

Introduction

‘Environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development.’

(Article 11 TFEU)¹

THE ENVIRONMENTAL INTEGRATION requirement enshrined in Article 11 TFEU – one of the oldest integration clauses in European Union (EU)² primary law – has captured scholarly interest over the past decades. It has been treated as one of the most important aspects of EU environmental law in leading textbooks,³ but also as the core subject of specialist studies. Legal scholars have enriched our understanding of the content and legal effects of Article 11 TFEU,⁴ as well as offered an examination of its articulation in the context of the EU agricultural, competition, energy and transport policies.⁵ Political scientists⁶ have contributed to the analysis of Article 11 TFEU, by looking into environmental policy integration both within various EU sectoral policies and in the practice of some of the Member States. Against this background, what are the additional perspectives on environmental integration that this book seeks to offer?

¹ Unless otherwise specified, throughout this book reference will be made to the consolidated versions of the Treaty on the Functioning of the European Union (TFEU) and the Treaty on the European Union (TEU) [2010] OJ C83/1, jointly referred to as the Treaty of Lisbon. Given that most of the EU measures analysed in this book were adopted during the pre-Lisbon period, complementary reference will be made where relevant to the consolidated version of the preceding Treaty establishing the European Community (TEC) [2006] OJ C 321E/1.

² For simplification purposes, throughout this book the term ‘European Union’ (EU) will be generally used, as the EU has superseded the old European Community (EC) since the entry into force of the Lisbon Treaty. In purely legalistic terms, it should be clarified that most of the measures examined in this book were adopted by the EC during the pre-Lisbon period, although this distinction had become increasingly fictitious in practice and largely irrelevant in non-legal literature.

³ See eg, JH Jans and HHB Vedder, *European Environmental Law* (Groningen, Europa Law Publishing, 2008) 16–23; L Kramer, *EC Environmental Law* (London, Sweet & Maxwell, 2007) ch 11.

⁴ N Dohndt, *Integration of Environmental Protection into Other EC Policies – Legal Theory and Practice* (Groningen, Europa Law Publishing, 2003); M Wasmeier, ‘The Integration of Environmental Protection as a General Rule for Interpreting Community Law’ (2001) 38(1) *Common Market Law Review* 159; M Hession and R Macrory, ‘The Legal Duty of Environmental Integration: Commitment and Obligation or Enforceable Rights?’ in T O’Riordan and H Voisey (eds), *The Transition to Sustainability: The Politics of Agenda 21 in Europe* (London, Earthscan, 1998). Note that these, and other pre-Lisbon studies, dealt with former versions of article 11 TFEU.

⁵ Dohndt, above n 4; R Macrory (ed), *Reflections on 30 Years of EU Environmental Law: A High Level of Protection?* (Groningen, Europa Law Publishing, 2005) chs 9–10; S Kingston, ‘Integrating Environmental Protection and EU Competition Law: Why Competition Isn’t Special’ (2010) 16(6) *European Law Journal* 780.

⁶ A Lenschow (ed), *Environmental Policy Integration – Greening Sectoral Policies in Europe* (London, Earthscan Publications, 2002).

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Most of the existing academic literature has focused on the integration of environmental protection requirements into the *internal* policies of the EU, while in this study attention is instead directed towards the *external* relations of the Union, encompassing both its external policies (on which this book concentrates) and the external dimension of internal policies (such as agricultural, energy and transport policies). The shift in focus appears particularly timely in light of the entry into force of the Treaty of Lisbon on 1 December 2009. Not only has the Lisbon Treaty underscored the growing importance of the EU role as a global player (notably, through a series of institutional innovations aimed at increasing the visibility and effectiveness of the EU external action), but it has also established environmental protection and sustainable development among the key objectives of the Union's external relations. Notably, these include an explicit commitment to facilitate the development of 'international measures to preserve and improve the quality of the environment and the sustainable management of natural resources'.⁷ The EU has, moreover, pledged at the international level to pursue an integrated approach to policy- and law-making in the economic, social and environmental fields, through its endorsement of the 1992 Rio Declaration on Environment and Development⁸ and of the 2002 Declaration of the World Summit on Sustainable Development.⁹ Global progress made in this regard will be reviewed at the upcoming UN Conference on Sustainable Development (Rio de Janeiro, June 2012), which also addresses on the emerging notion of 'green economy'¹⁰ and likely provide renewed impetus for the EU's own environmental integration initiatives.

Like any other international actor, the EU can advance environmental protection objectives through participation in *multilateral* environmental processes, but also on the basis of *bilateral or inter-regional*¹¹ engagements. Emphasis in this book is primarily placed on the latter, less explored, avenue that is becoming an increasingly important factor in the shaping of global environmental governance, running in parallel to multilateral processes. As will be seen, the EU has, over the years, put in place a sophisticated network of instruments to define and implement its relations with individual third countries or regions, other than through multilateral processes. Such external relations tools can be unilaterally adopted by the EU or bilaterally/inter-regionally agreed with third parties. In addition, these tools can be legal or non-legal in nature; even in the latter case, we found that they

⁷ Articles 3(5) and 21(2) TEU.

⁸ 'Rio Declaration on Environment and Development' (12 August 1992) UN Doc A/CONF.151/26 vol 1, Annex 1.

⁹ 'Political Declaration of the World Summit on Sustainable Development' (4 September 2002) UN Doc A/CONF.199/20, Resolution 1.

¹⁰ UN General Assembly, 'Implementation of Agenda 21, the Programme for Further Implementation of Agenda 21 and the Outcomes of the World Summit on Sustainable Development' (2010) UN Doc A/RES/64/236.

¹¹ Throughout this book, the term 'inter-regional' is used to refer to the relations of the EU (as a region) and a group of third countries (that usually form part themselves of a regional organisation), rather than with an individual third country for which the term 'bilateral' is used instead.

can contribute significantly to the development and implementation of legal norms. That being said, this book will also draw attention to the complex interplay and mutual influences between these EU environmental integration initiatives and environmental multilateralism.

As this book is the first attempt to verify the significance of Article 11 TFEU in the context of EU external relations, it is important to indicate from the outset the limits of the scope of our enquiry. While an important number of EU external relations tools are explored, our analysis is by no means exhaustive but aims at providing a solid basis for future academic research in this domain. Similarly, underlying aspects of EU law and international environmental law could only be treated with the degree of depth necessary to inform our analysis, while we attempted to make the book accessible both to EU external relations and environmental experts. In addition, this book confines itself to a *legal* appraisal of the degree and manner in which environmental protection requirements have been integrated into EU external relations, focusing on unilateral, bilateral and inter-regional tools, whilst assessing interactions with multilateral environmental regimes and processes.¹² Consequently, it does not purport to evaluate the impacts of the EU measures examined on the third countries or regions concerned, but may lay the ground for future empirical research in this direction.

The book will start by tracing the legal and policy contours of the environmental integration requirement, offering a detailed textual and contextual analysis of Article 11 TFEU, as well as of the constitutional foundations of the EU's environmental policy to which this requirement is inherently linked. While Article 11 TFEU is clearly construed as an obligation of environmental integration into all EU policies and activities (both internal and external), the EU political institutions enjoy a wide margin of discretion as to the degree and the modalities in complying with this requirement (Chapter One).

Building on this premise, the book turns to an analysis of practice in integrating environmental protection concerns into EU relations with third countries or regions, with each of the core five chapters examining a different instrument. A substantial part of the analysis is first devoted to a comparison of EU *bilateral and inter-regional agreements*, as treaties are the most defining legal expression of foreign policy-making, and also an instrument of external relations that has been negotiated with, and agreed upon by, the third country or region concerned. Chapter Two thus exposes the reader to the environmental dimension of these agreements, as well as to the variety of provisions that have been used to pursue environmental integration in EU bilateral and inter-regional relations. A considerable (although, by no means, exhaustive) array of case studies has been carefully selected from a geographic perspective (to provide a balanced representation, encompassing EU relations with several individual countries or regions in Africa, Asia, Eastern Europe and Latin America), as well as from a historical standpoint (to allow for a delineation of the evolution of practice).

¹² The law and policy developments throughout this book are reflected as they were on 30 June 2011.

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The two subsequent chapters explore, in turn, the extent to which environmental concerns have been integrated through tools that are, for the most part, *unilaterally* adopted by the EU, but which closely interact with its bilateral and inter-regional agreements. To this end, Chapter Three concentrates on the Generalised System of Preferences, which is a tool of EU external trade policy and regulates its trade relations with a number of developing countries. Chapter Four considers several instruments that underpin EU financial and technical assistance to third countries or regions, and that are adopted within the framework of other purely external policies of the Union such as enlargement and development policies. The analysis therefore does not extend to scrutinising environmental integration through unilateral measures of EU internal policies (such as agriculture, fisheries and energy policies), albeit these also have an important external environmental dimension.

Other *less legalised* tools used by the EU to pursue environmental integration in its relations with third countries or regions have also been identified. On the one hand, various dialogues have been institutionalised between the EU and third parties on a bilateral or inter-regional basis, within the framework of an existing agreement but also outside such a formal structure. While diverging in form, scope and objectives, these institutionalised dialogues affect environmental cooperation between the EU and the third parties concerned (Chapter Five). The other non-legalised instrument is the unilateral undertaking by the EU to carry out systematic prior assessments of the socio-economic and environmental impacts of an envisaged agreement that has a trade component. The EU practice related to these so-called sustainability impact assessments will be overviewed, followed by an evaluation of its relevance in ensuring environmental integration through other EU external relations tools (Chapter Six).

Drawing on the tool-by-tool analysis just outlined, Chapter Seven unveils the complex and evolving interactions of the EU's external environmental action at the unilateral, bilateral and inter-regional levels with multilateral environmental treaties and processes. A dynamic typology will be drawn to illustrate how EU external relations tools have been used as a means to: favour the implementation of existing MEAs in third parties (particularly developing countries); build alliances at the bilateral/inter-regional level with a view to influencing ongoing multilateral environmental negotiations; or contribute to the development of new international environmental norms in the absence of multilateral negotiations. The book concludes by offering some normative reflections regarding the credibility and legitimacy of environmental integration in the EU's external relations beyond multilateral dimensions.