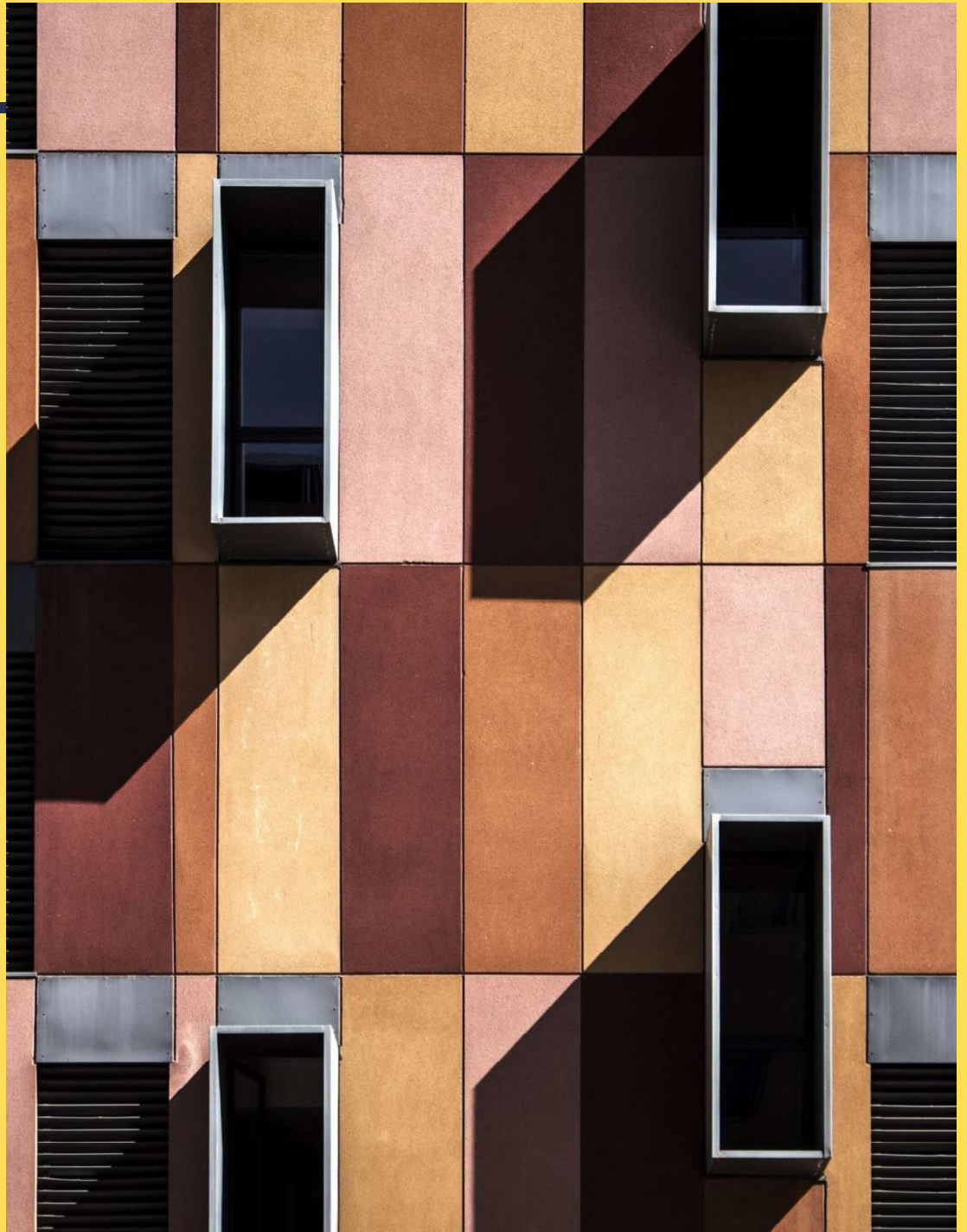


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HISTORICAL EVOLUTION OF THE “GREENISATION” OF EUROPEAN GOVERNANCE: THE DEFINITION AND THE APPROACH OF ENVIRONMENT FROM A EUROPEAN UNION PERSPECTIVE**EVOLUÇÃO HISTÓRICA DA “ECOLOGIZAÇÃO” DA GOVERNANÇA EUROPEIA: A DEFINIÇÃO E A ABORDAGEM DO MEIO AMBIENTE NA PERSPECTIVA DA UNIÃO EUROPEIA**Giulia Parola¹**ABSTRACT**

The European Union is the only region which has as its official objective the promotion of economic development, social cohesion and environmental protection at the same time. Thus, this article analyses the historical evolution of the “greenisation” of European governance, in particular through the Europeans treaties. Nevertheless, before starting it is necessary to analyse in particular the definition of the term “Environment” which can be found within the European context and then scrutinise which kind of approach, anthropocentric or ecocentric approach, the EU has adopted in the European Law. This paper was written from a qualitative research, with normative profile, and using academic literature analysis and bibliographical review.

RESUMO

A União Europeia é a única região que tem como objetivo oficial promover simultaneamente o desenvolvimento econômico, a coesão social e a proteção do ambiente. Assim, este artigo expõe a análise da evolução histórica da "ecologização" da governança europeia, em particular através dos tratados europeus. No entanto, antes de começar, é necessário analisar, em particular, a definição do termo "Ambiente", que pode ser encontrada no contexto europeu e, em seguida, examinar que tipo de abordagem, antropocêntrica ou ecocêntrica, a UE adotou no direito europeu. Este artigo foi escrito a partir de pesquisa qualitativa, com perfil normativo, e utilizando análise de literatura acadêmica e revisão bibliográfica.

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KEYWORDS

European Union. Europeans Treaties.
European Law. Anthropocentric
Approach. Ecocentric Approach.

PALAVRAS-CHAVE

União Europeia. Tratados Europeus.
Direito Europeu. Abordagem
Antropocêntrica. Abordagem
Ecocêntrica.

1 INTRODUCTION

The European Union is the only region which has as its official objective the promotion of economic development, social cohesion and environmental protection at the same time. In fact, there is no other model in the world which brings together the three pillars of sustainability “as ensuring peace, transboundary peaceful cooperation and integration, democracy and elements of an open society, under the government of the rule of law” (Krämer, 2006, p. 555).

Thus, this article sets out the historical evolution of the “greenisation” of European governance, in particular through the Europeans treaties (Part III). Nevertheless, before starting it is necessary to analyse in particular the definition of the term “Environment” which can be found within the European context (Part I) and then scrutinise which kind of approach, anthropocentric or ecocentric approach, the EU has adopted in the European Law (Part II).

2 THE DEFINITION OF THE TERM “ENVIRONMENT” IN EUROPE

Currently, what is considered as “European environment” is not clear since there is not a conclusive and uniform definition of environment in EU law. The environment is defined differently depending on the context and instrument in which it is being used (Kiss, & Shelton, 1993, p. 4).¹

The following overview shall first address the term “natural resources” particularly since they constitute part of both sets of definitions and second, an overview of the debate surrounding the definition shall be given.²

¹ See also Thornton, & Beckwith, 2004, p. 5.

² Despite the vagueness of the term Environment, it is possible to find two categories of definitions: one includes only natural elements, a narrow definition, and one includes also a social dimension, a wide definition. The following shall give an overview over that. First, however, the term natural resources shall be addressed particularly since they constitute part of both sets of definitions.

One can categorise the definitions of natural resources on the international level into two sets. It has been suggested that natural resources are naturally occurring materials that are useful to man (Skinner, 1986, p. 1). Another proposal is that natural resources are tangibles or intangibles which may be used in an economic manner or to create economic value and which are not manufactured or produced (Rosenne, 1986, p. 63).

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In the European context natural occurrences are listed as natural resources which are not human or man-made. According to several directives and regulations natural resources comprise fauna and flora, natural habitats, groundwater³ and surface waters,⁴ soil,⁵ oil, natural gas and solid fuels.⁶ Sometimes their economic value is stressed,⁷ but also elements without an economic value fall within the definition. Moreover, the EU is a party to the Convention on Biological Diversity⁸ since 1993⁹ and Article 2 of the

These definitions imply that the appearance in nature must have an economic value. This economically-valuing definition represents the first set of definitions.

The second category covers definitions of natural resources, which do not include an economic element (This approach is favoured by Schrijver, 1995, pp. 15-16. It was suggested that natural resources are all physical natural goods, as opposed to those made by man (Cano, 1975, p. 1). Hence, there are basically two sets of definitions, one requiring an economic value, the other one not. Nevertheless, both definitions agree on the fact that a natural resource is something nature given so to speak and not man-made. Moreover, they do not seem to include human beings.

³ E.g. Step 1(j) of Annex I to the Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the Geological Storage of Carbon Dioxide and Amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006, OJ 2009, L 140/114.

⁴ E.g. Groundwater and surface waters Preamble 28 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 Establishing a Framework for Community Action in the Field of Water Policy, OJ 2000, L 327/1; fresh water Article 2(2)(g) of Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 Laying Down General Provisions Establishing a European Neighbourhood and Partnership Instrument, OJ 2006, L 310/1; water in general Preamble 12 of Commission Regulation (EC) No 889/2008 of 5 September 2008 Laying Down Detailed Rules for the Implementation of Council Regulation (EC) No 834/2007 on Organic production and Labelling of Organic Products with regard to Organic Production, Labelling and Control, OJ 2008, L 250/1; Article 13(1) of Regulation (EC) No 1905/2006 of the European Parliament and of the Council of 18 December 2006 Establishing a Financing Instrument for Development Cooperation, OJ 2006, L 378/41.

⁵ E.g. Preamble 12 of Commission Regulation (EC) No 889/2008 of 5 September 2008 Laying Down Detailed Rules for the Implementation of Council Regulation (EC) No 834/2007 on Organic production and Labeling of Organic Products with Regard to Organic Production, Labeling and Control, OJ 2008, L 250/1.

⁶ E.g. all three Preamble 2 of Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the Promotion of the use of Biofuels or other Renewable Fuels for Transport, OJ 2003, L 123/42; Preamble 2 of Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 On the Energy Performance of Buildings, OJ 2003, L 1/65; only oil Preamble 1 of Directive 2009/33/EC of the European Parliament and of the Council of 23 April 2009 on the Promotion of Clean and Energy-Efficient Road Transport Vehicles, OJ 2009, L 120/5

⁷ E.g. Preamble 5 of Council Directive 1999/13/EC of 11 March 1999 on the Limitation of Emissions of Volatile Organic Compounds Due to the Use of Organic Solvents in Certain Activities and Installations, OJ 1999, L 85/1.

⁸ Convention on Biological Diversity of 5 June 1992, 1760 UNTS, p. 79.

⁹ See available at www.cbd.int/countries/?country=eur.

Convention lists as natural resources air, water, land, flora and fauna and natural ecosystems.¹⁰

Hence, at the European level natural resources are also nature given occurrences which are not man-made and do not include human beings. Furthermore, they have numerous appearances that include air, water, land, flora and fauna, natural ecosystems, oil, gas and fossil fuels.

2.1 Wide definition of “Environment”

Some definitions of the environment found at the European level are wide. A wide definition is one which comprises not only natural resources but, in addition, humans or man-made things or even both.¹¹

The “Declaration on the Environment” adopted by the Heads of State and Government in 1990, at the defining of Treaty negotiations which led to the adoption of the Treaty of Maastricht is interesting. The Declaration lists numerous elements:

clean and healthy environment: the quality of air, lakes, coastal and marine waters, the quality of food and drinking water, protection against noise, protection against contamination of soil, soil erosion and desertification, preservation of habitats, flora and fauna, landscape and other elements of the natural heritage, and the amenity and quality of residential areas.

The concept of the environment is an all-encompassing term including economic, social and aesthetic elements, including the preservation of natural and archaeological heritage and the man-made as well as the natural environment (Krämer, 2006). This notion can be considered to be evolving and open to development in the face of new discoveries, technical advances and greater societal interest in, and understanding of, the subject matter (Comte, 2006, p. 190).

¹⁰ See further on these examples not mentioning the term natural resource explicitly but describing the natural environmental elements, not human and not man-made Article 2(1)(c) Council Directive 67/548/EEC of 27 June 1967 on the Approximation of Laws, Regulations and Administrative Provisions Relating to the Classification, Packaging and Labelling of Dangerous Substances, OJ 1967, L 196/1 Article 2(12) of Council Directive 91/414/EEC of 15 July 1991 Concerning the Placing of Plant Protection Products on the Market, OJ 1991, L 230/1.

¹¹ A definition of an ordinary dictionary for instance defines the environment as the circumstances, objects or conditions, by which somebody or something is surrounded, (ed.) Allen, 2000, p. 465.

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No explicit legal definition of the environment is found in the Treaty of the European Communities. However, Article 191 (former Article 174(1)) and Article 192 (former Article 175(2) of the 2016 Consolidated versions of the Treaty on European Union (EU Treaty)¹² imply that the European environment comprises natural resources such as the natural element water, man-made elements such as waste and human beings themselves.

Thus, the EU Treaty seems to give a broad definition of the environment. Another example of a European document implying a broad definition is the Helsinki Final Act of 1975.¹³ There the co-operation in the environmental field comprises air, water, land and soil, genetic resources, rare animal and plant species, natural ecological systems, human health and waste.¹⁴ Still a broad definition, although slightly narrower, is the definition contained in the Lugano Convention of 1993.¹⁵

Its Article 2(10) defines the environment as comprising “*natural resources both abiotic and biotic, such as air, water, soil, fauna and flora and the interaction between the same factors, property which forms part of the cultural heritage; and the characteristic aspects of the landscape*”.

This definition does not include humans, but natural resources and man-made elements (Thornton, & Beckwith, 2004, p. 5). Moreover, it also comprehends the relationships between the elements. Other definitions that comprise also the relationship between the environmental elements are enshrined in Directives, though excluding man-

¹² Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, OJ 2016/C 202/02

¹³ Conference on Security and Co-Operation in Europe Final Act of 1 August 1975, 14 ILM 1992, p. 1292.

¹⁴ Conference on Security and Co-Operation in Europe Final Act of 1 August 1975, pp. 28-29.

¹⁵ Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, Lugano Convention of 21 June 1993, ETS 150.

made things.¹⁶ In particular, Article 2(1)(a) of Directive 2003/4/EC¹⁷ which implements the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters¹⁸ (Parola 2017) comprises as environmental elements air, atmosphere, water, soil, land, landscape, natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements. Several Directives do not provide for a definition of the environment, but list for example humans and the environment next to one another and thereby imply at least that the environment does not comprise humans but might include man-made things.¹⁹

Hence, several documents at the European level provide a wide definition of the environment which seems to include natural resources and sometimes human beings, man-made things or all of the above.

¹⁶ Listing “water, air and land and their inter-relationships as well as between them and any living organism” Article 2(1)(c) Council Directive 67/548/EEC of 27 June 1967 on the Approximation of Laws, Regulations and Administrative Provisions Relating to the Classification, Packaging and Labeling of Dangerous Substances, OJ 1967, L 196/1; Article 2(12) of Council Directive 91/414/EEC of 15 July 1991 Concerning the Placing of Plant Protection Products on the Market, OJ 1991, L 230/1; another example for a wider definition not including man-made things is to define the environment to be the natural surroundings of or the complex of external factors that acts upon an organism, an ecological community, or plant and animal life in general, Allen, 2000, p. 465.

¹⁷ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on Public Access to Environmental Information and Repealing Council Directive 90/313/EEC, OJ 2003, L 41/26.

¹⁸ See Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, Participants, June 25, 1998, 38 I.L.M. 517 (1999), *entered into force* Oct. 30, 2001. See in particular about global level: Parola, 2013a, Wates, 2005, p. 393.

¹⁹ Preamble 6 of Directive 1999/45/EC of the European Parliament and of the Council of 31 May 1999 Concerning the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Relating to the Classification, Packaging and Labelling of Dangerous Preparations, OJ 1999, L 200/1; Article 1 of Council Directive 1999/32/EC of 26 April 1999 Relating to a Reduction in the Sulphur Content of Certain Liquid Fuels and Amending Directive 93/12/EEC, OJ 1999, L 121/13; Article 1 of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the Deliberate Release into the Environment of Genetically Modified Organisms and Repealing Council Directive 90/220/EEC, OJ 2001, L 106/1; Article 6(5) of Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the Incineration of Waste, OJ 2000, L 332/91; Article 1(7) of Commission Directive 2001/59/EC of 6 August 2001 Adapting to Technical Progress for the 28th time Council Directive 67/548/EEC on the Approximation of the Laws, Regulations and Administrative Provisions Relating to the Classification, Packaging and Labelling of Dangerous Substances, OJ 2001, L 225/1; Article 4(2) of Council Directive 2002/55/EC of 13 June 2002 on the Marketing of Vegetable Seed, OJ 2002, L 193/33; Article 1(a) of Directive 2009/41/EC of the European Parliament and of The Council of 6 May 2009 on the Contained Use of Genetically Modified Micro-Organisms, OJ 2009, L 125/75; Article 1(1) of Directive 2008/50/EC of the European Parliament and of The Council of 21 May 2008 On Ambient Air Quality and Cleaner Air for Europe, OJ 2008, L 152/1.

2.2 Narrow definition of “Environment”

Some of the definitions of the environment found at the European level are narrow, however. A narrow definition will only include natural resources but exclude man-made things and human beings.

For the European Environment Agency,²⁰ which periodically assesses the state of the European environment, the definition of the European environment in these reports is a cluster of environmental issues, such as quality of air, water and soil. Of course this approach is limited and narrow because it takes into account only the indicators and not the complexity of this concept.

Examples of definitions representing a narrow approach are less frequent. Other examples of a narrow definition are found in the Habitats Directive of 1992 which only comprises habitats and wild fauna and flora²¹ and the Wild Birds Directive of 1979 which only comprises wild birds.²² A narrow definition is also found in several other directives. Again, they do not expressly define the environment but from listing the environment next to man-made things, humans or other elements it can at least be concluded what the environment does not comprise. For instance, some directives list humans and animals and the environment.²³ They, hence, seem to exclude humans and animals from the ambit of the environment. Even though the definitions only including natural resources are narrower than the ones above, their importance is not to be underestimated especially due to the above-shown wide range of occurrences falling under the term natural resources.

Thus, the narrow definitions that only comprise natural resources also have a wide scope of application. It is also possible to identify several definitions at the European level. For example, a text of the Council of the European Community includes “*water,*

²⁰ See for example EEA: Environment in the European Union at the Turn of the Century, Copenhagen 1999.

²¹ Preamble 1 of Council Directive 92/43/EEC of 21 May 1992 on the Conservation of Natural Habitats and of Wild Fauna and Flora Official Journal 1992, L 206/7.

²² Council Directive 79/409/EEC of 2 April 1979 on the Conservation of Wild Birds Official Journal 1979, L 103/1.

²³ Article 2(1)(b) of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 Concerning the Placing of Biocidal Products on the market, OJ 1998, L 123/ 1; Preamble 6 Directive 2000/16/EC of the European Parliament and the Council of 10 April 2000 amending Council Directive 79/373/EEC on the Marketing of Compound Feedingstuffs and Council Directive 96/25/EC on the Circulation of Feed Materials, OJ 2000, L 105/36; Article 6 of Directive 2002/32/EC of the European Parliament and of the Council of 7 May 2002 on Undesirable Substances in Animal Feed, OJ 2002, L 140/10

*air and land and their inter-relationship as well as relationships between them and any living organism”.*²⁴

The term “environment” could be said to cover “*all those elements which in their complex inter-relationships form the framework, setting and living conditions for mankind, by their very existence of by virtue of their impact*”.²⁵

The EU Treaty indicates, without expressly interpreting the term, in conformity with Article 191 (1) and (2), that the shape of the environment extends to human beings, natural resources, land use, town and country planning, waste and water. Thus, in principle this includes almost all areas of the environment, in particular fauna and flora and climate. The inclusion of town and country planning underlines the fact that the environment includes man-made as well as natural elements.²⁶

3 ANTHROPOCENTRIC AND ECOCENTRIC CHARACTER OF ENVIRONMENT IN EUROPE

The Environment mainly has an anthropocentric character in Europe, so that the focus is on protecting the health of humans rather than protecting the environment for its own sake (Parola, 2013a). This can be seen for instance in the Habitats Directive, in which the destruction of a habitat for development is provided for, so long as certain procedural

²⁴ Council Directive of June 27, 1967, 1967 O.J.; See: Kiss, & Shelton, 2000.

²⁵ EEC, OJ C 115, May 1976, p. 2.

²⁶ Thornton, & Beckwith, 2004, p. 1. Other definitions that encompass the link between the environmental elements are provided in Directives which keep out man-made things. Listing “water, air and land and their inter-relationships as well as between them and any living organism” Article 2(1)(c) Council Directive 67/548/EEC of 27 June 1967 on the Approximation of Laws, Regulations and Administrative Provisions Relating to the Classification, Packaging and Labeling of Dangerous Substances, OJ 1967, L 196/1; Article 2 (12) of Council Directive 91/414/EEC of 15 July 1991 Concerning the Placing of Plant Protection Products on the Market, OJ 1991, L 230/1; another example for a wider definition not including man-made things is to define the environment to be the natural surroundings of or the complex of external factors that acts upon an organism, an ecological community, or plant and animal life in general, Allen, 2000, p. 465. In particular, Article 2(1)(a) of Directive 2003/4/EC (Directive 2003/4/EC of the European Parliament And Of The Council of 28 January 2003 On Public Access to Environmental Information and Repealing Council Directive 90/313/EEC, OJ 2003, L 41/26) which implements the Aarhus Convention comprises as environmental elements air, atmosphere, water, soil, land, landscape, natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements.

requirements are fulfilled. The anthropocentric orientation of EU environmental law and its practical expression in legal instruments implicitly reject ecological thought.²⁷

Nevertheless, this strong statement should be moderated, because on several occasions the EU has led action in certain fields which entail a more ecocentric and global approach.

An example can be found concerning the Animal welfare which was introduced in a Protocol annexed to the TEC by the Amsterdam Treaty.

The Lisbon Treaty has amended the existing wording of the Protocol and added the amended Treaty (Article 13). The changes brought by the Treaty to the existing text include references to fisheries, technological development and space policies, and in particular, the classification of animals as “*sentient beings*”²⁸. Recognising “*animals as sentient*” is symbolically important and may also have potential legal and policy implications. Both EU institutions and Member States “consequently have to pay full regard to animal welfare in formulating and implementing policy in these sectors” (Benson, & Jordan, 2008, p. 283).²⁹

Another important example is the action in the fight against Climate Change which demonstrates how the EU also pursues ecological objectives. During the negotiation of the Constitutional Treaty, Climate Change was not such a “hot topic” (Lee, 2008, p. 133) but it has become a new objective in the Lisbon Treaty. This adds proof to the EU’s awareness of that topic as a “global environmental problem”, which has to be resorted to at the global level; but reaffirms that concrete action has to be undertaken also at regional and national levels.

This Article can be linked also to the provisions relating to “Energy policy” (Corazza, 2009) as contained in the Article 194. The reasons for the link are: firstly,

²⁷ McGillivray, & Holder, 2001, p. 143. Ecocentric approach which originally comes from the first and ancestral relations between Nature and man and which is still present in some religious and philosophical views around the world, gives a different concept to the “Environment”, one in which all organic existence in a single framework is united in harmonious interaction: Parola, 2013a.

²⁸ Article 13 “In formulating and implementing the Union’s agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage”.

²⁹ See also Camm, & Bowles, 2000, p. 195.

scientific and technological advance and the aim to “promote energy efficiency and energy saving and the development of new and renewable forms of energy”, and secondly, because all of the objectives of energy policy should be pursued “with regard for the need to preserve and improve the environment” (Lee, 2008, p. 131).

In addition, it is interesting to note that the European Corte of Justice (ECJ) places huge importance on the relationship between environmental quality and human health; but also numerous decisions in which the Court in a situation of conflict between natural resources and other interests decided in favour of the environment exist, following an ecocentric approach. For example, *Lappel Bank* outlined that the Wild Birds Directive accords special protection to species which constitute “a common heritage of the Community”.³⁰ Moreover, in two landmark decisions the Court explicitly ruled that environmental legislation designed to protect human health and the environment should be interpreted as creating rights and obligations for individuals vis-à-vis the environment.³¹

Thus, it should be underlined that, in particular, regarding the legislation on the protection of animals and habitats, this ecocentric approach has largely been ensured over the last twenty-five years through the jurisprudence of the ECJ,³² which “fine-tuned the rather rudimental provisions of EU legislation, generally trying to protect the environment against the greed of administrations or economic operators” (Krämer, 2009, p. 195).

In conclusion, the approach to the environment by Community Law is in principle anthropocentric; however, some grains of the ecocentric approach have entered into EU environmental law provisions, in particular by ECJ jurisprudence.

4 PROTECTION OF ENVIRONMENT IN THE TREATY

The Treaty of Rome, which in 1957 created what was then the European Economic Community (EEC), did not contain any reference to the environment. At that

³⁰ Case C- 44/95, R. v. Secretary of State for the Environment, (1996) ECH I-3805.

³¹ Case C-361/88, Commission v. Germany [1991] ECR I- 256; Commission v. Germany [1991] ECR I-825,7.

³² See for instance: ECJ Case 272/80, Biologische Produkteten (1981) ECR 3277; Case 412/85, Commission v. Germany (1987) ECR 3503; Case C-322/86, Commission v. Italy (1988) ECR I-3995; Case C-355/90, Commission v. Spain (1993) ECR I-4221; Case C- 365/97, Commission v. Italy (1997) ECR I-7773.

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time, the main scope of such Treaties was to establish functionally integrated markets in order to attain economic benefits.³³

Nevertheless, with the forceful support of the European Court of Justice starting decades ago, environmental protection has been elevated from a “position of neglect” to one of the “essential objectives” of the European Union.³⁴ In fact, it became clear that the creation of a common market and the development of economic growth could not be achieved without a policy for the environment and without an environmentally friendly orientation.

The first official mention of environmental protection came in a declaration made in October 1972 where the Heads of the Member States clearly expressed the political will to protect the environment:

Economic expansion is not an end in itself: its firm aim should be to enable disparities in living conditions to be reduced. It should result in an improvement in the quality of life as well as in standards of living. As befits the genius of Europe, particular attention will be given to intangible values and to protecting the environment, so that progress may really be put at the service of mankind.³⁵

This was followed by the First Action Programme on the Environment in 1973.³⁶ This Programme made the attempt to articulate a single environment policy for the EEC

³³ Indeed the original aim of the EEC was one of economic integration rather than protection of human rights or the environment. The legal regime of the European Union operates within three pillars. The first pillar, established by the Treaty of Rome (with subsequent amendments) organizes the European Community and addresses the economic objectives of the Community as well as social and environmental issues. The second pillar is the Common Foreign and Security Policy established under the Treaty of the European Union from 1992 (Maastricht Treaty). The third pillar addresses police and judicial cooperation in criminal matters. See EUROPA, *The E.U. at a glance, Treaties and Law*, available at www.europa.eu/abc/treaties/index_en.htm.

³⁴ Which the relevant directive ‘must be seen in the perspective of’, *ADBHU*, Case 240/83 para. 13. We see here the use of the general goals of the EU in the interpretation of secondary legislation. See *inter alia* Jacobs, 2006, p. 185.

³⁵ See E.C. Commission, 6th General Report (1972) p. 8: see also Shelton, 1993, p. 557.

³⁶ There have been seven such programmes since 1973, the first four converging periods of four or five years. 1st Environmental Action Programme, 1973-1976 (1973) OJ C112; 2nd Environmental Action Programme, 1977-1981 (1977) OJ C 139; 3rd Environmental Action Programme, 1982-1986 (1981) OJ C46; 4th Environmental Action Programme, 1987-1992 (1987) OJ C328; 5th Environmental Action Programme 1993-2001 (1993) OJ C138; 6th Environmental Action Programme, 2002-2012 (2002) OJ L242/1. 7th Environmental Action Programme to 2020.

The 1st Action Programme set out 11 “Principle of a Community Environmental Policy” that continued to be supported in subsequent Programmes. These may be summarised as follows: (1) Pollution should be prevented at source rather than dealt with after the event; (2) Environmental issues must be taken into

and it establishes two main principles still in use, the Polluter Pays Principle and the Preventive Action Principle (Collins, 2006, p. 98). Since then, Six further Action Programmes have been produced and the current 7th Programme, entered into force in January 2014, is the more ambitious³⁷. In order to give more long-term direction it sets out a vision beyond that, of where it wants the Union to be by 2050:

In 2050, we live well, within the planet's ecological limits. Our prosperity and healthy environment stem from an innovative, circular economy where nothing is wasted and where natural resources are managed sustainably, and biodiversity is protected, valued and restored in ways that enhance our society's resilience. Our low-carbon growth has long been decoupled from resource use, setting the pace for a safe and sustainable global society³⁸ (Endl & Berger 2014; Halmaghi, 2016).

The awareness *vis-à-vis* the environment, as it will be seen, has been reflected gradually also in the Treaties. In fact, environmental protection was promoted to the level of the main objectives provisions of the EU Treaty by the Treaty of Maastricht, while the

account at the earliest possible stage in planning and other technical decision making processes; (3) Abusive exploitation of natural resources is to be avoided; (4) the standard of knowledge in the EC should be improved to promote effective action for environmental conservation and improvement; (5) the polluter should pay for preventing and eliminating nuisances, subject to limited exceptions and transitional arrangements; (6) Activities in one country should not degrade the environment of another; (7) The EC and the Member States must in their environment policies have regard to the interests of developing countries and should aim to prevent or minimise any adverse effects on their economic development; (8) There should be a clearly defined long-term European environmental policy that includes participation in international organisations and co-operation at both regional and international levels; (9) Environmental protection is a matter for everyone in the EC, at all levels; their co-operation, and the harnessing of social forces, is necessary for success. Education should ensure the whole community accepts its responsibilities for future generations; (10) Appropriate action levels must be established -local, regional, optional Community and international – for each type of pollution and area to be protected; (11) Major aspects of national environmental protection policies should be harmonised. Economic growth should not be view for purely quantities aspects.

³⁷ Environmental Action Programmes set the framework for future action for all areas of environmental policy. These are integrated into horizontal strategies and are taken into account in international environmental negotiations.

European Parliament and the Council of the European Union, 2013. Decision No 1386/2013/ on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'. Official Journal of the European Union L 354/171 of 20 November 2013.

³⁸ It identifies three key objectives: 1) to protect, conserve and enhance the Union's **natural capital** 2) to turn the Union into a **resource-efficient**, green, and competitive low-carbon **economy** 3) to **safeguard** the Union's citizens from **environment-related pressures** and risks to health and wellbeing. Four so called "enablers" will help Europe deliver on these goals: 1) better **implementation** of legislation; 2) better **information** by improving the knowledge base; 3) more and wiser **investment** for environment and climate policy 4) full **integration** of environmental requirements and considerations into other policies.

Two additional horizontal priority objectives complete the programme: 1) to **make** the Union's **cities more sustainable**; 2) to help the Union **address international environmental and climate challenges more effectively**.

Amsterdam Treaty recognised environmental protection as an independent goal, rather than an incidental requirement of economic growth (Craig, & De Burca, 2008, p. 21).

Since then environmental protection has been a central issue in the EU, and so many huge steps on environmental regulations and policies have been made that the EU has been considered a largely successful experiment in regional environmental governance since the EU is “one of the world’s most advanced examples of international cooperation’ in the realm of environment and beyond”.³⁹

4.1 Single European Act

Although, until 1986, there was not an explicit Treaty basis for environmental action, with the fundamental support of the European Corte of Justice, the Commission and Council used Article 115 (ex 94) and 352 (ex 308) as a legal basis to develop a body of environmental legislation.⁴⁰

The first Article provides for the approximation of Member State laws that directly affect the establishment or functioning of the common market and was the principal instrument for environmental regulation; former Article 352 provides for action necessary to attain, in the course of the operation of the common market, one of the objectives of the Community, where the Treaty itself has not provided for the necessary powers. This approach to environmental policy is explained by the idea that during that period this policy was instrumental to the market (McGillivray, & Holder, 2001, p. 139).

The protection of the environment was settled by an autonomous Community action: the Single European Act (SEA) of 1986, by which three new Articles (Articles 130r, 130s and 130t) setting out the basic principles of Community action on the

³⁹ In addition to leading by example, the EU has also intentionally undertaken the project of actively promoting sustainable development and environmental protection at the international level, through such mechanisms as capacity building in developing countries, the conclusion of multilateral environmental treaties, and other forms of international diplomacy. See generally Commission Communication External Action of 16 February 2006, Thematic Programme for Environment and Sustainable Management of Natural Resources including Energy, COM(2006) 20, available at eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0070en01.pdf. See also: Collins, 2007b, pp. 323-324; Smith, 2002, p. 241. “The EU has accorded preeminent importance to environmental protection, EU environmental law and policy has grown exponentially, and Europe has become an acknowledged world leader in sustainable development and also now in climate change politically, the EU has seen itself as a leader in this area. Climate change is perceived as an issue with great popular resonance, where the EU wishes to be seen to provide something obviously valuable beyond what the Member States can provide”. See Somsen, 2002.

⁴⁰ Case 92/79 Commission v. Italy (1980) ECJ 1115; Case 240/83 Procureur de la République v. Association de défense des Bruleurs d'huiles Usagées (1983) ECR 531.

environment, were introduced. The SEA codified the status quo on decision-making in the environmental arena by providing an explicit legal base for environmental protection.

The fundamental principles which control Community environmental policy are: firstly, a principle of incorporation, according to which the policy of the Community in every field of its competence must be shaped after the assessment of the requirements for the protection of the environment.

Secondly, there is the principle of subsidiarity⁴¹ which, and in combination with, the possibility of the Member States to depart from the Community rules and regulations, gives “precedence to national legislation over community law of the environment and hinder(s) the latter’s development to a full legislative system with harmonised and homogenous application throughout the EU” (Karakostras, 2008, p. 12).

The provisions offered not just a legal basis for the enforcement of measures by Community institutions, but they also included the fundamental principles which control their acts. These principles do not have the character of a guideline or of a general declaration of intent, but are fully legally binding. In other words, the acts of the Community institutions and of the Member States must be in compliance with them.

The environmental provisions inserted in the EU Treaty through the SEA have since been renumbered and amended by the Maastricht, Amsterdam and Nice Treaties (Pedersen, 2010). After the Maastricht Treaty, the Community ceased to have an economic-only orientation and was transformed into a multidimensional institution with wider powers to interfere with the legal orders of the Member States also in the environmental field.

This treaty enlarged, improved and integrated, for the first time explicitly, environmental protection in the principles and objectives of the Community in Articles 2 and 3 of the EU Treaty. The amended former Article 130 of the SEA elevated the Community’s environmental action to Community policy. In other words, environmental protection is not just a component of other Community policies, but it “*must be integrated into the definition and implementation of the other Community policies*”. Moreover, it is

⁴¹ In this topic, among others, Estella De Noriega, 2002.

explicitly provided that the competent institutions for the implementation of Community environmental policy should aim at a high level of protection.

4.2 The Treaty of Amsterdam

The few changes brought by the Treaty of Amsterdam were in agreement with the proposal to broaden the Community activities for the environment. Here for the first time environmental protection is elevated to a Community objective independent of economic development and growth and it is established as a general imperative that permeates the whole range of Community Action (Karakostras, 2008, p. 15). Indeed, Article 2 of the Treaty of Amsterdam:

sets forth the objectives of the Union, including those of achieving balanced and sustainable development, strengthening the protection of the rights and interests of the EU nationals and maintaining and developing the Union as an area of freedom, security and justice.

Thus, the Treaty of Amsterdam has altered the objectives of the Community, making the promotion of the core environmental concept of “sustainable development” a central objective in the revised Treaty. What is important for the current purpose is that such a principle includes an inter- and intra-generational element, e.g. the main idea of the responsibilities vis-à-vis future generations. The inclusion of the mentioned principle has been seen “as a response to the Member States adopting sustainable development as a guiding principle in national legislation and policy documents, thereby discharging their obligations under international law” (McGillivray, & Holder, 2001, p. 148).

Finally, the Treaty introduced the environmental policy Integration Principle. This commitment was implemented by the Cardiff Process, launched by the heads of government in 1998, and it also underpins the Sixth Environmental Action Programme (Benson, & Jordan, 2008, p. 283).

Hence, the principle of integration is reinforced with its codification in Article 6, which states that environmental protection requirements must be integrated into the definition and implication of Community policies and activities referred to in Article 3, in particular with a view to promoting sustainable development.

Article 191 determines the objectives that Community policies on the environment shall pursue, and it reaffirms that such policies shall aim at a high level of protection

taking into account the diversity of situations in the various regions of the Community, listing the principles on which it shall be based (Kiss, 2008, p. 166).

4.3 The Lisbon Treaty

The Lisbon Treaty did not have a prominent “green agenda” and largely maintains the *status quo* in its explicit environmental provisions. Nevertheless, it has been said that the Treaty has introduced “some limited”, but “potentially broad ranging modifications to the environmental rules of the game” in the EU” (Benson, & Jordan, 2008, p. 280).

The principles and objectives of environmental policy remain “virtually” the same (Lee, 2008, p. 131). Indeed, the provisions containing environmental content have not changed the terminology of the objective concerning environmental protection, namely that of achieving “*a high level of protection and improvement of the quality of the environment*” (Article 3(3) TEU). Then, the Lisbon Treaty includes the environmental provisions in former Articles 174 to 176 of the TEC establishing the legal basis for environmental legislation in Articles 191 to 193 of the Consolidation Treaty EU. However, the environmental title in the treaty has been amended to specifically include the aim of combating climate change as one of the EC’s objectives.⁴²

Article 191 of the Consolidated Treaty presents the objectives of the Union policy on environment stating that:

Union policy on the environment shall contribute to pursuit of the following objectives: preserving, protecting and improving the quality of the environment; protecting human health; prudent and rational utilisation of natural resources; promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

Concerning Sustainable Development, the Treaty introduces a new definition which is based closely on the wording of the Constitution and which amends Article 3 of the Treaty⁴³. The sentence added that to “*promote scientific and technological*

⁴² The Art. 191(1) TFEU as amended, (formerly 174(1)) now states: “Union policy on the environment shall contribute to pursuit of the following objectives: —preserving, protecting and improving the quality of the environment, —protecting human health, —prudent and rational utilisation of natural resources, — promoting measures at international level to deal with regional or with regional or worldwide environmental problems, and in particular combating climate change”.

⁴³ The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy,

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advance” has to be read in accordance with the principle of Sustainable Development. This means that scientific and technological advances have to promote⁴⁴ Sustainable Development, identified as being achievable through meeting several new goals related to aspects of the internal market,⁴⁵ including raising living standards and the quality of life.

Moreover, amongst other core objectives of the EU, Article 3 also establishes that the Union shall in its dealings with the wider world “*contribute to peace, security and the sustainable development of the Earth. Finally the pursuit of Sustainable Development would become a specific policy goal in the external relations of the EU*”.

In the Treaty of Lisbon, some provisions could be also interpreted in an environmental light and they could even have a big impact in the environmental field. In this context, the most important provision is Article 11, which provided for participative democracy by ensuring the right of public participation and citizens’ initiatives⁴⁶. It

aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance.

⁴⁴ Sustainable development is also an element of Article 3(5) on external matters: “In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter”. Lee, 2008, p. 133.

⁴⁵ For instance, “price stability”, “highly competitive social market economy and “full complement”.

⁴⁶ It is interesting to note that as of June 2007, the 18 European Citizens Initiatives that have been launched (Available at www.citizens-initiative.eu) have enjoyed great popularity on the home-pages and the online signature forms. Eleven of the sixteen were proposed by NGOs including well-known organisations like Greenpeace and Friends of the Earth. Unfortunately, none have been launched by individuals (Fischer, & Lichtblau, 2008, p. 333). The topic of the initiatives concerned different issues: EU-organisation/political process, economics, health care/social issues and environment protection, in particular addressing the problems related to nuclear power and genetic food.

The most important and interesting for this study was the initiative “1 million Europeans against Nuclear Power”, supported by numerous NGOs which joined the initiative at different points in time. During the course of the constitutional debate in 2003, several smaller antinuclear organisations, like Atomstopp, became aware of the possibility of the European Citizens Initiatives. Consequently, at a French anti-nuclear demonstration in January 2004, the decision was made to make use of this new instrument as a political means for the struggle against nuclear energy, and the internet was selected as the main medium of communication.

In July 2005, Friends of the Earth and other smaller NGOs decided to support the initiative. Unfortunately, only 634,686 Europeans have signed against nuclear energy. The campaign failed principally for two reasons. Firstly, due to considerable problems in the procedure: in fact, each organisation has a different deadline for decisions. Secondly, other campaigns already have top priority, such as climate change, which has become a popular topic, and so the topic of nuclear power is losing attraction for NGOs. Available at www.million-against-nuclear.net/. See also Lorenz, 2007; Egger, 2007.

should be said that for environmental purposes this instrument is welcomed, although there is a risk of manipulation by the elites, and of deepening divisions between different parts of the Union,⁴⁷ and there are many elements that need to be clarified.

The Treaty talks about “a million signatures” without specifying whether it requires signatures to come from a minimum number of countries or a minimum number per country involved, or the requirements for their collection, verification and authentication. It also does not define the meaning of the Commission being “invited” to make a proposal. Is it obliged to draw up a proposal or is it only invited to consider it? The Commission has prepared a Green paper where it proposes answers to these questions, recognising the Commission’s responsibility to present conclusions and propose measures accordingly (Clientearth, 2009).

Among the implicit changes, there is also an amendment of Article 6: the new EU Charter of fundamental rights, signed 12 December 2007, become by reference binding in the same way as the treaty.⁴⁸ Secondly, the European Union shall accede to the European Convention on Human Rights.⁴⁹

Concerning the first novelty, the Charter, through the Lisbon Treaty, would become a legally binding instrument⁵⁰ in particular its Article 37, under Title IV Solidarity, which states that “*a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development*”.

⁴⁷ “At this level, participation is likely to be restricted to organised pan-European interest groups; the contribution of ‘participation’ to ‘democracy’ in any familiar sense is by no means automatic”. See Lee, 2008, p. 131.

⁴⁸ Charter of Fundamental Rights of the European Union, Dec. 14, 2007, 1007 O.J. (C 303) 1. The Charter represents a mixture of civil, political as well as economic, social, and cultural rights. See Butler, & De Schutter, 2008, p. 277.

⁴⁹ Relating to the binding character of the Charter, it has to be noticed that England and Poland have opted out. See Protocol on the application of the charter of fundamental rights of the European Union to Poland and to the United Kingdom.

⁵⁰ However, concerning the binding character of the Charter, it has to be noticed that England and Poland have opt-outs. See: Protocol on the application of the Charter of Fundamental rights of the European Union to Poland and to the United Kingdom. Available at www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:0156:0157:EN:PDF. The reason England negotiated this, was to avoid major changes in their labour law; Poland was mostly concerned about but the possible equal treatment of homosexual and heterosexual couples.

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This wording of the Article reflects and combines the provisions already present in the environmental chapter.⁵¹ The exact boundaries of the interpretation of this Article will have to be set by case-law. Nevertheless, as will be dealt with below, the inclusion of the principle of a high level of environmental protection, per se, does not give citizens ‘a right’ to a clean environment or the right to claim positive action in courts by the EU Institutions or Member States.⁵²

Regarding the European Convention on Human Rights,⁵³ after a long discussion over the possibility of accession, finally with the entering into the force of the Lisbon Treaty the EU has become a party to the Convention.⁵⁴ Accession to the European Convention Human Rights means that the EU and its institutions will be accountable to the European Court of Human Rights for issues concerning the Convention. In other words, the EU institutions would be directly subject to the Convention and to the jurisprudence of European Courts which would be able to directly apply the Convention as part of EU law. Nevertheless, the Treaty of Lisbon and its Protocols state that accession to the Convention will not affect the EU’s competences and that provision will be made for preserving the specific characteristics of the EU and EU law.

In conclusion, it may be said that through the explicit and implicit environmental provisions in the Treaty, the institutions of the EU have generated a vast amount of legislation relating to the environment.

⁵¹ Indeed, Article 191 (2) requires the Union policy on environment to aim at a high level of protection. However the Charter Article is broader since it covers all Union policies.

⁵² How NGOs have suggested that provision “serve as a basis for a demand of a judicial review of legislative acts/omissions in cases where the EU Institutions or Member States would have manifestly breached their margin of discretion”. See Clientearth, 2009.

⁵³ The European Convention on Human Rights (ECHR) is an international treaty which was signed on 4 November 1950 in Rome under the auspices of the Council of Europe. It sets out a number of fundamental rights. To date, 47 countries across the European continent have ratified this convention, including all 27 EU countries. Available at www.lawsociety.org.uk/documents/downloads/guide_to_treaty_of_lisbon.pdf#17.

⁵⁴ The long discussion over how to effectively protect fundamental rights in the EU had, inevitably, led to the consideration of a possible accession by the EU to the ECHR, as a way of creating an “international supplementary constitution” of the EU or, as the ECJ, put it in *Rutili* (ECJ, Case C-36/75, *Roland Rutili v. Ministre de l’Intérieur*, 28 October 1975. (Uerpman-Witzack, 2006) a source of “guidelines which should be followed within the framework of Community Law”. But this possibility of an accession by the EU to the ECHR was for long time expressly ruled out by the ECJ in its (Opinion 2/94) and by the Treaties.

5 CONCLUSION

This article has analysed the relationship between “Europe” and “Environment” and in particular the notion “Environment”, which can be found in the European context, that can be divided into wide and narrow definitions. Broad definitions comprise natural resources and human beings, man-made things or both, while the narrow one only comprises natural resources. However, broad definitions of the environment seem to be more common. Furthermore, the European notion of “Environment” has mainly an anthropocentric character, focusing on protection of human health rather than on protection of the environment for its own sake. This can be seen for instance in the Habitats Directive, in which the destruction of a habitat for development is provided for, so long as certain procedural requirements are fulfilled. Nevertheless, this strong anthropocentric orientation should be reduced with the increase of EU actions in certain fields which entail a more ecocentric approach, for instance Climate Change; and also, some traces of the ecocentric approaches have entered into EU environmental law provisions, in particular through ECJ jurisprudence.

In conclusion it possible to affirm, the EU has developed, during its history, a number of steps towards “greenisation” of its governance, nevertheless more green steps are always welcome in particular because the Europe are still far to live within the planet’s ecological limits.

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