform of the CAP, the strength of the EU's commitment to its 'green oath' to 'do no harm' (European Commission, 2019: 19) could be readily tested and found wanting. The new CAP delegates wide powers to the Member States which will each have to produce national implementation plans. This risk further undermines the farming level playing field with widely different levels of environmental ambition. While the Commission would have the opportunity to ask member states to go back to the drawing board if their national plans failed to meet EGD objectives (Dobbs et al. 2021), the Commissioner for Agriculture Janusz Wojciechowski argued such a move would be 'unthinkable' and that the Commission would try gentle persuasion instead (Foote 2021).

A second critical challenge in Brussels is ensuring strong EGD rules are adopted – and retain their strength after adoption. Research on policy dismantling at EU level, i.e., 'the cutting, diminution or removal of existing policy' (Jordan, Bauer and Green-Pedersen 2013: 795) has found the EU terrain unsupportive of the outright dismantling of existing directives and regulation through the legislative process (Gravey and Jordan 2016; Gravey and Moore 2019). Yet if direct, open legislative dismantling is difficult, the centralisation of legislative initiative power within the Commission makes policy expansion utterly dependent on the Commission accepting to table proposals (Gravey and Jordan 2019; Steinebach and Knill 2017). Whether support for the EGD and delivering on subsequent steps of the EGD, through evaluating and revising existing policy, will survive a change of Commission after the 2024 elections is far from certain. Another source of uncertainty is in the more hidden form of dismantling found by Pollex and Lenschow (2020) and Burns and Tobin (2020): dismantling through comitology, via the adoption of delegated acts which facilitate extensions and exceptions, or through Commission's decisions to favour industry self-regulation over stricter regulation. This means that the strength of policy developments such as the European Climate Law (2021/1119) cannot fully be judged yet. Much depends on implementation decisions, and in the Climate Law case as with the CAP, on how the Commission, deals with unambitious national plans.

Credibility outside Brussels

Beyond Brussels a very old challenge remains: that 'even rules' leads to 'uneven practices' (Versluis 2007) with the uneven implementation by member states of EU environmental law. This has long been the Achille's heel of EU law, especially so for environmental action; 19 per cent of current open infringement cases concern environmental law (as of October 2021), and after years of steady decline, this is rising (451 open environmental infringement cases for DG ENV at the end of 2020, up from 337 in 2019 and back to 2009 levels) (European Commission 2021b).

This is indeed an old challenge – born, in part due to the uncertainties inherent to environmental action and the depth of changes needed, yet due also to member states not taking their

European commitments seriously. Thus, reflecting on the establishment of EU environmental policy, Knill and Liefferink argue that 'some of the member states were not fully aware of what they were signing up to during EU negotiations (…). Individual member states also had false notions about the binding legal character of European directives' (Knill and Liefferink 2021: 20). The Court of Justice only gained power to fine member states for non-implementation in the 1992 Maastricht Treaty, and the fines then took a few years to manifest in practice. By the early 2000s member states like France and the UK were waking up to the risk of heavy fines (Keller 2007). The Barroso II and Juncker Commission changed tactics in implementation, opting to work early on with member states through the PILOT system and to reduce infringement numbers, relying increasingly on national courts and interest groups instead (Hofmann 2018). Yet this failed to account for the very different levels of legal and financial capacity of environmental groups across all member states (Hofmann 2018).

A more recent challenge, made even more critical by the EGD is the acceptability and legitimacy of EU environmental action for EU citizens (Hofmann 2021). Past backlashes against green taxes (such as the *bonnets rouges* in France in 2013) illustrate the imperative need for major changes set out in the EGD to go hand in hand with a 'just transition', 'ensuring that no one is left behind' (European Commission 2019: 4). As the EU tentatively puts its weight behind environmental ambition, the cost and popularity (or lack thereof) of environmental policies will contribute to shape EU citizens attitudes towards European integration. This makes the challenge of combining deep transformative change with social acceptability not only an environmental, but also a European challenge.

SOLUTIONS TO THE EU'S ENVIRONMENTAL CHALLENGES

The von der Leyen Commission is putting the environment at the centre of the EU project like never before. As EU rules are difficult to dismantle (Gravey and Jordan 2016) and EGD changes are so encompassing, future EU Commissions will have to deal with the legacy of this few years of regulatory environmental ambition – irrespective of their own policy preferences. This means European institutions from now on will have to deal with the consequences of making environmental action core to the European project. This, arguably, is a claim of moral authority from the EU (presenting itself not just an economic project but as an environmental one) – which exposes it to criticisms of hypocrisy and greenwashing.

If the EU is indeed, as set out in its Eighth EAP, going to lead and 'set the pace' for such profound system change globally, it needs to defend itself against such criticisms. It can do so in two different ways.

First, internally by prioritising a just transition alongside purposeful implementation of environmental law. Too many European citizens feel the EU does not work for them. The backlash against the EU's handling of the Eurozone crisis (especially its actions towards Greece) means that a key indicator for whether the EU will be successful in tackling climate change will be a question of social justice. Here, the solidarity mechanisms already deployed in regional funds (both within and between member states) can provide a good basis to start, and so does the European recovery plan. Ensuring that citizens do not suffer unduly from states meeting their environmental commitments should go hand in hand with continuing to chip away at the implementation gap. There, work on *customisation* of EU law (Thomann and Zhelyazkova 2017) offers new avenues, by demonstrating how flexibility in transposition and

allowing states to customise EU rules to their own specific needs can increase application in practice.

Second, the EU's credibility and moral authority need to be bolstered externally. This means reviewing the external environmental impacts of key EU policies (e.g., fisheries agreement with third countries) to ensure not only limited carbon leakage but also ensuring the EU economy does not benefit from biodiversity loss outside its borders. As the EU pushes for other countries to uphold their pledges under the 2015 Paris Agreement, the EU has a duty to be exemplar in its dealing with international environmental organisations. With regard to the climate negotiation process this means making sure that EU members all contribute development funding (through and in parallel to the EU) in line with commitments. Beyond climate, the way the EU engages with the UN Aarhus Convention is a black spot on its environmental credentials. The EU has long dragged its feet on meeting its commitments on access to environmental information, and especially environmental justice (Hofmann 2018; Vanhala 2016). Changing this would go a long way towards reassuring other states that there are not one set of rules for them and one for the EU – with the added benefit of strengthening pathways for bottom-up pressure on member states to implement EU environmental law.

CONCLUSION

After hitting the doldrums in the mid-2000s and 2010s, EU environmental policy appears to be moving swiftly again. But credibility issues remain, both inside and outside Brussels. With the environment set to play a central role in the EU's identity in the coming decades as the EU pushes for climate neutrality by 2050 it needs to ensure local buy-in, and implementation across the EU – and be properly supportive of environmental ambition globally. To do so, this chapter has suggested two set of solutions. First, the EU needs to ensure that internally its commitments lead to change and impacts in practice – this means avoiding backdoor dismantling, and addressing the implementation gap. The EU should centre social justice and just transition to ensure popular support for environmental action, as well as foster practices of customising EU law. Second, the EU needs to be exemplar externally. This means, in addition to delivering on its own internal policy agenda, supporting developing countries in meeting their own climate targets, limiting the negative external impacts of its policies and finally delivering on its commitments to the Aarhus Convention.

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