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Alexandre Kiss

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European Environmental Law and the Constitution

ALEXANDRE KISS*

The development of the constitutional law of the European Community ("EC" or "Community"), also referred to as the European Union ("EU") (the second means the political aspects of the institution), followed the different stages of the evolution of environmental concern and, thus, the development of environmental law in general, both in domestic and in international law. During the almost half century of their existence, the original European Communities ("Communities") developed progressively and were extended. Originally, six countries made up the Communities, and nine others progressively joined them. According to projections, in 2004 the EU will include twenty-five Member States. The EC was also fundamentally transformed, especially as environmental law is concerned. A distinction can be made between the different stages of evolution.

I. The First Phase: Environmental Protection Without Specific Legal Basis

The EC began as a set of three economic communities that merged into a single entity. The Communities added a political dimension through the creation of the EU. The 1951 Paris Treaty created the European Coal and Steel Community,[1] and in 1957 two treaties adopted in Rome established the European Economic Community ("EEC")[2] and the European Atomic Energy Community ("EURATOM").[3] Later, these three Communities merged into a single entity, the EC. Up to 1972, when environmental

* Professor Alexandre Kiss is the president on the European Council of Environmental Law.

1. TREATY ESTABLISHING THE EUROPEAN COAL AND STEEL COMMUNITY, Apr. 18, 1951, *available at* http://europa.eu.int/abc/obj/treaties/en/entoc29.htm (last visited Nov. 18, 2003).

2. TREATY ESTABLISHING THE EUROPEAN ECONOMIC COMMUNITY (TREATY OF ROME), Mar. 25, 1957, 2 B.D.I.E.L. 45 [hereinafter EEC TREATY].

3. TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY, Mar. 25, 1957, *available at* http://europa.eu.int/abc/obj/treaties/en/entoc38.htm (last visited Nov. 18, 2003).

awareness broadened, as evidenced by the Stockholm Conference on the Human Environment,[4] the Community institutions paid no specific attention to the development of an environmental policy. Only incidentally were actions taken which could be regarded as environmental measures—without, however, environmental awareness and motivation—in fields such as the classification, packaging, and labelling of dangerous substances,[5] or the permissible sound level and the exhaust system of motor vehicles.[6]

After the Stockholm Conference of June 1972 on the Human Environment, but also under the pressure of the growing awareness of the dimensions of environmental deterioration, a political decision was taken outside the statutory organs of the Communities. The heads of state or government of the then nine-member countries met in Paris on October 19 and 20, 1972, and proclaimed the necessity of improving the quality of life, paying particular attention to nonmaterial values and to protection of the environment.[7] The proclamation called for development of an environmental policy and invited the Community institutions to establish, before July 31, 1973, an action program setting forth a precise calendar.[8] As a result, the European Commission ("Commission"), the body corresponding in many respects to the secretariat of the organization, adopted and elaborated upon the first Programme of Action of the European Communities on the Environment. Covering the years 1974 to 1976, the Council of the European Union ("Council"), the organism representing the governments of the member states, adopted the Programme of Action, on November 22, 1972.[9] The Programme was followed periodically up to now by other action plans. In July 2002, a joint Decision of the European Parliament and of the Council laid down the Sixth Community Environment Action Programme, which

4. *See Report of the United Nations Conference on the Human Environment, Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26 (vol. 1), U.N. Sales No. E.73.II.A.14 (1972), *available at* http://www.unep.org/Documents/Default.asp?DocumentID=97 (last visited Nov. 16, 2003).

5. Council Directive 67/548/EEC, art. 1, 1967 O.J. (L 196) 1.

6. Council Directive 70/157/EEC, art. 2, 1971 O.J. (L. 42) 16.

7. *See* Declaration of the Council of the European Communities and of the Representatives of the Governments of the Member States Meeting in the Council of 22 November 1973 on the Programme of Action of the European Communities on the Environment, 1973 O.J. (C 112) 1 (referencing the Paris Summit Conference).

8. *Id.*

9. *Id.*

"should promote the process of integration of environmental concerns into all Community policies and activities. . . ."[10]

The legal basis of action during the following years was article 100 of the Treaty Establishing the European Economic Community (Treaty of Rome) ("EEC Treaty").[11] Article 100 authorized the EEC to adopt directives for the approximation of legislative and administrative provisions with a direct impact on the establishment of the functioning of the common market, particularly when disparities distorted competitive conditions in it.[12] Article 235 of the EEC Treaty could also be used, as it permitted action by the Community, when necessary, to achieve one of the aims of the functioning of the common market.[13]

Over one hundred Community instruments of a legislative character were adopted under this regime. Examples of environmental measures dating from this period based exclusively on article 100 include directives concerning the lead content of petrol,[14] detergents,[15] and the permissible sound level and exhaust system of motor cycles.[16] The Court of Justice, the judicial authority of the Communities, confirmed this practice, in a decision in which the validity of Directive 75/716, relating to the maximum sulphur content of liquid fuel, was raised.[17] The terms used in the judgment are characteristic:

> 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.[18]

The importance of this statement must be underscored. It shows a clear vision of the problem of the distortion of the condi-

10. Council Decision 1600/2002 of 22 July 2002, laying down the Sixth Community Environment Action Programme, 2002 O.J. (L 242) 1 [hereinafter "Environment Action Programme"].

11. EEC TREATY, *supra* note 2.

12. *Id.*

13. *Id.* art. 235.

14. Council Directive 85/210/EEC, 1985 O.J. (L 96) 25.

15. Council Directive 73/404/EEC, 1982 O.J. (L 347) 51.

16. Council Directive 78/1015/EEC, 1978 O.J. (L 348) 21.

17. *See* Case 92/79, Comm'n v. Italy, 1980 E.C.R. 1115 (1980).

18. *Id.*

tions of competition by the application of domestic legislation, unless common principles protecting the environment are adopted. This is exactly the situation that we face now on the global level with the liberalization of trade. Either general norms with a world-wide scope are adopted, ensuring the protection of the environment, or the most progressive legislation protecting the environment is likely to disappear, and the regression in this field will be great.

Most of the Community's environmental legislation during this period is based, however, both on article 100 and article 235. Some important directives can be quoted as examples related to:

- "[P]ollution caused by certain dangerous substances discharged into the aquatic environment of the Community[;]"[19]
- "[C]ombating of air pollution from industrial plants[;]"[20]
- "[T]he major-accident hazards of certain industrial activities[;]"[21]
- "[T]oxic and dangerous waste[.]"[22]

The Court of Justice confirmed the joint use of both articles 100 and 235 for environmental protection.[23] In a case concerning the validity of a directive on the disposal of waste oils, it held:

> In the first place it should be observed that the principle of freedom of trade is not to be viewed in absolute terms but is subject to certain limits justified by the objectives of general interest pursued by the Community provided that the rights in question are not substantively impaired. There is no reason to conclude that the Directive has exceeded those limits. The Directive must be seen in the perspective of environmental protection, which is one of the Community's essential objectives.[24]

It is legitimate to insist on the importance of this decision since the Court has, for the first time, recognized environmental protection as one of the Community's essential objectives.[25] This was an important step for the further development of the Community's action in this field, as it led to the formal proclamation of

19. Council Directive 76/464/EEC, 1976 O.J. (L 129) 23.
20. Council Directive 84/360/EEC, 1984 O.J. (L 188) 20.
21. Council Directive 82/501/EEC, 1982 O.J. (L 230) 1.
22. Council Directive 78/319/EEC, 1978 O.J. (L 84) 43.
23. *See* Case 240/83, Procureur de la Republique v. Ass'n de defense des bruleurs d'huiles usagees (ADBHU), 1985 E.C.R. 531 (1985).
24. *Id.*
25. *Id.*

the importance of environmental protection as one of the major objectives of the Community. It should also be stressed again that, as the Court expressed it, "the principle of freedom of trade is not to be viewed in absolute terms"[26] but must be subject to objectives of general interest of the whole community, regional or global.[27]

One may add that during the same phase, the European Community also became a contracting party to the major international treaties on nature protection and biological diversity, including the Washington Convention on International Trade in Endangered Species (CITES) of Wild Fauna and Flora,[28] the Bonn Convention on the Conservation of Migratory Species of Wild Animals,[29] and the Bern Convention on the Conservation of European Wildlife and Natural Habitats.[30]

II. The Constitutional Recognition of Environmental Protection as an Objective

An important change in the action of the EC in the field of environmental protection resulted from the adoption, on February 27, 1986, of a new treaty superseding the old ones of Paris of 1954 and of Rome of 1957, called the Single European Act.[31] This instrument definitely settled the issue of Community competence in respect to environmental protection. Later it was amended by the Maastricht Treaty on European Union of February 7, 1992,[32] which was modified in turn by the Treaty of Amsterdam, adopted on October 2, 1997.[33] The latter amended some of the former provisions and renumbered them. In the following, the references will be made to the Treaty of Amsterdam.

The inclusion in the Treaty of Amsterdam of provisions designed specifically to protect the environment confirmed the Com-

26. *Id.*

27. *Id.*

28. International Plenipotentiary Conference to Conclude an International Convention on Trade in Certain Species of Wildlife: Convention on International Trade in Endangered Species of Wild Fauna & Flora, Mar. 3, 1973, 12 I.L.M. 1085.

29. Convention on the Conservation of Migratory Species of Wild Animals, June 23, 1979, 19 I.L.M. 15.

30. Convention on the Conservation of European Wildlife and Natural Habitats, Sept. 19, 1979, Europ. T.S. No. 104.

31. SINGLE EUROPEAN ACT, 25 I.L.M. 506 (1986).

32. TREATY ON EUROPEAN UNION (MAASTRICHT), Feb. 7, 1992, O.J. (C 191) 1.

33. TREATY OF AMSTERDAM AMENDING THE TREATY ON EUROPEAN UNION, THE TREATIES ESTABLISHING THE EUROPEAN COMMUNITIES AND CERTAIN RELATED ACTS, Oct. 2, 1997, O.J. (C 340) 1 [hereinafter TREATY OF AMSTERDAM].

munity's task in developing a Community environmental policy. Article 3 of the Treaty of Amsterdam designates the tasks of the EU.[34] They include a policy in the field of environmental protection and article 174(2) adds that the Community policy on the environment shall aim at a high level of protection, taking into account the diversity of situations in the various regions of the Community.[35] Further details can be found in articles 174 to 176.[36] Article 174(1) designates the objectives of the Community policy:

- [P]reserving, protecting, and improving the quality of the environment;
- [P]rotecting human health;
- [P]rudent and rational utilisation of natural resources;
- [P]romoting measures at international level to deal with regional or worldwide environmental problems.[37]

Article 174(2) proclaims that the Community's environmental policy "shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay."[38]

According to article 174(3), "in preparing its policy on the environment, the Community shall take account of:

- [A]vailable scientific and technical data;
- [E]nvironmental conditions in the various regions of the Community;
- [T]he potential benefits and costs of action or lack of action;
- [T]he economic and social development of the Community as a whole and the balanced development of its regions."[39]

The compatibility between the conditions that must be taken into account on the one hand, and the basic principles article 174(1) proclaims on the other, can raise problems. The precautionary principle (the Treaty of Amsterdam, like its predecessor, the Maastricht Treaty uses the term "principle" and not "approach," which would be more usual for common law countries)

34. TREATY OF AMSTERDAM, *supra* note 33, art. 3.
35. *Id.* art. 174(2).
36. *Id.* arts. 174-176.
37. *Id.* art. 174(1).
38. *Id.* art. 174(2).
39. *Id.* art. 174(3).

includes that there can be a lack of full scientific certainty, so that taking account of available scientific and technical data does not always necessarily afford to find the solution.[40]

Similarly, the "polluter pays" principle[41] should be reconciled with the economic and social development of the Community and, in particular, with the balanced development of its regions which can impose the need of subsidies in order to help polluters suppress or minimize the pollution they cause. Still, it must be added that, according to article 175(5),

> Without prejudice to the principle that the polluter should pay, if a measure based on . . . [a decision of the Council taken in conformity with the usual procedure], involves costs deemed disproportionate for the public authorities of a Member State, the Council shall, in the act adopting that measure, lay down appropriate provisions in the form of . . . [either] temporary derogations, and/or financial support from . . . [a special fund of the EC].[42]

While the Treaty of Amsterdam confers such specific powers upon the Community in the field of environmental protection, it also provides for the limits of those powers.[43] Such limits can be compared to those generally included in constitutions of federal states. Five provisions are to be mentioned in this regard:

a) Such powers are to be exercised only if the Community's environmental objectives can be better attained at the Community level than at the level of the individual Member States. This flows from one of the basic principles of the Community, the principle of subsidiarity.[44]

b) According to article 174(2), "harmonisation measures answering these [environmental protection] requirements shall include, where appropriate, a safeguard clause allowing Member

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40. *See* TREATY OF AMSTERDAM, *supra* note 33, art. 174(2).
41. *Id.*
42. *Id.* art. 175(5).
43. *Id.* art. 5.
44. *See id.* art. 5. Article 5 states:

> In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.

Id.

States to take provisional measures, for non-economic environmental reasons, subject to a Community inspection procedure."[45]

c) "The protective measures adopted pursuant to [the environmental principles the Treaty proclaims do] not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaty. They shall be notified to the Commission."[46] Here again, the problem of limitations to the principle of free trade by domestic measures can be raised, not only inside the EC, of which one of the foundations is the freedom of trade, but also, by analogy, in the large context of globalisation.

d) While article 174(4) recognizes the capacity and the vocation of the Community to conclude arrangements with non member States or other international institutions in the field of environmental protection, it also affirms that such provision does not deprive the Member States of the right to negotiate in international bodies and to conclude international agreements.[47]

e) Finally, a protocol on the application of the principles of subsidiarity and proportionality of the Treaty of Amsterdam requires the EC to "justify the relevance of its proposals with regard to the principle of subsidiarity"[48] and take due account of the need for "any burden, whether financial or administrative,"[49] imposed upon government or industry.[50] European Community action cannot go beyond what is necessary to achieve the objectives of the Treaty; actions must be as simple as possible, and leave as much scope for national decisions as possible.[51] Framework directives are preferred over detailed measures.[52]

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45. TREATY OF AMSTERDAM, *supra* note 33, art. 174(2).

46. *Id.* art. 176. *See also* case C-203/96, Chemische Afvalstoffen Dusseldorp BV & Others v. Minister Van Volkshuisvesting, Ruimtelijke Ordening En Milieubeheer, 1998 E.C.R. I-4075 (1998) (confirming the right of Member states to take more protective measures).

47. TREATY OF AMSTERDAM, *supra* note 33, art. 174(4).

48. TREATY OF AMSTERDAM, *supra* note 33, Protocol on the Application of the Principles of Subsidiarity and Proportionality, at ¶ 9. The full text of the Protocol is available at http://europa.eu.int/eur-lex/en/treaties/dat/amsterdam.html#0105010010 (last visited Nov. 18, 2003).

49. *Id.* ¶ 9.

50. *Id.* ¶ 9.

51. *Id.* ¶ 7.

52. *Id.* ¶ 6.

III. Institutional Mechanisms

A. Institutions

The main institutions of the EU are the Council of the European Union ("Council"), the European Commission ("Commission"), the European Parliament, and the European Court of Justice.

a) The Council is the only institution that directly represents the governments of the Member States. The Council consists of a "representative of each Member State at ministerial level, authorised to commit the government of that Member State."[53] The ministers who meet are specialists, chosen by their government according to the issue discussed.[54] The environment ministers meet regularly two or three times a year as the Council of Ministers.[55] The most important acts which the Council adopts are either regulations which are obligatory in all their elements and are directly applicable in the Member States, or directives which are binding upon the Member States for the result to be achieved but leave them the choice of the means to obtain that result. The first act creates obligations of behavior, while the second imposes obligations of result. In both cases, the Council adopts such texts after the Commission submits and the requisite consultations are conducted.[56] The Council acts either upon unanimous or weighed majority vote.[57]

b) The Commission has twenty members chosen by agreement of the governments of the Member States.[58] There are one or two members from each of them.[59] Commissioners act in the Community's interest and not on behalf of their individual States.[60] Members of the Commission are appointed by unanimous agreement of the Member States to a five-year term and can only be removed by vote of censure from the European Parliament.[61]

The two principal functions of the Commission are to propose Community policies to implement the treaties and to provide for

53. TREATY OF AMSTERDAM, *supra* note 33, art. 203.
54. *Id.* art. 213(1).
55. *See id.* art. 204.
56. *Id.* art. 202.
57. *Id.* art. 205.
58. *Id.* art. 213(1).
59. *Id.*
60. TREATY OF AMSTERDAM, *supra* note 33, art. 213(2).
61. *Id.* art. 214(1).

the administration of the Community.[62] In regard to the first activity, the Commission prepares, discusses and adopts preliminary drafts of proposed standards for submission to the Council.[63]

The second main function article 211 of the Treaty foresees provides that the Commission must "ensure that the provisions of this Treaty and the measures taken by the institutions pursuant thereto are applied. . . ."[64] The latter authority is exclusive and may not be delegated to any other organ or institution.[65] In supervising implementation of the Treaty and of other Community obligations, the Commission acts where it finds a Treaty infringement, first by sending a formal note, then by delivering a "reasoned opinion."[66] Subsequently, if further action is needed, the Commission may bring a judicial proceeding against the involved Member State or entity.[67] The Commission can also take other measures, such as when it does not incorporate or apply Community rules, warning a member state that other members could impose sanctions against it.[68]

c) The European Parliament has 626 members directly elected by the people of the Member States and serving for a period of five years.[69] Members of the European Parliament do not sit by nationality but according to political affiliation.[70] The Parliament participates in the formulation of EC Law and the Community budget, as well as in monitoring the activities of the European Commission and Council.[71] The Parliament has set up a special committee on the environment, public health, and consumer policy.[72] Its main influence on legislation lies within its right to be consulted, its right to move amendments, and its power to delay legislation by withholding its opinion until the Commission responds to its proposed amendments.[73] When the Council

62. *Id.* art. 211.
63. *Id.* art. 175(2).
64. *Id.* art. 211.
65. *Id.* art. 213(2).
66. TREATY OF AMSTERDAM, *supra* note 33, art. 226.
67. *Id.* art. 228(2).
68. *Id.*
69. *Id.* arts. 189, 190(3).
70. *Id.* art. 191.
71. *Id.* art. 251(2).
72. *See* The European Parliament, Committee on the Environment, Public Health and Consumer Policy, *at* http://www.europarl.eu.int/comparl/envi_home.htm (last visited Nov. 18 2003).
73. The European Parliament, Rules of Procedure of the European Parliament, Annex VI (IX) (15th ed. 2003), *available at* http://www2.europarl.eu.int/omk/sipade2?

has transmitted to Parliament a common or interim position it adopted, and Parliament initially rejects or amends it, the Council must convene a "Conciliation Committee" to negotiate a compromise.[74] Within specified time limits, the Council representatives and the parliamentary representatives must attempt to negotiate a common position.[75] Once achieved, the Council and Parliament vote on the Committee proposal by qualified and absolute majorities, respectively.[76] Unless approved by both, the proposal lapses.[77] If the Committee fails to achieve a common proposal, the Council may go forward with its draft unless the Parliament rejects it by absolute majority.[78]

d) Once a regulation or directive is adopted, the European Court of Justice ensures correct interpretation and application of its provisions.[79] The court is composed of fifteen judges and eight advocates-general, the former organized in chambers of three, five or seven judges.[80] There is one judge sitting for each Member State.[81] Member States also nominate the advocates-general.[82] The court has jurisdiction to settle disputes within the Community and to award damages.[83] It may review the validity of acts of the Council or the Commission and give judgments on actions by Member States, the Council, or the Commission when it is alleged that there has been legal incompetence, errors of substantial form, infringement of the treaties, or abuse of power.[84]

In 1988, a Court of First Instance was set up, consisting of fifteen judges nominated by Member States.[85] Its jurisdiction extends to direct actions brought by natural or legal persons,

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74. TREATY OF AMSTERDAM, *supra* note 33, art. 251(3).

75. *Id.* art. 251(4).

76. *Id.* art. 251(5).

77. *Id.*

78. *Id.* art. 252(b).

79. *Id.* art. 220.

80. TREATY OF AMSTERDAM, *supra* note 33, arts. 221-222.

81. *Id.* art. 223.

82. *Id.*

83. *Id.* arts. 235-236.

84. *Id.* art. 234.

85. *See id.* art. 225(4) (establishing the Rules of Procedure of the Court of First Instance in agreement with the Court of Justice). *See also id.* art. 221 (establishing the Court of Justice shall consist of fifteen judges).

whether for annulment or damages.[86] Appeals may be taken to the European Court of Justice, but only on points of law.[87]

At the EU level, there is no environmental court as such. The European Court of Justice, within its attributed competencies, may consider environmental cases and therefore act as an environmental court.[88] Any individual or company may appeal a decision addressed to it, or challenge an act which, although in the form of a regulation or decision addressed to another person, is of direct and individual concern.[89] Such persons or entities are considered "privileged plaintiffs."[90]

e) Two bodies of consultative character can play a role in the legislative process of the EC. The Economic and Social Committee ensures the involvement of all economic and social groups in the development of the EC; it represents employers, workers, and various interest groups from agriculture, transportation, the professions, and consumers.[91] The Council appoints its members.[92] A Committee of the Regions represents regional and local communities; the Council equally appoints its members.[93]

f) The Council created a European Environmental Agency (EEA), by regulation adopted on May 7, 1990.[94] Its main objective is to provide technical and scientific support to the Community and Member States regarding environmental protection.[95] Unlike other organs of the Community, the EEA is open to countries that are not a member of the Community, but who share the environmental concerns of the Member States.[96] A management board, consisting of one representative of each Member State and two

86. TREATY OF AMSTERDAM, *supra* note 33, art. 230.

87. *Id.* art. 225(1).

88. *Id.* art. 230.

89. *Id.*

90. *See* case 321/95, Stichting Greenpeace Council (Greenpeace Int'l) & Others v. Cmty. European Comm'n, 1998 E.C.R. I-1651 (1998). The *Greenpeace* case made clear the limited scope of such a possibility where the non-government organization brought an action for annulment to the Court of First Instance and subsequently in an appeal against a decision of the Commission to co-finance a project in the Canary Islands. The Court stated that the condition on the *locus standi* of non-privileged plaintiffs was not fulfilled and rejected the application as non-admissible. *Id.*

91. TREATY OF AMSTERDAM, *supra* note 33, art. 257.

92. *Id.* art. 258.

93. *Id.* arts. 263-265.

94. Council Regulation 1210/90 on the Establishment of the European Environment Agency and the European Environment Information and Observation Network, 1990 O.J. (L 120) 1.

95. *Id.*

96. *Id.*

representatives from the Commission, directs the EEA.[97] In addition, the European Parliament designates two "scientific personalities" to the board.[98] The EEA, the functions of which are mainly non-political, is based in Copenhagen.[99]

B. Legislative Procedure

Article 175 of the Treaty of Amsterdam, combined with article 251, sets the rules of procedure for Community action in the field of environmental protection, as foreseen by article 174.[100] The Commission introduces a proposal with the Council and the Parliament. After having received the opinion of the Parliament, and after consulting the Economic and Social Council and the Committee of the Regions, the Council, voting as a weighed majority, takes a decision.[101] When the Parliament does not propose any amendment to the project presented by the Commission, or when the Council agrees with the amendments proposed by the Parliament, the proposed measure is adopted.[102] If not, the Council adopts a "common position" which it transmits to the Parliament.[103] In specific situations, a special procedure of conciliation, summarized above, is undertaken.[104]

By way of derogation from the usual procedure, the Council, on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee, and the Committee of the Regions, shall adopt specific measures acting *unanimously*—and not by weighed majority.[105] These are measures affecting:

- Town and country planning;
- Quantitative management of water resources or affecting the availability of those resources;
- Land use, with the exception of waste management;
- Decisions or programmes to be adopted by Member States;

97. *Id.*
98. *Id.*
99. *See* European Environmental Agency, Introduction to Information About EEA, *at* http://www.eea.eu.int/aboutus (last visited Dec. 6, 2003).
100. TREATY OF AMSTERDAM, *supra* note 33, arts. 175, 251.
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.*; *see also supra* text accompanying notes 75-78.
105. TREATY OF AMSTERDAM, *supra* note 33, art. 175(2).

- Choosing between different energy sources or planning the general structure of their energy supply.[106]

The Council may define those matters on which decisions are to be taken by a qualified majority.[107] In other areas, the Council, following the usual procedure, shall adopt general action programs setting out priority objectives to be attained.[108] The Council adopts the measures necessary to the implementation of these programs in the same way.[109]

IV. New Constitutional Developments

On December 7, 2000, an EU Charter on Fundamental Rights was solemnly proclaimed at a Summit of the European Council held in Nice.[110] While the Charter has not been adopted in the form of a treaty, it does have legal significance. It is the most important text on human rights the European Parliament, the Council, and the Commission have adopted to date. It breaks new ground in the range of rights, freedoms, and principles included. Unfortunately, the Charter falls short of proclaiming a human right to the environment. Its article 37 only affirms that "[a] high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development."[111]

Such a statement reflects a policy approach to environmental protection; not a legal one. Different from the other provisions of the Charter, it does not confer a right upon individuals but affirms a principle that the institutions of the European Union should apply and which already figures in the basic EC instruments.

Another development is more important, although it is more concerned with the general orientation of the EC than its constitutional structures and functioning. The Sixth Community Environment Programme, adopted on July 22, 2002,[112] which is intended

106. *Id.*
107. *Id.*
108. *Id.* art. 175(3).
109. *Id.*
110. EUROPEAN UNION, CHARTER ON FUNDAMENTAL RIGHTS, *available at* http://europa.eu.int/comm/justice_home/unit/charte/en/charter-preamble.html (last visited Nov. 18, 2003).
111. *Id.* art. 37, *available at* http://europa.eu.int/comm/justice_home/unit/charte/en/charter-solidarity.html (last visited Dec. 6, 2003).
112. *See* Council Decision 1600/2002, *supra* note 10.

to cover July 2002 through July 2012, should promote the process of integration of environmental concern into all Community policies and activities in order to reduce pressures on the environment from various sources.[113] It advocates a strategic integrated approach, incorporating new ways of working with the market that involves citizens, enterprises, and other stakeholders, in order to induce necessary changes in both production and public and private consumption patterns that influence negatively the state of, and trends in, the environment.[114] The Sixth Community Environment Programme shall form a basis for the environmental dimension of the European Sustainable Development Strategy, *inter alia*, by setting out environmental priorities for the Strategy.[115] The objectives respond to the key environmental priorities to be met by the Community in four areas: climate change, nature and biodiversity, environment and health, and quality of life, natural resources, and wastes.[116]

V. Conclusions

During its existence of almost half a century, the EC has developed complete legislation on environmental matters. Following the general trend in domestic as well as in international environmental legislation, its policy was first progressively oriented, from indirect approaches towards sectoral ones, adopting distinct measures aiming at the protection of water, air, or wildlife. The last phase, which started in the 1990s, shows a general trend towards integrated protection. This means that progressively, most human activities which can have an impact on the environment enter the scope of EC environmental legislation. At the same time, economic aspects of the proposed measures as well as the generally proclaimed need of sustainable development play an increasing role in the activities of the EC related to environmental protection.

113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*