

DAVID VERSUS GOLIATH?

**THE CHALLENGE FOR ENVIRONMENTALISTS
IN THE MAKING AND THE IMPLEMENTATION
OF EU ENVIRONMENTAL POLICY**

by

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EU ENVIRONMENTAL POLICY AND THE LOBBYING SCENE

The rapid development of EU environmental policy since the early 1970s merits continuous research and deserves to elicit surprise. Despite the non-representation of this policy area in the founding treaties of the three communities, and the fact that until 1993 all environmental policy decisions had to be approved by unanimous vote of the Council of Ministers, in terms of decision-making results environmental policy measures have enjoyed a rare degree of success. Around two hundred environmental policy directives have been passed by the EU, as well as hundreds of other instruments (regulations, recommendations and decisions). The Commission may have deftly moved after the United Nations conference on the environment in Stockholm in 1972 to position Brussels as leader of this particular, fairly virgin policy field, but it is nevertheless a policy field where actions at European level enjoy a high degree of legitimacy in the eyes of public opinion and where EU initiatives have also attracted a wide degree of interest and involvement from non-governmental interests, including commercial as well as environmental interests.¹

Many observers of interest group activity in the EC/EU have concluded that the formation of Europe-level interest groups is strongly correlated with the development of decision-making capacity in a given policy area at the Brussels level.² It would therefore seem appropriate to expect that, as EC/EU policy-making on environmental matters has developed, so the environmental lobby will have grown at the European

¹ See Eurobarometer 40 (December 1993) pp 60 et seq, which shows that 66% of EU citizens surveyed (including an absolute majority in every member state) consider protection of the environment an area of EU rather than nation state responsibility.

² J Meynaud and D Sidjanski, Les Groupes de Pression dans la Communauté Européenne 1958-1968 (Brussels, 1971), A Butt Philip, Pressure Groups and the European Community, (UACES, King's College, London, 1985).

level. The facts are not so simple. Although a number of environmentalist pressure groups have arrived on the Brussels scene in the last twenty-five years, such as Greenpeace, Friends of the Earth (CEAT) and the European Environmental Bureau (EEB), their numbers are very small - no more than 19 out of a total of 744 such Euro-groups identified by this author in 1991.³ Their presence is part of a wave of establishments of a presence in EU-decision-making processes by non-industrial and non-commercial groups charted in Table 1, but only a very insignificant part of the whole picture. More significant has been the evolution of the corporate "green" lobby, often based around existing Euro-groups, plus the occasional environment issue-specific industry association (e.g. European Water Pollution Control Association). Recent observers of the lobbying scene have indeed noticed the arrival of the industrial and commercial lobby on "green" issues,⁴ and a few have even commented upon the threat this may pose to the environmentalist lobby.⁵

This is not unrelated to the changes in the EC/EU treaty base, arising from the intergovernmental conferences of 1985 and 1991, which first of all specifically included environmental policy, together with a list of principles and objectives, in the Single European Act (SEA) of 1986 under Article 130, and later added the broad goal of sustainable development to the EU remit (Article 2) and introduced more opportunities for qualified majority voting and co-decision on environmental matters under the Treaty of European Union signed at Maastricht in 1992. The numerical score of environmental policy decisions is impressive, with some one hundred directives agreed unanimously before the EC even had a specified treaty competence in environmental matters, and one environment commissioner (Ripa de Meano) claiming the passage of some 300 environment measures during his own truncated term of office.⁶ Table 2 lists the annual flow of environmental directives. This spate of activity

³ A Butt Philip (ed.), Directory of Pressure Groups in the European Community (Longman, Harlow, 1992)

⁴ J Gardner, Effective Lobbying in the European Community (Kluwer, Deventer, 1991)

⁵ S Mazey and J Richardson, "Environmental Groups and the EC: Challenges and Opportunities" in Environmental Politics, Vol. 1 No. 4, Winter 1992, also published in D Judge (ed.) A Green Dimension for the European Community (Frank Cass, London, 1993)

⁶ to be added

has not only spawned new Euro-groups, but also new commercial sources of information on day-to-day environmental policy-making such as the annual American Chamber of Commerce EC Environmental Review and the monthly European Information Service reports on EU environmental policy⁷

The single market programme undoubtedly brought to the fore a number of issues where economic and environmental policy objectives were in conflict (e.g. vehicle exhaust emissions) but the policy-makers have been increasingly forced to address global environmental issues (such as climate change and bio-diversity) and to integrate these concerns into other policy-making, in however limited a fashion. This has meant that there is now a significant overlap of interests between world development Euro-groups and environmentalist Euro-groups, and the emergence of groups with a dual interest such as the Environment and Development Resource Centre

At the same time, the single market programme and the campaign for respect for the subsidiarity principle in Brussels has apparently tempted DGXI to shift the emphasis of its work more towards an agenda that is acceptable to industry and commerce, and specifically to promote policy measures that are horizontal rather than vertical in scope, notably the regulation on eco-labelling,⁸ the regulation on the EU eco-management and audit scheme,⁹ and the new directive on packaging and packaging waste.¹⁰

If the environmental agenda is shifting in the directions favoured by corporate interests, then one factor playing in their favour is the superiority of their resources for playing the lobbying field in comparison with the green movement. Not only do industrial and commercial Euro-groups vastly outnumber environmentalist Euro-groups by some 20:1, but their respective financial and staff resources are similarly

⁷ American Chamber of Commerce (EC Committee), EC Environmental Guides 1993 to date, and European Information Service, Brussels, Monthly Reports on European Environment policy (subscription service)

⁸ Council Regulation 880/92/EEC on a Community award scheme for an eco-label, OJ L 99, April 11 1992. See also OJ C 39, 16 February 1995

⁹ Council Regulation 1836/93/EEC published in OJ L 168, July 10 1993

¹⁰ Directive 94/62/EC, 20 December 1994 published in OJ L 365, 31 December 1994

unbalanced¹¹ Even though the European Commission has attempted to use grants, indirect subsidies and contracts to keep environmentalist groups going, this risks creating dependency problems for the groups rather than providing a sure foundation for the exercise of any countervailing power¹²

EU-LEVEL INITIATIVES IN QUESTION

This frenzy of environmental policy-making and policy-makers in Brussels stands in stark contrast to the actual performance of member states in implementing EC/EU legislation in this field, and to the attempt to divest Brussels of much of its responsibility for deciding and implementing environmental regulations

This very poor implementation, application and enforcement of EU directives and regulations concerning the environment has attracted limited attention over the years¹³ Recent work done by this author suggests that the record of the member states is so bad that the credibility of the whole exercise of EU-level decision-making on environmental issues is questionable.¹⁴ Table 3 shows that seven of the 15 least well implemented EU directives covering all sectors are environmental directives. Table 4 shows how, even after allowing for un-sanctioned implementation delays, one-third of the EC environmental legislation passed before 1989 is the subject of the EC's infringement proceedings. More recent legislation is in even greater difficulties on the ground, with the majority of environmental directives passed since 1989 subject to infringement proceedings.¹⁵

¹¹ A Butt Philip, Pressure Groups in the European Community (UACES, King's College, London 1985)

¹² S Mazey and J Richardson, "Environmental Groups and the EC. Challenges and Opportunities" in Environmental Politics, Vol 1 No 4, Winter 1992

¹³ A Butt Philip, Implementing the European Internal Market Problems and Prospects (Royal Institute of International Affairs, London, 1988), H Siedentopf and J Ziller (eds) Making European Policies Work (Sage/Bruylants, London/Brussels, 1988); R Macrory, "The Enforcement of Community Environmental Laws Some Critical Issues" in Common Market Law Review , Vol. 29 pp 347-369 (1992), R B Brown and A Butt Philip, "Environmental Enforcement in the European Union: Lessons from North America", CIBR Occasional Paper, Bath University School of Management (1994)

¹⁴ A Butt Philip, "Regulating the Single European Market", paper presented to the ESRC/COST Conference at Exeter University, 8-10 September 1994

¹⁵ *Ibid.*, Table

The problems of the poor implementation of EC/EU law have been discussed elsewhere, and particularly in relation to environmental policy¹⁶ The problems extend across from implementation, to application, to enforcement and penalties for non-compliance¹⁷ There is now evidence even that EU programmes themselves are inadequately subject to the rule of EU environmental law (e.g. the structural funds)¹⁸

Recent years have also seen a sharpening conflict between the drive to realise a single European market and the licence, contained in Article 130 of the EEC Treaty, for EU member states to develop national environmental standards that are set higher than EU requirements. This has been confirmed in a variety of cases heard by the ECJ (e.g. the Danish returnable bottles case of 1988, the Cinisello Balsamo plastic bags case of 1989), raising concerns among business interests about the use of environmental standards as barriers to trade.

This concern is not unconnected with efforts at EU level to respect the principle of subsidiarity The suggestion early in 1992 by the President of the Commission, Jacques Delors, that the Commission would be happy to hand back to the member states responsibility for the setting and implementation of environmental standards¹⁹ brought forth a chorus of disapproval from lobbyists in Brussels, whether corporate or environmentalist. Both sets of interests (apart from having their *raison d'être* partly challenged) were shocked at the anarchy that might ensue and at the possibility of far less commitment being given in some member states to high environmental standards than the Commission and other EU decision-makers. Corporate interests, especially multinational companies, proved to be particularly keen to see a single set of rules in force across the whole of the Union.²⁰

¹⁶ R Macrory, *op. cit.*, and A Butt Philip (1988), *op. cit.*

¹⁷ House of Lords Select Committee on the European Communities, Implementation and Enforcement of Environmental Legislation, 9th Report, Session 1991-92, HL Paper 53, (HMSO, London, 1992)

¹⁸ Court of Auditors Report, Special Report No 3/92, OJ C 245, 23 September 1992, pp 1-30

¹⁹ ENDS Report no 205, February 1992

²⁰ American Chamber of Commerce, EU Environmental Guide, Brussels, 1994).

The problem of reconciling the increasing economic, geographic and environmental diversity of the enlarged Union is likely to make the agreement of common environmental policies more difficult, although the changes to the voting rules of the Council of Ministers under the Maastricht Treaty will help alleviate this problem²¹ Nevertheless the poor record of compliance and the claims for respect for the principle of subsidiarity are additional factors suggesting that the integrity of the EU's environmental policy will be hard to sustain

THE LOBBYING SURGE CONTINUES

The most recent evidence of lobbying activity in Brussels does not offer any evidence to suggest that the tide of lobbyists advancing upon the EU institutions is abating - rather the reverse. Estimates of the numbers of lobbyists active in Brussels vary between 3,000 and 10,000,²² the lower figure being probably nearer the mark. The 1995 edition of the European Public Affairs Directory²³ lists over 1,600 organisations involved in pressure group politics (including a variety of consultants and professional advisers) compared with the 1,250 recorded at the start of 1992.²⁴

The problem for EU policy-makers now is not so much how to ensure wide consultation with relevant interests as how to manage the problem of lobbying overload. A recent Bath University study of the lobbying activity associated with the packaging and packaging waste directive²⁵ found that 279 lobbying entities contact DGXI (the sponsoring department) of the Commission between mid-1990 and December 1993, as the directive evolved towards its final form with a common position adopted by the Council. Of these entities (see Table 5) some seventy per cent (196) were classified as representing trade and industrial interests and less than four

²¹ A Butt Philip, "Old Policies and New Competences" in A Duff et al . Maastricht and Beyond (Routledge, London, 1994)

²² S Andersen and K Elhassen, Making Policy in Europe, (Sage, London, 1993)

²³ The European Public Affairs Directory 1995, (Landmarks SA/NV, Brussels, 1994).

²⁴ A Butt Philip (1992), op. cit.

²⁵ M H Porter, "Cross-national policy networks and the EU's packaging and packaging waste directive", unpublished Bath University paper presented to an EU-sponsored conference in Sonderborg (Dk), April 1995

per cent (10) were environmentalist in character. A similar imbalance was to be found on inspection of the representations to the European Parliament's rapporteur on this issue, Luigi Vertemati. Brussels anecdote refers to this as the "most lobbied directive in history"

In the course of the evolution of this directive several ad hoc cross-national coalitions of interests were constructed with whom the Commission was keen to develop a dialogue²⁶. Six of these groups represented trade and industry and one, the Sustainable Packaging Action Network (SPAN), with sixty member organisations drawn from all over Europe, represented "green" interests specifically. One other coalition, the European Environmental Round Table (TREE), is of a more permanent character and functions as a Brussels-based liaison group of environmental and consumer NGOs.

These far from stable coalitions attempted with varying success to reach common positions amongst their own member organisation's policy positions, the more effectively to lobby the Commission. In the early stages of the debate the Commission was particularly anxious to marshal the technical expertise of industrial groups so as to become better informed about the viable options for the directive. At this stage environmentalist groups were not involved in similar discussions with DGXI.²⁷ Their concerns, alongside those of the three most "advanced" EU member states in environmental policy matters (Denmark, Germany and the Netherlands) were to be brought into play later in the decision-making process, in the European Parliament and the Council of Ministers. However, the end result of all this lobbying activity was what one academic observer described as a directive that "unfortunately appears to achieve neither of its two stated objectives, relating to the minimisation of the impact of packaging and packaging waste on the environment, and the achievement of the

²⁶ The six trade and industry coalitions were: the European Union for Packaging and the Environment (EUPE); the European Packaging Federation (EPF), the Packaging Chain Forum (PCF), the European Organisation for Packaging and the Environment (EUROPEN), also EUROCOMMERCE and EUROMCONTACT.

²⁷ M H Porter (1995), *op cit.* See also M H Porter and A Butt Philip "The Role of Interest Groups in EU Environmental Policy Formulation: A Case Study of the Draft Packaging Directive" in European Environment, Vol, 3 Part 6, December 1993.

SEM [single market]”.²⁸ The new legislation now sets lower environmental standards than in the three “advanced” member states, while these standards are considered too tough for many others, who have achieved through negotiation temporary opt-outs. The resulting policy package appears to be neither effective nor particularly stable, and licenses continued lack of harmonisation of environmental standards at least in the medium term. As such it appears to be more of a “symbolic” piece of legislation than one that is designed to achieve real changes on the ground.

The case of the packaging and packaging waste directive provides food for thought on its own but, when taken alongside the difficulties encountered by the other two major horizontal measures, its message is the more powerful. The eco-labelling regulation is in deep trouble, as almost all the original twelve product groups set up to define criteria for the award of an eco-label have been unable to agree them. Only one product group governing washing machines has agreed such criteria; only one company (Hoover) has been awarded an eco-label for its product, and it has so far not used it in any of its literature.²⁹ The regulation on eco-management and audit has had more success because it was developed from an existing British Standard (BS 7750). But it too has many problems to overcome, not least the lack of agreement about the standards to be applied in approving independent verifiers for the scheme, whose job is to ensure compliance, and the doubts that such verifiers will themselves apply consistent standards across the Union.³⁰

SYMBOLIC POLICY-MAKING AND GREEN POSITIONING?

The conundrum which the above information lays bare demands some explanation. The configuration of the following observations points in at least two different directions (1) A high level of environmental policy-making activity at EU level has occurred and is continuing. (2) Evidence of continuing non-compliance with EU

²⁸ M H Porter (1995), p 35

²⁹ Evidence assembled by Duncan Mitchell, Bath University PhD student, for a thesis still in preparation.

³⁰ Ecomanagement and Auditing, Vol 1 No 1, Autumn 1993

environmental legislation in the member states is overwhelming. There is also emerging evidence of policy failures. (3) There is evidence of a very high level of corporate resources spent and activity undertaken in lobbying the EU institutions by industrial and commercial interests. Alongside this evidence sits the uncomfortable fact that environmentalist interests have to struggle to match the expertise, the comprehensiveness and intensity of business lobbying in Brussels. “Green” lobbyists have achieved only small gains and often risk being marginalised as latecomers in the policy-making process. (4) The evident difficulty facing the EU institutions in legislating for the economic and environmental diversity of the member states is increasing as a result of enlargement, and as the more advanced, “greener” member states diverge from the others in setting higher environmental standards for their countries.

One interpretation is that the EU institutions lack the flexibility and the mechanisms to learn from their policy mistakes or lack of success; that as presently constructed and, given the immense variety and weight of political pressures, they are programmed to fail. Another interpretation is that the likely ineffectiveness of EU environmental policy measures is well understood by key actors in the decision-making process, and that such policy ineffectiveness may indeed suit their interests quite well. The Commission and other EU institutions can point to their long legislative record on the environment while many of the business interests are content to live with and in a flawed policy environment which costs them little, may enhance their “green” credentials, and certainly justifies their representation in Brussels. Such an interpretation suggests that environmental policy-making is largely symbolic and has more to do with institutional and corporate positioning around a green agenda, than achieving radical environmental change. The EU’s new commitment to work towards sustainable development imposes a yet more challenging policy framework on all the actors in the decision-making process and offers the prospect of more radical policies evolving through that process. The challenge for environmentalists is to apply sufficient pressure on the EU policy-makers to ensure that reality coincides more closely with the institutional rhetoric, despite the green movement’s lack of funding and technical expertise, and the domination of the DGXI mind-set by economic

concerns The challenge faced by environmentalists looks extremely daunting and unequal, but then David did slay Goliath. Can this be repeated in Brussels?

TABLE 1

The EC Lobby: Composition and Growth (by sector)

Year	Agriculture and food	Industry	Commerce, services and professions	other	total
1962	27% (69)	43% (112)	21% (54)	9% (24)	(259) +133
1972	24% (96)	41% (159)	24% (96)	11% (41)	(392) +139
1982	22% (118)	37% (198)	27% (141)	14% (74)	(531) +101
1992	20% (125)	34% (216)	25% (161)	21% (130)	(632)
No date known	(11)	(29)	(25)	(47)	(112)
Total	18% (135)	33% (245)	25% (186)	24% (177)	100 (744)
Growth 1962-92	+56	+104	+107	+106	+373
growth 1982-92	+7	+18	+20	+56	+101

Source Data published in A Butt Philip (ed), Directory of Pressure Groups in the European Community. (Longman, Harlow, 1992), supplemented by further data collected subsequently.

TABLE 2**Annual Flow of Environmental Directives**

Date of Adoption of Directive	Number of Directives Adopted	Employment & Social Policy Directives	Environment Directives	No of Directives subject to infringement proceedings in 1993 (%)
Before 1980	362	9	15	37 (10.2)
1980	57	2	6	5 (8.8)
1981	28	-	6	- (0.0)
1982	42	2	5	5 (11.9)
1983	36	1	5	5 (13.9)
1984	42	-	13	9 (21.4)
1985	51	-	14	12 (23.5)
1986	50	3	8	9 (18.0)
1987	52	-	9	11 (21.2)
1988	65	2	7	23 (35.4)
1989	96	5	7	22 (22.9)
1990	75	6	8	38 (50.7)
1991	82	5	8	62 (75.6)
1992	92	2	5	80 (87.0)
Total	1130	36	116	318 (28.1)

Source: European Commission. Author's analysis of raw data to be found in the 11th Annual Report on the Monitoring of the Application of Community Law. Com (85) 500 final. 2^o March 1994. pp 144-393

Note Environmental directives include all directives which are the responsibility of DGXI of the European Commission

TABLE 3

Least Well Implemented Directives

Directive Number	Subject	Number of Member States Involved	No of Cases Listed	Member States Involved
77/0388	Sixth VAT Directive	10	15	Dk. F. Gr. Gy. Irl. It. Lx. NI. Sp. UK
76/0160	Bathing Water	7	7	F. Gr. It. Lx. NI. Sp. UK
79/0409	Conservation of Wild Birds	7	14	B. F. Gr. Gy. It, NI. Sp
80/0068	Protection of Groundwater	7	7	B. F. Gy, Irl. NI, Sp, UK
80/0778	Drinking Water	7	11	B. F. Gy, It, Lx. NI, UK
83/0189	Technical Standards	7	28	B. Gy. It, NI. P. Sp, UK
85/0337	Environmental Impact Assessment	7	7	B. Gy. Irl. It. Lx. Sp. UK
88/0379	Dangerous Preparations	7	7	B. Gy. Irl. It, Lx, Sp. UK
84/0466	Radiation Protection	6	6	B, Irl, It. NI, P, Sp
86/0378	Equal Treatment for men & women	6	6	B, Dk. Gr. It, Lx. NI
75/0440	Surface Water	5	5	B, F, Gr. Gy, It
75/0442	Waste	5	5	B. Gr, Irl, It, Sp
85/0339	Containers of liquids for human consumption	5	6	B, F, Lx, P, Sp
88/0295	Public supply contracts	5	8	Gr, Gy, It, NI. Sp
88/0380	Seed	5	6	F, Irl. Lx. NI, UK

(15 cases)

Source European Commission Data extracted from information given in the 11th Annual Report on Monitoring the Application of Community Law. Com (94) 500 final. 29 March 1994. pp 144-254

Note The table does not deal with directives adopted since 1988 on the grounds that the nature of the Commission's role in securing implementation of more recent directives is primarily concerned with transposition issues and involves a very high proportion of all new directives adopted

TABLE 4**One-third of Environmental Directives Subject to Infraction Procedures**

	Number of Directives	Employment and Social Policy Directives	Environmental Policy Directives	Internal Market/Free Movement Directives
Number	97	7	31	54
Proportion of All Directives in Field	12.4% (N=785)	35.0% (N=20)	31.6% (N=98)	9.0% (N=593)

Source European Commission. Data extracted from information given in the 11th Annual Report on Monitoring the Application of Community Law, Com (94) 500 final, 29 March 1994, pp 144-254

Notes: See note at foot of previous table concerning non-inclusion of recently adopted directives in the above analysis. Environmental policy directives include all directives which are the responsibility of DGXI of the European Commission

TABLE 5

Lobbying entities contacting DGXI about the packaging and packaging waste directive 1990-93.

			% of total
A Trade and Industry		196	70.1
B Environmentalists	10		
Consumer groups	5		
Trades Unions	<u>1</u>	16	5.7
C. Government departments	16		
Political representatives	10		
Regional authorities	18		
		44	15.8
D Research Institutes	19		
Others	4	23	8.2
TOTAL		279	100

Source. Information obtained from DGXI files by M H Porter cited in M H Porter, "Cross-National Policy Networks and the EU's packaging and packaging waste directive" (1995).