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# Environmental policy progression from the Maastricht Treaty to the Treaty of Lisbon

Bachelor's thesis in Europastudier med statsvitenskap

Supervisor: Viktoriya Fedorchak

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## Abstract

### English

In 2007 the Treaty of Lisbon amended the Maastricht Treaty and implemented a small but powerful passage that had a big impact on the European Union (EU): "It shall work for ... protection and improvement of the quality of the environment". This changed the environmental policies of the EU and was a steppingstone in the union's way to more comprehensive environmental policies. This thesis will use comparative analysis, document analysis and the concept of sustainability as methodology and theory. It will seek to answer the question: How does the progression of environmental policy and sustainability change from the Maastricht treaty to the Treaty of Lisbon? By conducting the research, it became apparent that the changes from the Maastricht Treaty to the Treaty of Lisbon were not obvious at first but provided a basis for the EU to further implement comprehensive environmental policy and legislation.

### Norwegian

I 2007 endra Lisboatraktaten Maastrichttraktaten og implementerte ei lita men kraftig passasje som hadde ei stor verknad på den Europeiske Unionen (EU): «Den skal arbeida for ... beskyttelse og forbetring av kvaliteten til miljøet». Dette endra miljøpolitikken til EU og var eit springbrett på unionens veg mot meir omfattande miljøpolitikk. Denne oppgåva kjem til å bruke komparativ analyse, dokument analyse og konseptet berekraft som metodologi og teori. Den vil prøve å svare på forskingsspørsmålet: Korleis har progresjonen av miljøpolitikk og berekraft endra seg frå Maastrichttraktaten til Lisboatraktaten? Gjennom forskingsprosessen blei det klart at endringane frå Maastrichttraktaten til Lisboatraktaten ikkje var openberre til å byrje med, men la eit grunnlag for EU til å implementere meir omfattande miljøpolitikk og lovgiving i framtida.



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## List of abbreviations

CJEU – Court of Justice of the European Union

EEA – European Economic Area

EC – European Community

EFTA – European Free Trade Association

EP – European Parliament

EU – The European Union

SEA – Single European Act

SDG – Sustainable Development Goals

TEU – Treaty on the European Union

UN – United Nations

UNFCCC – United Nations Framework Convention on Climate Change



## 1.1 Introduction

The European Union (EU) has ever since the Paris summit of 1972 kept environmental policies on their agenda. This meeting aimed to promote a more thorough cooperation on the topic and has ever since been visionary in its approach and execution (Jordan, et. al., 2021). The EU is ever pushing to be one of the leading actors combating climate change and executes a very ambitious approach, aiming to be the first climate neutral continent in the world. These proposals aim to make all sectors of the EU's economy engulfed in the climate conversation (European commission, 2022). The list of commitments and promises from the EU is long and seemingly exhaustive, showcasing their ambitious approach. At the heart of this lies the principle of sustainability. When claiming to include every aspect of the economy under principles of combating climate change, realistically there needs to be alternatives from today's practice and rapid changes needs to occur, especially with the self-implemented time limits. That is a huge task, even for a union as grand as the EU. Therefore, sustainability is a key component in developing a new economic model. Some of the major treaties addressing the environment goes deep into the concept of sustainability, such as the Lisbon treaty and the Treaty on European Union (TEU). Therefore, these treaties will be analysed in this paper with the aim to observe how environmental policy has developed between the treaties. This text will investigate the progression of these treaties in regard to environmental policy and see how they have changed. Starting with a methodology and theory part, followed by a brief literature review of the most influential articles for this thesis. It will then analyse the TEU and the Treaty of Lisbon, and topics such as democratization and the citizens' initiative, implementation, enforcement and the role of the CJEU, and institutional improvements, particularly of the Lisbon Treaty. Followed by a brief discussion of some of the improvement areas, the thesis will reach its conclusion where the main findings will be reviewed. This thesis will seek to answer the following research question: How does the progression of environmental policy and sustainability change from the Maastricht treaty to the Treaty of Lisbon?

## 1.2 Methodology

All reality is subjective, and so is the case for this text. No matter how hard one tries, predisposed biases is always going to affect research in a certain way (McNabb, 2010, p. 24). Attempts have been made to minimize these biases for the text, but as a staunch supporter of environmental protection, there will be more inclination to be overly critical where environmental protection policies may be weak. The same goes for support of actions and deeds considered positive towards the environment, it is more likely this could be highlighted in a good light and encourage such actions. Keeping this in mind, objectivity is always important and has been implemented as much as possible while conducting the research, and attempts to put biases aside for the sake of the paper being as objective and truthful as possible.

The collection of data throughout this text comes primarily from pre-existing literature on environmental policies from the EU, and primary sources from the EU directly, such as the treaties included in the paper. Using keywords relevant for the document analysis, such as "sustainability" and "environment", it was possible to navigate the treaties and compare the progression from the Maastricht Treaty to the Treaty of Lisbon. This made the research efficient and easily readable. On the downside, it is easier to overlook other parts of a treaty that covers the same topic, where the wording is different so keyword searches would not find those parts. For this reason, several keywords had to be used to avoid fall traps such as these and get the full scope of what the treaty was presenting.

Most of the pre-existing literature was found online, using databases and keywords to find articles and books that is relevant to the topic. This was primarily found through databases such as JSTOR, Google Scholar and Web of Science amongst others. Some library research was done but primarily the sources was gathered from the internet. The reason for this was mainly practical as browsing through several articles while consistently backtracking to the treaties gave a broader, more complete overview of the impact the treaties had. This produced the opportunity to compare different findings and opinions from several authors who might share different views on the EU and the treaties' impact and implement this in the comparative analysis used in the thesis. It also simplified locating the different findings from the Maastricht Treaty and the Treaty of Lisbon so comparing the treaties and observing different environmental approaches became more apparent. The primary sources came mostly from official EU websites, such as the Commissions, Council, and European Parliament's (EP) websites.

### 1.3 Theory

For this text I have used the concept of sustainability which is often referred to in the treaties being covered in this text. According to the Brundtland commission, sustainable development is described as "meeting the needs of the present without compromising the ability of future generations to meet their own needs" (UN, 2022). Sustainability appears to be a central concept in every major policy, treaty, and generally every aspect concerning growth within the EU. At the start of the EC, exponential growth was the focus, having little concern for the depletion of resources or the damage of nature such reckless targets bring about. Roughly three decades later the realization that going about in such a way is both self-destructing and unrealistic. Sustainable growth was implemented as a cornerstone for the EC, in almost every major policy area. Sustainability goes hand in hand with environmental protection, hence the importance and relevance for this text.

The EU works closely with the United Nations (UN) 2030 agenda including the Sustainable Development Goals (SDGs), a worldwide commitment to eradicate poverty and achieve a sustainable world by 2030 and beyond, with human well-being and a healthy planet at its core (European Commission, 2022). To implement these SDGs the EU have established an SDG policy mapping tool to show how EU policies address the SDGs. It is meant to further understanding of how the EU policies relate to the SDG framework by mapping policy documents and SDGs, using keywords so the EU can strengthen its capacity to implement, design and monitor integrated policies for sustainable development (European Commission, 2022). The same methods will at times be used in the research for this paper, searching for key words in treaties and policies from the EU concerning sustainability and development etc. as well as in search for relevant pre-existing literature.

### 1.4 Literature review

Hans Vedder's article "The Treaty of Lisbon and European Environmental Law and Policy" is analysing the effects of the Treaty of Lisbon for environmental law and policy, proving to be very insightful and relevant to this paper. The author concludes that other than renaming and renumbering some procedures, strengthening institution's ability to forward legislation and wider powers for the judiciary branch, the Treaty holds very few major changes (Vedder, 2010, p. 285). These findings are very much similar to the ones found in this text.

Maria Lee's article "THE ENVIRONMENTAL IMPLICATIONS OF THE LISBON

TREATY" is taking a more legislative view on the Treaty of Lisbon. This brought a different approach and viewpoints to Vedder's article, as it is written for environmental lawyers and students. It concludes that some of the aspects of the treaty will be important steppingstones for the future of environmental legislation, as well as stating that the Treaty takes a conservative and not significantly impactful approach to environmental issues.

David Wilkinson's "MAASTRICHT AND THE ENVIRONMENT: THE IMPLICATIONS FOR THE EC'S ENVIRONMENT POLICY OF THE TREATY ON EUROPEAN UNION" provided great insight in the environmental aspects of the Maastricht treaty and academic debates surrounding it in the 1990's. A very critical view on the environmental policy of the EC, starting the article with the opening line "two steps forward, one step back". Some of the critiques and expectations presented proved to materialize otherwise, such as the confusion around legislation and "who does what", and expecting legislation to take longer. The article generally concludes that the Maastricht treaty "suffers from many limitations" and highlights the need for the treaty to be amended.

Andrew Jordan and Viviane Gravey's "Environmental Policy in the EU" is an article that was very helpful when looking back at the impacts of environmental policies of the EU, including those from the Treaty of Lisbon. As it takes a historical look on the Treaty of Lisbon and its impacts (although this is not the main topic of the article), while analysing contemporary policies to make predictions for future policies. Unlike the three previously mentioned articles, the power of hindsight and looking back as an historical analysis at what happened was very useful, especially combined with the contemporary articles already used at that point.

Several other articles proved to be of great value for this article, such as David Benson and Andrew Jordan's "The Expansion of EU Climate Policy and its Future under the Lisbon Treaty" provided many of the same insights as Vedder and significantly filled gaps on the topic. Touching on several different methods such as intergovernmentalism and federalism, it gave a broad perspective on the situation, and gave reflective and important information that heavily inspired this thesis.

Andrew Jordan, Viviane Gravey and Camilla Adelle's "EU environmental policy at 50: retrospect and prospect", was insightful, summarizing some main characteristics of EU environmental policy and the focus of policy making in recent decades and the changes it has gone through (Jordan, Gravey & Adelle, 2021, p. 357-358).

Christian Franck's "From Maastricht to Lisbon" gave a clear overview of several major happenings in-between the treaties, although the article did not touch upon environmental politics, it gave good insight in the political environment of the period. Several other articles were also used and were helpful in the making of this thesis.

In general, there was not much literature on the topic, as mentioned by Benson and Jordan, especially comparing the two treaties, and seeing the progression from the Maastricht treaty to the Treaty of Lisbon. However, the existing literature covered a broad field and was very insightful, proving to be of significant influence, being both informative and objective. This thesis will try to fill the gap of how the environmental policies changed from the Maastricht Treaty to the Treaty of Lisbon.

## 2.1 Treaty on the European Union

As the TEU was set into force, the EC further committed to protect the environment. Article 2 of TEU reads as follows:

The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or activities referred to in Articles 3 and 3a, to promote throughout the Community a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment, a high degree of convergence of economic performance, a high level of employment and of social protection, the raising of the standard of living and quality of life, and economic and social cohesion and solidarity among Member States." (Treaty on European Union, 1992).

The TEU has a clear focus on fiscal and monetary policies, being a steppingstone consolidating the internal market and common currency. As well as this clear economic focus, "sustainable and non-inflationary growth respecting the environment" takes up a vital role in their focus as it becomes one of the ECs basic tasks, furthering their commitment to environmental protection. Environmental protection also needs to be "integrated into the definition and implementation of other Community policies" (Treaty on the European Union, 1992). This signals a clear commitment to cover environmental protection under almost every field produced by the EC. This article is only able to be introduced after in 1987 the EC introduced environmental policy as a shared competence, making it possible to introduce new legislation on the area (Benson & Jordan, 2010, p. 130).

The introduction of qualified majority voting on environmental measures on the Council of Ministers removes the possibility of a single state opposing a legislation, jeopardizing the entire legislation (Wilkinson, 1992, p.222). In addition to the removal of veto on environmental issues, qualified majority voting is expected to quicken the process of legislation (Wilkinson, 1992, p.222). Although qualified majority voting will indeed speed up things for the Council of Ministers, the strengthening of the EP's role in the 'co-decision' procedure might in turn lengthen the procedure (Wilkinson, 1992, p.222). This delay of the procedure however is no doubt one that is worthwhile as it addresses the democratic deficit of the union and strengthens the voice of the people. In terms of environment protection this could very well prove to be beneficial given the EP's green nature. In hindsight the expectation that the co-decision procedure would slow down legislation proved to not be the case, although during the Treaty of Lisbon the EU identified the need to improve institutional powers. The significantly increased powers for the CJEU will greatly help the implementation and enforcement of EC environmental legislation in the member states and make the legislation clearer as well as enabling the CJEU to root out breaches quickly and thoroughly (Wilkinson, 1992, p.222). The higher environmental standards of the EC comes with a price, but economically inferior member states will receive help from a new cohesion fund to help get them up to date for the new standards (Wilkinson, 1992, p.222). The cohesion fund shows that the EC is also willing to invest significant funds to environmental protection, not just the wealthier member states.

The TEA is building on the former treaty, the Single European Act (SEA), threading into force in 1987. Although the SEA was the first to implement an explicit legal basis for the environmental policies, this was hastily drafted and severely lacked thoroughness,

encouraging future reform on the topic (Wilkinson, 1992, p.222). A lot of what lacked in the SEA seemed to follow into the TEA as well. Some of the most important additions to environmental policy, like those mentioned above, were definitely forward thinking and brought some important changes to the field. Considering some of the “holes” in the TEA concerning environmental protection, such as the lack of implementing the Brundtland report in the treaty, there were high expectations for this to be amended at a later time. The focus of the EC seemed to be more on the internal market, the introduction of the Euro and the early accession to the EC from states from the European Free Trade Association (EFTA), rather than fixing the problems of environmental policy (Wilkinson, 1992, p.222). The amendments did however come, although later than expected, with the introduction of the Treaty of Lisbon.

## 2.2 Sustainability

At the beginning of the community’s history, the focus on environmental issues were almost non-existent. In most of the world at the time, climate change etc. was not considered a threat, and the dangers of pollution for example were not nearly as obvious for the people of the time as they are today. In the Treaty of Rome, some of the tasks included “a continuous and balanced expansion”, and “an accelerated raising of the standard of living” of the member states (Wilkinson, 1992, p.223). Viewing this with the goggles of today, an obvious problem becomes apparent. It was very much written in a “here and now” sense, taking little regards to future generations, protection of the environment, or preservation of crucial resources. This changed after three decades when the EC offered a declaration on the environment that “sustainable development must be one of the over-riding objectives of all community policies” (Wilkinson, 1992, p.223). Shortly after this declaration, at the behest of the EP and certain member states, it was ensured that environmentally sustainable development should be implemented in the treaty as one of the EC’s governing principles (Wilkinson, 1992, p.223). When the Maastricht treaty came about, sustainability was introduced in article 2, as addressed earlier. Article B also brings up the sustainability in its opening objective: “to promote economic and social progress which is balanced and sustainable...” (Treaty on the European Union, 1992). As the early years of the EC sought economic and social progress, so did they 30 years later, only identifying the need to pursue such ends in a sustainable fashion.

A worry sign for many environmentalists is the lack of inclusion of the Brundtland Commission’s sustainable development report of 1987 in the Maastricht treaty (Wilkinson, 1992, p.223). Given the reports’ progressive views and wide support this was a surprise for many. Implementing the report into the treaty would have been far more covering than what the treaty provided. The inclusion of environmental protection in article 2 of the TEU does however place it on the same shelf as economic concerns, immediately promoting environmental protection to the top of the priority list of the EC (Wilkinson, 1992, p.223). In addition to this the TEU have stated that community policy must strive to achieve a high level of protection, and “environmental protection requirements must be integrated into the definition and implementation of other community policies” (Treaty on the European Union, 1992). Placing environmental protection to the very top on the agenda, whilst planning on taking it into account on other policy areas is both a symbolic and important step leading the EC into a greener future. Particularly the inclusion of environmental protection requirements to be included in other policies is of major significance.

### 2.3 The Treaty of Lisbon

Sustainability is again mentioned in the treaty of Lisbon, highlighting the need to ensure economic progress, alongside the principle of sustainable development (Vedder, 2010, p. 287). The focus on sustainability combined with economy is a theme that the union has followed for decades. Along with sustainable development in several areas, the Lisbon treaty also includes three environmental integration principles, not including any reference to sustainable development (Vedder, 2010, p. 289).

In 2009 the Commission made public their plans to invest €105 billion to “green” the economy through the cohesion fund mentioned earlier (Benson & Jordan, 2010, p.135). Some of the main areas these funds will be invested in is renewable energies, rail infrastructure, and energy efficiency schemes (Benson & Jordan, 2010, p.135). Like EU’s environmental policies, the energy policies heavily focus on sustainability. As well as developing its own economy sustainably, Article 2 (3), reads as follows:

It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, 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 (Treaty of Lisbon, 2007).

Sustainable economic development is to be expected from the union, given their economy driven focus, particularly in the past. In article 2 of the Lisbon treaty however we see this sustainability focus to cover a much broader field, including the protection of the environment as an official focus area of the EU. Article 2 follows a remarkably similar wording pattern as Article B of the Treaty on European Union (TEU), however the most apparent difference is the addition of environmental protection which was not included in the Maastricht treaty. Putting environmental protection this high on the agenda, alongside economic development, is a statement to the importance of the topic and the commitment the EU has towards it. Further on in article 2 (5) of the Lisbon Treaty, it reads: “... It shall contribute to peace, security, the sustainable development of the Earth...” (Treaty of Lisbon, 2007). In this paragraph one can observe the EU’s awareness of its place as a leader in global context, aspiring to spread awareness and support towards the less developed parts of the world and contribute to help with the environmental difficulties elsewhere as well as at home. As a “leader” of the United Nations Framework Convention on Climate Change (UNFCCC) they were also one of the main actors pushing for an agreement to update the Kyoto protocol (Benson & Jordan, 2010, p.134). Ultimately, the EU emerged as “instrumental in brokering the Paris Agreement and continues to show global leadership” and has set some of the more ambitious goals of the members of the agreement, even updating their goals in 2020 to reduce emissions from 40% in 2030 to at least 55% by 2030 compared to 1990 (European Commission, 2022). Including their own ambitious targets, the EU actively encourages wider participation from other countries to participate more in environmental issues, contributing to development and distribution of low-carbon technology, and providing financial support to developing countries (Benson & Jordan, 2010, p.134). Climate change partnerships have been established with developing countries, often coming with funding meant to directly combat climate change (Benson & Jordan, 2010, p.134).

As well as contributing to the sustainable development of the Earth, the EU vows to ensure free and fair trade, an area often understated in the climate debates. Realistically,

more wealthy countries can not criticize underdeveloped countries for contributing less towards environmental change while they are struggling with securing basic human needs for its peoples. To include trade, sustainable growth and human rights in the same paragraph is a conscious decision from the EU to emphasize the importance of a balanced growth towards a sustainable world. As some of the most destructive actions towards the environment comes from underdeveloped countries, and they are also the ones being most heavily affected, their role in combating climate change is absolutely crucial. Recycling and avoiding toxic pollution in the ocean are amongst some of the most efficient measure to tackle climate change, but measures such as these are unlikely in many countries given their economic status as such actions is easily the cheapest option. For such countries sustainable development seems to be the way to go considering the position that we are in globally, and the EU is also very aware of that (Vedder, 2010, p. 288). Given the EU's crucial role as a frontrunner, environmental protection alongside sustainable development, both globally and locally, must continue to be in the very top of EU's objectives (Vedder, 2010, p. 288).

The active role the European Union plays on the international climate change arena is apparent and the treaty of Lisbon confirms that, although it was well known even before this treaty (Vedder, 2010, p. 288). The signal it sends by including it in the treaty is more politically based than making any considerable changes to day-to-day operations. It is a statement to the world, and the people of Europe that it is an important aspect of the union's priorities and inviting its people to follow their example. The last indent of Art 191 (1) reads:

1. 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* (Lee, 2008, p. 133).

The last phrase is particularly a statement to the world, confirming as well as reinforcing the EUs place as leading actor on international action combatting climate change. It does not however give the EU any new legal authorities for climate change, as it just expands existing environmental objectives (Benson & Jordan, 2010, p. 130). Interestingly this indent is cementing the union's commitment to fight climate change, even if the topic should cease to be politically attractive, something it is very much so today (Lee, 2008, p. 133). It is popular in the public and political eye and is an "easy" concept to support today but should this one day stop, the EU wishes to keep this an active priority, especially on the international arena. Climate change is thus prioritized within environmental measures, and although it is indeed a well-intended commitment to combat climate change specifically, it does raise some concerns. Many reports on problems around environmental issues has been the lack of coordination and a cross-sector approach, something many environmentalists and scientists believe should be prioritized, increasingly so over the years. Choosing to include one environmental problem, albeit a big one, confirms the lack of a broader approach to the topic. It has been said that the EU in the 2000s showed signs of "selective activism", particularly on climate change-related issues (Gravey, & Jordan, 2021, p. 335). If that were to be the



case it would be expected to mark the beginning of more policy expansion on the area, such as adopting of policies or new legislation (Gravey, & Jordan, 2021, p. 335). With the implementation of the European Green Deal in 2019 and the Energy Union of 2015, this proved to be very true, building on policy from the Treaty of Lisbon. A more holistic and integrated approach towards environmental governance, especially internationally, is very needed and could solve a lot of the problems we are facing when it comes to practical environmental problems (Lee, 2008, p. 133). It is generally accepted that environmental protection is most optimal if it is implemented in other key policy areas, rather than an isolated "special interest" (Lee, 2008, p. 133). Surprisingly this is not the case in many key policy areas that is directly involved in environmental protection, such as industry, transport, tourism, agriculture, or the article regarding free movement (Lee, 2008, p. 133). Neither of these policies has any reference to sustainable development or environmental protection, although with the EU Green Deal and Energy Union, this was later implemented.

#### 2.4 Greening the treaties and old decision-making procedures

Environmental concerns surrounding the previous treaties, such as the Nice, Amsterdam and TEU treaties were rising as a result of the internal market swallowing most of the attention of the EU at the time (Vedder, 2010, p. 298). In comparison to the internal market and policies that came with it, environmental policies were de-prioritized. During the making of the treaty of Lisbon, the transparency observed in previous treaties were missing, such as public hearings with European and national institutions (Vedder, 2010, p. 298). These hearings are crucial to observe the interests of such an institution and create a clearer "face" for the EU, an area the EU has struggling with for years, often being said to be run by faceless bureaucrats. During the drafting of the Lisbon treaty, the EU used traditional intergovernmental negotiations with ministers, heads of state and other high-ranking representatives exclusively being involved (Vedder, 2010, p. 298). This led to the exclusion of environmental lobbying (Vedder, 2010, p. 298). This is observable in the contents of the treaty of Lisbon, as it is mainly focused on the institutional aspects of the union. However, the internal market is indeed a top priority for the union, but as the goal of the union has been to use market-based instruments to protect the environment, the internal market and environmental protection has proven to be working well together (Vedder, 2010, p. 299).

The new rule implemented by the Lisbon treaty for the Council to require a "double majority", meaning minimum 55% of member states and 65% of the EUs population, would make it severely easier to find the majorities needed to pass legislation (Lee, 2008, p. 132). The removal of unanimous voting makes finding majorities for legislation more common, which in turn results in improved enforcement on environmental law and policy. The new institutional change for the Council was impacted by the enlargement on the EU, so that the 27 member states would not be limited by a single rogue nation jeopardizing crucial legislation out of national interests. Naturally this means a more practical approach towards forming of legislations, as it will increase the quality of content and quantity of legislations (Lee, 2008, p. 132). Even though the "double majority" significantly makes it easier to reach a majority to pass legislation, there are still a few issues that remain subject to unanimity voting in the Council, effectively making the national veto still in use. These matters can be moved into the "ordinary legislative procedure", that is qualified majority voting, if the Council decides so unanimously (Lee, 2008, p. 132). The sensitive matters are unchanged in the Treaty of



Lisbon. The matters that is subject to unanimous voting and is related to environment is environmental legislation that is of primarily fiscal nature, quantitative management of water resources, land use (with the exception of waste management), and measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply. (Lee, 2008, p. 132). In other words: a wide array of matters.

As we have seen the environmental laws of the EU is indeed quite minimal, as expected with the treaties' focus on institutional aspects. The enhancement in institutional power in regard to decision making is welcome, although of little significance (Vedder, 2010, p. 299). It mainly allows for enforcement of laws to be more efficient, with the opportunity to penalize breaches of these. The actual improvement of environmental protection is not significantly improved with the treaty of Lisbon. The improvement of the EP's role in environmental policies could very likely improve environmental policies given its "green record", although this is not a certainty. This was also highlighted under the TEU, believing that the involvement of the EP could further "green the treaties". There is however no guarantee that this would be the case and cannot in itself stand as a testimony to contributing to "greening the treaties". The unanimous voting requirement on environmental policies affecting energy sources and eco-taxation is also a hindrance for efficient environmental law making (Vedder, 2010, p. 299). On the upside for environmental protection, the EU has indeed managed to pass significant environmental legislations, such as the Energy and Climate Package of 2009, even with the use of the old decision-making procedures (Vedder, 2010, p. 299). The Commission is still running strong in the process, continuing to propose environmental topics and forwarding infringement procedures to breaches.

An obvious point to consider is the nature of the Treaty of Lisbon as an amendment treaty of the TEU. As the TEU was primarily focused on improving and preparing the internal market and the fiscal, monetary, and economic aspects surrounding this, so was the Treaty of Lisbon a treaty very much focusing on the institutional side of the union. The increased efficiency of decision making, the shared responsibility with the EP (although not directly on certain areas of environmental policy) and heavier involvement of the CJEU, is indeed setting up for more, more thorough policies and more efficiency on the area.

In the TEU we saw environmental protection being promoted to the same level of importance (at least on paper) as other policy areas. The EU with its 27 member states has been able to pass several significant and impactful pieces of environmental legislation using the old decision-making procedures (Vedder, 2010, p.296). This type of decision-making procedures stems from the TEU and proves that under TEU frameworks progress could still be made. An example is the Directive 2008/1/EC of the European Parliament and of the Council concerning integrated pollution prevention control. The purpose of this directive is to minimize or prevent pollution coming from the most significant agricultural and industrial sources of environmental impacts (Testa et. al., 2014). This by using a new pollution prevention and control system that uses a cross-media approach to the protection of the environment as a whole (Testa et. al., 2014). This is again regulated by a permit companies must follow to avoid penalties, following the "polluter pays" principle and the principle of pollution prevention with the objective to ensure prudent management of natural resources (Directive 2008/1, 2008). Several studies shows that this and other environmental directives have had a positive impact on the environment, and that the way these directives are shaped and implemented is

efficient, a testimony that important and comprehensive pieces of legislation could be passed using the old decision-making procedure (Testa et. al., 2014).

## 2.5 Democratization

When it comes to the attempt to increase the democratization of the union, the policies regarding environmental issues will not be affected by the improved democratization process the Lisbon treaty brings with it (Vedder, 2010, p. 293). As the treaty of Lisbon is an amendment treaty, several articles are very similar to TEU, some articles are even similar word for word. This is the case for most environmental policies, resulting in most standard environmental policies being subject to the ordinary decision-making procedure (Vedder, 2010, p.293). Environmental topics that also affects or is dominated by a fiscal nature, such as limited resources, renewable energy, or choices that will have big impact on a member state in choosing energy sources or supply, will be subject to special legislative procedure (Vedder, 2010, p. 293). Special legislative procedure often entails unanimous voting, alongside consultation from the EP, but the EP will only be consulted, and have limited real influence. As more and more people are gaining awareness and caring for environmental issues, increased influence from the democratically elected parliament could reflect the people's wishes in decision making regarding the environment, which could very well result in a "greener" outcome. Whereas environmental policy is subject to the special legislative procedure, the EP will be further involved in both agriculture and transport policies (Vedder, 2010, p. 295). This is a direct result of the parliaments increased power of the EU budget, giving significantly greater influence on a range of topics for the EP (Vedder, 2010, p. 293). But as the Lisbon treaty has made clear, the most pressing environmental matters are left outside the reach of the only democratically elected institution. So is also the case for the fishery policies, and the environmental protection that comes along with it. The only direct measure to ensure minimal environmental impact is the fishing quota, which in turn the EP have zero domain over, and the Council dictates completely (Vedder, 2010, p. 295). The reasoning behind excluding such matters to the EP has not been properly addressed by the EU. Whether it is to protect the environment without losing too much money in the process or having full control over the direction of environmental economic issues will take, is still unsure.

Public participation on environmental issues, where the EU has a significantly negative track record in regards of implementation, could be a way for the EU to improve their environmental governance (Lee, 2008, p. 134). Public participation in governance is commonly perceived as "good environmental governance", although this participation comes with challenges of itself, such as maintaining meaningful and stable participation in practice (Lee, 2008, p. 134). Issues such as waste management and climate change is even in need of public participation, partially because of the poor implementation mentioned above and the need of the people following implementations, such as recycling (Lee, 2008, p. 134). Including people in the process of constructing systems such as recycling and source sorting, makes it increasingly likely for them to follow through and have a strong opinion and connection on the matter, increasing the functionality of the system. Instead of actually taking advantage of the benefits of public participation, the Treaty of Lisbon picks up on the democratic possibilities of participation, seemingly as a response rather than a goal, to the critiques of democratic deficit at EU level compared to more traditional representative democracy (Lee, 2008, p. 134). Although the EU claims to be pushing for more participation, there is very little results to back this up. The Treaty of Lisbon does however strengthen its commitment to

openness, transparency, dialogue, consultations, and exchanges of view, emphasizing that such measures are imperative for the union's commitment to democracy (Lee, 2008, p. 134). Public participation appears to be ever more central to environmental governance, as its perceived importance is increasing and the EU genuinely seem to be committed to increase participation, but struggle to find the correct way of implementing it (Lee, 2008, p. 135).

## 2.6 Citizens' initiative

So far there have been little change on the topic, with the exception of the possibility of a citizens' initiative. The citizens' initiative is a possibility for the people of the EU to band together and submit a proposal to the EU. If the proposal gets one million signatures from a "significant number of member states", the commission is obligated (within the framework of its powers) to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the treaties (Treaty of Lisbon, 2008). Particularly on environmental issues this initiative holds considerable appeal, by providing political pressure to go around official agenda deemed unsatisfactory (Lee, 2008, p. 135). However, there have only been six initiatives that have met the requirement for the Commission to evaluate it at the time of writing (May, 2022), where only one was directly related to environmental issues (two on animal welfare, one on clean water access for everyone, one anti-abortion, one to protect minorities) the "Ban glyphosate and protect people and the environment from toxic pesticides" initiative (European Union, 2022). While the Treaty of Lisbon brings a very welcome opportunity for environmentalists in that they are able to suggest stricter and more comprehensive legislation, the process to getting there is difficult and may end up getting rejected by the commission. As we saw, one in six proposals were environmentally related, and expecting a "green outcome" is optimistic. For the citizens' initiative to work in a way that is environmentally friendly, the participation of environmental interest groups is essential, and more so their ability to mobilize large masses for specific causes. Even though the citizens' initiative is public participation and is directly inclusive, public participation in this sense does not necessarily mean participation of individuals (Lee, 2008, p. 135). To reach one million signatures, the most likely way of achieving that is through organised pan-European interest groups, which includes environmental interest groups (Lee, 2008, p. 135). The one environmentally focused initiative managed to gain 328,399 euros in funding, a testimony to the power and funds interest groups must hold to achieve their goals (European Union, 2022). Therefore, linking public participation to democracy is slightly inaccurate, albeit not untrue (Lee, 2008, p. 135).

## 2.7 Implementation and enforcement

The Court of Justice of the European Union (CJEU) is playing an important role in European environmental law (Vedder, 2010, p. 296). The treaty of Lisbon also makes it much easier for the CJEU to start infringement procedures in regard to environmental law, making it much more effective (Vedder, 2010, p. 296). If a member state were to go against any laws, they are indeed subject to the CJEU, but this would happen after the Commission has given the member state the chance to rectify its infringement (Vedder, 2010, p. 296). If they fail to do so the Commission will then bring the case to the Court which then may impose a penalty they see fit on the member state. In case of a specialised procedure the Commission is given the right to suggest the penalty payment to the Court who can then turn it down or give it a greenlight, even though the Court is in no way bound by the Commission's suggestions (Vedder, 2010, p. 296). Even with

new legislation, decided through the old decision-making procedures, the Commission is still forwarding many cases of infringement from Member states to the CJEU. Unfortunately, this means that the CJEU is facing an increased workload, with little improved capacity other than simplifying the infringement procedure, while still playing a vital role in enforcing the regulations and laws surrounding environment. The higher level of integration reached by the union through the TEU however, has shown that the CJEU has shown less tolerance for member states' failure to follow EU law, particularly environmental law (Hall, 2007, p. 302). They proved this in 2000 when monetary sanctions were issued to Greece, Spain, and France for failing to implement an environmental directive on landfill waste, proving their seriousness on the matter of compliance with environmental law (Hall, 2007, p. 303). These turned out to be accepted by the member states who paid the penalties, showcasing the acceptance from member states to comply with the enforcement of environmental law (Hall, 2007, p. 303). The CJEU's growing acceptance as an institution on equal footing with the rest, illustrates the power of the Courts to enforce legislation, making their often difficult tasks easier (Hall, 2007, p. 303).

## 2.8 Discussion

With the introduction of the Lisbon treaty, a key feature is undoubtedly environmental policy. Although it is a prominent feature of the Treaty, building on aspects from the TEU, the legitimate impact in itself is minimal (Vedder, 2010, p. 299). As the Treaty of Lisbon primarily focuses on institutional aspects of the union, much like the Maastricht Treaty focused heavily on the preparation of the internal market and policies surrounding economy, there should be little surprise that the focus on specific policies concerning environment was not plentiful. With that being said, the improvement of institutions and their ability to implement legislation more rapidly, such as the decision-making procedures, the Treaty of Lisbon does lay a solid foundation for the EU to implement more wide-reaching and comprehensive policies. We saw that with the introduction of the EU Green Deal and the Energy Union in 2020 and 2015. These introductions as well as the EU continuing as a global leader for environmental issues cemented by the Treaty of Lisbon, testifies to the commitment of the EU towards environmental protection and combating climate change (Benson & Jordan, 2010, p. 136). The lack of specific implementations regarding environmental policies in the Treaty of Lisbon does not mean that the EU lacks interests or deprioritizes environmental issues. Indeed, the Treaty of Lisbon was not particularly "green" and had minimal direct impact on environmental problems but is rather an important steppingstone to further build on environmental policies. In a larger sense, the Treaty of Lisbon is very much a facilitator of environmental policies to come, and irrespective of the treaty, environmental policy was always likely to expand (Benson & Jordan, 2010, p. 136).

Although the EU claims transparency, dialogue, and inclusiveness as crucial for the union's commitment to democracy, the lack of democratization from the Treaty of Lisbon tells differently (Lee, 2008, p. 134). The EU is aware of the benefits democratization, particularly on environmental topics can bring. This was questioned in the TEU, and the bare minimum was done to improve this in the Treaty of Lisbon. Although public participation is hard to implement in practice, the EU could do much better in the forming of this treaty to improve the level of involvement on environmental issues. The Citizens' initiative cannot be described as nothing but a failure, considering the 6 successful initiatives since the start of the procedure with the Treaty of Lisbon threading into force, and the citizen's initiative is also not purely meant for environmental issues. The

disappointing result of one successful environmental initiative speaks for itself and proves that the EU needs to reform or abandon the procedure in place of a better programme that can reflect the wishes and needs of the people of the union.

### 3.1 Conclusion

The progression of environmental policies from the TEU to the Treaty of Lisbon is a positive one, although considering the amount of time between the two treaties and the massive spike in public awareness on the topic, more thorough and comprehensive environmental policy were expected. In the sense of purely environmental aspects the Treaty of Lisbon can be deemed a disappointment. Looking at the broader picture however, it laid the foundation for important strategies and policy initiatives such as the Energy Union and most recently the EU Green Deal. The Treaty of Lisbon has made clearer the EU's views on environmental protection, and confirmed the need of sustainability implemented in policies, and sustainable growth being introduced in the TEU. These principles remain cornerstones for the EU. Environmental protection was a crucial piece of amendment implemented in the Treaty of Lisbon, making it an official policy area for the EU. This allows the EU to further implement environmental protection in other policy areas and is a statement to its commitment to improve and expand environmental policy. This was a huge steppingstone for the EU's environmental policy, allowing them to build on this and make improved policies and legislation in the future. As time would show, the Treaty of Lisbon laid the groundwork for some of the EU's most ambitious environmental policies.



## References

Benson, D., & Jordan, A. (2010). The Expansion of EU Climate Policy and its Future under the Lisbon Treaty. *St Antony's International Review*, 5(2), 121–140.

<http://www.jstor.org/stable/26227057>

Brundtland/World Commission on Environment and Development. (1987). *Our common future*. Oxford: Oxford University Press.

Council of the European Union (2022). Climate change: what the EU is doing. Retrieved from: <https://www.consilium.europa.eu/en/policies/climate-change/>

Directive 2008/1/EC. *Concerning integrated pollution prevention and control*. European Parliament & Council <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0001&from=en>

Directive 2011/92/EU. *35 years of EU Environmental Impact Assessment*. European Commission [https://ec.europa.eu/environment/eia/pdf/EIA\\_Directive\\_35\\_years.pdf](https://ec.europa.eu/environment/eia/pdf/EIA_Directive_35_years.pdf)

European Commission (2022). A European Green Deal. Retrieved from: [https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en#thebenefitsoftheeuropeangreendeal](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en#thebenefitsoftheeuropeangreendeal)

European Commission (2022). EU holistic approach to sustainable development. Retrieved from: [https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/eu-holistic-approach-sustainable-development\\_en](https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals/eu-holistic-approach-sustainable-development_en)

European Commission (2022). EU policies and the SDGs. Retrieved from: <https://knowsdgs.jrc.ec.europa.eu/policies-sdgs>

European Commission (2022). Paris Agreement. Retrieved from: [https://ec.europa.eu/clima/eu-action/international-action-climate-change/climate-negotiations/paris-agreement\\_en#eus-role](https://ec.europa.eu/clima/eu-action/international-action-climate-change/climate-negotiations/paris-agreement_en#eus-role)

European Commission (2022). Reporting and monitoring of environment legislation. Retrieved from: [https://ec.europa.eu/environment/legal/reporting/index\\_en.htm](https://ec.europa.eu/environment/legal/reporting/index_en.htm)

European Commission (2022). Sustainable Development Goals. Retrieved from: [https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals\\_en](https://ec.europa.eu/info/strategy/international-strategies/sustainable-development-goals_en)

European Commission (2022). SDG Policy Mapping. Retrieved from: <https://knowsdgs.jrc.ec.europa.eu/intro-policy-mapping>

European Commission (2022). The Environmental Implementation Review. Retrieved from: [https://ec.europa.eu/environment/eir/index\\_en.htm](https://ec.europa.eu/environment/eir/index_en.htm)

European Communities (1992). Treaty on European Union.

European Parliament (2022). Economic governance. Retrieved from: <https://www.europarl.europa.eu/factsheets/en/sheet/87/economic-governance>

European Parliament (2022). Energy policy: general principles. Retrieved from: <https://www.europarl.europa.eu/factsheets/en/sheet/68/energy-policy-general-principles>

European Parliament (2022). Environment policy: general principles and basic framework. Retrieved from:

<https://www.europarl.europa.eu/factsheets/en/sheet/71/environment-policy-general-principles-and-basic-framework>

European Union (2007). Treaty of Lisbon.

European Union (2022). Ban glyphosate and protect people and the environment from toxic pesticides. Retrieved from: [https://europa.eu/citizens-initiative/initiatives/details/2017/000002\\_en](https://europa.eu/citizens-initiative/initiatives/details/2017/000002_en)

Eurostat (2022). SDG cross-cutting issues - spillover effects. Retrieved from: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=SDG\\_cross-cutting\\_issues\\_-\\_spillover\\_effects#Conclusions](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=SDG_cross-cutting_issues_-_spillover_effects#Conclusions)

Eurostat (2022). Sustainable development in the European Union. Retrieved from: [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Sustainable\\_development\\_in\\_the\\_European\\_Union](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Sustainable_development_in_the_European_Union)

Franck, C. (2007). From Maastricht to Lisbon. *Studia diplomatica*, 60, 79-84. <http://www.jstor.org/stable/44839058>

Gollatta, J.A.M. & Newig, J. (2017). Policy implementation through multi-level governance: analysing practical implementation of EU air quality directives in Germany. *Journal of European Public Policy*, 24, 1308-1327. <https://doi.org/10.1080/13501763.2017.1314539>

Hall, E., M. (2007). Environmental Law in the European Union: New Approach for Enforcement. *Tulane environmental law journal*, 20(2), 277-303. <http://www.jstor.org/stable/43292838>

Harms, J. A. (1993). The European Community's Development Of an Environmental Policy: The Treaty Of European Union. *Tulane Environmental Law Journal*, 6(2), 397-421. <http://www.jstor.org/stable/43291147>

Jans, J. H., Sevenster, H. G. & Janssen, M. P. (2007). Environmental Spill-Overs Into General

Community Law. *Fordham International Law Journal*, 31(5), 1360-1386 <https://deliverypdf.ssrn.com/delivery.php?ID=79611412308500806711210909708808009200600402901402904100511511402410011708102401800204905603300802702304209710211510010311800010407504002303309806611508607202116073087035003068121089096109069024118064117085024011120087124025026119025075004088077083&EXT=pdf&INDEX=TRUE>

Jordan, A. (2005). *Environmental policy in the EU* (2nd. edition). London: Batch Press

Lee, M. (2008). THE ENVIRONMENTAL IMPLICATIONS OF THE LISBON TREATY. *Legislation and policy*, 10, 131-138. <https://journals.sagepub.com/doi/pdf/10.1350/enlr.2008.10.2.013>

McNabb, D. (2010). *Research methods for political science : Quantitative and qualitative approaches* (2nd ed.). Armonk, N.Y: M.E. Sharpe.

Oberthür, S. (2016). Perspectives on EU Implementation of the Paris Outcome. *Carbon & Climate Law Review*, 10(1), 34-45. <http://www.jstor.org/stable/43860130>



Rietig, K. (2016). The Power of Strategy: Environmental NGO Influence in International Climate Negotiations. *Global Governance*, 22(2), 269–288.

<http://www.jstor.org/stable/44861077>

Schoenberger, H. (2009). Integrated pollution prevention and control in large industrial installations on the basis of best available techniques – The Sevilla Process. *Journal of cleaner production*, 17, 1526-1529. <https://doi.org/10.1016/j.jclepro.2009.06.002>

Testa, F., Daddi, T., De Giacomo, M. R., Iraldo, F. & Frey, M. (2014). The effect of Integrated Pollution Prevention and Control regulation on facility performance. *Journal of cleaner production*, 64, 91-97.

<https://www.sciencedirect.com/science/article/pii/S0959652613005222>

Vedder, H. (2010). The Treaty of Lisbon and European Environmental Law and Policy.

*Journal of Environmental Law*, 22(2), 285–299. <http://www.jstor.org/stable/44248736>

Wilkinson, D. (1992). MAASTRICHT AND THE ENVIRONMENT: THE IMPLICATIONS FOR THE EC'S ENVIRONMENT POLICY OF THE TREATY ON EUROPEAN UNION. *Journal of Environmental Law*, 4(2), 221–239.

<http://www.jstor.org/stable/44247929>

