Environmental law of the European Union began to take its shape in 1970s. Initially, the political will of Member States’ leaders in this area was expressed without a clear Treaty foundation, in the form of non-binding resolutions, which included multi-annual Action Programmes. It was only the Single European Act that brought changes in this respect: it clearly referred to the Community environmental policy and defined its objectives and principles. The legal bases of modern environmental policy have been laid down by the Treaty on the Functioning of the European Union in the Title XX “Environment” describing its objectives and rules. The sources of the derivative environmental law include directives, regulations and decisions. Typically directives would be used, which subsequently have to be transposed to national legislations.

Keywords: environmental policy, European Union

Introduction

Environment is an issue of global nature, which affects entire humanity. It consists of numerous components of animate and inanimate nature, natural environment, as well as anthropogenic objects. In the European dimension, in the time of shaping of European Communities and their dynamic development, it turned out rather quickly that there was a need to develop community standards not only of socio-economic nature, but also in the area of environment, and specifically its protection. The objective of this article is to discuss fundamental concepts of environmental law of the European Union, without - however - exhausting them all. The deliberations on the foundations of functioning of this branch of law shall be preceded by presentation of a historical outline of development of environmental law since the beginning of 1970s. Then, in a synthetic manner, objectives and principles of the EU environmental policy shall be analysed, as well as fundamental instruments of derivative law in this area, the most important issues related to implementation of this law in the Member States and its harmonisation. As the author limits her considerations to issues connected solely to environmental policy and law, the article shall not touch upon general issues related to legislation of the European Union, broadly discussed in the literature of the subject, such as the procedures for its adoption.
development arrived at a compromise of sorts in this area. Several stages in the development of this policy can be distinguished, related to amendments to the provisions of primary legislation, i.e. Treaties, and adoption at the level of the Community, and then the Union, of subsequent Action Programmes in the area of environment.

In the initial stage of development of the EU environmental policy, when the intensive economic growth of European countries necessitated undertaking efforts at the Community level targeted at environment protection, it was somewhat difficult to establish the legal basis for such initiatives. The provisions of Article 100 (approximation of national legislations) and Article 235 (assumed competences) of the Treaty establishing the European Economic Community (the EEC treaty) signed in Rome in 1957 were deemed the foundations of legislative activities of the Community in the area of environment.

The 1st Action Programme (for 1973-1976) was the first document to invoke these bases (Declaration of the Council of the European Communities and of the representatives of the Governments of the Member States meeting in the Council of 22 November 1973 on the programme of action of the European Communities on the environment, OJ C 112, 20.12.1973, p. 1–53). The European Commission (EC) was obliged to draft it at the summit of heads of states and governments, which took place in Paris 1972. However, still before approval of this Programme, since 1964 there had been attempts at definition of common provisions in the area of environment protection in the form of directives, which had not comprised a consistent system, but had rather been an incidental legal regulation and had been primarily meant to eliminate trade barriers (see Barcz, 2006, p. 686). The objective of the first Action Programme was to develop a general framework for standards of environment quality, which was required at the level of the Community. Environment friendly activity of the states was to be focused on striving to neutralise pollution sources, undertaking prevention measures and repairing damage to environment (see Kosior, 2008, p. 202). Prevention of exhaustion of natural resources was also deemed important. A necessity of broader introduction of “emission standards” was identified, perceived as a primary instrument to control pollution and affecting all components of environment, products and industrial processes. Another instrument of control was to consist in “quality criteria”, which represented requirements to be met by environments. Implementation of these two instruments turned out to be too difficult at the stage of the 1st Action Programme. The following turned out to be most problematic: assessment of harmfulness of pollutants, absence of harmonised methods for analysis and measurement of pollution and difficulties with estimation of costs of damages caused by pollutants.

The 2nd Action Programme spanning 1977-1981 was the continuation of the 1st one (Resolution of the Council of the European Communities and of the representatives of the Governments of the Member States meeting within the Council of 17 May 1977 on the continuation and implementation of a European Community policy and action programme on the environment, OJ C 139, 13.6.1977, p. 1–46). This Programme focused primarily on rational management of natural resources, reduction of pollution, protection of fauna and flora. In the area of pollution reduction it referred primarily to water, air and noise. In the 2nd Programme the EU policy was to be extended to include marine waters, rather than inland waters, as had been the case thus far. From the point of view of the Treaty legal bases, which has been mentioned above, it was questionable to cover fauna and flora with protection at the Community level. Nevertheless, the EC was asked to draft legal acts in this area (protection of wild animals, migratory species, as well as marine flora and fauna).

Despite the fact that the doctrine assumes that 1st and 2nd Programmes did not bring expected results, their undoubted merit lies in the development of general framework for the Community policy for environment protection, which were the starting point for drafting of subsequent Programmes.

The efforts on drafting of the 3rd Action programme (1982-1986) placed emphasis differently than the first two ones (Resolution of the Council of the European Communities and of the representatives of the Governments of the Member States, meeting within the Council, of 7 February 1983 on the continuation and implementation of
a European Community policy and action programme on the environment (1982 to 1986), OJ C 46, 17.2.1983, p. 1–16). The focus was more on prevention of environmental damage, rather than on repairing that already done. At the same time the EC was equipped with the competence to implement the Community law to national legal orders. It was decided that further socio-economic development was limited by natural resources. Importantly, environment protection was deemed to be an integral part of Community activities in other areas and connection of this policy with employment was recognised (see Erechemla, 2013, p. 56).

4th Action Programme (1987-1992) was elaborated immediately after adoption of the Single European Act (SEA) in 1986, which brought clear definition of objectives in the environmental domain (Resolution of the Council of the European Communities and of the representatives of the Governments of the Member States, meeting within the Council of 19 October 1987 on the continuation and implementation of a European Community policy and action programme on the environment (1987-1992), OJ C 328, 7.12.1987, p. 1–44. The Programme drew attention to the necessity of incorporating environment protection into social and economic policy of the Community. Still, the focus was on limiting the pollution of air and waters originating from industry, while the issues related protection of Earth’s surface, flora and fauna, or rational use of natural resources remained at the background.

5th Action Programme (1993-2000) could be perceived as an expression of responsibility of the EC for global problems resulting from: degradation of environment, including climate changes, depletion of the ozone layer, disturbing of the biological balance and pollution of Earth’s surface (see Barcz, 2006, p. 691). It was adopted after the Treaty of the European Union (the Maastricht Treaty). The Programme pointed to the necessity of implementation of the sustainable development principle, which was connected with the need to include environmental policy in all other domains of EC’s activity. The sustainable development was understood as development that meets the needs of the present without compromising the ability of future generations to meet their own needs (Resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council of 1 February 1993 on a Community programme of policy and action in relation to the environment and sustainable development - A European Community programme of policy and action in relation to the environment and sustainable development, OJ C 138, 17.5.1993, p. 1–4).

The 6th Action Programme (2002 -2010) built on the findings of the 5th Action Programme, while at the same time stating that purely legal approach to environment protection should give way to a strategic approach (Decision No 1600/2002/EC of the European Parliament and of the Council of 22 July 2002 laying down the Sixth Community Environment Action Programme, OJ L 242, 10.9.2002, p. 1–15). It pressed for adoption of seven thematic strategies related to: air pollution, marine environment, sustainable use of resources, prevention of generation of waste and recycling, sustainable use of pesticides and soil protection, urban environment. The strategies were to be based on a comprehensive approach, be thematically organised, and define long-term objectives on the basis of problems related to environment protection. The Programme was also to be based to a greater extent on scientific and economic analyses, as well as on environmental indicators. It proposed five priorities in strategic activities: improvement of implementation of existing legislation, inclusion of environment related issues in other policies, cooperation with markets, involvement of citizens and changing their behaviour patterns, as well as inclusion of environment related issues in decisions on planning and spatial management. Specific manners of action were ascribed to each of these priorities.

The 7th Action Programme adopted in the form of the Decision of the European Parliament and the Council (The Decision of the European Parliament and the Council 1386/2013/EU of 20 November 2013 on a General Union Environment Action Programme to 2020 “Living well, within the limits of our planet”, OJ L 354, 28.12.2013, p. 171–200), builds on the findings of the 6th Action Programme concluded in 2012. At the same time it indicates that the shortcomings in attainment of its objective are apparent and that the EU should intensify its efforts for implementation of its assumptions (see the Opinion of the European Economic and Social Committee on the 7th
Environment Action Programme, follow-up to the 6th EAP, OJ C 191, 29.6.2012, p. 1-5). It also states that it is deemed necessary to set the objectives for the Union by 2020, which shall be consistent with a long-term vision for its development by 2050, and that they should refer to political agreements with the Europe 2020 strategy. Without detriment to the achievements in this domain so far, it states that activities under the Programme should be based on existing planning documents, i.e. the EU climate and energy package, the Roadmap for moving to a competitive low carbon economy in 2050, the EU Strategy for protection of biodiversity by 2020, the Roadmap to a resource efficient Europe, the flagship initiative “The Innovation Union” and the EU strategy for sustainable development. It shall also be necessary to attain the already agreed objectives on environment and climate change. The 7th Action Programme “Living well, within the limits of our planet” sets three key objectives. The first is the protection, retention and reinforcement of the natural assets of the EU, i.e.: clean air and water, uncontaminated soil and other components of healthy ecosystems. The Programme defines objectives, which are to stop the loss of biodiversity by 2020 and restore the proper condition of at least 15 percent of damaged ecosystems. The second objective is to transform EU economy into resource effective, environmentally friendly and competitive. The third one focuses on the significance of environment to health and welfare of EU citizens, pointing the need of safeguarding EU residents against negative impact of environmental factors such as: noise, air and water pollution, or presence of hazardous chemicals. The measures leading to attainment of these objectives shall include: better implementation of legal provisions, improved social awareness through better information campaigns, more thoughtful investment in environment and climate policy, and full inclusion of environment protection requirements in other policies.

In the absence of Treaty legal bases for undertaking legislative initiatives in the area of environment, initially the Member States assumed that provisions of Article 100 (approximation of national legislations) and Article 235 (assumed competences) of the Treaty establishing the European Economic Community (TEEC) of 1957 should be used for the purpose. These were the bases invoked by the first Community Action Programmes discussed in the introduction. The first regulations within the primary law were only brought the Single European Act of 1986. It already mention environmental policy and defined its objectives, pointing to its principles as well. These included: the prevention principle, the principle of repairing damages at source, the polluter pays principle, the principle of incorporating environment protection requirements into processes of drafting and implementation of other policies, or the principle of cooperation with third parties in the area of environment. Moreover, the principle of subsidiarity was introduced, stating that measures at the European level shall be undertaken only when they are more effective than measures undertaken at the level of a single country. Also the Council was empowered to undertake environment related measures. The next stage of the development of the EU environment protection policy was brought by the Maastricht Treaty (1993) and the Amsterdam Treaty, when environment protection became one of the objectives of the Union. The latter, in its Article 2, contained an objective pertaining to a high level of protection, as well as the integration principle (Article 6), which stipulates that when defining and implementing EU policies and actions, particularly for the purpose of providing support for sustainable development, requirements of environment protection must be taken into account. Here, the role of the European Parliament strengthened, as since then the co-decision procedure was typically applied when adopting legal acts in the area of environment. The Treaty of Nice (2001) did not introduce any major changes here, but it pointed to EU’s responsibility for environment protection issues in the international arena, where it was to be its proponent. The Lisbon Treaty, adopted in 2007 and currently in place, states that the domain of environment belongs to shared competences, while its objectives include a high level of protection and improvement of the quality of natural environment, as well as sustainable development (Article 3 of TEU). The important novelty here is the provision, which puts an obligation on the Union to support sustainable development in external EU relations with developing countries. Article 21 of TEU stipulates that the Union shall foster the sustainable economic, social and environmental development of developing countries and help develop international measures to preserve and improve the quality of the environment and the sustainable
management of global natural resources, in order to ensure sustainable development. The Treaty also point to the objective related to combating the climate change.

Legal bases of modern EU environmental policy, its objectives and principles, harmonisation of environmental law

The legal bases for EU policy in the environmental domain are laid down in Title XX of TFEU “Environment” (The Treaty on functioning of the European Union, OJ EC C 326, 26.10.2012, p. 47-390). It contains objectives and principles of this policy, which are in line with broader objective of the Union included in Article 3 of the Treaty establishing the European Community. This Article formulates three general objectives in the area of environment of the European Union: high level of environment protection (in connection with Article 191(2) TFEU); improvement of the quality of environment and sustainable development of Europe and Earth.

When explaining the concept of sustainable development, it is necessary to refer to the now already famous Brundtland Commission Report “Our Common Future – Brundtland” adopted in 1987 at the 42nd session of the UN General Assembly. It was a result of the work of the special independent World Commission for Environment and Development (WCED) established in December 1983. The report stated: “At the present level of civilisation, it is possible to have sustainable development, i.e. development that meets the needs of the present without compromising the ability of future generations to meet their own needs.” (see Rokicka, Woźniak, 2016, p. 55-56). Thus, it is about an integrated approach to questions of climate and socio-economic development, i.e. a policy of socio-economic development, which embraces the relevance of environmental problems, while any economic development, which shall not account for environmental problems, shall fail to meet the criteria of sustainable development (COM (2003) 745, Communication from the Commission to the Council and the European Parliament - Environment Policy Review. Consolidating the environmental pillar of sustainable development).

The fundamentals of Union’s actions for sustainable development referred to in Article 3 of Treaty on European Union (TEU) include high level of protection and improvement of natural environment. The objective has been repeated in Article 191(2) of TFEU, which provides that: “Union policy on the environment shall aim at a high level of protection”, as well as in Article 114(3) referring to high level of protection in the context of approximation of Member States’ legislations for functioning of the internal market. Despite several references to the high level of protection in the Treaty, its provisions fail to define the term. The objective of improvement of quality of natural environment has been formulated in a similarly general manner. However, as both of the above mentioned objectives are located in Article 3 of TEU, one could assume that all measures undertaken with a view to improve the quality of environment shall at the same time contribute to achievement of the objective of the high level of protection.

The general Treaty objectives have been laid down in more detail in Article 191 of TFEU, which stipulates that EU 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. In general one could conclude that the objective of environment protection covers both refraining from activities harmful to the environment and actions aiming at ensuring that the environment shall not be degraded. As the literature points out, the objective formulated in this way reflects the modern concept of environment protections, as a comprehensive process involving planning and management of environment, regulated by norm of material and procedural law in this domain. Such concept makes it possible to undertake measures of preserving, remedial or prevention nature, but also sanctions (see Kenig-Witkowska, 2011, p. 56). Inclusion of the necessity to promote measures at international
level to deal with regional or worldwide environmental problems, and in particular combating climate change (Article 191 of TFEU) in the Treaty objectives is obvious, taking into account the cross-border nature of problems related to environment protection. It is implemented primarily via EU practice in the area of concluding or joining international agreements related to environment. Inclusion of objectives related to protection of human health or prudent and rational utilisation of natural resources in the Treaty is in turn a natural consequence of increasing ambitions of the Community in this area already in the initial stage of development of environmental policy.

The Union’s guiding principles, when developing the environment policy, include, the principle of prudence, application of preventive measures, repairing the damage at source, the polluter pays principle, subsidiarity and integration.

The principle of prudence, which is connected with the principle of prevention means that if there is a suspicion that a given type of human activity may result in serious consequences for the environment, than on the basis of available scientific data measures minimising these negative impacts should be undertaken. The absence of relevant data should be a reason to delay any action perceived as hazardous to environment. The principle of taking prevention measures dictates the necessity to undertake relevant measures before damage to environment could occur, which points directly to a legal instrument of environmental impact assessment. Thus, one should prevent occurrence of events which could harm the environment, rather than counteract future impact of such events. This principle was present across the Action Programmes.

The principle of repairing the damage at source shall mean that any damage to the environment should be repaired at the place where it occurred or in the close vicinity (pollution with waste, but also pollution of cross-border waters or air).

The polluter pays principle (PPP), included already in the 1st Action Programme is also a principle of common international environmental law. This principle was elaborated in 1972 by the Organisation for Economic Cooperation and Development (OECD). According to OECD recommendation the cost of pollution should be paid by a polluter, which may transfer the cost to consumers, but it should not be subsidised by the state. This principle may be applied directly or in the form of environment related taxes or fines. An exception, which would allow departure from this principle, would be a situation, where it could cause severe socio-economic consequences.

The principle of subsidiarity included in Article 5 of TEC is one of the principles broadly discussed in the doctrine. Initially it pertained to environment protection only, but in the Maastricht Treaty it became a principle related to all domains of Union’s activity, which were not its sole competence. It was the reaction to increasing interference of the Community in many areas and deprivation of competences of the states. Article 5 establishes the general principle for Union’s actions, pursuant to which in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. The Protocol on application of the principle of subsidiarity attached to the Amsterdam Treaty was the expression of controversy raised by the principle. It stated that the justification of each draft of a Community legal act shall include a reference to compliance with the subsidiarity principle and shall examine, if certain issues of transnational nature could not be better addressed at the level of individual Member States (see Barcz, 2006, p. 700).

The integration principle/clause has been included in Article 11 of TFEU, which stipulates that when defining and implementing EU policies and actions, particularly for the purpose of providing support for sustainable
development, requirements of environment protection must be taken into account. The doctrine emphasises that it should be broadly interpreted, which means that it should apply to all EU policies and actions.

The sources of derived law in the area of environment are adopted on the basis of Article 288 of TFEU. These include: directives, regulations, Decisions, recommendations and opinions. The latter two are not legally binding. Communications, resolutions, notices, guidelines, action programmes, voluntary agreements are used in practice, although not listed in Article 288 TFEU and also not legally binding. When discussing the concepts of the source of law, one should mention acquis communautaire, which should be understood as the accumulated legislation of the Community/Union, i.e. all legislative activity undertaken including the case law of the Court of Justice.

When it comes to the EU environmental law, the directives are the instrument typically used. They are proposed by the Commission and adopted jointly by the European Parliament and the Council under the regular legislative procedure. They are legally binding in terms of the objective stipulated in a given directive. They leave the choice of how to implement them to the Member States. They are not in force directly, but they are implemented into the legislations of Member States through transposition. The could have a direct effect only if certain conditions are met. Their objective is to approximate legislations of the Member States, primarily through establishment of environmental standards and harmonisation of national systems in this domain. Most of directives are based on the requirement to adopt minimum standards, while the Member States have an option to implement stricter standards. A regulation is an instrument to harmonise the law and is often used to establish standards of environmental law. They are also proposed by the Commission and adopted jointly by the European Parliament and the Council under the regular legislative procedure. They are in force in their entirety and are characterised by direct effectiveness, thus not requiring transposition. Decisions are adopted under a procedure similar to this discussed above for directives and regulations; they are used to regulate individual situations, therefore they are binding in their entirety only for entities, to which they are directed. Decisions could be addressed to natural and legal persons, as well as to Member States. Decisions addressed to states are binding for all bodies of such state, including courts. All provisions of national law, which could hinder or distort implementation of provisions of a decision, should be revoked due to the principle of priority of the EU law. Decisions, just like directives, can have a direct effect, provided they have been formulated unconditionally and precisely. It has already been mentioned that recommendations and opinions are sources of law, which are not binding. Such acts, published by main EU institutions with advisory or financial functions, have the nature of an interpretation of EU law, e.g. national courts (according to the position of the Court of Justice) are under obligation to take recommendations into account when deciding disputes, particularly when this could facilitate clarification of national provisions, adopted for the purpose of their implementation (Case C-322/88 Grimaldi v. Fonds des maladies professionnelles, Rec. 1989, p. 4407). Opinions could be published optionally by major EU institutions or be a procedural requirement in the legislative process. In the latter case they shall be issued by major institutions, but typically of advisory nature - the Committee of Regions, the Economic and Social Committee, if so stipulated by the Treaties. They are not binding for institutions, but as they are a procedural requirement, their absence could serve as a basis to revoke a given legal act.

The Treaty objectives in the area of EU environmental law are typically achieved through actions consisting in drafting of legal provisions, both at the level of the EU and the Member States. EU law is of integrative nature, thus aiming at creating strong ties between legal systems of the Member States. One method of such integration is harmonisation. The Treaties use this term directly (Articles 113 and 114(4) of TFEU) or alternatively with the term (approximation of provisions (Article 114(1) TFEU) or approximation of legislations (Chapter 3 TFEU). The general legal bases for harmonisation are included in Articles 114 and 115 of TFEU. Article 114 stipulates that save where otherwise provided in the Treaties, for the achievement of the objectives related to the internal market (Article 26 of TFEU), the EP and the Council shall, acting in accordance with the ordinary legislative
procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market. Article 115 stipulates that the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.

Several classifications of harmonisation could be distinguished, according to type of a legal act employed, where we deal with either a hard harmonisation (in case of a directive) or a soft one (in case of a recommendation). When the differentiation consists in the scope and intensity of the harmonisation process, we refer to minimal, partial, optional and complete harmonisation. The minimal one lay down the minimum legal standards necessary to be adopted at the level of Member States. It is often used in the area of environmental law; a directive then regulates only selected components of a given issue, leaving the rest to the Member States. It is only important that it does not lead to inconsistent interpretations of provisions of such directive. The partial harmonisations covers only a part of standards regulating given relations without attempting to establish common criteria regulating all relations subject to harmonisation. The optional harmonisation is only possible when the Member States approve products taking into account requirements of a directive. The states then have the right to choose prescriptive standards - harmonised or national (see Semeniuk, 2011, p. 220). The complete harmonisation excludes legislative activity of the Member States, as it attempts to regulate a given issue exhaustively and completely. Typically, environmental law would use minimal or partial harmonisation.

### Implementation of environment protection law standards at the Member State level

Implementation of EU law standards to the national legal order consists of several stages: transposition, application and observation of these standards. Each of these may involve responsibility of Member States. Particularly in the case of environment protection law, realisation of each of these stages is important from the point of view of accomplishment of results envisaged in the law.

Transposition is the use of each legal instrument of binding nature, adopted at the level of a state by a competent authority and aiming at incorporation of standards pertaining to obligations and rights resulting from EU law into the national legal order. Transposition is not solely about mirroring provisions of a directive in an act of national law, but also assumes inclusion in this law of amendments to legal legislation, which otherwise would be in conflict with EU law (COM 96/500, Communication from the Commission on Implementing Environmental Law).

The requirement of transposition is primarily associated with directives. They are binding to the Member States in terms of the intended result, leaving the choice of forms and methods of implementation to the authorities of a given state. The time-frame for transposition would typically be set by the directive itself. However, not all provisions of directives require transposition. Regulations addressed to the Commission or the Council rather than to the Member States could serve as examples. Similar is the case of provisions, which pertain to relations between EU institutions and the Member States. To a certain extent, the obligation of transposition also pertains to regulations. Such obligation may occur in relation to selection by a given state of standards related to observation of a regulation or designation of relevant authorities. However, there is a fundamental difference between a regulation and a directive: a regulation will have direct legal effects on entities, which is not the case with directives (see Kenig-Witkowska, 2011, p. 169).

Transposition is followed by application, utilisation of EU law, for which the Member States are responsible. In its rulings related to environment, the Court of Justice indicates that measures used in the process of implementing the EU law to national legal orders should be proportional, effective and be of preventive nature.
If a directive has been transposed, but the national law does not ensure proper observation of its provisions, then the implementation of EU regulations to national legal orders is by no means adequate (Case C-42/89, Commission v. Belgium, Rec. 1990, p. I-2821). It is the Commission, which pursuant to Article 17(1) of TEU oversees application of the provisions of the Treaties, that is responsible for the monitoring of the process implementation of EU environmental law.

Generally, directives in the area of environmental law contain provisions, which put an obligation on the Member States to submit reports on their implementation (typically every 3 years), on the basis of which the Commission drafts the report on the process of implementation of a directive in Member States. Articles 258-260 of TFEU contain a procedure, which is the most important instrument of the Commission in the process of overseeing observation of the Treaties by Member States. It stipulates that if the Commission considers that a Member State has failed to fulfil an obligation under the Treaties, it shall deliver a reasoned opinion on the matter. However, the State concerned shall have the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the Commission may bring the matter before the Court of Justice of the EU. The practice shows that application by the Commission of Article 258 TFEU would typically be preceded by exchange of correspondence between the Commission and the Member States concerned, which would have the nature of the monitoring of the process of implementation of the EU law to the national legal order of the State concerned and by a lengthy informal dialogue with the State. It is an obligation of Member States to notify the Commission on the details of implementation of a given directive to the national legal order, pointing to the provisions which incorporate the provisions of the transposed directive. However, if the State fails to comply with the opinion and the case is brought by the Commission to the Court of Justice, the procedure from Article 258 shall be concluded by the ruling of the Court, while the State shall be under obligation to undertake measures, which shall ensure compliance with the ruling. Failing to undertake such measures may constitute another infringement of the provisions of the Treaty. In cases related to infringements of environmental law, only the Commission or another Member State may bring the case against the infringing State to the Court of Justice of the EU (Article 259). Individuals or non-government organisations have no right to file such complaints.

**Summary**

Because of its substance, the European Union environment policy is a special policy. The importance of issues it tackles is confirmed by a very intense legislative activity over the years, initially in the Community and then in the Union. It also means a clear determination of the Member States to undertake concrete action to protect or even improve the environment. However, it is just one of many aspects of the issue. Another one to be looked at is low effectiveness of actions described above. Adoption of subsequent Action Programmes for environmental protection, initially in the form of declarations and resolutions, an only later (6th and 7th Action Programmes) in the form of binding decisions, is an evidence of a certain restraint of activity of the same states, which for years have expressed their political support for the concept in question. Subsequent cases of delays in transposition of environmental directives by a number of Member States are well known to the public, while the progress of the process is only made as a result of Commission’s reminders and the prospect of it launching the procedure under Article 258 of TFEU, which could result in a case being brought to the Court of Justice of the EU. The doctrine sees the reasons for poor effectiveness of enforcement of EU environment law provisions in a weak position of the EU environmental policy, vis-a-vis other policies. Unlike in the case of fisheries, agriculture or transport, it is not a common policy. Thus, Member States do not have to incorporate its objectives into their national legal orders. A section of the provision included in Article 4(3) of TEU seems to be pivotal here; it points to a large degree of freedom of Member States in their actions, stipulating that: “The Member States shall facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives”. It would thus seem expedient for the on-going debate in the doctrine on
the future of this policy to claim that in order to improve the effectiveness of this policy, it should be made on of the common policies of the European Union.

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