

The Commission's proposal for a 7th EU Environment Action Programme

Time has come to discuss in public the EU Commission's strategy for the environment, as it manifests itself through the elaboration and monitoring of environmental action programmes. This necessity is proven through the official "Proposal for a Decision on a general Union environment action programme to 2020" which the Commission published in November 2012 (COM(2012) 710). The proposal constitutes one step more of the Commission to reduce EU environmental policy to an insignificant accessory of its policy to promote economic growth.

EU environmental action programmes were launched, by the Commission itself, since 1972. At that time, the European Treaties did not contain any reference to the environment or its protection. As the Heads of States and Government had requested the European institutions to elaborate such a policy at EU level, it was thought that the policy objectives, the principles for action and the priorities for an EU environmental policy should be laid down in an agreed EU environmental action programme. Such action programmes were consequently adopted in 1973, 1977, 1983, 1987 and 1993.

In 1992/93 the EC Treaty was amended by the Maastricht Treaty. That Treaty provided for unanimous decisions in the area of environmental policy. However, it considered environmental action programmes so important that it provided for their adoption by joint decisions by the European Parliament and the Council, and provided that the Council should decide by majority decision. It was the first time that under the European Treaties, the European Parliament obtained the right to co-decide on future actions which the EU should undertake; in no other area was there such a right for Parliament.

In the years after 1993, there was a battle between the European Parliament on the one side, and the Commission and the Council on the other side: whereas the European Parliament wanted precise and well-defined actions to be laid down in the action programme, the Council and the Commission preferred vague terms and general orientations. The amendment of the 5th EU action programme and the 6th environmental action programme (2002-2012) constituted a compromise, with strong prevalence of the Council/Commission position. Though these programmes were agreed in the form of a legally binding decision of the European Parliament and the Council, the Commission did not consider itself politically or legally bound by them:

measures which the programmes requested, were not proposed by it, whereas other measures which were not in the programmes, were submitted. Legally and politically, this appears questionable. However, as the European Parliament did not exercise its watchdog role, the Commission got away with this attitude.

The proposal for a 7th environmental action programme now goes a considerable step forward: while it is in theory an action programme that is proposed by the Commission, it contains the remarkable innovation that there is not one single concrete action which the Commission suggests. The objectives of the programme enumerated in Article 2 of the proposal, largely repeat the objectives which are laid down in Articles 191 and 11 TFEU anyway: protecting the environment, protect against health risks, improve the evidence base for environmental policy, improve environmental integration, better confront regional and global environmental challenges. Other objectives are rather ridiculously vague: this applies to the request to get the prices right, maximize the benefits of environmental legislation, improve policy coherence and enhance the sustainability of cities. As these objectives are not followed by proposals for concrete action or, at least, for reaching targeted results, they are meaningless: everybody can and will subscribe to them - and nothing will change. Enforcement of EU environmental legislation, one of the proposed priorities under the programme, is already mentioned as a priority for the Commission in Article 17 TEU.

And the Commission had the courage to propose, in Article 2(2) that the 7th programme should be based on environmental principles, repeating one by one the principles which are laid down in Article 191(2) TFEU.

Why should there be an action programme that only repeats commonplaces and Treaty provisions? The Commission has generated the new form of an action programme without actions. This is a mockery of any serious policy at EU level.

Neither the Commission President (from Portugal) nor his Secretary General (from Ireland), appear to understand that a middle or long-term sustainable economic policy cannot be achieved without a strong environmental policy: the Nordic EU Member States, Germany, Netherlands, Austria and other industrialized States outside the EU (Norway, Switzerland) are evidence for that. What is more: the Commission does not appear to understand that it cannot make environmental policy disappear: the environment cannot remain without protection. And when the EU is not able or not willing to ensure this protection, it will not be able to prevent Member States from ensuring this protection – with all consequences for the internal market and for the EU as a whole.

The Commission's proposal for a 7th action programme suggests to enhance the sustainability of the union's cities, at a time, when the Commission was obliged to start legal action against some 20 EU Member States which do not comply with their obligation to respect the air pollution limits which they all had agreed to in 2008 and laid down in binding EU legislation. One might bet that the Commission, applying its favoured principle of "smart regulation" – proposed in Article 2(3) of its proposal – will either amend existing legislation in order to legalize the air pollution – this had been done in the past – or discontinue its actions against the Member States. This is but one example of many which could be given.

At the end of the day, one will have to reflect: if the EU is not ready or willing to efficiently protect human health and the environment, it should say so and transfer this responsibility back to the EU Member States. As far as the environment is concerned, the present proposal for a 7th action programme makes a mockery of the EU environmental policy and invites to the re-nationalization of environmental issues.

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ClientEarth is a non-profit environmental law organisation based in London, Brussels and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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