

## EUROPEAN ENVIRONMENTAL POLICY - LEGISLATIVE AND ECONOMIC FRAMEWORK

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In ancient times the answers received from the Delphic oracle were confusing, ambiguous, but they always came true. Fate could not be avoided. Today's messages to the oracle at Brussels receive replies that are ambiguous, confusing and not always clear. Nevertheless, we are assured that they will always come true and our fate is unavoidable. Nowadays, however, instead of a priestess it is a government minister or lawyer who replies.

European Environmental Regulation

Sources of Regulation

- National and local regulations
- International conventions and recommendations
- European Union legislation

Key Trends and Developments

- Stricter regulation and liability
- EIA, IPC, and common standards
- Fiscal measures
- Growing impact on investment and financing
- Green publicity: Eco-Audit, Eco-Label

In Europe the sources of environmental policy began with national and local regulations that were rather uncoordinated. First, there was a political recognition. This could be at city council level, where a particular problem was realized, such as how to handle waste water, traffic, production from a factory outside the city, or farmers using more water to irrigate, thus creating problems for fishing, by polluting the water of the bay. Therefore, policy decisions began at national and local levels but in a very uncoordinated way.

International Conventions and Recommendations

Council of Europe

- Model Agreement on Liability for Accidental Pollution
- Draft Convention of Civil Liability for Environmental Damage

- OECD and UN conventions on transport of hazardous materials
- Basle Convention on shipment of hazardous wastes
- United Nations protocols on ozone depletion, biodiversity, climate change.

International conventions, such as the Rio Convention on Bio-Diversity and Climate Change, or the Montreal Protocol, under the United Nations auspices, concerning the depletion of the ozone layer, have taken place. How do these high level policy decisions filter down to the daily practices of business people? This is one of the motivations for the legislation that comes from Brussels. There is now an agreement amongst the member states to establish principles and standards that will apply throughout the European Union. However, there was no environmental aspect in the Treaty of Rome when it was first signed. Its only goal then was to try to create an integrated market among member states.

National and Local Regulation

- Wide variations in law and enforcement
- New environmental acts
- Traditional administrative law focus, but:

undefined standards for pollution, and contamination  
uncoordinated permits and procedures

#### Recent development of civil and criminal liability

And then the classic problem of environmental regulation arises, which is: "Who goes first?" If, for example, the Danes can improve their standard of health, or the environment, additional costs will be imposed on businesses there. As a result, the latter will cease to be as competitive, as similar businesses in the Netherlands, France, or Spain. There is always the problem of environmental regulation. Some level of uniformity must be established, even if methods of trying out the same policies are a little different. Similar costs and burdens must be imposed on all the players in the industrial game. This is difficult during economic recession when governments, examining economic conditions, say: "There is high unemployment, we are losing market share in our principal markets to outsiders, which means incredible demands are placed on our budget. The higher the unemployment level, the higher the amounts paid in the form of social benefits. How can we possibly pay for the additional costs imposed by environmental regulations?"

Within the member states of the European Union there is a need to try to coordinate environmental activities, which increasingly affects the Alpine, Nordic and Eastern European countries as well. Similar costs and standards must be created to establish some common guidelines for environmental protection. As a result, the benefits from better public health and a better environment will be recognized. Ultimately, even increased profits for individual companies will be achieved.

Some of these trends are already recognizable. Businesses are already thinking much more about environmental matters than before, most commonly as a result of requirements to establish an environmental impact-assessment or statement. This is done before embarking on plant expansion, for example, or introducing a new product line.

In the European Union the concept of integrating pollution control is being developed into legislation. The result will be that, instead of dealing separately with each emission, waste and hazardous product problem, it will be possible to go to one national authority with experts in each area, which is already beginning to happen in England, for example. A company can develop a plan for each manufacturing facility and each large agricultural operation, taking into account the hazardous materials, emissions into air, water and soil resulting from these activities, as well as how the plant's waste stream will be handled. These developments represent a trend that has only just begun.

The use of fiscal measures is also increasing. The European Union proposal for an eco-tax is now in serious trouble. An alternative might be the introduction of harmonized excise taxes on carbon-based fuels. But unless all member states agree to move collectively, none of them will be willing to impose the additional costs. Increasing political cooperation can therefore be expected. This has an impact on investment in business, both in expanding facilities and in attracting foreign capital. Taking out a flotation on the London Stock Market, the New York Stock Exchange, or attracting foreign investment for loans from the European Investment Bank or the World Bank, means that one of the first questions will be: "What are your environmental risks?" After consultation with lawyers and technical consultants, an eco-audit is carried out to discover if the environmental risks are being minimized. Such an audit will make the project interesting for investors, in the long term. The profit motive, itself, begins to drive the change in operations and procedures, as well as in end products.

Finally, the concept of green-marketing, or green-publicity. Such ideas were developed by the Minnesota Manufacturing and Mining Company in the 1970's, very early, before some of the regulatory requirements were in place. This company now has the reputation for being very environmentally-conscious. It produces thousands of different consumer products which increasingly affect the consumer marketplace, as individual consumers become more interested in environmental affairs. In Germany, for example, consumers are beginning to look for labels showing that products have been produced in an environmentally sound way. The ability to use the new eco-label, now approved by the European Union, also exists, and is in the process of being applied to different product lines. This is also beginning to make a difference in the market place. So even on the consumer's side, the demand to consider the environment is growing.

#### Key Trends and Developments

##### Stricter regulation and liability

Emissions and permits  
Hazardous substances  
Disaster prevention and response  
Waste management - Cleanup  
Civil liability

Civil liability for waste  
Green Paper on civil liability for environmental damage  
Court access for individuals

## EIA, IPC, and common standards

- Environmental impact assessments
- Integrated pollution control (single permits)
- Hazardous substances and waste classifications
- Environmental quality standards

## Fiscal measures and financial instruments

- LIFE and similar programs
- ECO Tax

## Growing impact on investment and financing

- Environmental audits
- Indemnification and warranties
- Policies of EIB, EBRD, World Bank, other lenders
- Structural Funds and Cohesion Funds

## Green publicity

- Eco-Audit and public access to data
- Eco-Label

To summarize some of these trends: the integration of the regulatory scheme in integrated pollution-control permits has already been discussed. In reality, most of Europe is probably about three to five years away from seeing this. Such a trend seems to represent the future.

On the other side, civil liability issues are increasing. The Council of Europe Convention on Liability for Environmental Harm was launched this year. It has not yet been adopted by the entire European Union, and is still controversial within it. It is one of the subjects in a green paper on environmental liability. But even before the European Union adopts it, Greece, Italy and several other countries have already signed the Council of Europe Convention. However, its impact will not be felt for several months or years yet. For example, it will mean that a municipality could build a port and, if necessary, go to court in order to require a manufacturer or operator to pay for cleaning up the environmental harm that it caused. This would be on a prospective basis. Companies do not have to pay for all the past damage they have caused, but any company operating at an old industrial site should be very careful to get an eco-audit as soon as possible, to establish how much of the damage was there before, otherwise the company concerned might be called upon to pay for it.

Such a situation developed in the United States, where litigation occurred over large superfund sites to which hundreds of companies and municipalities had contributed industrial and municipal waste. Then the federal government decided that such damage must be paid for by any company identified as using the site. For example, 3M was one of the big companies involved at a site where they had been dumping for generations. Most of the other companies could not be found, but unfortunately for 3M, three of the barrels at the site had their name painted on them. That one site cost 3M twelve million dollars to clean up, which it did very promptly, on its own.

On larger sites hundreds of millions of dollars can be required to clean up past problems. This is perhaps not as huge an issue in Greece, where some of the environmental considerations are already coming into effect before the most polluting industries have become well established. But here it will also become an issue. The Greek government has signed the Convention on Civil Liability, so this is already something to consider, in the business context. The question of insurance coverage must also be raised. The access of individuals and environmental organizations to the courts is important if they are to enforce some of the laws that may not have been rigidly enforced by the government itself in the past.

Historically, the destiny that was predicted here in Greece was inevitable. Fortunately, today something can be done about it, rather than simply waiting for destiny's results to become painfully clear. The importance of having a partnership with government has been discussed in this meeting. There is already a movement away from the context of governments reluctantly imposing regulatory costs on business, and toward governments working together with business. This is in order to understand the nature of the environmental impacts they create, and to develop practical solutions to them, which may mean many more trips to the appropriate ministry, to the local government, and sometimes to Brussels. But it is to ensure that the problems and applications in a particular industry are taken into consideration, so that a practical approach to them can be developed. The following list shows some of the measures currently coming out of the European Union:

## European Union Legislation and Enforcement

- EEC Treaty of Rome (1957): EC acts to prevent market distortions

Single European Act (1987): "high level of protection" for environment  
 Maastricht Treaty (effective 1 Nov. 1993) requires environmental consideration in all EC legislation  
 European Commission, DG XI, drafts legislation and monitors implementation  
 European Environmental Agency: studies, data, etc.  
 Harmonization procedures  
 European Parliament role (increasingly "green")  
 Qualified majority vote in Council  
 Environmental measures  
 Unanimous Council; vote for broad policy and fiscal measures  
 Maastricht Treaty increases EP role, allows qualified majority vote for many measures  
 Member states transpose, enforce EU legislation  
 Harmonization and "subsidiarity" tension  
 Localization of some issues  
 Member states may enact stricter rules  
 Extension of EU law to other European countries  
 United States experience as a reference point

This movement is now being realized in Brussels. Increasingly, there is a commitment to using public funds and technical help to provide assistance in making this transition. It means changing the nature of operations, building the infrastructure and making the necessary plant improvements in order to take into account environmental concerns. Some examples: for several years now various structural funds have existed within the former European Community, now the Union. During the period from 1989 to 1993, Greece received a total of 7.8 billion ECU. An ECU at present is worth approximately a dollar and fifteen cents in United States currency, so 7.8 billion ECU is over 8 billion dollars, invested in Greece between 1989 and 1993. These were funds which were directed from Brussels, in cooperation with the Greek government, for structural projects.

Regional development funds use money specifically earmarked to promote the development of underdeveloped regions within the Union. Every member state has underdeveloped regions. But in addition, social funds are to train employees in environmentally protective new techniques. Therefore, whether it is tourism, fisheries, or manufacturing, if there are changes required in an industry, not only technical assistance but also employee retraining, can now be funded. These funds in Brussels have not been spent, because member governments and local businesses have not been aware that they could use some of this money for such projects. At times of economic recession, when governmental budgets are limited and there is no intention of raising taxes, creative thinking is essential. Some of these funds could be of great assistance in making the transition.

As part of the Community Agricultural Program, funds are also available for the environmental impact of agricultural operations, especially important in Greece, where water is always at a premium. Here, something like three-quarters of water consumption goes in agricultural irrigation. In many cases this simply means inefficient open trenches, where most of the water evaporates. It is possible to look for World Bank, or European Investment Bank financing, as well as European Union agricultural funds. These can be used to convert to hydroponic irrigation, using much less water to accomplish the same productivity. Removing less water from the rivers is also better for the fisheries industry on the coast. Some of the most controversial projects in Greece have been exactly those water-division projects that benefit agriculture, but hurt fisheries. The European Union seeks solutions that do not act to the detriment of one industry or another.

Now, as a result of the Maastricht Treaty, a new cohesion fund exists. This is not like the structural funds, where the European Union will undertake 20% to 30% of the cost of the project. The cohesion funds, which are focused on Greece, Spain, Portugal and Ireland, are to be spent on two kinds of projects: transport infrastructure, and environmental protection. However, cohesion funds cannot be used to pay the administrative costs of the government. The money has to be used for the environmental projects themselves, whether they are pilot programs or the actual infrastructure projects.

It is possible to combine elements in a development project. For example a re-development project for an island, or coastal city, can ask for structural funds to develop the tourist industry and create jobs in the area. It can also look to the cohesion funds to build the new water-treatment plant and the sewage facility. The attraction of cohesion funds is that they will intervene to up to 80% of the cost of the project.

These cohesion funds are designed to keep the peripheral European Union countries from going further into debt in order to finance non-commercial infrastructure projects. These countries will then be more likely to meet the public debt and inflation targets which are set for entry into the European Monetary System. The Large Transport Environment projects represent exactly this kind of investment.

Somehow the ECU ends up driving the availability of funds today. Again, this is an area where member state governments have only just begun to use their imagination as to how the funds could be applied. The mandate for the cohesion funds is to maintain a balance between transport and environmental projects. 1993 was the first year in which money was available under the cohesion fund, and obviously all four governments had transportation projects in mind. Very few environmental projects were proposed. However, the director of the cohesion fund said that he would not let the balance become more than 60/40, in favor of transport projects. The only transport projects to be considered, on

a case-by-case basis, are those consistent with the Trans-European Network Proposals. The environmental projects have to be for infrastructure, or changes in operations that improve environmental protection. This is in accordance with the guidelines of the fifth Environmental Action Program, EIB, promulgated by the European Commission.

The amount of money committed to the cohesion fund, through to 1999, is 15 billion ECU. Between 16% and 20% of that will be spent in Greece. Therefore it is now time, either as an individual company, trade association, or local chamber of commerce, to develop projects to submit to the Ministry of Economics and to get placed before the Commission in Brussels, for 1994 all the way through to 1999. These projects can be combined with outside financing, but not with the structural funds. It is possible to get an EIB loan; to look for financing in the commercial markets, and also to have the large infrastructure portion built with European Union funds.

This is an opportunity that should not be missed. The difference between whether 16% or 20% of this 15 billion ECU is spent in Greece lies in just how creatively and quickly projects can be prepared, presentations made and approved, case-by-case. Each project must also have a cost benefit analysis and a technical environmental assessment, as these have been part of the planning from the beginning.

The current meeting of the Council of Ministers in Brussels is discussing Mr. Delor's White Paper dealing with unemployment and competitiveness in the European Union. One of the commitments that has been made, and is apparently going to be agreed by heads of state of all member states, is to increase the level of spending and financing from the European Union for these Trans-European Network projects. They are not focusing on air transport, but are looking at large infrastructure projects in road, rail and maritime transport. They are also considering the information and telecommunications network infrastructure. A combination of project proposals with the environmental aspects of the proposal will qualify for a new source of funds. All projects must meet the environmental standards of the European Union, and the amount of money to be committed through to 1999 is over 22 billion ECU, which is over 25 billion dollars.

So the money is available to do something now, in the "window of opportunity" in the second half of this decade. It is available, if companies think creatively, put together their joint projects, get them supported by their national government and presented at Brussels, and thus begin to get things done. This could be a very productive five or six years ahead. Many problems could be dealt with which have long been of concern. If they are not dealt with soon, they will keep business from developing and continue to be a burden on society in the future.

I leave these thoughts with you, and hope that you will bring the appropriate sacrificial offerings to Brussels, and wish you well.

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