

Abstract:

Sustainable Development as Objective, Principle and Rule of European Law

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Sustainable development encompasses several of the general objectives of EU law, and has a special position amongst the overarching objectives. In my doctoral thesis I have developed obligations for the Community institutions based on the overarching objectives of EU law in accordance with, notably, Article 2 EC and the principle of sustainable development, which is codified in the rule in Article 6 EC. I intend to develop this further into a comprehensive discussion of the scope and extent of sustainable development as an objective, a principle and a rule of European law (used as a term covering both EU and EEA law). This entails a discussion of whether and to what extent my conclusions regarding EU law are applicable to EEA law. The EEA aspect is relevant for the Nordic region as a whole, as it may have consequences for the extent to which the Nordic region may act together as one, in spite of the EU/non-EU divide. I will also summarise and develop further my results as regard the obligations for the Community institutions, and discuss possible rights and obligations for the Member States that indirectly may be derived from the Community obligations, both as regards the 27 Member States of the EU, and Norway, Iceland and Lichtenstein as members of the EEA agreement.

In the discussion of sustainable development as an objective of European law, a comparison of the objectives provision of Article 2 EC and the somewhat narrower, economics-focused objectives provision of Article 1 of the EEA agreement represents a natural starting point. The Preamble to the EEA agreement, relevant to the interpretation of the agreement, does however indicate a wider goal. The EEA agreement links the three EFTA states to the EU, where the internal market is an important means to reach the overarching aims indicated in Article 2 EC. Do the three EFTA states endorse these overarching objectives when they, through the EEA agreement, become an integrated part of the main means?

In the discussion of sustainable development as a principle and a rule of European law, the starting point will be Article 6 EC, which sets out a duty to integrate environmental protection requirements in all areas with the aim of achieving a sustainable development. This integration rule codifies the principle of sustainable development. It is not included in the EEA agreement, as the integration rule achieved its current position and formulation after the conclusion of the EEA agreement. However, Article 73(2) EEA contains the rule that the EC Treaty previously had: a more reticent version of the integration rule. Does the principle of homogeneity entail that the upgraded version of the integration rule, in Article 6 EC, also applies to the EFTA countries through the EEA agreement?

The legal significance of sustainable development as objective, principle and rule of European law, with the emphasis on Article 6 EC, is the main topic of my planned paper. Based on my research, I have developed the following obligations for the Community institutions:

- 1) The duty to stay within the framework of the general objectives;
- 2) the duty to seek a balance between the general objectives (with sustainable development as the overarching goal);
- 3) the duty to act to achieve the objectives (as a general obligation);
- 4) the most controversial point: a specific duty, under given circumstances, to undertake specific action to achieve the objectives.

In this paper I will further develop what this means for the Community institutions (including the EEA institutions ESA and the EFTA court), and what this entails, indirectly, as regards rights and obligations for all 30 Member States. This includes a discussion of

- 1) the use of the integration principle and the objective of sustainable development as a substantiation for restrictions, and thereby
- 2) the scope of legal latitude for the Member States (which they may be bound, on grounds of national or international law, or on an ethical basis, to make use of);
- 3) the duty to use the integration principle in the implementation, execution, interpretation and application of all Community rules (which are to be interpreted in light of Treaty law); and finally
- 4) a discussion of whether there is a (coming) duty for the Member States actively to contribute to a sustainable development through compliance with the integration principle, even though Article 6 EC does not as a starting point address the Member States *qua* Member States.

The significance of Articles 2 and 6 EC in the specific area of company law is discussed in my book 'Towards a Sustainable European Company Law. A Normative Analysis of the Objectives of EU Law, with the Takeover Directive as a Test Case', Kluwer Law International, 2009 (a revised and expanded version of my doctoral thesis), see: <http://www.kluwerlaw.com/Catalogue/titleinfo.htm?ProdID=9041127682&name=Towards-a-Sustainable-European-Company-Law> and the first chapter of this book is freely downloadable from the SSRN at <http://ssrn.com/abstract=1356542>.

See also my article 'Internalizing Externalities in EU Law: Why Neither Corporate Governance Nor Corporate Social Responsibility Provides the Answers', available at: <http://ssrn.com/paper=1139584>.