

EUROPE'S "JOLLY GREEN GIANT":  
ENVIRONMENTAL POLICY IN THE EUROPEAN UNION

BY  
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INTRODUCTION

Cooperation among sovereign states in economic matters inevitably results in closer cooperation in other policy fields through a process known as "spillover." Leon N. Lindberg defines spillover as "a situation in which a given action, related to a specific goal, creates a situation in which the original goal can only be assured by taking further actions, which in turn creates a further condition and a need for more action, and so forth."<sup>1</sup> Thus, the agreement of states to adopt common economic policies creates a situation where other common policies will need to be implemented in order to realize the original goal of eco-

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<sup>1</sup> Leon N. Lindberg, *Political Integration: Definitions and Hypotheses*, in *THE EUROPEAN UNION: READINGS ON THE THEORY AND PRACTICE OF EUROPEAN INTEGRATION* 99,107 (Brent J. Nelson & Alexander C-G. Stubb eds., 1994).

conomic integration. An example of spillover from economic goals to other policies is the emergence of the European Union's environmental policy.

The Treaty of Rome, which established the European Economic Community in 1958, stated its goal as "the constant improvement of the living and working conditions of [Europe's] peoples" to be realized by the removal of barriers to trade among the six original members.<sup>2</sup> The original Treaty did not mention any common environmental policy. Forty years later, however, environmental policy is an important aspect of the European Union (EU). Indeed, since the signing of the Single European Act in 1987, protection of the environment is a stated goal of the EU. To realize this goal, certain institutions — such as the Directorate-General XI of the European Commission on Environment, Nuclear Safety and Civil Protection and the European Environmental Agency — have been established and a wide body of environmental legislation implemented.

The historical development of EU environmental policy demonstrates that as the members of the EU worked toward the goal of economic integration, a need for greater cooperation in the field of the environment surfaced. The degree of cooperation in this field has progressed so much, in fact, that environmental policy now displays characteristics far beyond that of a mere customs union to an almost supranational authority. While the EU may still lack a "green giant," it is taking significant steps toward a powerful, unified environmental policy.

### I. HISTORICAL OVERVIEW OF EUROPEAN UNION ENVIRONMENTAL POLICY

A historical review of the development of the EU's environmental policy reveals a clear trend of expanding the powers of EU institutions in environmental matters. This expansion of power did not progress at a strong and steady pace, but instead followed the stop-and-go pattern of European integration as a whole. As a result, four separate periods of development are distinguishable. The first period began with the signing of the Treaty of Rome in 1957. The second period started with the introduction of the First Environmental Action Programme in 1973 and continued to 1986. The third expansion of the EU's environmental policy originated with the signing of the Single European Act (SEA) in 1987. The fourth and present phase began with the signing of the

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<sup>2</sup> *Id.* at 14.

Treaty of Maastricht in 1992. Indeed, in the past forty years EU environmental policy has evolved from virtual non-existence to a field of law with almost supranational proportion.

### A. *The Treaty of Rome*

The Treaty of Rome, which established the European Economic Community (EEC or "Community") on January 1st, 1958, contained no references to the environment.<sup>3</sup> The Treaty states that the principle aim of the Community is "to promote throughout the Community a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, an accelerated raising [sic] standard of living, and closer relations between States belonging to it."<sup>4</sup> At the time, environmental considerations did not factor into the goals of the EEC. The Treaty, however, is significant because it established an institutional framework for decision making and dispute resolution that went beyond the simple structure of a normal trade agreement.<sup>5</sup> This framework facilitated the future development of a Community environmental policy.

Though no legislation with explicit environmental aims surfaced during this period, some measures were enacted that had an indirect impact on the environment. Examples include the 1967 *Directive 67/548 Relating to the Classification, Packaging and Labeling of Dangerous Preparations*, and the 1970 *Directive 70/157 Relating to the Permissible Sound Level and the Exhaust System of Motor Vehicles*. These were enacted primarily to facilitate the operation of the common market, but they do demonstrate an early attention to environmental matters.<sup>6</sup>

### B. *Developments From 1973 to 1986*

Environmental policy is a recent phenomenon. Ludwig Krämer states that "Environmental law and policy inside the Community — and in most of its member states — has developed only over the last twenty-five years."<sup>7</sup> Indeed,

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<sup>3</sup> David Baldock & Edward Keene, *Incorporating Environmental Considerations in Common Market Arrangements*, 23 ENVTL. L. 583 n.2 (1993).

<sup>4</sup> *Id.* at 577.

<sup>5</sup> *Id.* at 578.

<sup>6</sup> Jan Jans, *The Development of European Environmental Law*, in EUROPEAN ENVIRONMENTAL LAW: A COMPARATIVE PERSPECTIVE 271, 271-76 (Gerd Winter ed., 1996).

<sup>7</sup> Ludwig Krämer, *The Elaboration of EC Environmental Legislation*, in EUROPEAN ENVIRONMENTAL LAW: A COMPARATIVE PERSPECTIVE 297, 298 (Gerd Winter ed., 1996).

it was not until the early 1970s that the first steps were taken toward the development of a common European environmental policy. One of the first actions to signal the Community's attention to the environment occurred at the 1972 Paris summit of Heads of State or Government of the Community, where the main principles of a Community environment policy were outlined. Then, in 1973, the European Commission ("Commission") drafted and the Council of Ministers ("Council") adopted the Community's First Environmental Action Programme (EAP).<sup>8</sup> This program provided a multi-annual framework for Community initiatives, including legislative proposals.<sup>9</sup> The Community EAPs have since created a complex body of environmental legislation in which standards of environmental protection are largely harmonized.<sup>10</sup> Examples include Community standards for air and water quality, waste control, chemicals, conservation, and noise.<sup>11</sup>

According to David Baldock and Edward Keene, "the [EEC] built up a substantial body of environmental legislation in the late 1970s and early 1980s despite the fact that the original Treaty contained no reference to environmental policy or environmental objectives."<sup>12</sup> Most environmental legislation from this period is based on Articles 100 and 235 of the original EEC Treaty.<sup>13</sup> Article 100 was used as the legal basis for legislation when differences in national environmental laws had a detrimental effect on the common market. For example, Article 100 corrected distortions in competition resulting from different national environmental standards.<sup>14</sup> Article 235, on the other hand, was used if action by the Community was necessary to attain one of the objectives of the Community and the EEC Treaty did not provide the necessary power. In 1985, the power of the Commission to propose environmental legislation based on Article 235 was enhanced by the Court of Justice ("Court") ruling in *Case 240/483*.<sup>15</sup> In its decision, the Court, for the first time, recognized "environmental protection" as an essential objective of the Community. According to Jan Jans, this meant that

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<sup>8</sup> Rolf Wagenbaur, *The Single Market Programme and Protection of the Environment*, in ENVIRONMENTAL PROTECTION AND THE IMPACT OF EUROPEAN COMMUNITY LAW 18, 18-20 (The Irish Center for European Law, 1992).

<sup>9</sup> Baldock & Keene, *supra* note 3, at 580.

<sup>10</sup> Mary T. D. Harney, *Opening Address*, in ENVIRONMENTAL PROTECTION AND THE IMPACT OF EUROPEAN COMMUNITY LAW 2 (The Irish Center for European Law, 1992).

<sup>11</sup> *Id.*

<sup>12</sup> Baldock & Keene, *supra* note 3, at 583.

<sup>13</sup> Jans, *supra* note 6, at 272.

<sup>14</sup> *Id.* at 272-73.

<sup>15</sup> *Id.* at 273.

Article 235 could be used not only as a supplementary legal basis to Article 100, but could itself form the legal basis for Community environmental policy.<sup>16</sup> Thus, even without explicit references to the environment in the original Treaty of Rome, the Community's institutions developed a mechanism to implement environmental legislation within the framework of the Treaty.

### C. The Single European Act

The signing of the Single European Act (SEA) in 1987 provided great impetus for European integration as it aimed to reinvigorate the common market, remove internal barriers, and deepen the decision-making process and the political goals of the Community.<sup>17</sup> At the same time, the SEA established provisions extending EEC powers in the field of social policy, including health and safety of workers, research and technological development, and the environment.<sup>18</sup> Title VII of the SEA, for example, established environmental protection as one of the EEC's formal objectives.<sup>19</sup> In particular, Articles 130(r), 130(s), 130(t), and 100(a) were designed as tools for environmental protection.<sup>20</sup> Article 130(r) defined the objectives of Community environmental policy as follows:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilization of natural resources,
- promoting measures at the international level to deal with regional or worldwide environmental problems.<sup>21</sup>

Article 130(s) requires the Council to agree on Commission proposals unanimously, and Article 130(t) explicitly allows member states to maintain or introduce protective measures more stringent than EEC provisions, provided that they are compatible with other elements of the Treaty.<sup>22</sup> Article 100(a) is also a significant addition to the Treaty because it states that the Commission

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<sup>16</sup> *Id.* at 274.

<sup>17</sup> Baldock & Keene, *supra* note 3, at 581.

<sup>18</sup> LOUKAS TSOUKALIS, *THE NEW EUROPEAN ECONOMY: THE POLITICS AND ECONOMICS OF INTEGRATION* 63 (1993).

<sup>19</sup> Baldock & Keene, *supra* note 3, at 585.

<sup>20</sup> Jans, *supra* note 6, at 275.

<sup>21</sup> *Id.* at 277.

<sup>22</sup> Baldock & Keene, *supra* note 3, at 585.

“will take as a base a high level of protection,” which should alleviate concerns that environmental policies will be reduced to the lowest common denominator.<sup>23</sup>

These amendments to the original Treaty significantly impacted the status of the EEC's environmental policy in three respects. First, with the addition of Title VII, it is understood that the Community's environmental objectives are binding on the member states.<sup>24</sup> Second, enshrining environmental objectives in the language of the Treaty itself could have important implications for the settlement of conflicts between the Community's trade and environmental goals.<sup>25</sup> Finally, Title VII introduced three guiding principles of Community action: prevention, polluter's liability, and the avoidance of damage at its source.<sup>26</sup> As a result, greater emphasis is now placed on reduction of pollution and potential environmental damage at its source, as opposed to simply harmonizing standards of each member state.<sup>27</sup> Thus, the SEA not only introduced environmental protection as an explicit goal of the Community, but also greatly enhanced the powers of the Community's institutions to act in environmental matters.

#### *D. The Treaty of Maastricht*

Like the SEA, the Treaty of Maastricht (“Treaty”) represents a further commitment to European integration. It is most famous for setting the timetable to monetary union, but the Treaty also further entrenched the Community's role in environmental matters. One significant feature of the Treaty is that for the first time, the term “environment” is included in key provisions of Articles 2 and 3, thus displaying the Union's enhanced commitment to environmental protection.<sup>28</sup> To this end, the Treaty identified four guiding principles: sustainable growth, protection, the Precautionary Principle, and integration.

Article 2 states that the Community will encourage “sustainable and non-inflationary growth respecting the environment.”<sup>29</sup> The Protection Principle, elaborated in 130(r)(2), requires the Community to “aim at a high level of pro-

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<sup>23</sup> Wagenbaur, *supra* note 8, at 20.

<sup>24</sup> *Id.* at 19.

<sup>25</sup> Baldock & Keene, *supra* note 3, at 586.

<sup>26</sup> *Id.* at 585.

<sup>27</sup> Harney, *supra* note 10, at 2.

<sup>28</sup> Jans, *supra* note 6, at 275.

<sup>29</sup> Baldock & Keene, *supra* note 3, at 586.

tection" in the formulation of policies.<sup>30</sup> The Precautionary Principle compels the Community to act "before it is too late" when there is a strong suspicion that an activity will be environmentally harmful.<sup>31</sup> The Integration Principle states that "environmental protection requirements must be integrated into the definition and implementation of other Community policies."<sup>32</sup>

The Treaty reinforces the commitment to environmental protection by granting Community institutions greater power in environmental matters. For example, under the Treaty, the Court will have the power, in certain circumstances, to fine member states that are found guilty of non-compliance.<sup>33</sup> Another significant feature of the Treaty is the change in decision-making procedures. Decisions under Title VII, for example, can now be taken by a qualified majority, instead of the previously required unanimity.<sup>34</sup> The European Parliament is also given two opportunities to express its opinion with the new cooperation procedure.<sup>35</sup> Thus, the Treaty represents the latest expansion of the EU's environmental policy.

## II. ENVIRONMENTAL POLICY AS AN EXAMPLE OF THE SPILLOVER EFFECT

The historical development of the EU's environmental policy has generally expanded along with other aspects of European integration, namely economic cooperation. Environmental policy expanded, at least in part, as a *result* of closer economic integration. Lindberg describes this phenomenon as the "spillover effect," which occurs when the initial task and grant of power to the central institution creates a situation that can be dealt with only by further expansion of the task and the grant of power.<sup>36</sup> In the context of this discussion, the creation of a common market and common EEC institutions to oversee the integration process marked the initial task and grant of power. By the early 1970s, it became clear that the increased economic activity resulting from the creation of a com-

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<sup>30</sup> *Id.*

<sup>31</sup> Jan Jans, *Objectives and Principles of EC Environmental Law*, in *EUROPEAN ENVIRONMENTAL LAW: A COMPARATIVE PERSPECTIVE* 277, 283 (Gerd Winter ed., 1996).

<sup>32</sup> Baldock & Keene, *supra* note 3, at 587.

<sup>33</sup> *Id.* at 580.

<sup>34</sup> Jans, *supra* note 6, at 276.

<sup>35</sup> Baldock & Keene, *supra* note 3, at 587.

<sup>36</sup> Lindberg, *supra* note 1, at 107.

mon market could have negative impacts on the environment. Thus environmental policy became an important feature of the activities of the Community.

In light of the spillover effect, the EU's environmental policies can be separated into two categories: policies that arose as a direct response to increased economic integration, and policies that came about as a result of the expanded role of the environment in the EU's activities. The first category can be further divided into legislation designed to ensure a properly functioning common market, and legislation intended to address the environmental damage resulting from increased economic activity.

#### A. Policies Arising as a Direct Result of Economic Integration

Jan Jans notes that "environmental measures may relate very directly to the functioning of the internal market."<sup>37</sup> Indeed, the objective of many of the EEC's environmental directives is the removal of obstructions to trade and competition.<sup>38</sup> Emissions standards, for example, which used to be the EEC's main environmental policy tool, were intended to prevent certain states from having an unfair competitive advantage resulting from low environmental standards.<sup>39</sup> Article 100 of the SEA was used specifically where differences in national environmental laws had a detrimental effect on the common market, an example of which is *Directive 75/716* dealing with the maximum sulfur content of liquid fuels.<sup>40</sup>

Environmental policies can also be used to remove barriers to the free movement of people. Baldock and Keene argue that "the existence of different environmental standards within the Community is a restriction upon the movement of people and the completion of the internal market requires a commitment to minimum environmental standards across the Community," citing minimum standards for bathing and drinking water as examples.<sup>41</sup> The EEC has also used different levels of environmental standards to compensate for varying levels of social development. For example, Article 5 of *Directive 88/609*, on the

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<sup>37</sup> Jan Jans, *Competencies for EC Environmental Law*, in *EUROPEAN ENVIRONMENTAL LAW: A COMPARATIVE PERSPECTIVE* 317, 327 (Gerd Winter ed., 1996).

<sup>38</sup> Baldock & Keene, *supra* note 3, at 582.

<sup>39</sup> *Id.* at 591.

<sup>40</sup> Jans, *supra* note 6, at 272-73.

<sup>41</sup> Baldock & Keene, *supra* note 3, at 591.



limitation of emissions of certain pollutants into the air from large combustion plants, allows Spain to temporarily apply less stringent emissions standards.<sup>42</sup>

Another aim of EU environmental policies is to alleviate the detrimental effects of increased economic activity resulting from the completion of the internal market. The 1988 "Costs of Non-Europe" report estimated that the creation of an internal market could result in a growth of GDP ranging from 4.5 to 7 percent; as well as increased air and water pollution, and waste production.<sup>43</sup> According to Baldock and Keene, "environmental safeguards (such as environmental quality standards) are necessary if this growth is to be sustainable in an environmental sense."<sup>44</sup> Wägenbaur points to the examples of electricity generation and transport, which together account for sixty percent of sulfur dioxide, eighty percent of nitrogen oxide, and fifty-five percent of carbon dioxide emissions.<sup>45</sup> In response to these increased stresses on the environment, the Council adopted a resolution in 1985 that charged the EEC with developing standards in order to protect health, safety and the environment.<sup>46</sup>

The Fourth Environmental Action Programme stresses that environmental protection must be taken into account as a fundamental factor when economic decisions are made.<sup>47</sup> Article 130(r)(2) explicitly states: "Environmental protection requirements must be integrated into the definition and implementation of other Community policies."<sup>48</sup> These measures clearly demonstrate the spillover effect, as they were enacted solely to rectify the environmental situation resulting from the initial task of economic integration.

### *B. Policies Beyond the Internal Market*

The second category of EU environmental policies are those extending beyond the mere functioning of the internal market to proactive environmental protection. The environment is one of several policy domains where the EEC has advanced beyond a trade focus and adopted wider objectives and accompa-

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<sup>42</sup> Jans, *supra* note 31, at 295.

<sup>43</sup> TSOUKALIS, *supra* note 18, at 90.

<sup>44</sup> Baldock & Keene, *supra* note 3, at 591.

<sup>45</sup> Wägenbaur, *supra* note 8, at 18.

<sup>46</sup> Baldock & Keene, *supra* note 3, at 590.

<sup>47</sup> Harney, *supra* note 10, at 1.

<sup>48</sup> Jans, *supra* note 31, at 287.

nying instruments.<sup>49</sup> As was previously noted, Title VII of the amended Treaty of Rome states that one goal of the Community is "to preserve, protect, and improve the quality of the environment."<sup>50</sup> The preamble to the Habitat Directive is even more explicit, declaring that "the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community, as stated in Article 130(r) of the Treaty."<sup>51</sup>

These mandates exceed mere correction of market distortion, and represent further spillover. Not only does environmental policy occasionally go beyond the correction of distortions, it sometimes allows trade barriers to be *erected* on environmental grounds. For example, the Court affirmed the right of member states to restrict trade based on environmental protection concerns in a case involving French used-oil disposal legislation.<sup>52</sup> Since the establishment of environmental protection as an objective of the Community, the EEC has taken more proactive measures, including proposals for eco-labeling, the protection of habitats, and the establishment of the European Environment Agency in 1994.<sup>53</sup> The Community *Directive 92/43* on natural habitats provides for a system of co-financing when measures to protect priority natural habitats and priority species would result in excessive financial burdens for some member states.<sup>54</sup>

### III. ENVIRONMENTAL POLICY AND SUPRANATIONALITY

Through the spillover effect, the EU's environmental policy developed as the member states' commitment to integration in other areas increased. As a result, the EU's environmental policy now displays several overtly supranational characteristics. One outstanding feature of the EU is that it has developed an unusually advanced set of political institutions and has also built up a substantial body of legislation of a kind not found in other international agreements or common markets.<sup>55</sup> In fact, the Articles established by the Treaty almost make the Union a federal system with respect to environmental matters.<sup>56</sup> For ex-

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<sup>49</sup> Baldock & Keene, *supra* note 3, at 577.

<sup>50</sup> *Id.* at 585.

<sup>51</sup> Jans, *supra* note 31, at 278.

<sup>52</sup> Baldock & Keene, *supra* note 3, at 598.

<sup>53</sup> Harney, *supra* note 10, at 2.

<sup>54</sup> Jans, *supra* note 31, at 295.

<sup>55</sup> Baldock & Keene, *supra* note 3, at 576.

<sup>56</sup> *Id.* at 586.

ample, both EU legislation and Court rulings take priority over national laws.<sup>57</sup> The principle of subsidiarity might seem to reserve significant powers for the individual member states, at the expense of EU institutions. However, EU environmental policy commonly involves “transboundary environmental matters which would seem to pass the test of subsidiarity.”<sup>58</sup> Jan Jans explains further that “it is precisely in cases of transfrontier environmental issues, a product-oriented environmental policy or an environmental quality policy and stringent anti-emission measures that Community action can produce significant benefits of scale.”<sup>59</sup> Thus, as environmental matters can often be best dealt with at the Community level, and indeed take priority over national laws, they acquire a supranational quality.

Another supranational aspect of environmental policy is the role that EU institutions play in its creation. The four main EU institutions — the Council of Ministers, the European Commission, the European Parliament, and the European Court of Justice — all have a significant impact on the formulation and implementation of environmental policy. For example, the twenty member Commission has the exclusive right to initiate legislation.<sup>60</sup> While the members of the Commission are drawn from the fifteen EU countries, each must swear an oath of independence.<sup>61</sup> The right to initiate legislation is not an insignificant power, as it allows the Commission to decide the direction of EU policies. All Commission proposals, however, must be approved by the Council, which in environmental matters is composed of the Environmental Ministers of each member state.<sup>62</sup> The Court is responsible for interpreting the Treaty, and may nullify national laws if they are found to be contrary to the Treaty’s provisions.<sup>63</sup>

Though the European Parliament (“Parliament”) is primarily consultative, it has been granted a somewhat more important role in environmental matters. Under the Treaty, the Parliament now has the right to formally express its opinion and propose amendments to legislation, a process known as the “cooperation procedure,” before it is formally adopted by the Council.<sup>64</sup> If the Parliament

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<sup>57</sup> *Id.* at 580-81.

<sup>58</sup> Jans, *supra* note 37, at 319.

<sup>59</sup> *Id.*

<sup>60</sup> Baldock & Keene, *supra* note 3, at 3; Krämer, *supra* note 7, at 304.

<sup>61</sup> Europa, *The European Commission—Introduction 1995-2000* (visited Apr. 3, 1999) <<http://europa.eu.int/en/comm/c9500/intro.html>>.

<sup>62</sup> Baldock & Keene, *supra* note 3, at 579.

<sup>63</sup> *See id.* at 580.

<sup>64</sup> *Id.* at 579.

approves a measure, it will be adopted *jointly* by the Parliament and the Council. If the Parliament does not agree, or if the Council does not adopt Parliament's proposed amendments, a conciliation procedure begins between Parliament and the Council in which the Commission participates.<sup>65</sup> The compromise text must then be approved by both the Council and the Parliament. In addition, the Parliament can reject this text with an absolute majority.<sup>66</sup> These decision-making procedures therefore give the Parliament an important role in the formulation of environmental policy. This is significant since the Parliament is notoriously "green." Indeed, the Environmental Committee is one of the biggest, most active and influential committees of the Parliament.<sup>67</sup> As a result, the Parliament constantly pleads for more progressive and efficient environmental legislation at the Community level.<sup>68</sup>

Another supranational aspect of environmental policy involves the use of Qualified Majority Voting (QMV) in the Council. In the past, EU environmental legislation has largely been decided by unanimity. However, some measures may now be adopted by QMV.<sup>69</sup> Unanimity is still required in legislation involving provisions of a fiscal nature: town and country planning; land use, excluding waste; water resource management; and energy sources and supply structure.<sup>70</sup> However, Article 130(s)(2) allows the Council, acting unanimously, to decide which of these matters are to be decided by QMV.<sup>71</sup> Legislation involving Article 100(a) can also be adopted by QMV.<sup>72</sup> In fact, under the Treaty, the most commonly used voting procedure in environmental matters is QMV.<sup>73</sup> Therefore, national interests are sometimes subordinated to overriding EU interests in environmental policy as a result of the decision-making procedures involved, giving environmental policy a distinctly supranational quality.

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<sup>65</sup> Krämer, *supra* note 6, at 307.

<sup>66</sup> *See id.*

<sup>67</sup> *See id.* at 305.

<sup>68</sup> *See id.* at 304.

<sup>69</sup> Baldock & Keene, *supra* note 3, at 579.

<sup>70</sup> *See id.* at 588.

<sup>71</sup> Jans, *supra* note 37, at 325.

<sup>72</sup> Wägenbaur, *supra* note 8, at 20.

<sup>73</sup> Baldock & Keene, *supra* note 3, at 7.

## IV. THE EFFECTIVENESS OF EUROPEAN UNION ENVIRONMENTAL POLICY

Over time, the EU's environmental policy has grown in scope and application. However, one might question its effectiveness to date. Though EU institutions have significant powers to formulate and implement environmental legislation, there still exist some inherent weaknesses that hinder its impact on the behavior of member states. For example, the most widely used environmental act is the Community Directive, which relies on the individual member states for implementation within certain time limits. Wägenbaur notes that "frequently the time limits are not respected, or the implementation is not complete, or the member states commit errors of all kinds."<sup>74</sup> In 1990, the Commission had nearly 400 cases outstanding that claimed noncompliance by member states.<sup>75</sup> In addition, there are no financial penalties to the member states in most cases.<sup>76</sup> However, there are plans to improve these deficiencies. One example is a proposal to establish an inspectorate in Brussels to oversee the application of EU laws and the appointment of "green" ombudsmen in each of the 15 member states.<sup>77</sup> Another proposal is to provide individuals and interest groups with easier access to national courts in order to ensure compliance with EU environmental regulations.<sup>78</sup>

Despite various structural limitations and initial failures, EU environmental policy has met with a certain degree of success. For example, the UK's water utilities are now making multi-billion dollar investments to meet EU standards, and its beaches, among the dirtiest in Europe, are getting cleaner as resorts are shamed into action by the annual European clean beach listings from Brussels.<sup>79</sup> Significant progress has also been made with regard to the provisions of the Fifth Environmental Action Programme. According to the European Environment Agency, successes include "the reduction of ozone depleting substances, emissions of heavy metals and sulfur dioxide and improvement of surface water

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<sup>74</sup> Wägenbaur, *supra* note 8, at 23-24.

<sup>75</sup> Raymond Vernon, *Behind the Scenes: How Policy Making in the European Community, Japan, and the United States Affects Global Negotiations*, ENVIRONMENT, June 1993, at 23.

<sup>76</sup> Baldock & Keene, *supra* note 3, at 580.

<sup>77</sup> Bruce Barnard, *EU Toughens Environmental Stance*, EUROPE, April 1996, at 25.

<sup>78</sup> *See id.*

<sup>79</sup> *See id.*

quality.”<sup>80</sup> Thus, despite some inherent weaknesses, there exists a great potential for success of the EU’s environmental policy.

#### CONCLUSION

Though it is not yet a giant in EU politics, European environmental policy has developed significantly over the last forty years. Although several theories might explain the growth of environmental policy in the EU, the “spillover effect” described by Lindberg provides the clearest explanation of its evolution. Some environmental legislation was enacted during the “Eurosclerosis” period of the 1970s and 1980s, but the greatest periods of expansion of environmental policy occurred during the age of “Europhoria,” with the enactment of the Single European Act, and again with the establishment of the Treaty of Maastricht. Indeed, these two treaties placed environmental protection on the list of EU objectives and granted enhanced powers to EU institutions to implement environmental policies. As a result, these environmental policies have given these institutions a supranational quality, as they now have the power to enact rules that are binding on all member states. Indeed, we may see further entrenchment of environmental policy in the future as EU institutions gain more power to enforce their stated environmental goals.

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<sup>80</sup> Domingo Jimenez-Beltran, *The European Commission’s mid-term review of the 5th Environment Action Programme* (visited Apr. 3, 1999) < <http://www.eea.eu.int/Document/ArtPaper/speeches/CLUBBXL.htm> >.