
ARGUMENTA OECONOMICAE

2 • 1996

Academy of Economics in Wrocław
Wrocław 1996

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No 2 · 1996

PL ISSN 1233-5835

**INAUGURAL LECTURE
FOR OPENNING THE ACADEMIC YEAR 1994/1995**

Bogusław Fiedor

**ECOLOGICAL ASPECTS OF ECONOMIC
RELATIONSHIPS
BETWEEN POLAND AND EUROPEAN UNION***

**1. ECOLOGICAL ISSUES IN POLAND'S TREATY
ON ASSOCIATION WITH EUROPEAN COMMUNITIES**

1. The Treaty on Association is to create prerequisites for the future full integration with the European Union which means, above all, the harmonization of the whole Polish legal system with the European legal system. Legal solutions in the sphere of human health and life protection, protection of natural environment, as well as in the domain of intellectual, industrial and trade ownership protection are considered to be the most important areas of the whole harmonization process. Its general background will be the adjustment of most important legal conditions relating to the performance of enterprises and, first of all, to the ownership status and legal provisions in the sphere of commercial turnover between enterprises.

2. The Treaty on Association with European Communities of December 16, 1991 emphasizes a necessity of collaboration in ecological issues in almost all the spheres of Poland-EU relations. Article 80 of the Treaty contains numerous guidelines concerning this collaboration. Joint actions or activities are to be undertaken in environmental pollution monitoring in order to diminish transboundary and regional air and water pollution, counterba-

* The full text of the inaugural lecture given on 30th September 1995 during the ceremony opening the academic year 1994/1995 in the Academy of Economic, Wrocław.

lance results of soil erosion, to protect forests and to preserve fauna and flora species that are in danger of being extincted. The collaboration should also contribute to solving problems of world-wide climate changes. The parties involved are also to cooperate through the exchange of information, experts and by the joint organization of research. The collaboration with the European Environmental Protection Agency has been foreseen as well.

3. The previously mentioned harmonization process of Polish environmental law and standards proceeds in parallel to the unification of many kinds of standards and norms within the Community which generally results in introducing more rigid natural environment related technology, product or emission standards. It is very likely that some Polish exporters will not be able in the short run to meet those standards and thereby will lose the Community's markets. Hence, the standards concerned may act as the non-tariff barriers in the trade relationships between Poland and the EU. It is therefore extremely important to create legal and economic conditions and incentives that would stimulate new investment projects and new products in Poland's domestic market to meet EU ecological requirements. It is worth noticing here that their adjustment to EU environmental standards and regulations could positively influence the state of natural environment in Poland (the unification of Polish standards with their EU counterparts is firmly emphasized in Articles 69, 71 and 80 of the Treaty).

4. Difficult problems are connected with the protection of natural environment against agricultural pollutants. In the European Communities this area of common environmental protection policy is linked to measures and instruments to influence the scope, direction and intensification of soil/land use. There have been proclaimed zones of particular ecological hazard. Numerous programs of agricultural production intensification or extensification, depending on ecological requirements, have been worked out. Many regulations of a strictly technical nature supplement the above-mentioned preventative activities. In the future, Polish legislators will have to pay more attention to create the legal framework for the EU-type structural approach towards solving environmental pollution/protection issues in agriculture. Following the Community's experiences, Poland should employ, at least to a limited extent, financial incentives (subsidies, preferential credits etc.) to promote pro-ecological behaviour patterns of Polish farmers, instead of the hitherto prevailing practice of commands, prohibitions and money fines.

5. Polish legislators have also to adjust legal provisions concerning forest environment protection. The unification with EU legal solutions has to include, above all, the protection of forests from air pollution, the harmonization of forest pollution monitoring with that of EU, as well as the adjustment of Polish norms to requirements resulting from European fire-control regulations

for forests. The implementation of all these objectives will require the development of a credit-subsidy system for forestry and to obtain direct financial support from the Community as well.

6. The explicitly expressed willingness of the Community to assist Poland financially, technically and organizationally in its striving for improvement of the environmental quality is a base to intensify Polish efforts to use possibly quickly and mostly effective resources of assistance funds: PHARE, STRUDER and others. It is still more important to make more Poland's attempts in the range of debt-for-environment-swap more successful. With a view to its future full membership of the European Union, Poland has to watch carefully the ecological consequences of the integration processes within the Union and manners of solving environmental issues as well. It relates, particularly, to such outcomes of creating the Single European Market as: abolition of commodity control on state borders, liquidation of technical trade barriers, establishing the open market for government orders, liberalization of service markets, developing the internal energy market and harmonization of taxes. Anticipating potential ecological problems that may result from all of these processes, Poland should undertake preventive activities, paying special attention to respective legislative initiatives. The processes concerned require also to undertake investment activities in order to create the technical infrastructure that would enable Poland to enter the European Union in the future.

2. EUROPEAN UNION ENVIRONMENTAL LEGISLATION AND REGULATIONS AND THEIR ECONOMIC CONSEQUENCES TO POLAND

7. The significance of EU legislation and regulations in the range of environmental protection and natural resources economy, as well as with regard to the broadly understood ecological safety, results directly for Poland from its Treaty on Association and future actions to be undertaken before achieving the formal status of full membership in the European Union. Representatives of the Commission of European Communities expressed many times a view that the adoption of overall EU legislation (*acquis communautaire*) within the coordinated time schedule has to be treated as an elementary or initial step towards Poland's full membership of the European Union.

8. It is obvious that EU environmental legislation and regulations influence both the present and future volume and structure of Polish exports to and imports from the EU. It is, however, worth noticing here that the harmonization of Polish environmental law with European environmental law and, in

particular, with EU emission, technological and product standards, will essentially influence the competitiveness of the whole of Polish foreign trade. The process of harmonization has to be implemented in a very deliberate manner, with the adoption of a precise strategy and range of bringing the Polish formal-legal procedures closer to their EU counterparts, as well as with taking into account general economic conditions of the transformation of Polish economy, particularly by the harmonization of emission and ambient air/water standards, which should result in working out the cost-effective harmonization strategy. The range of choice within the above mentioned process is relatively large, because the Treaty on Association speaks only of "likening legal procedures", not defining the scope and rate of bringing Polish environmental legislation nearer that of the EU.

9. It is crucial to be fully aware that the harmonization of Polish legal solutions with EU environmental protection legislation and standards and subsequent economic outcomes of this process makes a very important but not the only dimension of ecological relationship between Poland and the European Union. Another and much more important dimension of this relationship is connected with the ecological consequences of establishing the European Single Market. From the Polish perspective, it has to be particularly emphasized the increased transboundary pollution and, subsequently, deposition of air pollutants (mostly SO₂ and NO_x) that will be (very likely) brought about by the globally increased consumption of fuels and energy and a significant intensification of international road freight traffic in conjunction with commonly expected acceleration of economic growth due to the development of European Single Market. (For more detailed analysis of this scenario see: Bush 1991).

10. The ecological policy of the European Community was only launched in 1972. However, over the next 15 years the legislative competencies of the community in the sphere of environmental protection have not been precisely defined. Significant changes in this domain are linked to the Single European Act (1987) that supplemented the Treaty of Rome with a new chapter: "The Natural Environment". A further widening of legislative, executive, regulatory and controlling competencies of the Community in the sphere of environmental protection took place in The Treaty on European Union of 1991 (Maastricht).

11. The Treaty of Rome (Art. 25) defines the following objectives of the European Union in the environmental protection:

- preservation, protection and improvement of the environmental quality,
- improvement and protection of human life and health,
- rational exploitation of natural (particularly, exhaustible) resources.

Since 1973, the substantiation of those general objectives has been taking place within four to five year long Environmental Action Programmes. They also

constitute a general foundation for EU environmental protection legislative and regulatory activity. Currently (1993-1997), the Environmental Action Programme: "Towards Sustainability" is being realized. It is crucial to point out that the Polish State (National) Ecological Policy approved by the Polish Parliament in 1991 is, in general, also based on the concept of ecologically sustainable development.

12. Besides the commonly accepted (in accordance with the Paris Conference of OECD in 1972) Polluter-Pays-Principle (PPP is also one of basic principles of Poland's ecological policy), other basic principles of the environmental protection policy of the European Union are as follows:

- prevention principle,
- public participation principle,
- subsidiarity principle,
- principle of trans-boundary environmental protection (strictly linked to the international cooperation principle).

Without going here into details of actual implementation and use of the above indicated principles in the EU legislative and regulatory activity in the environmental protection, I would like to briefly pay attention to the special significances and implications of the prevention and, respectively, subsidiarity principle. The former relates to a fundamental view that (a) economic considerations can not be given priority over ecological requirements and (b) preventing activities are ever more effective than the *end-of-pipe-approach* to solving environmental problems. (In conformity with the Art. 130, para. 3 of the Treaty of Rome it does not exclude taking into account requirements that result from the social-economic development of the Community as a whole or particular countries and regions)

13. The principle (clause) of subsidiarity (this principle is of general character and pertains to all the spheres of the activity of EU) implies that the activity of the EU in the range of environmental protection should be undertaken only when the objectives (as specified in Art. 13, para. 1 of the Treaty of Rome) could be better achieved through common actions at the Union's level than through individual undertakings of particular member countries. The principle concerned found its expression and confirmation in the Treaty of Maastricht (Art. 3 b) as well.

14. The practical interpretation of subsidiarity principle is not uniform. It is subject to numerous legal-theoretical doubts. (See e.g. on this subject: Huckestein 1993, pp. 419-423.) Detailed presentation of relevant discussion would go beyond the scope of this paper (by the way, it is very important from the standpoint of defining Union's goals, policies and instruments to prevent transboundary pollution or in the range of nature protection). I pay attention to the subsidiarity principle mostly in the context of harmonization

of Polish environmental legislation and standards with respective EC laws, regulations and standards. The point of special significance is that the principle concerned does not imply for the Polish environmental legislation and regulation a necessity to follow (to introduce) all the general and detailed legal and regulatory provisions of EU, but only a need to introduce those of them that would ensure implementing the Union's objectives in the sphere of environmental protection and make the Polish environmental legislation consistent with the previously mentioned main principles of common environmental protection policy. In practical terms, it means, for instance, a necessity of working out and practically implementing legal and administrative instruments to ensure (following EU countries' practice) a broader participation of citizens in the Environmental Impact Assessment of industrial investments projects (in conjunction with the public participation principle).

15. The subsidiarity principle (in the interpretation of Treaty on EEC and Treaty on European Union as well) does not preclude a possibility to create and apply legal solutions that have a transnational and not just an international character. The latter are characterized by a necessity of notification and ratification by specific countries (as in the case of international ecological conventions). The existence of transnational environmental laws and regulation within the EU will have to mean for Poland, with a view of its Treaty on Association and future full membership, a partial limitation of its sovereignty in the domain of environmental protection.

16. The Community has issued hitherto over 200 legal acts in the sphere of environmental protection; thereof about 90 relate directly to the environmental protection and natural resources economy and the remaining 110 constitute legal acts pertaining to such legal and regulatory provisions that indirectly influence environmental quality. A quantitative voluminousness of the ecological legislation of the European Union does not mean, however, that it is a complete and consistent legal system which is the case in majority of national ecological legislation. As S. Wajda emphasizes, it is at the same time crucial that the acceptance of subsidiarity principle makes it very difficult to foresee whether the Community's legislative policy in the sphere of environmental protection will be intensified/accelerated or, quite on the contrary, slowed down. (Wajda 1993, p. 4.) Therefore, a thesis seems to be justified that, apart from the requirements of the very harmonization process, it is also very important and urgent to improve the whole Polish environmental legislation system. As in the case of any domain of Polish law, in accordance with the general principle of Treaty of Rome (art. 3), this improvement should serve to create "indispensable conditions for the performance of common market". In practical terms, it means, above all, the implementation of "four

economic liberties" which means the free movement of commodities, persons (labour), capital and services.

17. From the formal-legal point of view, regarding environmental protection (as in any area of common policy) the Council of Ministries and the Commission of European Union employs the following main kinds of legal instruments:

1. Ordinances; regulations in the normal sense,
2. Directives,
3. Decisions,
4. Recommendations or opinions.

Only ordinances and directives are instruments of transnational law. Ordinances bind member countries in the direct manner. Directives are also of a fort-right obligatory character but they differ from ordinances because they only oblige member countries to follow common principles of environmental protection policy and to achieve the Community's goals in the approved time horizon, whereas the way of implementing those goals can be freely chosen by particular countries. Decisions are issued in individual matters and bind only specific legal and/or business entities (governments, banks, enterprises etc.). Recommendations constitute interpretations of treaties, ordinances etc. and are not binding. Among legal instruments of Community's ecological policy one can also number judgements of the Court of Justice. Its performance shows that a substantial part of those judgements is linked to variations in the way of interpreting the very nature and scope of subsidiarity principle by member countries in conjunction with the implementation of joint objectives and elements of the Community's environmental protection policy.

Without going into details of complex legal problems concerning the classification of legal instruments of this policy, it is worth indicating here still two (besides the four above-mentioned) kinds of such instruments:

- principle of public subsidizing protective actions,
- detailed interpretations on the nature of „environmental protective resources”.

18. Legal and regulatory instruments of the Community's environmental protection policy can be divided in a "classical" manner into the following groups:

- air protection,
- surface and underground water resources protection,
- land and soil protection,
- fauna, flora (wilderness) and natural habitats protection (nature protection),
- solid waste management,
- toxic/hazardous wastes management.

It found its expression (among other things) in the contents and priorities of particular Environmental Action Programmes. So for instance, the first of them focused on toxic waste management issues and the third on air protection problems.

Another way of classifying the legal and regulatory instruments of environmental protection policy within the Community consists in dividing them into groups which define:

- general ecological conditions of and constraints to extracting and manufacturing activities,
- conditions of handling (management) chemicals and use thereof,
- use and management of packings.

19. Having already made a presentation of the main features and scope of the Community's environmental protection law and regulations, I confine myself to an enumeration and brief comments on the most important ecological directives. In doing so I take into consideration the simple fact that the process of harmonization of Polish environmental legislation and regulations with their respective solutions of the European Community will have to be based, first of all, on those of them that, as transnational law, are of obligatory character in the context of requirements of Treaty on association and Poland's future full membership of the European Union:

1. Directives on ambient air standards with respect to SO₂, suspended dust, NO_x and lead (1984, 1989). Except the lead standard, they define the so-called limit and guide values for concentration of the above-mentioned pollutants in the atmospheric air. Guide values serve, by and large, to specify the air quality in areas that require the special environmental protection (e.g. natural parks, reserves of fauna and flora and other natural habitats). They are also applied to define the ambient air quality in urban areas in order to prevent them from the deterioration of air quality.

2. Five directives on the SO₂, NO_x and dust emission by industrial facilities, thermal power plants, already existing and being currently under construction communal waste incinerators, as well as on polluting the atmospheric air with asbestos. Special significance should be attributed to the 1988 directive on big combustion facilities (more than 50 MW power). It is to contribute to a radical decline of SO₂, NO_x and dust emissions by both „old” and power plants currently being constructed. The directive concerned is of special importance to Poland, since, providing Poland's future memberships of the EU, it has defined not only “limit values” for SO₂, NO_x and dust emission in the short-to-medium-term but also assigns member countries global emission levels for the years: 1993, 1998 and 2003.

3. Numerous directives on pollution emitted by mobile sources (vehicles), including the 1985 and 1987 directives on unleaded gasoline and 1991 di-

rective on harmonization of gas emission standards for cars and trucks and, simultaneously, introducing a duty to install catalytic converters in currently produced cars (the directive on lead content in gasoline, likewise a respective legal act on sulphur content in heating gas, can be regarded as classic examples of product standards).

4. Directives on drinking water quality (1979, 1980, 1989), defining, among other things, 66 parameters of tap water (1989), and specific methods to measure the water quality.

5. Directives on industrial and communal sewage treatment plants (the recent ones from 1989 and 1991).

6. Directives on reduction of the pollution of surface waters by fertilizers and pesticides.

7. Numerous directives on solid waste disposal and management (e.g. the 1986 directive on used oils disposal).

8. A large number of directives concerning the use, disposal and storage of hazardous/toxic wastes. This area of common environmental protection policy is particularly intensive in terms of Community's legislative activity and international collaboration, including collaboration with non-member countries, as well as with many international organizations: OECD, UNEP, UNDP, ILO (above all, in handling toxic chemical wastes).

9. Directives on product packings and packaging management/handling, including a directive that binds EU member countries to achieve the 70 per cent level of recycling for plastic packages.

10. Directive on Environmental Impact Assessment.

11. Directive on the common availability of ecological information (the public's „right-to-know”) in the sphere of environmental pollution and protection.

3. CONCLUDING REMARKS ON HARMONIZATION STRATEGY AND ITS COSTS

20. This brief enumeration of the main transnational legal acts of the EU pays attention to the huge amount of legislative work to be done in Poland in conjunction with the process of Polish environmental law and standards harmonization with legal solutions of the Community in the domain under consideration. The general approach of our country towards this process should not be based merely on the previously mentioned subsidiarity principle as the main foundation of the Community's environmental law. Within this approach, taking into account ongoing environmental priorities that are incorporated in Poland's national ecological policy has also to be ensured.

21. Secondly, during the introductory stage the harmonization process should mostly consist of introducing principles and institutions of Community's ecological law (e.g. the public participation principle in decision making processes related to the state of environment) into Polish law. In some cases the very nature of the harmonization process will mean an improved (compared to the past) practice of real observance of those principles (cf. Wajda 1991, pp. 14-15). The process concerned should also comprise main concentration (ambient), emission and product standards, particularly in the sphere of atmospheric air pollution due to the necessity of meeting the obligations that result for Poland as the signatory of international ecological conventions and protocols.

22. Thirdly, the harmonization of Polish environmental law and standards with the European Union should proceed in the strictly defined institutional framework. Particularly, the establishment of Subcommittee on Protection of Natural Environment within the Polish-EU Association Committee would be worth recommending. This is very important in the above-mentioned context of the still high liability of Community's ecological law, as well as with a view of the controversies about the interpretation of its specific components and uncertainties concerning the future development of EU ecological law.

23. The harmonization of Polish environmental law and standards gives rise to very serious, both direct and indirect, economic consequences. It encompasses the increase in current costs of environmental protection in Poland (direct outcomes) and the bearing upon general conditions of performance of Poland's economy and upon the competitiveness of specific branches, enterprises and products on domestic and foreign markets in particular. As the German *Institut für Wirtschaftsordnung (ifo)* estimates, the overall costs that Poland would have to bear in order to achieve the environmental quality comparable to that corresponding to EU standards amount to about USD 30 billion (by the current yearly expenditures of approx. USD 1 billion). According to estimates that have been carried out by Polish analysts, to achieve in 1998 emission standards for SO₂, NO_x and dusts from the 1990 ordinance of MEPNR&F on the fuel combustion in the energy sector, ca. USD 5-10 billion (depending on the emission abatement scale) would have to be spent. At the same time it is obvious that it will result in increased costs and prices of electricity; 10% on average and up to 100 per cent (for costs) in some thermal power plants. Though the implementation of standards under consideration would make their level comparable to that resulting from the EU directive on big combustion facilities, it could be insufficient in the context of planned total emission plafons to be achieved by particular EU member countries in 1998 and, subsequently, 2003.

24. There can be indicated many other areas of environmental protection policy within which the harmonization of Polish law and standards will be very costly, difficult or even impossible in the foreseen time period of 10-12 years of achieving the status of full EU membership by Poland; e.g. emission standards for five basic gases for cars and trucks or numerous product standards. (This topic discusses broadly Górka 1994, pp. 205-229.) There exist also domains wherein Polish legal and regulatory provisions do not diverge from their EU counterparts, however, on the other hand, we have frequent practice of non-observing the law; e.g. ambient water standards for non-toxic sewage and basic drinking water quality criteria. Generally, it could be stated that the process of Polish environmental law and standards harmonization with the EU will have to be extended, due to the expected tremendous economic costs over the time period beyond the foreseen 10-12 years within which Poland hopes to become a full member of the European Union. It is at same time obvious that Poland will have to prepare, in collaboration with the respective Community institutions, a detailed program of approaching EU environmental law and standards. Taking into account the consequences of this process in terms of the level and structure of costs of goods being sold on internal markets, as well as international competitiveness related outcomes of bringing Polish environmental law and standards closer to EU counterparts, it is crucial for Poland to work out cost-effective strategies of introducing and/or real implementing more rigid ecological legislation and standards. It implies both broader use of economic tools to promote enterprises' compliance with ecological law and regulations and basing, to the largest extent possible, the whole environmental protection policy on preventive measures and instruments.

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