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## Recent Developments Note: The European Environmental Agency

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# RECENT DEVELOPMENTS NOTE: THE EUROPEAN ENVIRONMENTAL AGENCY

Edward Moy\*

The European Environmental Agency (the EEA) was born on March 22, 1990, with the formal approval of European Community environment ministers.<sup>1</sup> It represents another outgrowth of the European Community's development of a regional environmental control regime which began over two decades ago.

The idea of an environmental protection agency for Europe, "in and outside of the Community," was proposed in June 21, 1989 when Spain held the rotating six-month presidency of the Council of Environment Ministers, with an information gathering mission.<sup>2</sup> On October 29, 1993, Copenhagen was named the site of the Agency.<sup>3</sup> To date, the EEA has been hampered by differences among various branches of Community government and national governments, keeping its function restricted to environmental monitoring, such as environmental impact assessments on certain Community funded projects in Community and non-Community countries.<sup>4</sup> Given the evolution of the European Community's environmental policies, however, the EEA may become a more powerful force and surmount its limitations, set by national governments and those segments of European Community government interested in preventing the emergence of a "green police force."<sup>5</sup>

The Treaty of Rome, a critical document in the history of the

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1. Council Regulation 1290/90, art. 1, para.1, 1990 O.J. (L. 120) 1 [hereinafter EEA regulation] (The agreement by the Community's member states was actually on May 7, 1990).

2. *International Developments: Brinkhorst Sees Environmental Agency, Biotechnology Draft as ECC Priorities*, CHEMICAL REGULATION REPORTER CURRENT REPORT, Aug. 11, 1989, available in WESTLAW, BNA-ENV Database.

3. *European Community: Summit Names Copenhagen Seat of European Environment Agency*, DAILY ENVIRONMENT REPORT NEWS, Nov. 1, 1993, available in WESTLAW, BNA-ENV database.

4. *International Developments: New European Environmental Agency Formally Approved by EC Ministers*, CHEMICAL REGULATION REPORTER CURRENT REPORT, Mar. 30, 1990, available in WESTLAW, BNA-ENV database.

5. *Id.*

Community, did not include a focus on the environment,<sup>6</sup> but it has been interpreted broadly so that the Community's goal of economic growth would also be based on environmental concerns.<sup>7</sup> One of the first steps toward a Community environmental policy included the adoption of its First Action Programme on the Environment in 1973,<sup>8</sup> in response to the 1972 United Nations Conference on the Human Environment.<sup>9</sup> There followed a series of Action Programmes,<sup>10</sup> with a Fifth Action Programme adopted recently, to run to the year 2000.<sup>11</sup>

Other important developments include significant amendments to the Treaty of Rome, under the Single European Act (SEA), which was intended "to preserve, protect and improve the quality of the environment,"<sup>12</sup> and the creation of the Treaty of European Union (TEU) at Maastricht.<sup>13</sup> The TEU would modify SEA amendments and Treaty of Rome provisions, streamlining the implementation process of environmental objectives, and to promote the

6. TREATY ESTABLISHING THE EUROPEAN COMMUNITY [hereinafter EEC TREATY].

7. See, e.g., ECKHARD REHBINDER AND JAMES STEWART, ENVIRONMENTAL PROTECTION POLICY IN INTEGRATION THROUGH LAW (Mauro Cappelletti, Monica Seccombe and Joseph Weiler, eds., 1985) [hereinafter REHBINDER AND STEWART].

8. Council Declaration of Nov. 22, 1973 on the Programme of Action of European Communities on the Environment, 1973 O.J. SPEC. ED. (C 112) 1.

9. *Report on the United Nations Conference on the Human Environment at Stockholm*, U.N. Document A/Conf. 48/14, 11 I.L.M. 1416 (1972) [hereinafter *Report*]; see also Julie A. Harms, *The European Community's Development of an Environmental Policy: the Treaty of European Union*, 6 TUL. ENVTL. L.J. 397 (1993) [hereinafter Harms].

10. For example, the Second Action Programme continued the First Programme's policies, from 1977 to 1981, and emphasized air and water pollution prevention with pollution control. The Third Action Programme ran from 1983 to 1986, continued the Second Programme's policies and emphasized such goals as the avoidance of overlapping and inefficient proposals. It is important to indicate that during the time of the Third Action Programme that over one hundred environmental measures were implemented from 1976 to 1987, "covering areas such as waste management, conservation of flora and fauna, radioactive waste, nuclear safety and air, water and noise pollution." Harms *supra* note 11, at 403.

11. See 1993 O.J. (C 138) 1 (adopted Feb. 1, 1993); see, e.g., Commission of the European Communities (Directorate General XI), TOWARD SUSTAINABILITY (1993) [hereinafter SUSTAINABILITY].

12. Single European Act, Feb. 16-28, 1986, 1986 Bull. Eur. Communities (Comm'n Eur. Communities), 25 I.L.M. 506.

13. Treaty on European Union, Feb. 7, 1992, 31 I.L.M. 253.

goal of sustainable growth.<sup>14</sup>

The EEA may not have been empowered to be an "enforcer,"<sup>15</sup> but the time may come when it may have to assume greater duties and powers in the name of Community economic growth. While the Action Programmes were not legally binding, they were perpetuated and have become increasingly important over the past 20 years.<sup>16</sup> While some Community member states were trying to "hold back the tide" of change, the Community's environmental order has in fact been growing during the negotiations for the SEA.<sup>17</sup> What was once a policy area that was "somewhat marginal" became one of "central importance," and has affected the law of corporation, tax, financial services, broadcasting and civil procedure.<sup>18</sup>

The EEA was created in order to gather information to make a more effective environmental policy possible. When this source of environmental information becomes reliable and constant enough to reassure the certainty and necessity of more proactive environmental protection, an implementation mechanism with a governance structure appropriate for environmental protection may be needed to carry out Community-wide policies - and that could be the EEA.

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14. See, e.g., Harms, *supra* note 9, at 412-20. For a definition of sustainable development, refer to WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (1987).

15. Harms, *supra* note 9, at 407.

16. During the past 20 years, the first four action programmes have "given rise to about 200 pieces of legislation covering pollution of the atmosphere, water and soil, waste management, safeguards in relation to chemicals and biotechnology, product standards, environmental impact assessments and [the] protection of nature". See, SUSTAINABILITY, *supra* note 11, at 37.

17. Phillippe Sands, *European Community Environmental Law: The Evolution of a Regional Regime of International Environmental Protection*, 100 YALE L.J. 2511, 2515 (1991).

18. *Id.* at 2515.

