

HARMONIZATION OF NATIONAL LEGISLATION WITH EUROPEAN ENVIRONMENTAL REGULATIONS

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ABSTRACT: *In recent years, the whole world has become increasingly complex, marked by unrest of all kinds and subjected to very rapid climate change. This state of affairs brings with it both opportunities and challenges. Thus, in this context, the European Union as a whole has set out to strengthen its role in this changing environment. The Member States are determined to shape the future world in order to promote the interests of our citizens, businesses and societies and to protect our way of life. In this article we will present how Romania has harmonized its national legislation on the environment to the European regulations.*

KEYWORDS: *harmonisation, rules, environment, legislation, European Union.*

JEL Code: *K32, K33*

1. INTRODUCTION

From the latest scientific data carried out in the field, it is clear that the whole earth globe is warming, the climate is changing, and extreme weather events are increasingly frequent: floods, the increase in global average temperatures, drought, sea level rise and the decrease of the ice cap, all of which are signs of climate change.

The main cause of climate change is mainly the increase in greenhouse gas emissions. In order to combat this cause, the reduction of emissions has become a priority for all the countries of the world.

Scientific uncertainty is depicted in many of the decisions regarding the environment. Choices must be made with no knowledge of the future consequences. (Nicolau, 2021)

European environmental policy was adopted at the European Council in Paris in 1972, where (following the first UN environment conference) the European Heads of State or Government declared that a Community environmental policy was needed to accompany economic expansion and called for an action programme.

The Single European Act of 1987 introduced a new title 'Environment', which provided the first legal basis for a common environmental policy with the objectives of

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preserving the quality of the environment, protecting human health and ensuring the rational use of natural resources.

Subsequent revisions to the Treaty have strengthened the Union's commitment to environmental protection and the role of the European Parliament in its development.

With the Maastricht Treaty (1993), the environment became a formal EU policy area, the codecision procedure was introduced, and qualified majority voting in the Council became the general rule.

The Treaty of Amsterdam (1999) established the obligation to integrate environmental protection into all SECTORAL EU policies in order to promote sustainable development.

Through the Treaty of Lisbon (2009), 'combating climate change' and sustainable development in relations with third countries have become specific objectives. Legal personality has thus enabled the EU to conclude international agreements.

Although the first environmental programme was started in 1973, opinions on the application of European Union legislation are divided, depending on the concrete situation in each country. Environmental movements in the Netherlands, Denmark and Germany regard the EU as a factor slowing down the development of their own countries, and in other countries, EU legislation is seen as a means of putting pressure on national governments.

European environmental policy is based on the principles of precaution, prevention, correction of pollution at source and 'polluter pays'. The multiannual Environment Action Programmes set out the framework for future actions in all areas of environmental policy. They are integrated into horizontal strategies and are taken into account in international environmental negotiations. Last but not least, implementation is fundamental.

EU legal regulations in general, and legal environmental (environmental) regulations in particular, which oblige Member States to adopt environmental protection measures, consist of five main groups of legal acts: directives, decisions, regulations, recommendations and resolutions. To this are also added numerous published information materials, programme documents, which are weighted tools in regulating the EU's environmental policy. It should be noted that directives are the main and most effective types of legal acts, as they oblige EU Member States to bring their national legal systems into line with them, that is, to amend or supplement them in accordance with the directives adopted within a certain period. (Bosceanu, 2020)

What should be noted, however, is that the EU's policy on environmental issues has, to date, materialised in more than ninety Directives and several Decrees, Decisions and Regulations. To these are added 110 Directives which seek to adapt the previous ones in line with new technical progress and the growing importance of the problems of current affairs.

The EU directives cover wide areas, such as pollution due to cars, large industrial sites, main industries and farms. These directives oblige national governments to use environmental impact assessment and to allow access to environmental information. They provide EU guidelines on product packaging, the use of toxic chemicals, the protection of birds, etc

The trend of economic growth is causing fears to environmentalists, as this will have considerable negative effects on the environment.

Currently, EU member countries are developing and strengthening their cooperation in the field of the environment. Cooperation shall also cover cooperation at regional level, including within the European Environment Agency, and at international level. (Ceban, 2019)

Despite the progress made towards environmental protection, in the field of international collaboration, the meetings that have taken place over the last ten years and the documents adopted by them have not led to significant changes, aimed at bringing back the consequences of the global ecological crisis.

In Romania, environmental protection problems are being acuously posed, especially as a result of intense local pollution by industry and agriculture or by population centers, as well as cross-border pollution, which has led to the disturbance of some ecosystems and to the worsening of the living conditions of the people in these areas. (Drobotă, 1999)

The State through its legislative power, usually through the Parliament, issues normative acts regulating, at this level, the rights and obligations of citizens and legal entities in all areas including the protection of the environment and human health. Another series of normative acts, issued through the executive power of the state, implement and execute the rights and obligations set out in the acts issued by the legislative power.

European Union law is a body of legislation that forms Community law. These regulations have suprastate issuers (the European Parliament, the European Commission, the European Council), with a legal force superior to domestic normative acts, democratically accepted, on the basis of a certain procedure.

Regulations which have this force are strictly laid down in the EU Treaty and in the constitutions of the Member States. The general rule shows that following accession, the provisions of the constituent TREATIES of the EU, as well as the other binding Community regulations, take precedence over the contrary provisions of domestic laws, while respecting the provisions of the Act of Accession. Binding Community rules are the regulation, the directive and the decision. The European Union has legal personality and therefore has its own legal order, distinct from the international one. European Union law has an effect on the legislation of its Member States both directly and indirectly, and once it enters into force, it becomes an integral part of the legal system of each Member State.

2. HARMONIZATION OF ROMANIA'S ENVIRONMENTAL LEGISLATION TO THAT OF THE EUROPEAN UNION

The emergence, development and constitution of the Romanian legislation on environmental protection have a relatively long history, which has known several stages, with its own characteristics.

Gradually, from the first unwritten rules of customary law, which concerned the minor aspects of nature protection, we have reached the current regulations, which are in line with Community legislation and legal rules on global environmental issues,

The general concepts expressed by the legal regulations have also evolved from a utilitarian approach, of protecting the environmental factors in direct relation to their economic value, with the utility presented for man, by recognizing the need for the

conservation of the natural environment as a fundamental human interest, to the vision that puts first of all the intrinsic value of the environment, protecting its elements that are necessary for man for survival.

This process was strongly influenced by developments in international regulations in the field, before 1989, by the first U.N. Conference on the Human Environment (Stockholm, June 1972), and after 1990, by the decisions of the World Conference in Rio de Janeiro (June 1992) and the Johannesburg Conference (September 2002), as well as by the Euro-Atlantic integration efforts.

Romania's accession to the European Union (January 1, 2007) marked a new stage in the development of environmental law and its protection.

The socio-political and economic transformations that were triggered in Romania after the Revolution of December 1989, the ample process of transition from a planned, hyper-centralized economy to a market economy, from the domination and absolute primacy of state property to private property, have imprinted new dimensions on how to approach and solve the issues of environmental protection, conservation and development.

Thus, by the force of the new realities, a series of provisions of the framework law on environmental protection (no. 9/1973) and the sectoral laws have become obsolete by the disappearance of the institutions, and in general, by the radical change of the socio-political and economic context.

The Constitution of December 8, 1991 enshrined the obligation of the state to ensure "the restoration and protection of the environment, as well as the maintenance of the ecological balance", thus establishing the general concept that environmental protection is a public responsibility of the state. (Nicolau, 2016)

Rapid were also the developments in the field of environmental institutions where a tripartite structure - water, forests and environmental protection - was chosen, maintained regardless of the name used, until January 2001, when the field of forests was passed to the Ministry of Agriculture, a situation subsequently maintained.

The transition from the absolute domination of public (state) property to that of private property, especially in the land field, but also in other sectors of the economy, also involved the establishment of a new type of relations between property and environmental protection.

In this respect, the Constitution of 8 December 1991 established that: "The right to property obliges to respect the tasks of environmental protection" (Art. 41 para. (6)).

After a parliamentary gestation of 4 years, on December 30, 1995, the Environmental Protection Law no. No 137/1995, conceived as a framework regulation in the field, on the basis and development of which the adoption of 17 special laws was expressly provided for.

Having as a fundamental reference the Model Law on environmental protection elaborated under the aegis of the Council of Europe (1991), this framework law marked the end of the first phase of the transition, characterized by the abandonment of the old planned-totalitarian conception and the affirmation of the Western type one in terms of environmental protection.

Together with the provision of 'principles and strategic elements` to underpin the legal regulations on the environment and other 'horizontal` issues, Law No 137/1995 laid down the fundamental rules of horizontal regulations (regime of hazardous substances

and wastes as well as other wastes, treatment of chemical fertilizers and pesticides, protection against ionizing radiation, protection of natural resources and biodiversity, protection of water, atmosphere, soil and subsoil and terrestrial ecosystems, etc.).

Thus, new regulations were adopted in the fields of forestry (Forest Code, Law No 26/1996), water management and protection (Law No 107/1996), the regime of nuclear activities (Law No 111/1996, republished), the regime of protected natural areas, the conservation of natural habitats, wild flora and fauna (Government Emergency Ordinance No 236/2000), the protection of the atmosphere (Government Emergency Ordinance No. 243/2000), waste regime (Government Emergency Ordinance No. 78/2000) s.a.

The new legislation enshrines the continental concept that environmental protection is a "major public interest objective" and is part of the overall sustainable development strategy.

One of the major objectives for Romania's environmental policies is the increasing focus of environmental programs, strategies and legislation, on the relevant standards and legal framework of the European Union. Achieving these objectives requires effective state-level coordination, institutionalized control by a body with broad and well-targeted competences, namely the Ministry of the Environment, water and forests.

Environmental legislation is represented by all laws, decisions and government orders issued by various EU authorities and regulations defining and regulating all measures applied to the correct management of waste generated by natural and legal persons, measures necessary to protect the environment and the health of the general public, by means of selective collection and efficient and environmentally sound treatment of waste of all types.

Environmental legislation establishes as a primary priority the application of a waste hierarchy, which makes waste generation and management more efficient, thus reducing negative impacts on the environment and public health, such as: Waste prevention; preparing for re-use; waste recycling; other recovery operations (energy recovery), not least waste disposal. (Muntean, 2018)

This hierarchy makes waste generation and management operations more efficient, thus reducing the harmful effects on the environment and the health of the population. With its accession to the European Union, Romania became a Member State with full powers at Community level, the 7th Member State in terms of the number of votes (14) in the EU Council.

Romania has signed and transposed into national law several environmental and climate-related treaties such as the United Nations Framework Convention on Climate change (UNFCCC) by Law No 24/1994; the Kyoto Protocol by Law No 3/2001; The Protocols to the Convention on long-range Transboundary Air pollution, done at Geneva on 13 November 1979, adopted in Aarhus on 24 June 1998 and in Gothenburg on 1 December 1999 by Law No 271/23.06.2003 (published in Official Gazette No 470/01.07.2003); Convention on persistent organic pollutants, adopted at Stockholm on 22 May 2001 by Law No 261/16.06.2004 (published in Official Gazette No 638/15.07.2004); Convention on the Transboundary effects of Industrial accidents, adopted at Helsinki on 17 March 1992 by Law No 92/2003 (published in Official Gazette No 220/02.04.2003), etc.

In 2020, the Romanian Parliament adopted Law 123/10.07.2020 to amend and supplement the Government Emergency Ordinance 195/2005 on environmental protection, which makes some important changes in the field of environmental protection.

In order to fulfill the environmental protection obligations of Romania as a Member State of the EU, the Directorate-General for European Affairs and International relations of the Ministry of Environment, water and forests (MMAF) represents the interface structure between the Ministry and the Ministry of Foreign Affairs (MAE) by:

- Preparing, together with the technical directorates of the Ministry, the instructions and general mandates for negotiations in the field of environmental protection for European regulations, strategies and policies (at EU level or in relation to candidate, acceding and non-EU Member States), promoting/negotiating regardless of the level of representation and their correlation with the positions adopted by other member states;
- Coordination of the exchange of information on European regulations, strategies and policies, in the field of environment protection, being promoted between the national institutions involved and the Romanian Permanent representation to the EU;
- Coordination of the representation of Romania at meetings on environmental protection organized within the Council of the European Union, the European Commission and by the EU Presidency;
- Monitoring compliance with the timetable for transposition/implementation of the Community environmental acquis and the timetable for reporting to the European Commission/European Environment Agency;
- Coordinating the reporting of national acts transposing European directives within the framework of the notification process, but also of legislative acts issued in the field covered by the Directive which are subject to transposition by the Ministry of Foreign Affairs and the national implementing acts of the European Regulations to the European Commission;
- Coordination of the preparation: Responses to requests for information from the European Commission and other European institutions; points of view of THE MMAS for the transmission of responses to requests for information received through the EU pilot (MAE coordinator); MAPAP points for the submission of responses to formal notifications/reasoned opinions of the European Commission in the pre-litigation phase of the infringement procedure and for the transmission of documents (defense, rejoinder) in the litigation phase (referral to the EU Court of Justice) of the infringement procedure (MAE coordinator).

Climate change has come to be considered the main threat to global stability and security by many experts in the field. In Europe, we can already see an increase in the level and intensity of rainfall, increasing frequency and duration of heat waves and increasing drought in southern Europe. At the same time, rainfall rises in central and northern Europe, leading to intense flooding in watercourses and coastal areas. Extreme weather events are increasingly linked to climate change.

At this point, we can say with certainty that the process of reviewing existing environmental policy and developing a new legal framework in the field of environmental protection and strengthening environmental security has been growing. This process is dictated by the current requirements to approximate national

legislation to the provisions of EU directives and regulations, and by the need to implement a single policy that would integrate environmental requirements into the sectors of the national economy (agriculture, energy, transport, industry, etc.).

Environmental security is to be treated as an action to prevent the existing danger of worsening the environmental parameters of the human living environment and the biosphere in general, which threaten the state of the atmosphere, the hydrosphere, the lithosphere, the outer space, the animal and plant Kingdom. Environmental security can be ensured through a complex of political, legal, economic, technological, social, etc. measures that guarantee the state of protection of the environment and of the vital interests of humans. Ensuring the safety of individuals, society and the environment against threats caused by anthropogenic activity, and exceptional natural and theogenic situations become a priority of the policies of each Member State of the European Union and even the international Community. (Ceban, 2019)

Environmental security is achieved at local, regional, European and global level. The overall level involves the pronouncement and supervision of processes in the biosphere and its components. The aim of global control is to preserve and restore the natural reproduction mechanism of the components of the natural environment, and coordination of actions is the prerogative of the European Union, but also of other bodies, when we refer to the international level, namely: The UN, UNESCO, UNEP. (Ceban, 2019)

Ensuring global environmental security is achieved by a variety of methods:

1) to study the most relevant manifestations of the risks likely to affect the survival of the human community, including environmental, economic, demographic and political aspects, humanitarian, military, social. The establishment of minimum acceptable levels of risk, the exceedance of which will cause a global danger to human life and to civilization in general;

2) drawing up and adopting environmental programs and international instruments on environmental protection. To increase the efficiency of existing agreements, treaties, programs and institutions, and to extend international cooperation;

3) developing the necessary approaches to identify and assess the hazard for each risk category, and the interaction between them;

4) ensure access to the results of investigations and recommendations of the UN, other organizations for governments, civil society.

3. CONCLUSIONS

The current trend in economic growth is causing environmental concerns, as from their point of view, this increase will have considerable negative effects on the environment. EU Member countries are currently developing and strengthening their cooperation in the field of the environment. However, the progress made in the field of international cooperation, in particular in the meetings held over the last ten years and in the documents adopted by them, has not led to any significant changes in order to restore the consequences of the global environmental crisis.

The global market for green and low-carbon goods and services has reached more than €4.000 billion and is continuously growing by more than 4% per year. This makes it one of the most dynamic and prosperous sectors globally. It is therefore an enormous opportunity for these already modern and innovative sectors to grow even more and help

create new green jobs. Ambitious climate action can ensure Europe's leadership in the benefits of this growth in demand for green and low carbon goods and services globally.

The European Parliament has repeatedly recognized the need to make better implementation a key priority. In a resolution on "optimizing the benefits of EU environmental measures: Increasing trust through better knowledge and responsiveness", Parliament has criticized the unsatisfactory level of implementation of environmental legislation in the Member States and has presented a number of recommendations for more effective implementation, such as the dissemination of best practices between Member States and between regional and local authorities. In presenting its position on the current Environment Action Program, the European Parliament stressed the need for a more rigorous enforcement of EU environmental legislation and called for improvements in the safety of investments supporting environmental policy and efforts to combat climate change, as well as taking better account of environmental concerns in other policies.

Thus, every EU Member State must ensure that its current and future legislation complies as far as possible with EU law, and the result of harmonization is that there is a single system in different States not only of common principles but also of sectoral law with common objectives and tasks in external policies, as well as a single mechanism for the legal regulation of public relations.

Therefore, only knowledge of EU directives is not sufficient. Firstly, EU environmental legislation needs to be considered in a wider context of tasks, obligations and commitments aimed at ensuring sustainable development, a high level of protection, integration processes, the implementation of the general principles of the functioning of the European Community, as well as ensuring fundamental human rights.

While respecting the recommendations of the European Union institutions in the field of environment, Romania seeks to comply with the provisions adopted at EU level by transposing them into its national legislation.

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