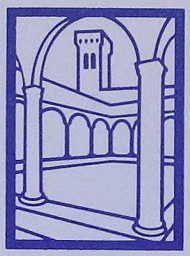


# EUI WORKING PAPERS

EUI WORKING PAPER No. 88/328

# E EUROPEAN COMMUNITY'S ENVIRONMENT POLICY
## From the Summit in Paris, 1972 to the Single European Act, 1987

by

Ida Johanne KOPPEN

European University Institute, Florence

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE

DEPARTMENT OF LAW

EUI WORKING PAPER No. 88/328

# THE EUROPEAN COMMUNITY'S ENVIRONMENT POLICY
## From the Summit in Paris, 1972 to the Single European Act, 1987

by

Ida Johanne KOPPEN

BADIA FIESOLANA, SAN DOMENICO (FI)

Printed in Italy in January 1988
European University Institute
Badia Fiesolana
50016 San Domenico di Fiesole (FI)
Italy

TABLE OF CONTENTS

# THE EUROPEAN COMMUNITY'S ENVIRONMENT POLICY

## From the Summit in Paris, 1972 to the Single European Act, 1987

### Introduction

When the Treaties establishing the European Communities (EC) were signed in 1957, environmental protection was not yet recognized as an important societal issue. Thus the subject did not get attention in the provisions describing the tasks of the EC.

On 1 July 1987 the Single European Act (SEA) has come into force. The SEA amends the original EC Treaties. One of the amendments is the addition of a separate chapter on environmental protection, making it one of the offical Community tasks.

It did not take until 1987 for the EC to start being concerned about environmental problems. Fifteen years earlier, the first environmental steps were taken. When the heads of State and government met at the Summit in Paris on 19 and 20 October 1972, they recognised the importance of Community environmental protection. To this end they asked the Commission to prepare a programme of action.

In 1973 the first programme of action on the environment was launched. Under the impetus of the programme the Community started to promulgate legislative acts, mostly Directives, regulating some of the acute environmental dangers.
Four years later, in 1977, a new programme was put forward, to authorize the continuation of these efforts.

The focus of the first two programmes was first of all on the reparation of environmental damages. The Directives emphasized

that distortion of competition and the functioning of the Common Market due to diverging environmental protection provisions in member states could only be prevented if harmonisation measures were taken at the Community level.

In the course of events the perspective changed.
The Community developed a comprehensive environmental policy that did much more than react to already existing problems of pollution or national provisions distorting the Common Market.
Already in the first programme it was stressed that a rational approach to environmental protection had to be preventive. And this consideration gained more and more importance.

When the realm of Community involvement increased, so did the protest of member states guarding their sovereignty. After all they did had initially not authorized the EC to defend environmental interests.
As a result of this attitude, agreement about proposed activities and measures could often only be reached after long negotiations and at a low level of protection.
It also had the effect that member states raised the question whether or not the EC had the power to regulate environmental issues in procedures before the European Court of Justice.
Between 1981 and 1985 the Court gave a series of judgments on this matter, progressively underlining the validity and legitimacy of the environmental policy of the Community.

In the later action programmes of 1983 and 1987, the policy approach has become mostly preventive, indeed.
And prevention means integration. That is to say that environmental considerations are to be taken into account at an early stage of decision making in other policy fields.
That is where the emphasis of the EC environmental policy lies at the moment.

In this article I want to present an overview of the entire scope of action by the EC in the field of environmental protection.

In Chapter 1, a lengthy discussion can be found of the four Environmental Action Programmes, and of some of the main legislative texts that came into being in the past fifteen years.

Chapter 2 discusses the cases treated by the European Court of Justice in which the Court gives its opinion about the legitimacy of the environmental policy developed by the EC.

Chapter 3 finally, presents the new legal basis of EC environmental action. The Treaty amendments resulting from the coming into force of the SEA are discussed in detail.

Each chapter concludes with a summary. The most important points of the article are summarized in the Conclusions.

## Chapter I - The EC Environmental Action Programmes and the promulgation of environmental Directives.

### 1.0 General

Since the Summit meeting of the heads of State and government in Paris on 19 and 20 October of 1972, where the EC institutions were invited to establish a programme of environmental action, four such programmes have been effected.
The rather unusual and changing legal form of the action programmes can be seen as a reflection of the existing policy disagreement about the legal basis of EC activities in the field of environmental protection.
The first programme was presented as a "Declaration of the Council and of the representatives of the governments of the member states meeting in the Council"[1]. The second and third programme have the status of a "Resolution of the Council and of the representatives of the governments of the member states meeting in the Council"[2]. The form of the fourth programme finally, is a "Resolution of the Council"[3].
Declarations and resolutions are both used in general to present policy statements of the Council. Often, as in the case of the Environmental Action Programmes, they include a time schedule for the realisation of the proposed activities. They are only legally binding in so far as the Treaty establishes competence in the field covered, and to the extent that legal consequences are intended. The difference between a declaration and a resolution in terms of political weight and legal bond is not completely clear. Some authors suggest a resolution is more legally binding, and carries in that sense more political weight

---

1. OJ No C 112, 20.12.73, p.1.
2. OJ No C 139, 13. 6.77, p.1.
   OJ No C 46, 17. 2.83, p.1.
3. In Draft form: OJ No C 70, 18.3.87, p.3.

than a declaration[4]. This cannot be held to be a common opinion[5]. Moreover, legal bond and political weight are not necessarily positively related: "It sometimes appears that the more important the decision, the less formal the procedure and the measure."[6]

Of greater significance seems to be the change of institutional body formally presenting the programmes as the accepted EC policy: the change from 'Council plus representatives of the governments of the member states meeting in the council' to 'Council' alone.

The transfer of powers from national states to the community concerning environmental protection being controversial, community action in this field was likely to incur opposition by some member states. By making the Environmental Action Programmes an expression of the joint will of the Council and of the government representatives, this problem was partly circumvented.

Decisions of the representatives of the governments of the member states meeting in the Council have a rather vague legal character[7]. They are used in areas where decisions by the Council are not possible or feasible yet. They are an efficient, flexible and somewhat informal way to reach agreement where a formal procedure would take much more time.

On the negative side, they impose a threat on the institutional equilibrium, the system of checks and balances, and the judicial control established by the Treaty.

The legal consequences of this type of decisions are unclear. Depending on their wording, they can be considered more or less binding. The Agreement, for instance, of the representatives of

---

4. See Klatte (1983), p.300 and 303, and Jessurun d'Oliveira (1987), p.25.
5. Kapteyn and VerLoren van Themaat (1980), p.127, discuss declarations and resolutions in similar terms.
   Mathijsen (1985), p.88 and p.96, does not describe any difference between the two.
6. Mathijsen (1985), p.88.
7. See Kapteyn and VerLoren van Themaat (1980), p.139 ff.

the governments of the member states of 5 March 1973, on information concerning the protection of the environment[8], was explicitly presented as a gentlemen's agreement[9]. The Environmental Action Programmes, with the time schedule they include, are binding for the Community institutions. However they can not be submitted to the European Court of Justice for judicial control since they do not emanate from the Council or the Commission[10]. Thus they are binding more in a political than in a legal sense.

The Programmes do not contain direct obligations for Member States.

In the development of Community tasks, these semi-formal decisions[11] play an interesting role. If we see how the position of environmental law within the EC structure has now become constitutionalised[12], we realize that these informal steps represent an incremental process through which a major qualitative change has been reached.

It must be noted that the first three Environmental Action Programmes were presented as a joint Declaration, or Resolution of the Council and the representatives of the governments of the member states meeting in the Council. Since also the Council members are representatives of the governments of the Member States, it is obvious that the essence of this presentation lies in its formal aspect.

---

8. Agreement of the representatives of the governments of the member states meeting in the Council of 5 March 1973, on information for the Commission and for the member States with a view to possible harmonization throughout the Communities of urgent measures concerning the protection of the environment, OJ No C 9, 15.3.1973, p.1.
9. see note 1 on the first page of the document.
10. Article 173 of the EEC Treaty states: "The Court of Justice shall review the legality of acts of the Council and the Commission other than recommendations and opinions..."
11. Rehbinder and Stewart (1985b), p. 33, call it "soft law". "Soft law consists of programs and declarations of a non-binding nature..." that represent "...a new type of policy developed through political consensus of the member states."
12. See Chapter III.

In other words, a resolution by the Council alone must be interpreted as proof of increased consensus about the legitimacy of an EC environmental policy: the Draft Fourth Environmental Action Programme came about in the same period as the Draft Single European Act.

One comment should be added here about the -so much discussed- vague legal base of the environmental action programmes. The controversy about scope and depth of the EC environmental policy, at some point resulted in an argumentation over subtle differences in formulation. Proponents of an independent involvement of the EC in environmental matters were talking about an 'environmental policy of the Community' or a 'Community environment policy'. Opponents referred to an 'environmental policy in the Community', which implied a superficial task for the EC of coodinating and harmonising existing national policies of the Member States.[13] In a report drawn up on behalf of the Committee on the Environment, Public Health and Consumer Protection of the European Parliament, on the embodiment of the principle of environmental protection in the EEC Treaty, the same distinction is made. In the first EAP, according to the report, the Council spoke of "environmental policy in the Community", because of political disagreement among the Member States over the establishment of the policy.[14]
It is true that the full acceptation of an EC environment policy has taken some time; however it must be added that the first EAP in several places refers explicitly to "a Community Environmental Policy"[15].
I agree with the argument that the legal base of the environmental policy of the EC has been rather vague up to now, but I want to argue at the same time that this has not in a

13. See for instance Reich (1987), p.268: "Umweltpolitik in der Gemeinschaft" as opposed to "Umweltpolitik der Gemeinschaft".
14. EP working document A 2-203/85, of 24 January 1986, p.9
15. OJ No C 112, 20.12.73, p.1 and 2.

substantive way hampered the development of a Community environmental policy as such. The description of Community environmental action in this chapter will underline this point.

1.1 The first Environmental Action Programme

The first Environmental Action Programme (EAP) was prepared by the Commission after an explicit request to this end was expressed at the Summit conference in Paris in 1972.
Unlike most sources suggest, this was not the first effort by the Commission to act on environmental matters.
Usually the credit of originating the EC environmental policy is given to the summit meeting in Paris. However the Commission was really the first to express the need for an EC policy on this subject. More than a year prior to Paris, the Commission took a major initiative in preparing its first Communication in the field of environmental protection[16], followed by a Draft EAP[17].
After the summit meeting then, these first communications were rewritten in the form of a Draft council resolution on a Community EAP, as submitted to the Council on April 10th 1973[18].
The Council adopted the Programme on November 22nd of 1973, by way of a Declaration; as mentioned, a Declaration of the Council and of the representatives of the governments of the member States meeting in the Council[19].
Legitimation of the Declaration is found in article 2 of the EC Treaty when the Council states: "Whereas in particular, in accordance with Article 2 of the Treaty, the task of the European Economic Community is to promote throughout the Community a harmonious development of economic activities and a continuous and balanced expansion, which cannot now be imagined

16. SEC (71) 2616 final, 22-7-1971.
17. SEC (72) 666 final, 22-3-1972.
18. COM (73) 530 final, 10-4-1973.
19. OJ C 112, 20-12-1973.

in the absence of an effective campaign to combat pollution and nuisances or of an improvement in the quality of life and the promotion of the environment;
Whereas improvement in the quality of life and the protection of the natural environment are among the fundamental tasks of the Community; whereas it is therefore necessary to implement a Community environment policy;"[20].

The course of action set out in the first EAP covers the period of the next two years. The programme contains two parts. The first part contains objectives and principles of a Community environment policy, and a general description of proposed Community action. The second part gives a detailed description of concrete Community measures to be taken to protect and improve the environment.
The aim of a Community environment policy as described in Part I, Title I of the first EAP is "to improve the setting and quality of life, and the surroundings and living conditions of the peoples of the Community. It must help to bring expansion into the service of man by procuring for him an environment providing the best conditions of life, and reconcile this expansion with the increasingly imperative need to preserve the natural environment." Among the principles defined in the programme are the following:
- pollution prevention at the source;
- integration of environmental considerations into all planning and decision-making processes;
- polluter pays principle;
- consideration of effects of Community policy on developing countries;
- promotion of international cooperation;
- carrying out educational activities to increase environmental awareness;

20. ibid., pp. 1-2.

- establishment of appropriate level of action (local, regional, national, Community, international);
- coordination and harmonization of national programmes;
- implementation of the environment information procedure[21].

The timetable set in Title IV of Part I calls for completion of the prescribed action within two years after adoption of the programme.

First priority in Part II of the programme is given to the combat of pollution by substances "chosen on the grounds both of their toxicity and of the current state of knowledge of their significance in the health and ecological fields"[22]. The pollutants are defined and the Commission is charged with the initiative to draw up Directive-proposals, in which emission standards are fixed. Among the defined sustances are lead, sulphur, nitrogen oxides, asbestos, cadmium, mercury and pesticides. The deadline for the presentation of these proposals is 31 December 1974.

The programme continues to describe specific measures the Commission intends to take concerning specific problem areas, like international watercourses, exceptionally polluting industries, energy production, marine pollution, radioactive wastes. They are all accompanied with a strict timetable.

Separate chapters are dedicated to research projects, the dissemination of knowledge and the promotion of awareness through education.

In the last part of the programme reference is made to other forms of international cooperation concerning environmental problems. The Community is warned not to duplicate the efforts of these organisations, while encouraged, at the same time, to participate in this cooperation.

---

21. The environment information procedure was established by the agreement mentioned in footnote 8.
22. ibid., p.13.

In the two year period after the programme was launched, the first EC environmental legislation was developed. The emphasis was put on the treatment of cases that demanded immediate attention, like dangerous substances and extreme air- and water-pollution. Although the first EAP already emphasized the need for a preventive approach, the activities undertaken necessarily involved the cleaning-up of what was already damaged.
Directives were proposed, and adopted, concerning the quality of surface waters[23], air quality standards[24], waste[25], chemicals[26] and noise[27].

---

23. Directive of 16 June 1975, on quality requirements for surface water intended for the abstraction of drinking water, OJ No L 194, 25.7.75.
    Directive of 8 December 1975, concerning the quality of bathing waters, OJ No L 31, 5.2.76.
24. Directive of 24 November 1975, on the approximation of the laws of the member states relating to the sulphur content of certain liquid fuels, OJ No L 307, 27.11.75.
    Directive of 28 May 1974, adapting the Directive of 20 March 1970, on reduction of air pollution by gases from positive ignition engines of motor vehicles, OJ No L 159, 15.6.74.
25. Directive of 16 June 75, on the disposal of waste oils, OJ No L 194, 25.7.75.
    Directive of 15 July 1975, on waste, OJ No L 194, 25.5.75.
26. Directive of 6 April 1976, on the disposal of PCBs and PCTs, OJ No L 108, 26.4.76.
    Directive of 4 May 1976, on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community, OJ No L 129, 18.5.76.
    Directive of 27 July 1976 on the approximation of the laws of the member states restricting the marketing and use of certain dangerous substances and preparations, OJ No L 262, 27.9.76.
    Directive of 29 March 1977, on screening the population for lead, OJ No L 105, 28.4.77.
27. Directive of 19 December 1978, on the determination of the noise emission of constructional plant and equipment, OJ No L 33, 8.2.79.
    Directive of 8 March 1977, modifying Directive of 6 February 1970, on the approximation of the laws of the member states relative to the permissible sound level and the exhaust system of motor vehicles, OJ No L 66, 12.3.77.

As far as research and development (R&D) are concerned we have to note the separate Environmental Research Programmes (ERP) that are developed by the Community. In 1973 the first ERP's were published: two, supplemental ones, as direct projects[28], and one for indirect action[29].

The main objective of the Research Programmes is to provide scientific support for the implementation of Environmental Action Programmes and to promote long-term research on important environmental problems in support of a preventive approach to environmental protection.

A very important aspect of the programmes is the allocation of money for the research. The Council decisions mentioned budget a total of 15.85 million units of account for direct action, to be carried out at the Community Research Centre in Ispra, Italy. For indirect action 6.3 million units of account were allocated[30].

An Advisory Committee on Environmental Research Programme Management was installed in 1973 to assist the Commission in carrying out the research programme for indirect action[31].

Since the Research Programmes involve the allocation of money, they had to be adopted as formal Council Decisions. The problems that existed around the recognition of EC environmental policy and appeared in the presentation and the changing legal format

---

28. Council Decision 73/126/EEC of 14 May 1973, adopting a research programme for the European Economic Community on the protection of the environment, OJ No L 153, 5.6.73, p.11.
    Council Decision 73/174/EEC of 18 June 1973, adopting a research programme for the European Economic Community on the protection of the environment (direct project), OJ No L 189, 11.7.73, p.30.
    They were amended in 1975, by Council Decision 75/514/EEC of 25 August 1975, OJ No L 231, 2.9.75, p.19.
29. Council Decision of 18 June 1973, adopting a European Economic Community research programme for the protection of the environment (indirect project), OJ No L 189, 11.7.73, p.43.
30. The European Unit of Account was fixed at the current value of the dollar at the time.
31. Council Resolution of 10 December 1973.

of the policy documents did not show in the adoption of programmes on environmental research activities. It seems inconsequent to make so much fuss about the legitimacy of a general environmental policy statement, while the allocation of money for environmental research takes place without any conflict.

A partial explanation can be found in the fact that the ERP's were a part of the general Community research program. Apparently Community involvement in environmental protection that consisted of research activities was more easily agreed upon.

The inconsequence however remains, especially when one realizes that the legal basis for Community research in general was not established until 1974[32].

Concerning the dissemination of knowledge, the Programme gives the Commission task to prepare an inventory of existing information services. The inventory will be used to set up an information network on the state of the environment in the EC. The comparability and accessibility of national data are essential for such a network.

An early agreement was signed by the representatives of the governments of the member states meeting in the Council on notification of environmental measures taken in the member states. The member states committed themselves to submit information to the Commission[33].

The work on environmental data falls under the general information activities of the Community as carried out by the

---

32. See Council Resolutions of 14 January 1974, on the coordination of national policies and the definition of projects of interest to the Community in the field of science and technology, OJ No C 7, 29.1.74, p.2, and on an initial outline programme of the European Communities in the field of science and technology, ibid., p.6.
33. Agreement of 5 March 1973, OJ NO C 9,15.3.73, p.1; see also footnote 8.

Scientific and Technical Information and Documentation Committee.

1.2 The second Environmental Action Programme

The Second EAP of 17 May 1977 is a continuation and extension of the first[34].
As the Council states in the Resolution by which the programme is accepted, "...the programme of action on the environment of 22 November 1973 should be updated to ensure the continuity of the projects already undertaken and whereas new tasks should be undertaken in the period 1977 to 1981"[35].
The scope of the Resolution is much the same as the Declaration of 22 November 1973. Again the task of the Community to protect the environment is related to article 2 of the Treaty, and referred to as one of the fundamental tasks of the EC. The objectives and principles as set out in the first EAP are underlined for the future.
The programme itself is, like the first Programme, presented as an annex to the Council Resolution. This time, it contains just one part. The general description of Community action in part I of the first EAP is not repeated. The programme starts with describing the - exactly similar - objectives and principles of a Community environmental policy[36].

The second EAP covers a five year period, from 1977 to 1981.
During that time, the Commission continues to prepare environmental legislation. Many proposals for new Directives and Decisions are presented. Some of the major achievements include

---

34. Resolution of the Council of the EC and of the representatives of the governments of the member states meeting in the council of 17 May 1977, OJ No C 139, 13 June 1977, p.1.
35. OJ No C 139, 13 June 1977, p.2.
36. See paragraph 1.1.

measures to monitor surface water quality standards[37], to set quality requirements for waters capable of supporting fresh water fish[38] and favourable to shellfish growth[39], and for water for human consumption[40].

Another important area of Community action concerns the discharge of dangerous substances into the environment. Two Directives regulate the discharge of dangerous substances into water[41]. They include a black and a grey list on which the most dangerous substances are noted. Discharge of substances on the black list must be prevented with the best technical means available. The grey list substances are only allowed to be discharged up to a given limit value and after prior authorization by the national states[42]. A Directive on toxic and dangerous wastes defines a special waste treatment scheme for appointed wastes[43]. Notification, packaging and labelling of new dangerous substances brought on the market are regulated in the sixth amendment to Directive 67/648/EEC, of 18 September 1979[44].

---

37. Directive of 9 October 1979, concerning measurement methods and frequency of sampling and analysis of surface waters intended for the abstraction of drinking water in the member states, OJ No L 271, 29.10.79.
38. Directive of 18 July 1978, on the quality requirements for water capable of supporting freshwater fish, OJ No L 222, 14.8.78.
39. Directive of 30 October 1979, on the quality required for shellfish waters, OJ No L 281, 10.11.79.
40. Directive on the quality of water for human consumption of 15 July 1980, OJ No L 229, 30.8.80.
41. Directive of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment, OJ No L 129, 18.5.76.
    Directive of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances, OJ No L 20, 26.1.80.
42. See Johnson (1983), pp. 55 ff, for details on substances and limit values.
43. Directive of 20 March 1978 on toxic and dangerous wastes, OJ No L 84, 31.3.78.
44. Directive of 18 September 1979, on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, OJ No L 259, 15.10.79.

Research and Development and the dissemination of knowledge were treated in the first EAP in the Title 'Measures to reduce pollution'. In the second programme they have been moved to the Title 'General action to protect and improve the environment'. This shift seems reasonable and did not prevent a detailed treatment of the subjects in the programme.
A new research programme is adopted for a five year period, from 1976 to 1980, allocating 16 million units of account for indirect projects[45]. The existing direct projects are continued as part of the Multiannual Research Programme of the Joint Research Centre (1977-1980)[46], with a maximum budget of 15.85 million units of account[47].

The Council adopted a decision on the coordination of environmental information between the EC and the UNEP[48]. A preliminary report was published by the Commission of the inventory work regarding sources of environmental information. A system of information on national and Community environmental legislation is being set up, compatible with the overall system on Community law (CELEX).

The international activities of the EC appeared in the first programme under the heading 'Community action or joint action by the Member States in international organizations'. In the second programme the Community is granted slightly more independent powers in this field. Part of the Title 'Community action at international level' deals with joint action; the other part is

---

45. Council Decision 76/311/EEC of 15 March 1976, adopting a research programme (1976 to 1980) for the European Economic Community in the environmental field (indirect action), OJ No L 74, 20.3.76, p.36.
46. Submitted to the Council by the Commission on 11 May 1976.
47. See Council Decision of 25 August 1975, amending the earlier Research Programmes for direct action. OJ No L 231,2.9.75, p.19.
48. Council Decision 76/161/EEC of 8 December 1975, OJ No L 31, 5.2.76, p.8.

devoted to Community cooperation with developing countries on environmental matters.

The EC participates increasingly in international agreements about environmental protection. In the period covered by the second EAP, the Community was party to the following international Treaties:

- Barcelona Convention of 1976, on the protection of the Mediterranean against pollution;
- Bonn Convention of 1976 on pollution of the North Sea by oil;
- Bonn Convention of 1976 on the protection of the Rhine against pollution by chemicals;
- Geneva Convention of 1979 on the prevention of long distance transboundary air pollution in Europe.
- Berne Convention of 1979 on the conservation of European wildlife and natural habitats;
- Canberra Convention of 1980 on the conservation of the marine flora and fauna in the Antarctic.

1.3 The third Environmental Action Programme

On 7 February 1983, the Council and the representatives of the governments of the Member States meeting in the Council, adopted a Resolution "on the continuation and implementation of a European Community policy and action programme on the environment (1982 to 1986)"[49]. The third "Action Programme of the European Communities on the environment" is annexed to the Resolution[50].

The first part of the Resolution is identical to the Declaration of 22 November 1973 and the Resolution of 17 May 1977: reference to the earlier environmental policy documents of the Community; mention of article 2 of the Treaty; statement that Community environmental policy is necessary to accomplish one of the fundamental tasks of the EEC.

---

49. OJ No C 46, 17.2.83, p.1.
50. ibid., p.3.

But unlike the documents of 1973 and 1977, the Resolution of 1983 contains some substantive elements. The Council presents the focal points of Community environmental action, the first one being "integration of the environmental dimension into other policies"[51]. Subsequently, the problem areas that have received most attention up till then are summed up and the considerations that have guided Community environmental action are underlined.

The third EAP itself is much shorter than the earlier two: thirteen pages as opposed to fortythree and fortysix.
The objectives and principles of EC policy as describied in the first and the second programme are referred to, they are not mentioned explicitly. A treatment of specific measures to be taken in the different sectors of the environment is replaced by the presentation of a general policy line.

The formulation of the overall strategy puts emphasis on research, accessibility of information and education. These subjects are not treated in separate chapters anymore. The description of action in the different sectors covers, as mentioned, only a few pages. Specific measures to be taken are not described. The second programme included a summing-up of measures completed under the scope of the first programme. These data cannot be found in the third programme.[52]

The subjects international action and cooperation with developing countries conclude the programme. The controversy that existed among member states about Community competence in foreign relations concerning environmental issues seems to have disappeared silently. The first EAP described this competence as

---

51. ibid., p.2.
52. They can be found in an evaluation of ten years EC environment policy that was published simultaneously with the third EAP.
See Commission of the EC (1984), 'Ten years of Community environment policy'.

being entirely concurrent with the competences of the member states[53]. The second programme gave more room for independent Community action, as long as this action remained "within the framework of its competence"[54]. The limits of this competence were not defined, however the existence of such limits was explicitly mentioned. The third programme goes still farther. It contains a description of Community's activities at an international level, with no reference to the concurrent competences of the member states; with no reservation concerning limited competences of the Community on the matter[55].

The promulgation of Directives continued steadily in the period covered by the third action programme. New Directives regulating the discharge of dangerous materials were enacted for mercury[56], cadmium[57], and titaniumdioxide[58]. Air quality standards were established for lead[59] and nitrogen dioxide[60]. The problems with toxic wastes were also dealt with in a new

---

53. An example of this approach can be found in the voting right of the EC in the International Rhine Committee, in which the individual member states participate as well. Whenever the member states execute their voting rights, the EC has to abstain.
As reported by Jessurun d'Oliveira (1987), p.27.
54. OJ No C 139, 13.6.77, p.45 under 255 and 257.
55. OJ No C 46, 17.2.83, p.15-16.
56. Directive of 22 March 1982, on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry, OJ No L 81, 27.3.82.
Directive of 8 March 1984, on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry, OJ No L 74, 17.3.84.
57. Directive of 26 September1983, on limit values and quality objectives for cadmium discharges, OJ No L 291, 24.10.83.
58. Directive of 3 December 1982, on procedures for the surveillance and monitoring of environments concerned by waste from the titanium dioxide industry, OJ No L 378, 31.12.82.
59. Directive of 3 December 1982, on a limit value for lead in the air, OJ No L 378, 31.12.82.
60. Directive of 7 March 1985, on air quality standards for nitrogen dioxide, OJ No L 87, 27.3.85.

Directive[61]. The Directive orders the Council to set equal standards for the civil liability within the EC, in case of damage caused by toxic waste, and to determine a system of insurance[62].

The decisions concerning research projects on environmental subjects used to be taken in the form of Council Decisions: legally binding acts by the Council for an individual situation[63]. As mentioned before, this form was necessary in order to allocate money for the projects.
The same situation occurs now on the subject of information gathering. Council Decision of 27 June 1985[64] allocates 4 million ECU for a work programme concerning gathering, coordinating and ensuring the consistency of information on the state of the environment in the Community. The programme runs from 1985 until 1988[65].
Research and development are the subject of a new Framework Programme for the period of 1987 until 1991[66]. 425 million ECU are allocated for environmental research.

---

61. Directive of 6 December 1984, on the supervision and control within the European Community of the transfrontier shipment of hazardous waste, OJ No L 326, 31.12.84.
62. Note that since 1985 civil liability is covered by Council Directive 85/374/EEC, of 25 July 1985, OJ No L 210, 7.8.85, p.29, on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.
63. See article 189 first and fourth sentence of the EEC Treaty: "In order to carry out their task the Council and the Commission shall, in accordance with the provisions of this Treaty, make regulations, issue directives, take decisions, make recommendations or deliver opinions."
"A decision shall be binding in its entirety upon those to whom it is adressed."
64. OJ No L 176, 6.7.85, p.14.
65. The programme is annexed to the Council Decision, ibid., p.16.
For the initial proposal by the Commission and an extensive description of the methodological approach used for the information system, see Documents of the Commission, COM(83), 528 final.
66. See COM (86) 430 final.

Two comments of a more general nature have to be added to the discussion of the third EAP.

The third EAP is presented and often discussed as being very different from the first two programmes, the main changes being a new emphasis on prevention and a more integrative approach to environment and economy[67]. This is true only as a matter of emphasis, not fundamentally. The idea that prevention of pollution should have priority over reparation was a central argument already in the first EAP, where the first principle of a Community environment policy was defined as follows: "the best environment policy consists in preventing the creation of pollution or nuisances at the source, rather than subsequently trying to counteract their effects"[68]. The second EAP continues this line. The treatment of waste-issues, for instance, places all the emphasis on prevention and recycling[69].

The necessity to integrate environmental programmes and other EC policy fields was never mentioned explicitly before, it was however implicit in the presentation of the earlier programmes. In the Declaration of the Heads of State and Government of 1972 for instance, it was recognized that "economic expansion is not an end in itself"[70]. The Council stated in 1973, that "the task of the European Economic Community is to promote throughout the Community a harmonious development of economic activities and a continuous and balanced expansion, which cannot now be imagined in the absence of an effective campaign to combat pollution and nuisances or of an improvement in the quality of life and the protection of the environment"[71]. That is not too different from the recognition "that the resources of the environment are the basis of - but also constitute the limits to - further

---

67. See Commission of the EC, 'Ten years of Community environment policy', Preface, especially par. 13-25.
68. OJ No C 112, 20.12.73, p.6 under 1.
69. OJ No C 139, 13.6.77, p.31 ff.
70. As reported in 'Ten years of Community environment policy', p.2.
71. OJ No C 112, 20.12.73, p.1-2.

economic and social development and the improvement of living conditions"[72].
The real change introduced by the third programme lies in the recognition of possible positive effects of an environment policy on other policy fields. The Programme emphasizes how environmental action will create jobs and stimulate industrial innovation[73]. This approach is new.

The second general comment concerns the execution of EC environmental measures. This aspect of the EC environment policy gets attention for the first time in the third EAP and in the accompanying evaluation report. The inertia of member states to implement the Directives has been one of the major draw-backs of EC environmental regulation. The national measures, necessary to operationalize a Directive[74] are usually taken with great delay.
"To monitor the implementation of adopted measures, to ensure their correct application and their adaptation if circumstances or new knowledge should so require"[75] is considered one of the conditions for an effective EC environmental policy.
In this respect it is worthwile to note that the Commission has brought many cases before the European Court of Justice of member states that fail to implement environmental Directives[76].
The Commission also conducts projects in the member states to

---

72. OJ No C 46, 17.2.83, p.3.
73. ibid., p.4-5.
74. A Directive has to be incorporated into the national legislation of a member state before it can have any effect.
    Article 189 third sentence: "A Directive shall be binding, as to the result to be achieved, upon each Member State to which it is adressed, but shall leave to the national authorities the choice of form and methods."
75. OJ No C 46, 17.2.83, p.6.
76. So-called 'infringement procedures' under article 169 of the EC Treaty. See Chapter II, par. 1 and 2.

monitor the implementation of the EC Directives[77].
The European Parliament set up a special Committee of Inquiry, into the application of the Directive of 20 March 1978, on toxic and dangerous wastes[78]. The Committee made an extensive study of the implementation of the Directive, that should have been completed two years after its adoption. The Committee also critisized the lack of control exercized by the Commission[79].
When implementation and enforcement are lacking, the environmental policy developed will remain without effect.[80]

1.4 The fourth Environmental Action Programme

On 15 October 1986, the Commission submitted to the Council a Draft for a Resolution presenting the fourth EAP[81]. The Draft Resolution and the annexed programme were published by the Commission in the Official Journal of the EC on 18 March 1987[82]. Up to now the Council has not officially adopted the Resolution, although there do not seem to be any controversies about the programme. Acceptance of the Resolution can be expected shortly.

---

77. See for instance the recent publications on the implementation of EC water and waste Directives in the Netherlands, Great Britain, the Federal Republic of Germany and France, conducted by the Institute for European Environmental Policy in Bonn, financed by the Commission.
Haigh (1986), Bennett (1986), Kromarek (1986), Lavoux (1986), 'EC environmental policy in practice - Volumes I-IV'.
See also the (bi-)annual publications by DocTer about environmental legislation in EC countries, partially financed by the Commission.
DocTer (1984), 'Annuario Europeo dell' Ambiente'; ibid., (1986); the 1987 edition is published in English: DocTer (1987), 'European Environmental Yearbook.
78. OJ No L 84, 31.3.78.
79. See EP Working Documents 1984-1985, 9 April 1984, Document 1-109/84.
80. For an excellent general discussion of the problem of non-compliance with EC-rules see Krislov, Ehlermann and Weiler (1986).
81. See Commission Documents, 9.10.86, COM(86) 485final.
82. OJ No C 70, 18.3.87, p.3.

The fourth EAP came about at the same time as the Single European Act[83]. This concurrence is of importance since the Act includes amendments to the EC Treaties by which environmental protection is made an official task of the Communities. The development of and discussion around the adoption of the Single European Act have influenced the atmosphere at the time of preparing the new EAP.

The Commission proposes the Council to adopt the programme by Council Resolution, not as a joint Resolution of the Council and the representatives of the governments of the member states meeting in the Council. This change is a direct result of the new Treaty provisions instituted by the Single European Act. The legitimacy of environmental action by the EC can no longer be disputed.

The Resolution contains substantive elements, like the Resolution accompanying the third programme. Only a few differences are worth mentioning.

Reference is made to the Single European Act and the objectives and principles laid down in it.

The European Year of the environment, starting on 21 March 1987, is mentioned as a chance to promote the new changes and to launch the projects included in the programme.

The list containing priority areas for Community action has become somewhat longer, but contains many similar points. Among them are integration of the environmental dimension into other policies; dangerous chemical substances; reduction of atmospheric-, aquatic- and soil pollution at the source; development of clean technology; international cooperation.

New is the explicit attention given to the implementation of Community measures.The need to control implementation was already mentioned in the third programme[84], but is now stated

83. See Chapter III.
84. OJ No C 46, 17.2.83, p.6; see also the discussion at the end of paragraph 1.3.

with more emphasis in the Resolution itself. The Council "urges the Commission to pay special attention to the need for greater attention to the implementation, application and practical effects of Community legislation"[85].

The programme is longer again (35 pages) and more substantive than the third programme. It covers a six year period, from 1987 until 1992. The main chapters cover 'General policy orientation', 'Approaches to the prevention and control of pollution', 'Action in specific sectors', 'Management of environmental resources', 'Research', and 'Action at international level'. Some comments on the European Year of the Environment and Conclusions end the programme. In two annexes to the programme, the objectives and principles of a Community environment policy and the new environment provisions of the Single European Act are included.

The chapter 'General policy orientations' exemplifies the new focus of the EC policy.
It starts with the description of the amendments to the Treaty. The commission stresses its intention "to make full use of Article 100A"[86]. It also announces a new information procedure about the implementation of EC measures into national legislation. The existing Information Agreement[87] will be replaced by a binding Directive, rendering notification of proposed environmental legislation obligatory. This will make facilitate the publication of a more systematic assessment of the effects of Community legislation.
"The effective implementation of Community environmental legislation" is further dealt with in the second part of the chapter. It is considered "of primary importance for the Community"[88], and "a priority under the Fourth Environmental

85. OJ No C 70, 18.3.87, p.5.
86. ibid., p.8.
87. OJ No C 9, 15.3.73.
88. ibid., p.9 under 2.2.1.

Action Programme"[89]. Meant are both the transposition of EC measures into national legislation - i.e. formal legal compliance - and their effectiveness in reality in improving the quality of the environment - i.e. practical implementation.
The Commission intends to increase the cooperation between Community and national or regional officials to ensure effective implementation of Community acts and the national laws based upon them.
Infringement procedures will be used as a last resort.

Integration of the environmental dimension into other policy fields is the subject of the next section. The consequences for all the different EC policies are discussed briefly. The environmental impact assessment procedure as developed under the third programme is considered a general instrument for integration[90]. The essence of the instrument is to ensure that environmental data are taken into account in the decision-making process[91].
Economic and employment aspects of environmental policy, and possible economic instruments are discussed next. As in the third programme, the possible positive effect of environment policy on employment and technological innovation is stressed. Combined long- and short-term cost-benefit analyses are considered necessary.
As an exception to the fundamental 'polluter pays principle' some national financial measures to ease the introduction of new pollution control regulations are permitted. The Community itself will set up special aid programmes for disadvantaged areas in the Community.
Information and education comprise the last part of this general chapter. The Commission establishes the publication of Community

---

89. ibid., p.10 under 2.2.8.
90. Directive of 27 June 1985, on the assessment of the effects of certain public and private projects on the environment, OJ No L 175, 5.7.85.
91. See OJ No C 46, 17.2.83, p.6 under 11.

'State of the Environment' reports every three years, starting in 1987. They will be a sequel to nationally published reports. The information is available through the Community Information System on the state of the environment and on natural resources[92].

The next chapter deals with the different methods that can be used to prevent and control pollution. The Community control system sofar has been sectoral. Emissions into the different environment components air, water and soil are regulated separately. Since these sectors are in reality not isolated, and since controls in one area might influence emission in another, the Commission proposes to follow a more interrelated strategy. Especially for management of dangerous chemicals, an integrated substance-oriented control is advised.
The source-oriented approach that was defined in the first EAP as the guiding principle for environmental control has not had impressive results. The fourth EAP presents it only as one of the alternative approaches available. Other alternatives include emission- and product standards, and environmental quality objectives. All these methods have been applied sofar, and the Commission intends to follow this mixed approach - different methods being appropriate for different subject matters.
In Community environmental legislation, requirements are increasingly set at the level of the 'best available technology'. The Commission will promote a more efficient information exchange between member states on achieved technological advances.

---

92. See Council Decision of 27 June 1985, on the adoption of the Commission work programme concerning an experimental project for gathering, coordinating and ensuring the consistency of information on the state of the environment and natural resources in the Community, OJ No L 176, 6.7.85, p.14.

The proposed action in the different areas (air, water, biotechnology, noise, nuclear safety) is largely a continuation of the policy developed in the earlier programmes. New is specific attention for the acidifying effect of certain sustances emitted into the air.
With respect to water pollution, the implementation of the new Directive fixing emission limits and quality objectives for dangerous substances[93] will be accelerated. During the period of the fourth EAP many of the values for black- and grey-list substances will be filled in.
Concerning chemicals, attention will be focused on the further elaboration of the system of notification, classification, packaging and labelling established by the Directive of 1979[94]. The substance-oriented approach will be pursued especially to control chemicals that are widely dispersed in the environment, like cadmium and lead.

The Community intends to continue and expand scientific research on biotechnology. It can sometimes be used in environmental protection. The health and environmental risks of genetic engineering will be assessed carefully.

Noise measures have until now only been product requirements, like noise emission limits for motor vehicles and aircraft. The Commission intends to define quality objectives and to develop a system of charges aimed at favouring more silent products.

---

93. Directive of 12 june 1986, on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC, OJ No L 181, 4.7.86.
List one of the Annex to Directive 76/464/EEC (OJ No L 129, 18.5.76) is the so-called 'black list'.
94. Directive of 18 September 1979, amending for the sixth time Directive 67/648/EEC of 27 June 1967, on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, OJ No L 259, 15.10.79.

Nuclear safety is treated for the first time in an EAP. The subject is dealt with normally under the Euratom Treaty. After the Chernobyl accident however, the Commission decided that certain aspects of nuclear safety require attention as an integrated part of the Community environment policy[95].

Nature conservation, soil protection, waste management and urban-, coastal- and mountain areas are the subject of the chapter 'Management of environmental resources'. In the line of the Directive on the conservation of wild birds[96] the Commission envisages further regulation protecting fauna and flora. Implementation of the Berne Convention on the protection of endangered plants and species in the member states will be enhanced.
On the subject of soil protection the integration of environment and agricultural policies can be expected to cause difficulties[97]. Another Community task concerns the clean-up of polluted waste disposal sites.
Waste management will include the development of clean technologies, as initiated under Council Regulation No 1872/84[98]. The policy priority followed under the second and the third programme -first prevention, then reclamation, then disposal- will be continued. Market instruments will be introduced to support the prevention of waste.

---

95. See communications from the Commission to the Council on the Chernobyl accident: COM (86) 327 and 434 final.
96. Directive of 2 April 1979, on the conservation of wild birds, OJ No L 103, 25.4.79.
97. See the following Commission's communications: 'Perspectives for the common agricultural policy', COM(85) 333, 13.7.85; 'A future for european agriculture',COM(85) 750, 18.12.85.
98. Regulation of 28 June 1984, on action by the Community relating to the environment, OJ No L 176, 3.7.84.
The Regulation allocates 13 million ECU to support, inter alia, projects aimed at developing clean technologies.

Urban environmental problems are being given attention again; the third programme did not address this issue. Funding for the improvement of environmental conditions in major urban areas is made available through the European Regional Fund. The Commission will look into the contribution to urban rehabilitation of job creation through environmental measures.

The next chapter deals with research. The fourth Environmental Research Programme (indirect action), running from 1986 until 1990, allocates 75 million ECU for research on environmental protection[99]. In the second Research and Development framework programme (1987-1991), the role of environmental research is further strengthened[100]. The in-house research at the Joint Research Centre in Ispra continues.

As in all the other programmes, action at international level constitutes the last substantive chapter.
The third programme had shown a change in this area. It had only discussed the role of the Community in international relations, without reference to its delimitations because of the individual competences of member states. An increasingly independent role of the Community in this field seemed to be supported.
A clear Community competence to enter relations with third countries had already much earlier been defended by the European Court of Justice. In the AETR-case of 1971[101], the Court decided that the Community has the power to enter into agreements with third countries also if this power is not expressly conferred by the Treaty, as long as the agreement concerns a policy field for which the competence to adopt internal measures exists. "With regard to the implementation of the provisions of the Treaty the system of internal Community measures may not (...) be separated

---

99. Council Decision of 10 June 1986.
100. See Proposal for Community Research and Development Framework Programme, COM(86) 430.
101. Case 22/70, 31.3.1971, ECR 1971, p.263.

from that of external relations."[102] Moreover, when the Community adopts internal rules on a certain subject, it has thereby created the exclusive right to enter international relations on the same subject. The member states do not have concurrent competences, since this would disrupt the unity of Community law.[103]

In the Local Cost Standard Case of 1975[104] this opinion was repeated. The Court decides that the effective implmentation of a Community policy is incompatible with the individual rights of member states to enter external relations on the same subject. Once a subject is defined as a Community policy, it is no longer accaptable that "the Member States should exercise power concurrent to that of the Community, in the Community sphere and in the international sphere."[105]

The fourth EAP denies this development.[106] Participation of member states in international action is mentioned side by side with Community participation, while no borderline is drawn between Community and member state competences. "Where the Commission negotiates on behalf of the Community it does so in accordance with Directives laid down by the Council. Where Member States participate in a convention it may be necessary for them to act within the framework of a common position laid down by the Council"[107]. The delimitation of Community competences against the competences of the member states thus remains unclear.

---

102. ibid. p.274, under 19.
103. ibid. p.274-275; see especially considerations 16-19 and 31.
104. Case 1/75, 11.11.75, ECR 1975, p.1355.
105. ibid. p.1364.
106. See also the discussion of article 130R par.5 of the Single European Act in paragraph 3.1.
107. OJ No C 70, 18.3.87, p.37 under 7.1.4.

## 1.5 Summary

If we try to summarize 15 years of EC environmental policy as expressed in four action programmes and some hundred Directives, we have to conclude first of all that the amount of policy documents and legal texts is impressive. The good intentions of 1973, the continued effort of 1977, the new focus of 1983 and the extensive programme of 1987, accompanied by new Treaty articles: they constitute a major achievement.

Two reservations have to be made however. First of all, harmonisation of national measures by the Community is achieved usually on the level of the greatest common denominator. This implies that environmental standards set by the Community are low.

Secondly, Community legislation alone does not guarantee any improvements of environmental quality. If one bears in mind the major problems with the implementation and enforcement of legal rules within national systems, it is understandable that the EC encounters even greater difficulties in this respect. The development in the third and the fourth programme to pay more attention to the formal implementation and the practical effect of Community measures must be reinforced. Making sure that environmental Directives are implemented and effective, is the only way to build up a serious EC environmental policy.

## Chapter II - The European Court of Justice and the legitimation of EC environmental Policy.

### 2.0 General

The judgments of the European Court of Justice (ECJ) on the legitimacy of an EC environmental policy with regard to the EC Treaty, show a remarkable development.
In succeeding cases where the Court had to decide upon the matter, it followed different argumentations, ranging from marginal approval to unexpected enthusiasm.

The ECJ has expressed its opinion about the Community's environmental measures in two different kinds of cases.
First of all there have been several so-called infringement procedures, brought before the Court by the Commission under article 169 of the Treaty, against member states that failed to implement environmental Directives within the prescribed compliance period[108].
Secondly the ECJ has been asked by national courts to deliver preliminary rulings, on the basis of article 177 of the Treaty, about the (in)compatibility of environmental Directives with the

---

108. Article 169: "If the Commission considers that a Member State has failed to fulfil an obligation under this Treaty, it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations.
If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice."
Article 171: "If the Court finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice."

Treaty-provisions[109].

In this chapter we will discuss nine cases in which the Court takes its stand in the discussion about the legitimacy of Community environmental policy.
The first eight cases are infringement procedures: two against Italy and six against Belgium[110]. The last case involves a preliminary judgment requested by a French Tribunal.

In infringements procedures the overall legitimacy of EC environmental policy does not constitute the Court's central argument. However, before the Court turns to the question of a Member State's default, it usually adresses the more general issue of the legitimacy of the Directive at stake. This is especially true in cases where the Member State defends itself by saying that it does not consider itself bound to environmental measures taken by the EC (see below EC versus

---

109. Article 177:"The Court of Justice shall have jurisdiction to give preliminary rulings concerning: (a) the interpretation of this Treaty; (b) the validity and interpretation of acts of the institutions of the Community; (c) ...
Where such a question is raised before any court or tribunal of a Member State, that court or tribunal may, if it considers that a decision on the question is necessary to enable it to give judgment, request the Court to give a ruling thereon.
Where any such question is raised in a case pending before a court or tribunal of a Member State, against whose decisions there is no judicial remedy under national law, that court or tribunal shall bring the matter before the Court of Justice."

110. There have been more infringement procedures brought before the ECJ, against Member States that did not implement environmental directives within the prescribed period. To prevent being accused of chauvinism, I have to mention judgments of the Court in which the Kingdom of the Netherlands was condemned. See Cases 96/81 and 97/81, Judgments of the Court of 25 May 1982, ECR p.1791 and p.1819 respectively.
In these cases, however, the Court did not give a general opinion about the existence of EC environmental policy.

Italy). But also in the other cases the Court tends to follow this approach.
It is this part of the infringement procedures that is of interest for the present discussion.

2.1 Commission of the EC versus Italian Republic: Cases 91/79 and 92/79.

Italy did not take, within the prescribed period, the legislative steps needed to comply with the Council Directives of 22 November 1973, on the approximation of the laws of the Member States relating to detergents[111], and of 24 November 1975 on the approximation of the laws of the Member States relating to the sulphur content of certain liquid fuels[112].
Subsequently the Commission initiated the procedure of article 169, resulting in cases 91/79 and 92/79.

The intention of infringement procedures is to secure compliance of a defaulting State, not to take that State to court. The procedure starts with the exchange of information between the Commission and the State. Often in the course of this consultative interaction the State adopts the necessary provisions. The Commission only brings a case before the ECJ if a State persists in its non-compliance, as was the case with Italy.
Italy persisted. In an implicit argumentation it disputed the competence of Community institutions to enact environmental Directives, saying that the subject matter lied "on the fringe of Community powers"[113].

---

111. Council Directive No 73/404/EEC, OJ No L 347, 17 Dec. 1973, p.51.
112. Council Directive No 75/716/EEC, OJ No L 307, 27 Nov. 1975, p. 22.
113. Case 91/79, 18.3.80, ECR 1980, p.1105.

Eight years after the first steps towards an EC environmental policy were taken, it is not surprising that the Court turned down this argument.

The Court argued that the Directives fall under the General Programme of 1969 for the elimination of technical barriers to trade[114] and under the first Action Programme of the EC on the environment of 1973[115]. They both establish product requirements, and are thus validly founded upon article 100 of the Treaty, that authorizes Directives necessary to prevent distortion of the Common Market[116].

Besides this argument concerning product requirements, the Court presents article 100 as a legal base for environmental measures in general: "Furthermore it is by no means ruled out that provisions on the environment may be based upon Article 100 of the Treaty. Provisions which are made necessary by considerations relating to the environment and health may be a burden upon the undertakings to which they apply and if there is no harmonization of national provisions on the matter, competition may be appreciably distorted."[117]

From this point on it is clear that environmental measures related to industrial and commercial activities are considered to be consistent with the treaty and can be validly based on article 100.

---

114. Adopted by the Council on 28 May 1969, OJ, English special edition, Second Series IX, p.25.
115. Council decision of 22 November 1973, OJ No C 112, 20 Dec. 1973, p.1.
116. Article 100: "The Council shall, acting unanimously on a proposal from the Commission, issue directives for the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market.
The Assembly and the Economic and Social Committee shall be consulted in the case of directives whose implementation would, in one or more Member States, involve the amendment of legislation."
117. Case 91/79, 18.3.80, ECR 1980, p.1106 under 8.

The Court declares that the Italian Republic, by failing to adopt within the prescribed period the provisions needed in order to comply with the Directives, has failed to fulfil an obligation under the Treaty.

2.2 Commission of the EC versus Kingdom of Belgium: Cases 68/81-73/81.

The Commission brought six cases before the ECJ against Belgium under article 169: cases 68/81-73/81. Belgium had failed to fulfil its obligation to adopt national legal measures, in order to conform with a number of environmental Directives. The following Directives were not implemented in time:

- Directive of 16 June 1975, on the disposal of waste oils[118];
- Directive of 16 June 1975, concerning the quality required of surface water intendedn for the abstraction of drinking water[119];
- Directive of 15 July 1975, on waste[120];
- Directive of 8 December 1975, concerning the quality of bathing water[121];
- Directive of 6 April 1976, on the disposal of PCB and PCT[122];
- Directive of 20 February 1978, on waste from the titanium-dioxide industry[123].

While the Court's argumentation in the cases against Italy was solely based on article 100 of the Treaty, the legal basis of Community environmental action is enlarged in the cases against Belgium where the Court refers to both articles 100 and 235 of the Treaty.

---

118. No 75/439/EEC, OJ No L 194, p.23.
119. No 75/440/EEC, OJ No L 194, p.26.
120. No 75/442/EEC, OJ No L 194, p.39.
121. No 76/160/EEC, OJ No L 31, p.1.
122. No 76/403/EEC, OJ No L 108, p.41.
123. No 78/176/EEC, OJ No L 54, p.19.

Article 235 authorizes Community action that is necessary to achieve the objectives of the Community[124]. The objectives are determined in the Preamble and in article 2[125].
As we mentioned before, acts based on article 100 need to have a direct link to economic activities. Article 235, in combination with the Preamble and article 2, leaves more room for the development of Community functions beyond the common market in strict economic terms.
The harmonious development of economic activities, as mentioned in article 2, and the constant improvement of working and living conditions, as referred to in the Preamble, both cannot be realised without a broad programme of environmental protection; a programme that involves more than harmonizing national provisions that distort competition.

The Belgian government did not question the validity of the Directives. Its only defense was that the measures required for compliance were being considered and would take 'longer than was desirable'. It referred to internal administrative reforms to justify the delay in implementation.

---

124. Article 235: "If action by the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community and this Treaty has not provided the necessary powers, the Council shall, acting unanimously on a proposal from the Commission and after consulting the Assembly, take the appropriate measures."
125. Relevant for environmental protection are the following phrases.
From the Preamble: "Affirming as the essential objective of their efforts the constant improvement of the living and working conditions of their peoples".
Article 2: "The Community shall have as its task, by establishing a common market and progressively approximating the economic policies of Member States, to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising of the standard of living and closer relations between the States belonging to it."

Note that environmental Directives usually set a time period for compliance of two years. By February 1982 when the Court gave its judgments, the deadline for some of the Directives had been passed for more than five years!

The Court decides in all six cases that "according to established case-law of the Court a Member State may not plead provisions, practices or circumstances in its internal legal system to justify failure to comply with obligations under Community directives."[126]

In its considerations the Court makes a series of statements on Community environmental measures I want to present here in detail.
In the first case, concerning the Directive on waste from the titanium-dioxide industry, the Court considers the Directive "...one of the various Community measures which are based on Articles 100 and 235 of the Treaty and fall within the Community policy on the protection of the environment." The aim of the Directive, is "...the prevention and progressive reduction, with a view to its elimination, of pollution caused by waste from the titanium dioxide industry."[127]

In the second case, concerning the Directive on waste, the formulation is similar. The Directive is considered "...one of various Community measures which are based on Articles 100 and 235 of the Treaty and come within the Community policy on the protection of the environment." The objective of the directive is "...the protection of human health and the environment against harmful effects caused by the collection, transport,

---

126. Case 68/81, ECR 1982, p.157; Case 69/81, ECR 1982, p.167; Case 70/81, ECR 1982, p.173; Case 71/81, ECR 1982, p.181; Case 72/81, ECR 1982, p.187; Case 73/81, ECR 1982, p.193-194.
127. Case 68/81, ECR 1982, p.153.

treatment, storage and tipping of waste."[128]

In the third case, concerning the Directive on the disposal of waste oils, the legal basis of the Directive in articles 100 and 235 is somewhat elaborated. After the repeated statement that the Directive under consideration "...is one of various Community measures which are based on Articles 100 and 235 of the treaty and fall within the Community policy on the protection of the environment", the Court describes its aim, as being "...on the one hand to eliminate disparities between laws of the Member States likely to have a direct effect upon the functioning of the Common Market and on the other hand to protect the environment against harmful effects caused by the discharge, deposit or treatment of waste oils and to encourage recycling."[129]

The argumentation in the fourth case, concerning the Directive on the disposal of PCB and PCT, refers to the general existence of an EC environmental policy. A dual basis for a Community policy is founded. The first cornerstone of such a policy being prevention of distortion of competition (article 100), the second being the achievement of "certain objectives laid down by the Treaty" (article 235). The Court states that the Directive "...is one of the Community measures based on Articles 100 and 235 of the Treaty which, as part of the Community policy on the protection of the environment, aim on the one hand to abolish disparities between the laws of member States which may, in particular by creating unequal conditions of competition, have a direct effect upon the functioning of the common market and on the other hand to achieve by means of more extensive Community rules certain objectives laid down by the Treaty."
The economic aspects of environmental protection obviously still form the stronger basis of the Community policy. However the

128. Case 69/81, ECR 1982, p.163.
129. Case 70/81, ECR 1982, p.169.

second part of the formulation by the ECJ shows the emerging recognition of an independent environmental policy. The Court judges environmental protection in its own worth, a function of the Community, necessary to reach "certain objectives laid down by the Treaty"[130].

In the fifth case, concerning the Directive on the quality of bathing water[131], the Court does not refer to the framework of environmental protection in which the Directive is placed, nor does it mention articles 100 and 235 as the legal basis.
But this is only silence before the storm.

In the sixth case, the Court presents its strongest argument for a Community environmental policy. The case adresses the non-implementation of the Directive concerning the quality required of surface water intended for the abstraction of drinking water. The second cornerstone of an EC environmental policy - environmental protection as a "policy in its own right"[132], independent of competition considerations - is further developed. Compared to the fourth judgment the weight given to the two aspects is more equal. Prevention of distortion of the common market is mentioned side by side with the consideration that environmental protection for its own sake is a Community task.
The Court first refers to articles 110 and 235 as the legal basis. It continues to state that the Directive "...aims on the one hand to put an end to disparities between laws of the Member States ... which may create unequal conditions of competition and thus directly affect the functioning of the common market and on the other hand by wider regulations to achieve one of the aims of the Community in the sphere of protection of the environment and improvement of the quality of life."[133]

---

130. Case 71/81, ECR 1982, p.175 ff.
131. Case 72/81, ECR 1982, p.183.
132. Rehbinder and Stewart (1985a), p.371 and 384.
133. Case 72/81, ECR 1982, p.189.

All six cases result in a judgment of the Court declaring that the Kingdom of Belgium has failed to fulfil its obligations under the Treaty.

Thus we see that the ECJ has accepted articles 100 and 235 as the legal basis for the environmental policy of the EC. The scope of the policy is not limited to harmonisation measures necessary to enhance equal conditions of competition and the functioning of the Common Market. The Court considers environmental protection one of the aims of the Community as it is a prerequisite for the improvement of the quality of life.

One general comment should be added here about infringement procedures as a means to secure compliance with environmental directives.
EC environmental Directives are generally implemented by member states with great delay. Sofar no environmental Directive has been implemented in time by all member states[134]. If we are to take EC environmental policy seriously, it is essential that some enforcement procedure exists.
Infringement procedures, as mentioned before, are directed primarily at obtaining conformity with the rules prior to the moment the Commission refers the case to the Court. The administrative steps the Commission is required to take in the initial stages of the procedure are surrounded with more guarantees than the final judgment of the Court.
A condemnation by the Court, as we have seen, takes the form of a declaration. The Court can only tell the defaulting state again to take the required measures[135]. The only sanction a member states incurs is public blame and negative publicity. Not too much to be worried about. I doubt whether Belgium experienced a decline in tourism after the Court had found that

134. See de Clercq (1983), p.659 and Klatte (1983), p.306.
135. See article 171, supra note 108.

it had not fulfilled the requirements of the bathing-water Directive.
It is suggested[136] that a condemnation by the Court can serve as a basis for liability of the state towards other member states, the Community or private individuals. I am not aware of any examples however. And if we see the great difficulties with which international liability for environmental damages is established anyhow, I suppose one should not expect much of this. A national test case would be worth the effort: Italian beach employers sueing the Italian government for damages resulting from polluted beaches, after the Italian Republic is condemned by the ECJ for not implementing the EC Directive on bathing-water. I am sure it would be a hard case to win.

Thus we must conclude that no realistic sanction for the infringement of EC environmental Directives by national states exists. When we realize the scope of implementation-inertia with regard to environmental directives, and consider the time and effort spent on an infringement procedure, this situation is very unsatisfactory.

2.3 Preliminary ruling: Case 240/83

The preliminary ruling we want to discuss concerns a judgment of the ECJ as requested by the French Tribunal de Grande Instance (Regional Court), Creteil. The request was related to a case between the Public Prosecutor and an Organisation defending the interests of burners of waste oils (Association de Défense des Brûleurs d'Huiles usagées, referred to as ADBHU). In the case pending before the court, the ADBHU contested the validity of the EC Directive on the disposal of waste oils of 16 June 1975[137].

---

136. See Kapteyn and VerLoren van Themaat (1980), p.189.
137. No 75/439/EEC, OJ No L 194, p.23.

The restrictions set in the Directive for the handling of waste oils (licensing, zoning and subsidies) are, according to the ADBHU, incompatible with the principles of freedom of trade, free movement of goods and freedom of competition, established by the Treaty of Rome.
The ECJ argues that the Community principles mentioned are not to be viewed in absolute terms. They are subject to certain limits as justified on the basis of the general interest pursued by the Community.
The Directive in question seeks to protect the environment against harmful effects caused by the disposal of waste oils. Environmental protection - and here comes the final and complete recognition of an EC environmental policy by the European Court of Justice - "...is one of the Community's essential objectives."[138] Thus the restrictions the Directive causes on other Community principles are justified.
Without any further reference to harmonisation of national provisions to prevent distortion of competition and the functioning of the common market, without mentioning articles 100 and 235, without any limitation to the scope of the policy, the Court presents environmental protection as one of the essential tasks of the Community.

## 2.4 Summary

The political will to conduct an environmental policy has been expressed in the Environmental Action Programmes, since 1972.
The legal affirmation of this policy has been proclaimed by the ECJ from 1980 onwards.
Was the Court still careful and indirect in its wording in 1980, its recognition is strong and explicit since 1985.

---

138. Case 240/83, Judgment of 7.2.1985, ECR 1985, p.549 under 13.

In 1987 the Single European Act was passed in which the Treaty of Rome establishing the European Communities is amended as to include articles making environmental protection one of the tasks of the Community.
From a pragmatic point of view the inclusion of environmental protection in the treaty seems redundant. It is not more than a legal consolidation of the status quo.
From a formal-legal point of view it can be viewed as a victory in a fifteen years battle.

With the passing of the Single European Act the legal development described in this chapter belongs to history. Arguments to defend the general existence of a Community environmental policy are no longer needed. The role the ECJ can play in shaping this policy is however not finished. As we will see in the next chapter the Court must be prepared to clear up and decide on many issues that have remained uncertain under the new provisions.

## Chapter III - The Single European Act and the constitutionalisation of EC environmental policy

### 3.0 General

The Single European Act (SEA) was signed by the Member States of the European Communities on the 17th and the 28th of February 1986. It was supposed to enter into force on January first 1987. The ratification procedure by national governments was held up however by a decision of the High Court of Ireland, that judged some aspects of the SEA against the irish constitution. Ratification would go beyond the powers of the irish government and could only be decided by national referendum. On May 26th 1987 the irish population voted in favour of ratification of the SEA. The Act came into force on July first 1987[139].

The SEA contains two main parts: one consisting of amendments to the EC Treaties, the other providing rules for European foreign policy cooperation. A number of Declarations are added to the Act in the Annex.

The amendments we are interested in here are found in Section II of the SEA, called 'Provisions relating to the foundations and the policy of the Community'. Subsection I and VI of Section II add provisions to the EEC Treaty directly related to environmental action.

The main amendment concerning the environment is found in Subsection VI that adds a separate Title on 'Environment' to

---

139. A national referendum was also held in Denmark, as part of the approval by the national parliament of the ratification. The Danish referendum was held in an earlier stage, and did not hold up the coming into force of the SEA.
The major controversy in the Danish referendum was the environmental regulation in the SEA, which was considered too weak.

Part Three of the EEC Treaty[140].
The new Title, VII, contains three articles. Article 130R describes objectives and principles of EC environmental policy; article 130S provides for a possibility to take decisions by qualified majority, instead of the usual unanimity rule; article 130T enables Member States to deviate from EC standards, in the sense that they are allowed to apply more stringent national environmental rules.
Subsection I is concerned with the 'Internal Market' in general. One part of it relates to environmental matters. A new article 100A will be added to Chapter 3 of Title I of Part Three of the EEC Treaty[141].
Referring to the aim of establishing the internal market by 1992[142], article 100A provides that the Council may enact measures for the approximation of national laws by qualified majority instead of the usual unanimity rule. Paragraphs 3 and 4 of article 100A refer specifically to environmental protection. Paragraph 3 states that a high level of protection must be pursued; paragraph 4 determines that, if a harmonization measure is adopted by majority vote, a Member State may, under certain conditions, apply national provisions.

As we will discuss, the SEA offers only marginal changes in the set of instruments for the execution of environmental policy as it already existed. The factual results of the Act will depend on the political will of the Member States concerning a specific issue at a certain moment. In that sense the inclusion of environmental tasks in the Treaty is - only - the expression of a general willingness of the Member States to deal with the subjectmatter in the future; it is of potential significance.

---

140. Part Three of the Treaty relates to 'Policy of the Community'.
141. Chapter 3 of Title I of Part Three relates to the 'Approximation of laws'.
142. Article 100A refers to the new article 8A of the EEC Treaty.

The new rules leave doors for escape open. All the obstacles that had to be taken before environmental tasks of the EC were recognized, can be seen as a reflection of the opinion that economic- and environmental interests clash. An opposition brought about by short-term orientation[143]. Although the SEA confirms an integrative approach as a principle of EC environmental policy, it does not offer binding instruments against this pervailing attitude.
For that reason the European Parliament criticised the SEA sharply[144]. It wanted a stronger commitment to environmental protection. With the present provisions all depends on the way they will be filled in. The European Court of Justice will have a major task in making sure that the possibilities provided by the SEA to conduct a constructive environmental policy are not undermined by a wilful abuse of the flexibility that is built in to the new legal framework[145].

3.1 The new Title VII - Environment

Three objectives of EC environmental policy are described in parapraph 1 of article 130R:

1 - to preserve, protect and improve the quality of the environment;

2 - to contribute towards protecting human health;

---

143. Note that the Third and Fourth Environmental Action Programmes of the EC emphasize that economics and environmental protection do not represent opposing interests.
OJ No C 46, 17.2.83, Annex paragraphs 5-8.
See also the Preface to 'Ten years of Community Environment Policy', Commission 1984, paragraphs 14-25.
OJ No C 70, 18.3.87, Annex paragraphs 1.3, 1.6 and 2.3.
See also the Introduction of COM (86) 485 final. 9.10.86, paragraphs 5-9.

144. See OJ No C 68, p.46-48, minutes of the sitting on Tuesday 18 February 1986.

145. See for instance the task given to the Court in article 100A paragraph 4 third sentence, to judge such an abuse.

3 - to ensure a prudent and rational utilization of natural resources.

The description of general objectives and principles of environmental policy is more substantive and detailed than of any other EC-policy.
The concept 'environment' in objective 1 is not restricted in any sense. Community action does not have to concern the environment within the territory of the Community, and is not restricted to the 'natural' environment. EC environmental policy included from the beginning the protection of urban and working environments[146].
The second objective confirms the fact that the Community is authorized to legislate health issues without a direct link to the realisation of the Common Market.
The third objective makes it seem as if a far reaching energy-control policy could be carried out within the framework of the EC environmental policy. This objective has to be seen in relation to Declaration No 9 of the SEA where it is stressed that the EC environmental policy "may not interfere with national policies regarding the exploitation of energy resources".

Four principles that underly Community action are defined in paragraph 2 of article 130R t:
- prevention of pollution is preferred over reparation;
- pollution must be controlled at the source;
- the polluter must pay for the costs of control;
- environmental considerations must be integrated into other Community policies.

The idea that prevention is the best approach to environmental

146. See First EAP, OJ No C 112, 20.12.73, Title II Chapters 3 and 4.

control was already defended in the first EAP[147], and was repeated in the three other Programmes[148]. The same is true for the principle of pollution control at the source[149], and the polluter-pays principle[150]. The principle of integration was presented for the first time in the Third Programme[151], and defended strongly in the policy document by which it was accompanied[152]. The Fourth program also emphasizes it[153].

With respect to prevention d'Oliveira makes a worthwile reservation in his publication on the institutional arrangements around the protection of the Rhine[154]. He agrees wholeheartedly with prevention as one of the axiomes of environmental law. With the present state of affairs however, where a preventive approach apparently often fails, he emphasizes that repressive and repairing aspects of law should not be forgotten. 'The ideology of prevention', according to d'Oliveira, should not

---

147. See OJ No C 112, 20.12.73, page 6 under 1. Prevention was also stated as an objective of EC policy; ibid. page 5.
148. OJ No C 139, 13.6.77, page 6 under objectives and under principles.
Prevention was also mentioned in the Council Resolution, ibid. page 2.
OJ No C 46, 17.2.83, page 5 under 9, third paragraph. NB only as a principle.
Prevention was also mentioned in the Council Resolution, ibid. page 2.
OJ No C 70, 18.3.87, page 8 under 2.1.1, with reference to the SEA amendments.
149. OJ No C 112, 20.12.73, page 6 under 1.
OJ No C 139, 13.6.77, page 6 under 13.
OJ No C 46, 17.2.83, page 4 under 5.
OJ No C 70, 18.3.87, page 8 under 2.1.1, in the reference to the SEA.
150. OJ No C 112, 20.12.73, page 6 under 5.
OJ No C 139, 13.6.77, page7 under 17
OJ No C 46, 17.2.83, page 4 under 5.
OJ No C 70, 18.3.87, page 8 under 2.1.1, in the reference to the SEA.
151. OJ No C 46, 17.2.83, page 5 under 8.
152. 'Ten years of Community Environment Policy', Commission 1984, page 5 under 14 to 6 under 18.
153. OJ No C 70, 18.3.87, page 10 under 2.3
154. Jessurun d'Oliveira (1987).

serve to undermine the tougher sides of the law, that are necessary to repair the damages[155]. Prevention sounds good, but means little, as long as many environmental rules are not implemented nor enforced at all.

A preference for the combat of pollution at the source asks for requirements directed at the producer of the pollution. This implies setting emission standards as opposed to fixing the standards for immission, i.e. quality standards for the receiving environment as a whole.

According to the polluter-pays principle, the polluter is responsible for the costs of fulfilling the legal requirements to prevent, suppress or repair the pollution. Besides this financial responsibility in public-law terms, there is the private liability in case of a tort claim. In general the polluter will also be liable for these private costs. There are situations however where the government can be held liable for the costs to repair the damages of pollution by a firm. A lack of enforcement measures by the government can serve as a basis to establish tort-liability of the government[156].

As far as the integration of environmental policy into other policy areas is concerned: this requirement is unique for this specific policy field, it does not exist for any other EC policy. In the Third EAP integration is presented as a logical result of the prevention principle. "To (...) implement a preventive environmental protection policy in a full and

---

155. ibid. page 11.
d'Oliveira describes reparation, on the basis of private liability law, and repression, due to the application of criminal sanctions, as ways to achieve prevention. Forced to internalize the external effects of their production this way, firms will have a strong incentive to prevent externalities (ibid page 12).

156. See van Dunné (1987), p. 7 and d'Oliveira (1987) p. 9-10. They both defend this view.

effective manner, the Community should seek to integrate concern for the environment into the planning and development of certain economic activities as much as possible and thus promote the creation of an overall strategy making environmental policy part of economic and social development. This should result in a greater awareness of the environmental dimension, notably in the fields of agriculture (including forestry and fisheries), energy, industry, transport and tourism."[157]
If taken seriously this principle can have far-reaching effects. We might hope for some kind of institutionalisation in the form of environmental departments within the different Directorates-General, or a worked-out form of cooperation between the Directorate-General for Environmental Affairs and the others. Edward calls it "an incidental conrequence of the Single Act", that there might be "a move away from the highly 'sectoral' organisation of the Commission"[158].
Furthermore, the integration-principle entails that whenever environmental considerations come up in other policy contexts, no specific reference is required to Title VII. Environmental measures taken in the context of the realisation of the internal market for instance, can thus be decided on the basis of article 100A only, with circumvention of the unanimity requirement of Title VII[159].

Besides objectives and principles, article 130R, in paragraph 3, defines four factors the Community must take into account when preparing environmental policy proposals, namely:
1 - available scientific and technical data;
2 - environmental conditions in the various regions of the Community;

---

157. OJ No C 46, 17.2.83, page 5 under 8.
158. Edward (1987), p.29.
159. For a further discussion of the difficulties that can be expected around the choice between 100A (majority) and 130S (unanimity) see below, paragraph 3.2.

3 - the potential benefits and costs of action or of lack of action;
4 - the economic and social development of the community as a whole and the balanced development of its regions.

The first point of consideration refers to the old discussion about 'best technical' as opposed to 'best practical' means to combat pollution. With an extensive Research Programme, financed partially by the Community, The EC is of course inclined to pretend the obligatory application of the most advanced techniques available. It seems as if the 'best technical means' of pollution control are to be required.
Point three however, introducing cost-benefit analyses of proposed actions, clearly thwarts this good intention. Weighing costs of action against costs of lack of action results in a choice based partially on the state-of-the-art concerning control devices and partially on the economical situation of the firm.
This implies that the 'best practical means' are required after all.
Point two allows a differentiation of environmental standards within the Community according to the specific circumstances of a certain region; a logical consequence of ecological diversity that seems hard to combine with a prohibition of competition distortion. Strong opposition can be expected from regions whose ecosystems require stricter standards.
The EC could think of circumventing competition distortion by the installment of an adjustment-fund. The adjustment-fund reallocates money from regions with less strict standards. Thus no industry would be economically (dis)advantaged by differing requirements.
Unlike the source-principle, the idea of regionally diverging requirements implies the setting of immission, i.e. quality standards for the area.

The last point mentioned, the overall development of the Community and the development of its regions, refers especially to the less developed regions. They expressed the strong wish to be spared somewhat of strict norms. With the realistic weight the SEA intends to give to long-term environmental management, it seems that loose standards would not help these regions in the end. Some kind of environmental subsidy or tax preference would be preferable here.

Paragraph 4 of article 130R does not make things easier. Environmental action by the Community is given a subsidiary nature. That is to say that the Community can only undertake action if "the objectives referred to in paragraph 1 can be attained better at Community level than at the level of the individual Member States".
This condition is partially a clear and straightforward call for efficiency. Certain tasks should be carried out on a local, regional or national level, others by the Community. Besides some obvious situations however it will usually be extremely difficult to judge whether or not Community-level action yields better results. The absolute vagueness of the provision will induce lengthy, inefficient discussions about the adequacy of the level of activity proposed: the Member States opposed to too much EC involvement taking one side, the ones in favour of substantial EC regulation taking the other.
Ultimately the Council has to decide, according to article 130S first sentence, on a proposal from the Commission, and after consulting the European Parliament and the Economic and Social Committee. The Commission and the EP, known for their progressive approach to EC environmental policy have a major task here to set the trend in the right direction. The European Court of Justice might experience a 'l'histoire-se-répète'; it

is very well possible that a Member State will question the adequacy of a certain EC activity in a Court-procedure[160].
Since paragraph 4 refers to "individual Member States", Community action will be justifiable as soon as more than one state is affected. It is not necessary that the Community as a whole is involved in a certain issue.

The second sentence of paragraph 4 states that Community measures have to be financed and implemented by the Member States themselves, except for "certain measures of a Community nature".
The wording of this provision leaves a very uncommitted impression. A policy without a budget seems a rather vain hope.
It is regrettable that the SEA does not mention the EC environmental research activities. They should have been mentioned in this financial provision, since they have been financed and executed by EC institutions ever since 1973[161].
As suggested earlier I have the opinion that certain financial measures are necessary on EC level to adjust for the weaker economic position of certain regions. If not in the form of subsidies, the Community has at least the task to transfer financial gains in stronger regions due to favourable ecological circumstances, to weaker regions where strict environmental standards are necessary.
Another point of critique regards the vagueness of the provision. When are measures "of a Community nature", and which measures fall in the prescribed category of "certain measures of

---

160. See the Court-cases, as described in paragraph 2.1, in which a Member State questioned the existence of environmental action by the EC.
161. See Chapter I for a description of Environmental Research Programmes.

a Community nature"?[162]

We come to the last paragraph of article 130R. The subsidiarity of Community competence in environmental action in general, entails shared competences for the Community and the member States in relation to third countries and international organisations as well. In paragraph 5 of article 130R an effort is made to define these concurrent competences, apparently with the unfortunate omission of the relevant jurisprudence. Ambiguity and vagueness prevail once again: "Within their respective spheres of competence, the Community and the Member States shall cooperate with third countries and with the relevant international organizations. The arrangements for Community cooperation may be the subject of agreements between the Community and the third parties concerned(...) The previous paragraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements."
It can not be the case that international agreements on a certain topic by the Community have no consequence at all for international activities on the same subject by Member States. This would be in contradiction with the jurisprudence of the ECJ

162. Par.4 of article 130R reminds us of the language in the Declaration that launched the first EAP in 1973: "The Council of the European Communities and the Representatives of the Governments of the Member States meeting in the Council note that the projects to which this programme will give rise should in some cases be carried out at Community level, and in others be carried out by the Member States." (OJ No C 112, 20.12.73, p.1)
At that time this compromise was a result of the rigid attitude of France that did not want to authorize the EC to take action in the field of environmental protection. See Klatte (1983), p.300. Since the SEA takes care of exactly that problem we did expect to find a more substantive budget commitment here.

as established in the AETR-case[163], and repeated in later Court decisions[164]. The jurisprudence is not forgotten completely after all: in Declaration No 9 in the Annex to the SEA, it is mentioned that the last part of paragraph 5 has to be understood in terms of the judgment of the ECJ in the AETR-case. It seems a bad legislative technique to use annexed declarations to make up for the unclear formulation in the law itself.

Concerning yet another aspect of international relations the SEA contains an ambiguous regulation. As a consequence of the order in which the provisions are presented, the phrase "within their respective spheres of competence" in paragraph 5 must be interpreted as to refer to action-levels established on the basis of paragraph 4. However here we must make the distinction between Community competence in theory and Community activities (competence in practice). It is the established opinion of the Court that the Community can act in external relations without prior internal activities on a certain subject[165]. Actual Community activities are not needed for the establishment of

---

163. Case 22/70, 31.3.1971, ECR 1971, p.263.
See especially paragraphs 17, 18 and 31 of the judgment.
"17. In particular, each time the Community, with a view to implementing a common policy envisaged by the Treaty, adopts provisions laying down common rules, whatever form these may take, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules.
18. As and when such common rules come into being, the Community alone is in a position to assume and carry out contractual obligations towards third countries affecting the whole sphere of application of the Community legal system."
"31. These Community powers (as established by a Council Regulation) exclude the possibility of concurrent powers on the part of the Member States, since any steps taken outside the framework of the Community institutions would be incompatible with the unity of the Common Market and the uniform application of Community law."

164. See Local Cost Standard case, Opinion 1/75, 11.11.75, ECR 1975, p.1355, especially p.1363 under 2. "The exclusive nature of the Community's powers".

165. See discussion of Local Cost Standard case in Hartley (1981), p.157ff.

external competence. Thus the "respective spheres of competence" refer to the establishment of Community competence on basis of paragraph 4 in theory.
Also here the SEA does not use Court-jurisprudence to acieve a straightforward legal position.
The aspect of international contacts reflects clearly the ambiguity in the division of competences between the Community and the Member States. No choices have been made on this subject in the new provisions.
We wish the Court patience in the foreseeable procedures necessary to fill in the new rules with old jurisprudence.

A procedural novelty is introduced in article 130S. Not in the first sentence (see above), but in the remainder: the Council, shall appoint matters on which decisions will be taken by qualified majority.
Of course, many decisions would be taken much easier once the majority rule is established. One must bear in mind however, that appointing the matters to which this would apply has to be a unanimous decision. For one category of decisions the SEA has already fixed majority decision-making: article 100A states that harmonization measures, necessary to establish the internal market are taken by qualified majority. All the environmental Directives that were formerly based on article 100 can be taken with majority vote.

As to the interaction between the Council and the European Parliament (EP), the normal procedure requires the Council to consult the EP. One of the amendments of the SEA involves an intensified interaction, the so-called 'cooperation procedure'[166]. The cooperation procedure, in fact, introduces a dual consultation: first the EP gives its opinion about a Commission proposal for action; the Council then prepares a so-called 'common position'; subsequently the EP can propose

166. See article 7 SEA as amending article 149 EEC Treaty.

amendments to the common position and reject proposals not backed by Council unanimity.
It remains unclear from the wording of article 7 whether the cooperation procedure applies to all situations where qualified majority voting has replaced unanimity[167], or only to those situations where the Treaty explicitly refers to it[168].
In article 130S second sentence the cooperation procedure is not mentioned. I would be a proponent of the view that the intensified interaction procedure with Parliament applies to environmental decision taken by qualified majority under article 130S.

The last article of the new Title, article 130T, allows member states to diverge from EC-rules if they want to apply more strict environmental measures.
With the explicit provision that Community environmental action has to take into account regional differences in environmental conditions[169], it was not necessary from an ecological point of view to allow for further diversifications. That is to say: if EC standards are set sufficiently high. We do need article 130T in the light of the expectation that EC environmental standards will be set at a level that is too low to satisfy those Member States that have a strong protective national policy.

Summarizing we can say that the new Title Environment starts promising by spelling out objectives and principles of EC environment policy. No other policy is dealt with in the Treaty in such detail. Further on however the provisions leave a vague and ambiguous impression: EC action will be subsidiary (article 130R par.4), concurrent as far as international relations are concerned (article 130R par.5), with minimal funding (article

---

167. This opinion is defended in the Editorial Comments on the SEA in Common Market Law Review, 2(1986), p.250-251.
168. As in article 110A par.1.
169. Article 130R, par.3 under ii.

130R par.4 second sentence), while setting minimal standards (article 130T).

3.2 The new Article 100A

Several of the provisions in the new Title VII have to be analized further in relation to the new article 100A on the harmonisation of national provisions with the aim of establishing the internal market. Paragraphs 3 and 4 contain rules related to environmental policy. The Danes, who placed high priority on environmental issues all through the negotiations about the SEA, consider article 100A the central article of the new Treaty[170].
Article 100A states that the Council shall adopt measures for the approximation of national provisions with the aim of establishing the internal market by 1992[171]. The Council acts by qualified majority, on a proposal from the Commision and in cooperation with the EP and the Economic and Social Committee.
In the proposals concerning health, safety, environmental protection and consumer protection, the Commission must take as a base a high level of protection[172].

This brings us to a controversy in the system of environmental regulation created by the new Treaty. How is the high-protection-level-principle to be understood in conjunction with the idea of minimal protection standards that emanates from article 130T, as described above? More in general: how can the line be drawn between measures that are to be taken on the basis of article 100A and measures which fall under article 130S? The distinction is of importance because of the different voting

170. See Ørstøm Møller (1987) and Gulmann (1987), p.34ff.
171. Article 100A refers to the new article 8a.
172. See article 110A par.3.
Paragraph 3 establishes in a way a principle for action concerning the internal market in the line of the principles for environmental action defined in article 130R par.2.

requirements - unanimity as opposed to majority - and because of the difference in the level of protection prescribed.
Product legislation and emission standards clearly fall under the heading Internal market. In many cases however the issue will be controversial. Opponents of a measure taken by qualified majority may contest its relevance for the establishment of the internal market before the European Court of Justice.

Paragraph 4 of article 100A is also related to article 130T.
If a harmonisation measure is adopted by qualified majority, Member States are allowed to apply national provisions instead of the EC measure, on the grounds expressed in article 36[173] or related to protection of the environment or the working environment. A member state must notify the Commission of its intention not to apply the EC measure. The Commission in turn verifies that the application of the national provision is not "a means of arbitrary discrimination or a disguised restriction on trade between Member States"[174].
There is some debate in the literature as to what the admissible divergence is. Does paragraph 4 allow member states to apply national provisions that are less strict than the EC measures, or are only stricter provisions allowed?[175]
To my opinion only stricter national provisions can be allowed. As far as it relates to environmental protection, paragraph 4 has to be understood in conjunction with article 130T. Article 130T is a specification of 100A par.4 and fills it in for the specific subject[176].

---

173. Article 36 refers to limitations to trade on grounds of public morality, public policy or public security.
174. Article 100A par.4 second sentence.
175. Kromarek (1986), p.12, and Jessurun d'Oliveira (1987), p.32, both see a possibility here for Member States to escape to looser national rules.
176. The same opinion is expressed by Gulmann (1987), p.34-36. See also Declaration No 18 of the SEA by the Government of the Kingdom of Denmark.

The potential disruptive effect of diverging national measures can only be prevented if Community action will be sufficiently high. In that sense paragraph 3 of article 100A can be seen as a guarantee for the coherence of the new legal system[177].

Another guarantee can be found in paragraph 4. If the Commission or a member state finds that another member state uses the above mentioned provisions as a means of hidden protectionism, it may bring the case directly before the European Court of Justice[178], skipping the normally required consultative phase of infringement procedures[179]. The aim of the consultation is to secure compliance of the defaulting state in the course of the interaction with the Commission. Without the consultation the procedure has a more penal character. The weak point remains however that the Court can not apply a sanction once a member state is condemned. Negative publicity is the only punishment.

3.3 Summary

Overall, the system of environmental provisions as put forward in the Single European Act must be judged confusing, ambiguous and contradicting.
The objectives and principles with which the EC environmental policy started in 1973 are now codified in the EEC Treaty.

---

177. This argument is strongly defended by Ørstrøm Møller (1987). Article 100A, he argues, tries to integrate two opposing points of view, namely the establishment of the internal market and the protection of health, the environment and the working environment. If this goal is reached it will hardly be necessary for member states to take stricter individual measures. "It would be a shame, if a courageous effort would fail, to combine two central goals of great importance for Europe's future." (my translation from German)
178. Article 100A par.4 last sentence.
179. See discussion of infringement procedure of article 169 in Chapter 2. An infringement procedure by a member state is regulated in article 170.

The member states have not been able to agree on how to fill in this general framework. Unanimity voting as opposed to qualified majority, competences in relation to third parties, high level of protection as opposed to minimal standards that require stricter national provisions: these issues have remained undecided.

The European Court of Justice can prepare itself for the task to figure out the unclarities[180].

It seems that the political arena has left the major fight to be resolved in the legal battle-field.

---

180. Former Judge Pescatore expresses a totally negative opinion about the entire SEA. "In view of the foregoing, it is my conclusion that the putting into force of the Single Act will be a setback for the European Community. My hope is that it will remain stuck somewhere in the ratification process, which might well happen if the parliaments of the Member States were ready to seriously examine its contents on its merits." Pescatore (1987), p.17.

Conclusions

Between 1972 and 1987 the institutions of the EC have developed a comprehensive policy in the field of environmental protection. A large body of legal texts has been passed as well as a great number of policy documents. (Chapter 1)

Accepting environmental protection as one of the tasks of a Community, set up first of all for economic purposes, means the member states recognize the interrelatedness of economic and environmental interests.
This recognition was functional in the first place, as EC environmental measures were justified by referring to prevention of distortion of the functioning of the Common Market. Later it grew to include awareness of the fact that a healthy economy in the long run is dependent upon the management and maintenance of its environment.

In 1987 the existence of an EC environmental policy can not be disputed any longer. With the inclusion of environmental tasks in the EC-Treaty this discussion is closed.
The series of Court cases in which this issue was considered are now part of modern history. The final judgment was unavoidable: "environmental protection (...) is one of the Community's essential objectives."
In that sense the new constitutional basis of EC environmental policy in the Treaty merely serves a formal purpose; in fact there was no longer a question about its legitimacy since the Court decision in 1985. (Chapter 2)

But another, more pragmatic question remains: how effective are the measures taken by the EC?
The weak points of the EC environmental policy, have always been the low level at which quality requirements are set, the slow

pace at which EC rules are negotiated and decided upon, and the great delay with which EC measures are implemented by member states. It often seems as if member states are able to pursue their own policies, irrespective of EC-acts. The EC lacks enforcement measures to pressure defaulting states to comply.
The SEA does not offer hope that this picture will be changed through binding legal steps. It expresses the general willingness of the member states to continue the existing environmental policy. It does not show a more committed attitude, compared to the situation that already existed.
Some of the issues that the SEA leaves unclear will have to be filled in by the European Court of Justice. (Chapter 3)

But even though new binding measures are lacking, a new policy focus can still have effect.
The main focus for the EC in the near future, as announced in the fourth action programme, will be on integration and implementation: integrating environmental protection into decision making in other policy fields, and implementing EC measures on the level of national legislation and on the level of practical results.
These are policy intentions, and no more than that. If taken seriously, however, they will make the EC environmental policy more effective.
Maybe the result of the SEA is, after all, that environmental policy considerations are taken more seriously?!

Bibliography

Bennett, G. (1986)
'EC environmental policy in practice. Volume 2. Netherlands: water and waste. A study of the implementation of the EEC Directives.'
Graham and Trotman, London.

de Clercq, M. (1983)
'Tien jaar Europees milieubeleid.' (Ten years European environment policy.)
in Economische Statistische Berichten (Economic Statistical Messages), 3415(1983), p.656-660.

DocTer (1984)
'Annuario Europeo dell' Ambiente.'
DocTer, Milan.

ibid. (1986)

DocTer (1987)
'European Environmental Yearbook.'
DocTer, Milan.

Edward, D. (1987)
'The impact of the Single Act on the institutions.'
in Common Market Law Review, 1(1987), p.19-30

van Dunné, J.M. (1987)
'De rechtspraak inzake milieuaansprakelijkheid: van schuldbeginsel naar risicobeginsel.' (The jurisprudence concerning environmental liability: from fault to risk.)
in Tijdschrift voor Milieuaansprakelijkheid (Environmental Liability Law Quaterly), 1(1987), p.3-10.

Gulmann, C. (1987)
'The Single European Act - some remarks from a danish perspective.'
in Common Market Law Review, 1(1987), p.31-40.

Haigh, N. (1986)
'EC environmental policy in practice. Volume 1. Comparative report: water and waste in four countries. A study of the implementation of the EEC Directives in France, Germany, Netherlands and United Kingdom.'
Graham and Trotman, London.

Hartley, T.C. (1981)
'The foundations of European Community law. An introduction to the constitutional and administrative law of the European Community,'
Clarendon Press, Oxford.

Jessurun d'Oliveira, H.U. (1987)
'De vervuiling van de Rijn. Een nieuwe aflevering van het feuilleton: Sandoz en institutionele frikties,' (The pollution of the Rhine. A new episode of the series: Sandoz and institutional frictions.)
forthcoming

Johnson, S.P. (1983)
'The pollution control policy of the European Communities.'
Graham and Trotman, London.

Kapteyn, P.J.G. and P. VerLoren van Themaat (1980)
'Inleiding tot het recht van de Europese Gemeenschappen.' (Introduction to the law of the European Communities.)
Kluwer, Deventer.

Klatte, E.R. (1983)
'Tien jaar Europees milieubeleid (1973-1983). Een balans.' (Ten years European environment policy. An account.)
in Milieu en Recht (Environment and Law), 10(983), p.298-312.

Krislov, S., C.D. Ehlermann and J. Weiler (1986)
'Compliance (and non-compliance) with and enforcement of transnational law.' in The political organs and the decision-making process in the United States and the European Community, p.59-88.
in Integration through law: Europe and the American federal experience, Volume 1, Book 2, M. Cappelletti, M. Seccombe and J. Weiler (eds.), de Gruyter, Berlin/New York, 1986.

Kromarek, P. (1986a)
'EC environmental policy in practice. Volume 4. Federal Republic of Germany: water and waste. A study of the implementation of the EEC Directives.'
Graham and Trotman, London.

Kromarek, P. (1986b)
'The Single European Act and the environment.'
in European Environment Review, 1(1986), p.10-12.

Lavoux, T. (1986)
'EC environmental policy in practice. Volume 3. France: water and waste. A study of the implementation of the EEC Directives.'
Graham and Trotman, London.

Mathijsen, P.S.R.F. (1985)
'A guide to European Community law.' fourth edition
Sweet and Maxwell, London.

Ørstrøm Møller, J. (1987)
'Artikel 100a der EEA aus dänischer Sicht.' (Article 100a of the Single European Act from a danish point of view.)
in EGmagazin, 6(1987), p.7.

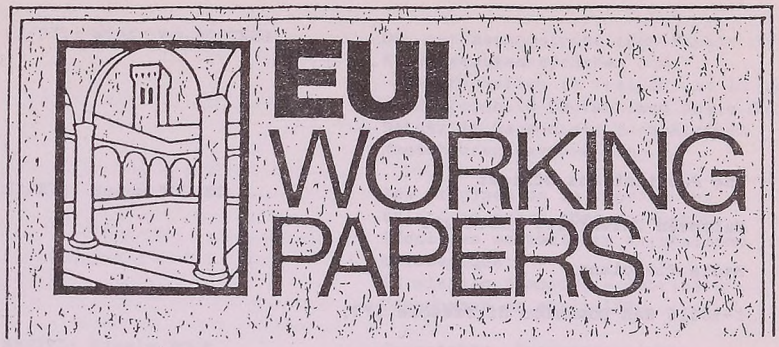
Pescatore, P. (1987)
'Some critical remarks on the 'Single European Act.'
in Common Market Law Review, 1(1987), p.9-18.

Rehbinder, E and R. Stewart (1985a)
'Legal integration in federal systems: European Community environmental law.'
in The American Journal of Comparative Law, (1985), p.371-445.

Rehbinder, E. and R. Stewart (1985b)
'Environmental protection policy.'
de Gruyter, Berlin/New York.

Reich, N. (1987)
'Umweltpolitik, Konkurrenzbedingungen und Lebensqualität in der Gemeinschaft.'
in Förderung und Schutz diffuser Interessen durch die Europäischen Gemeinschaften, N. Reich (1987), 9. Kapitel, p.267-291.

de Ruyt, J. (1987)
'L'Acte unique européen.'
Editions de l'Université de Bruxelles, Bruxelles.




EUI Working Papers are published and distributed by the European University Institute, Florence.

A complete list and copies of Working Papers can be obtained free of charge -- depending on the availability of stocks -- from:

The Publications Officer

European University Institute

Badia Fiesolana

I-50016 San Domenico di Fiesole (FI)

Italy

Please use order form overleaf

PUBLICATIONS OF THE EUROPEAN UNIVERSITY INSTITUTE

To The Publications Officer

European University Institute

Badia Fiesolana

I-50016 San Domenico di Fiesole (FI)

Italy

From Name.....

Address.....

.....

.....

.....

Please send me: ☐ a complete list of EUI Working Papers

☐ the following EUI Working Paper(s):

No.:.....

Author, title:.....

.....

.....

.....

.....

Date:.....

Signature: .....

| | | |
|---|---|---|
| 87/271: | Winfried BOECKEN | Der verfassungsrechtliche Schutz von Altersrentenansprüchen und -anwartschaften in Italien und in der Bundesrepublik Deutschland sowie deren Schutz im Rahmen der Europäischen Menschenrechtskonvention |
| 87/272: | Serge NOIRET | Aux origines de la reprise des relations entre Rome et Moscou. Idéalisme maximaliste et réalisme bolchevique: la mission Bombacci - Cabrini à Copenhague en avril 1920. |
| 87/273: | Gisela BOCK | Geschichte, Frauengeschichte, Geschlechtergeschichte |
| 87/274: | Jean BLONDEL | Ministerial Careers and the Nature of Parliamentary Government: The Cases of Austria and Belgium |
| 87/275: | Birgitta NEDELMANN | Individuals and Parties - Changes in Processes of Political Mobilization * |
| 87/276: | Paul MARER | Can Joint Ventures in Hungary Serve as a "Bridge" to the CMEA Market? |
| 87/277: | Felix FITZROY | Efficiency Wage Contracts, Unemployment and Worksharing |
| 87/278: | Bernd MARIN | Contracting Without Contracts Economic Policy Concertation by Autopoietic Regimes beyond Law |
| 87/279: | Darrell DUFFIE and Wayne SHAFER | Equilibirum and the Role of the Firm in Incomplete Markets |
| 87/280: | Martin SHUBIK | A Game Theoretic Approach to the Theory of Money and Financial Institutions |
| 87/281: | Goesta ESPING ANDERSEN | State and Market in the Formation of Social Security Regimes A Political Economy Approach |
| 87/282: | Neil KAY | Markets and False Hierarchies: Some Problems in Transaction Cost Economics |
| 87/283: | Leslie OXLEY and Donald GEORGE | Perfect Foresight, Non-Linearity and Hyperinflation |

* :Working Paper out of print

PUBLICATIONS OF THE EUROPEAN UNIVERSITY INSTITUTE DECEMBER 1987

| | | |
|---|---|---|
| 87/284: | Saul ESTRIN and Derek JONES | The Determinants of Workers' Participation and Productivity in Producer Cooperatives |
| 87/285: | Domenico Mario NUTI | Financial Innovation under Market Socialism |
| 87/286: | Felix FITZROY | Unemployment and the Share Economy: A Sceptical Note |
| 87/287: | Paul HARE | Supply Multipliers in a Centrally Planned Economy with a Private Sector |
| 87/288: | Roberto TAMBORINI | The Stock Approach to the Exchange Rate: an Exposition and a Critical Appraisal |
| 87/289: | Corrado BENASSI | Asymmetric Information and Financial Markets: from Financial Intermediation to Credit Rationing * |
| 87/290: | Johan BARNARD | The European Parliament and Article 173 of the EEC Treaty |
| 87/291: | Gisela BOCK | History, Women's History, Gender History |
| 87/292: | Frank PROCHASKA | A Mother's Country: Mothers' Meetings and Family Welfare in Britain, 1850 - 1950 |
| 87/293: | Karen OFFEN | Women and the Politics of Motherhood in France, 1920 - 1940 |
| 87/294: | Gunther TEUBNER | Enterprise Corporatism |
| 87/295: | Luciano BARDI | Preference Voting and Intra-Party Competition in Euro-Elections |
| 87/296: | Gianna GIANNELLI | On Labour Market Theories |
| 87/297: | Domenica TROPEANO | The Riddle of Foreign Exchanges: A Swedish-German Debate |
| 87/298: | B. THOM, M.BLOM T. VAN DEN BERG, C. STERK, C. KAPLAN | Pathways to Drug Abuse Amongst Girls in Britain and Holland |
| 87/299: | V. MAQUIEIRA, J.C. LAGREE, P. LEW FAI, M. De WAAL | Teenage Lifestyles and Criminality in Spain, France and Holland |

* :Working Paper out of print

PUBLICATIONS OF THE EUROPEAN UNIVERSITY INSTITUTE DECEMBER 1987

| | | |
|---|---|---|
| 87/300: | A. ELZINGA, P. NABER, R. CIPPOLLINI, F. FACCIOLI, T. PITCH | Decision-Making About Girls by the Criminal Justice System in Holland and Italy |
| 87/301: | S. LEES, J. SHAW, K. REISBY | Aspects of School Culture and the Social Control of Girls |
| 87/302: | Eleanor MILLER, Rosa ANDRIEU-SANZ and Carmen VAZQUEZ ANTON | Becoming a Teenage Prostitute in Spain and the U.S.A. |
| 87/303: | Mary EATON and Lode WALGRAVE | A comparison of crime and its treatment amongst girls in Britain and Belgium |
| 87/304: | Annie HUDSON Edna OPPENHEIMER | Towards an effective policy for delinquent girls |
| 87/305: | G. VAN DER LAAN and A.J.J. TALMAN | Computing, Economic Equilibria by Variable Dimension Algorithms: State of the Art |
| 87/306: | Paolo C. GARELLA | Adverse Selection and Intermediation |
| 87/307: | Jean-Michel GRANDMONT | Local Bifurcations and Stationary Sunspots |
| 87/308: | Birgit GRODAL/Werner HILDENBRAND | Income Distributions and the Axiom of Revealed Preference |
| 87/309: | Eric PEREE/Alfred STEINHERR | Exchange Rate Uncertainty and Foreign Trade |
| 87/310: | Giampaolo VALDEVIT | American Policy in the Mediterranean: The Operational Codes, 1945-1952 |
| 87/311: | Federico ROMERO | United States Policy for Postwar European Reconstruction: The Role of American Trade Unions |
| 87/312: | Pietro REICHLIN | Output-Inflation Cycles in an Economy with staggered wage setting |
| 87/313: | Neil KAY, Jean-Philippe ROBE and Patrizia ZAGNOLI | An Approach to the Analysis of Joint Ventures |
| 87/314: | Jane LEWIS | Models of Equality for Women: The Case of State Support for Children in 20th Century Britain |

* :Working Paper out of print

PUBLICATIONS OF THE EUROPEAN UNIVERSITY INSTITUTE JANUARY 1987

| | | |
|---|---|---|
| 87/315: | Serge NOIRET | Nuovi motivi per studiare i meccanismi delle leggi elettorali. Una riflessione metodologica a proposito della legge del 1919 in Italia |
| 87/316: | Alain GOUSSOT | Les sources internationales de la culture socialiste italienne à la fin du 19e siècle et au début du 20e siècle. Problèmes de la composition de l'idéologie du PSI et ses rapports avec la circulation des idées en Europe |
| 87/317: | Eamonn NOONAN | Württtemberg's exporters and German protection, 1931-36 |
| 87/318: | Jean-Pierre CAVAILLE | Theatrum Mundi. Notes sur la théatralité du Monde Baroque. |
| 87/319: | Peter RAPPOPORT and Lucrezia REICHLIN | Segmented Trends and Nonstationary Time Series |
| 87/320: | Douglas GALE | A Strategic Model of Labor Markets with Incomplete Information |
| 87/321: | Gianna GIANNELLI | A Monopoly Union Model of the Italian Labour Market |
| 87/322: | Keith PILBEAM | Sterilization and the Profitability of UK Intervention 1973-86 |
| 87/323: | Alan KIRMAN | The Intrinsic Limits of Modern Economic Theory |
| 87/324: | Andreu MAS-COLELL | An Equivalence Theorem for a Bargaining Set |
| 88/325: | A. GROPPI | "La classe la plus nombreuse, la plus utile et la plus précieuse". Organizzazione del lavoro e conflitti nella Parigi rivoluzionaria. |
| 88/326: | Bernd MARIN | Qu'est-ce que c'est "Le Patronat"? Quelques enjeux théoriques et observations empiriques |
| 88/327: | Jean BLONDEL | Decision-Making Processes, Conflicts, and Cabinet Government |
| 88/328: | Ida KOPPEN | The European Community's Environment Policy From the Summit in Paris, 1972, to the Single European Act, 1987 |

* :Working Paper out of print