



**EU Environmental Governance:
A Benchmark of Policy Instruments**
With a focus on Agriculture, Energy and Transport
A Study commissioned by the
Belgian Federal Department of the Environment
Ministry for Public Health, Food Chain Security & Environment

Executive Summary: 1 June 2002

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1 Executive Summary

A specific methodology ("3 Bs") has been adopted in this benchmarking report. A Baseline being defined – EU environmental policy and governance in 2001, the Benchmarking analyses the various processes and structures with impact on environmental policy; then, the Basis for better environmental governance is assessed.

1.1 Background, Purpose and Scope of this Study Report

1. During 2001, a number of developments helped move the issue of governance in general and environmental governance in particular up the agenda of European policy debate. Chief among them were, and still are the:
 - Convention on the Future of Europe preparing Treaty changes for adopting in the Inter-Governmental Conference in 2004,
 - Lisbon Process and the resulting pressure to align economic and social policies among the Member States through the (new) Open Method of Co-ordination,
 - progressive debate about reforming the structure and procedures of the Council of Ministers and the European Council to prepare for enlargement,
 - preparation and publication of the European Commission's "European Governance: A White Paper",
 - drafting of the EU Sustainable Development Strategy and the 6th Environmental Action Programme,
 - continued interest in the Cardiff Process for environmental policy integration and giving effect to Article 6 of the EC Treaty demanding such integration,
 - the Conclusions of the Council (Environment) of 12 December 2001 on Sustainable Development Strategy follow-up, establishing regular and dependable follow-up to policy decisions.
2. In this context, under Belgian EU Presidency in 2001, the Belgian Federal Department of the Environment commissioned the study "EU Environmental Governance: A Benchmark of Policy Instruments", guided by a steering committee¹ and undertaken jointly by Ecologic and IEEP London. Preliminary results and remaining issues were presented in a "Key Points for Discussion" paper to stimulate debate at a Workshop on EU Environmental Governance in Brussels on 5 March 2002. This was held with the

¹ Members of the Steering Committee: Belgian Federal Department of the Environment: Marc De Win (Chairman); Alexandre de Lichtervelde (Project manager), Expert, Environmental Integration & Sustainable Development Strategy; previously SDS pilot during Belgian EU Presidency; Philippe Bourdeau, professor at IGEAT (ULB) and past-Chairman of EEA Scientific Committee; Belgian Permanent Representation to the EU: Frédéric Chemay, EU Environment Council chair during Presidency and Belgian seat as from Jan 02; Belgian Federal Department of the Environment: Joëlle Smeets (Communication Manager); Ministry for Consumer Protection, Public Health and Environment: Ulrik Lenaerts (Cabinet's Environment Counsellor); Brussels Institute for Environmental Management (IBGE), Data Observatory: Marie-Christine Berrewaerts; Belgian Federal Department of the Environment: Maud Istasse (Legal counsel); Flemish Region: Remy Merckx, Head of Europe & Environment Division.

participation of the Spanish Presidency of the European Union 2002. The Federal Ministry of Agriculture, Forestry, Environment and Water Management of Austria provided their support by hosting the event in their Permanent Representation to the European Union.

3. The baseline of this report consists of the following documents:²
 - EU Sustainable Development Strategy
 - Sixth Environment Action Programme
 - Cardiff process and its sectoral integration strategies
 - December 2001 and March 2002 Environmental Council Conclusions
4. The focus of this study is on the European Union, as EU environmental policy is still in search of its marks. Issues of global governance are not addressed within the scope of this study.
5. This report highlights a range of issues that are part of EU Environmental Governance and documents the key findings of the study in relation to:
 - Overall objectives and policy approaches
 - Institutional structures and procedures
 - Policy dimensions and policy instruments
 - Sector policies and environmental policy integration
 - Horizontal & institutional issues in environmental policy integration

This summary does not include all key findings and recommendations of the study (ca. 70 pages with 20 charts and tables & 5 annexes). The summary will be available in French and Dutch in the coming weeks.
6. The study report is published ahead of the June European Council meeting in Sevilla, which is expected to take important decisions on Council reform and environmental governance. Being an outcome of the Belgian Presidency 2001, the report provides a reference for a continued discussion and a possible further elaboration during the Spanish and Danish Presidencies 2002 and beyond.

1.2 Overall Objectives and Policy Approaches

The European Union now needs a completed strategic goal for the Lisbon Process including the environment. This is still lacking, although the Lisbon Process has been complemented with an environmental element by the Göteborg European Council meeting. The European Council should call for the **European Union to "become a highly eco-efficient economy and use energy and natural resources in a way that respects the carrying capacity of the environment [...]"**.³

² Only documents released before the 1st of June 2002 were considered.

³ Conclusions of the Council (Environment) of 4 March 2002, No. 12. The current wording in No. 5 of the Conclusions of the Lisbon European Council reads: "to become the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion".

7. The European Council should also give the **same weight to the environmental dimension** of the Lisbon Process as to the economic and social dimensions. This should be reflected in substantial improvements to the **environmental component in the Commission synthesis report** and the number and weighting of environment-related **indicators in the structural indicators list** (with priority for indicators on biological diversity, water and chemicals) as well as in the **establishment of committees** (see below, 2.3).
8. The **Charter of Fundamental Rights**, which is not a binding legal document, contains an environmental article which is **not satisfactory**. It does not give citizens a right to the protection of their natural environment, and it only binds the institutions. The Convention on the Future of Europe should, in consequence, consider making the **Charter part of EU primary law**, and **introducing the right to a high level of environmental protection and the improvement of the quality of the environment**.
9. The European Commission and Council should establish clear and transparent **rules for consultations** of stakeholders at all levels, covering the legislative process as well as implementation and evaluation. **Consultations must be transparent and well organised**. The names of the participants and the outcomes of consultations could be made available to the interested public. It would be helpful to include **environmental NGOs** in all consultations on environmentally relevant sectoral policies.

1.3 Institutional Structures and Procedures

10. The Convention on the Future of Europe should consider ways to **revitalise the Community Method (CM)**, reduce the implementation deficit, and obtain synergies by applying the CM and the Open Method of Co-ordination (OMC) in combination. This matter is particularly urgent in the field of environment, where the CM has resulted in notable successes but where a structure for OMC is now needed for institutional coherence with the other dimensions of sustainable development. The Convention should also consider **Treaty changes** establishing OMC structures in environmental policy.
11. The European Council meeting in Sevilla in June 2002 should consider the creation of one or more **permanent advisory committees**, such as:
 - **Article 6 Committee** for environmental policy integration,
 - **Environmental Policy Committee**, like the Economic Committee, the Employment Policy Committee or the Social Protection Committee, plus a
 - **Sustainable Development Policy Committee**.

Various options are now under consideration in COREPER and the discussions should be brought to a speedy conclusion, with the **Sevilla European Council establishing at least one committee**. Failing that, the Environment Council working party should be reinforced as an intermediate measure, e.g. by a sub-committee. One advantage of such committees, used in **Open Method of Co-ordination**, are the **two-year rotating chairmanships** which provide continuity, an effect urgently needed in the development and implementation of environmental or sustainable development strategies.

12. Key parts of the Open Method of Co-ordination are **formalised annual environmental performance reporting** to the European Commission or, through an Environmental Policy Committee, to the Council (Environment), and the adoption by Council of **reports and guidance to the European Council**.
13. The European Commission, in its **Action Plan for Better Regulation**, and the Council should consider which aspects of the Open Method of Co-ordination could be applied to environmental policy. Options would be: **Guidelines to Member States, peer reviews, institutional indicators**, involvement of national administrations in policy formulation at European level (**vertical coherence**), etc. In the long term, the Convention on the Future of Europe should consider the challenge of **matching or better co-ordinating the competencies** of Council configurations, Commission services, Parliament and the ministerial structures in the Member States. Some clarification might also come from the forthcoming inter-institutional agreement.
14. Simplification of the **agendas of the European Council** meetings should not be allowed to reduce the political authority attached to the EU Sustainable Development Strategy and the Cardiff Process for Environmental Policy Integration.
15. The **General Affairs Council** (GAC): some Member States want to split it into two parts, one of which should focus on cross-cutting and institutional issues. This “Horizontal Affairs Council” (HAC) should have the authority to undertake, at Council level, detailed reviews, co-ordinate, and draft guidance on sectoral environmental integration strategies and priorities for sustainable development. The HAC should also extend the SDS **Road map** of the General Affairs Council to the two other dimensions of SD.
16. As a first priority, the **Environment configuration** of the Council should continue to be an identifiable formation of the Council. In the event it is paired with other Council configurations, it should be ensured that the Environment Council keeps its own identity. The Council (Environment) should study the options for, and then establish **monitoring and assessment routines** to observe results stemming from the Conclusions of the Council (Environment)⁴ and review mechanisms to assess the follow-up to policy initiatives, in particular the implementation of the Cardiff EPI Strategies.⁵
17. The European Commission and the Council should acknowledge and **strengthen the role of the European Environment Agency** (EEA) in evaluating the effectiveness of environmental policies, approaches and instruments at European and Member State levels. The EEA should act as the **focal point** for shared policy learning to improve the environmental performance in the Member States and at Community level, and in other EEA member countries. In this context, national and European **reporting obligations** relating to environmental policy integration and sustainable development should be **streamlined**. **Penalties for non-compliance** with information disclosure or reporting requirements should be considered.

⁴ Notably of 12 December 2001 and 4 March 2002.

⁵ In case the Environment Council is paired with other Council configuration(s) it could be paired with sectors covered by the SDS i.e. health, transport, energy, agriculture.

1.4 Policy Dimensions and Policy Instruments

18. The **external dimension** of EU environmental policy and sustainable development has not yet been clarified and, apparently, much initial analysis is still needed before a coherent set of targets can be formulated. On the basis of the Conclusions of the Council (Environment) of 4 March 2002 on the internal dimension of SDS and the Conclusions of the Council of 12 December 2001 on the follow-up to the environment-related aspects of SDS, the European Council should invite the Council to develop the **inter-linkages between the internal, external & global dimensions** of Community policy on sustainable development.
19. **Enlargement** of the European Union is expected to adversely affect the future adoption of environmental legislation, unless directly associated with the internal market or accompanied by financial inducements. **A weaker environmental policy is likely** because of the more cumbersome process of policy definition where a wider range of arguments would need to be considered:
- bio-regional conditions,
 - levels of administrative capacities,
 - traditions of civic involvement in environmental matters,
 - different levels of pollution and
 - economic capacities for dealing with its consequences.
- In addition, implementation deficits are likely to increase. The **Open Method of Co-ordination** and **environmental conditionalities** attached to financial transfers to new Member States may be important parts of strategies for mitigating these problems.
20. In June 2001, the European Council meeting in Göteborg called for 'mechanisms to ensure that all major policy proposals include a **Sustainability Impact Assessment** (SIA) covering their potential economic, social and environmental consequences'. The matter is now considered by the Commission's Secretariat-General as part of an "Action Plan for Better Regulation" prepared for the Sevilla European Council meeting in June 2002. Given the nature of issues under consideration by the **Convention on the Future of Europe**, SIAs should be undertaken of its major proposals with the potential to affect the environment.
21. The 6th Environmental Action Programme requires the European Commission to consider, **prior to their adoption**, whether actions in the economic and social fields contribute to and are coherent with European environmental policy. Clear guidance should be developed establishing **good practice and minimum essential characteristics for SIAs and environmental impact assessments**. The introduction of SIAs as part of a wider, integrated impact assessment system should not be allowed to dilute consideration of essential environmental issues. SIA systems need **significant resources** and high-level political support to retain credibility.
22. **The new system of Tripartite Agreements** for environmental protection between Commission, Member States and regional or local authorities, should be tried and implemented with safeguards to avoid the risk of eroding harmonised and high levels of protection.

23. The European Council should invite the Council and the Member States to try the instrument of **Enhanced Co-operation** and evaluate its suitability for extended application.
24. Adopting and enforcing the **right combination or 'mix' of instruments, be they legislative or non-legislative**, is of paramount importance for successful environmental protection and environmental policy integration. The European Commission should explore the scope for synergies among instruments.

1.5 Sector Policies and Environmental Policy Integration

The process of environmental policy integration (EPI) is aimed at ensuring that the needs of the environment are considered, respected, and preferably advanced in the process of choosing policy options and implementation for sectoral policies that have potentially significant impact on the environment. Without **concrete actions** aiming at implementing the existing strategies and addressing environmental issues in sectors not yet covered by integration strategies, there is little chance to overcome the apparent inability or unwillingness of some Council configurations to recognise and sufficiently address the full range of unsustainable consequences of their policies and decisions.

25. Integrating environmental protection requirements into the **Common Agricultural Policy** (CAP) remains limited to implementing Agenda 2000 and no substantial discussion on improving EU governance has taken place in this field. However, during 2001, a new agenda emerged in the EU Sustainable Development Strategy with an emphasis on 'encouraging healthy, high quality products, environmentally sustainable production methods, including organic production, renewable raw materials and the protection of biodiversity'. These environmental issues are now taken up by Member States in preparation of the mid-term review of the CAP beginning in the summer of 2002, with a view of an ambitious reform of the CAP to be adopted in 2006. Much could be gained in the short term by Member States using the opportunities for increasing funding for agri-environment and other second-pillar measures through the use of modulation.
26. The integration of environmental policy requirements into **Energy Policy** in the context of **climate change** started early, led to the development and progressive adoption of a range of measures and instruments, and is now ahead of other sectors. Shortcomings persist, however, in view of meeting the targets established by the Kyoto Protocol, the main driver of climate change policy. The focus of European energy policy now needs to shift towards sustainable energy use and apply the full range of instruments (including taxation, targeted subsidies, emissions trading, voluntary agreements) and the role of the Council in its Energy configuration, which only meets every six months, should be strengthened.
27. Taking account of environmental concerns relating to **Transport and Mobility** also started early and the sector is now remarkable for its integration of transport and environment experts and officials working on indicators and policy formulation. This moved transport policy beyond traditional "end-of-pipe" solutions to recognise the need to decouple transport growth from economic growth. However, problems of CO₂-emissions and congestion, and growth in air traffic persist. Solutions are likely to be achieved through demand management and applying the full range of policy instruments, according to the proposals of the Horizon 2010 White paper. Progress in the sector will also

depend on the co-ordination of different scales of land use or spatial planning with the transport infrastructure development.

28. Understanding of the environmental impacts of the **Internal Market** and trade liberalisation is still limited, the formulation of effective policy responses in the sector is lacking and no quantified targets, timetables or indicators have been developed. There is a need now to clarify the circumstances in Article 95 of the EC Treaty. An amendment should allow a Member State to adopt measures for environmental protection in the presence of a Community harmonising measure, and empower Member States, regional and local authorities to take any action that is needed to protect the environment or natural resources. The purpose of the internal market would be served well by phasing out environmentally-harmful state aid in the Member States, and by using taxes and charges for internalising environmental and resource costs at all levels of governance. The process of adoption of a Community Integrated Product Policy (IPP) should be accelerated to promote changes in production and consumption patterns, supported by eco-labelling, use of standardisation, and the new rules for green procurement.
29. **Cohesion Policy** is a decentralised Community policy with only limited guidance from the General Affairs Council. Provisions for integrating environmental concerns exist with respect to the Structural Funds but are lacking in relation to the Cohesion Funds. Even with the environmental provisions, the Structural Funds demonstrate the conflict between two sets of governance principles, decentralisation and participation, versus better co-ordination and coherence. Extending the Cohesion Policy to new Member States after enlargement in the next programming period after 2007 should be preceded by a reform of objectives and procedures. Also, the Council – meeting in its General Affairs configuration or a future Horizontal Affairs Council (HAC) – should regularly review the use of Structural and Cohesion funds and issue guidance on good practice.
30. The development of **effective environmental policy integration (EPI)** strategies is still deficient at Community level:
 - **Appreciation of the environmental impacts** of sectoral policies is only relatively advanced in agriculture, energy and transport.
 - Having no systematic analysis of environmental impacts leads to **inadequate formulation of EPI objectives** and (more concrete) targets. A consistent approach has been developed chiefly in transport policy, with a strong role for the European Environment Agency.
 - The **consistency of planned measures with EPI objectives** is reasonable only in relation to energy and transport policies, and to a much lesser extent in agriculture.
 - **Indicators** and time frames, and regular **monitoring and review** mechanisms, are essential for strategy implementation and follow-up. Again, only the Transport Council has adopted suitable indicators with clear links and relevance to policy objectives, but still without enforceable deadlines.
 - Consideration for **nature conservation** and **bio-diversity** is inadequate in all sectors, and the European Council meeting in Barcelona has highlighted the renewed importance of both issues. This was backed by the Commission Communication on the European Union Sustainable Development Strategy, which calls for establishing a system of indicators by 2003. The European Council should now specifically ask all

relevant Councils configurations to consider nature conservation and bio-diversity in **updating and revising their Cardiff EPI Strategies**.

31. Consequently, the European Council should highlight the importance of sustained action for the **full implementation of Article 6 of the EC Treaty**, which stipulates that 'environmental protection requirements must be integrated into the definition and implementation of all Community policies and activities'. The European Council should provide **guidance on the structure and content of Cardiff EPI Strategies** and establish **minimum requirements for implementation and follow-up**.
32. An initiative should also be taken to promote EPI and the implementation of the Cardiff EPI Strategies in the **Member States**, leading to the development of **national processes for environmental integration** building on:
 - Harmonised reporting and other instruments for information exchange,
 - Comparative assessments (peer reviews), and on that basis on
 - Trans-national policy learning and the development of networks of experts.

The aim should be to create a continuous and stable process – incorporating relevant elements of the **Open Method of Co-ordination** – and thereby stabilise EPI policies in the Member States and other countries.