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*Two Parallel Discourses and a New Path for Policy-Making: The
Biodiversity Strategy for 2030*



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The Biodiversity Strategy for 2030***

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1. *Introduction*

The progressive broadening and deepening of European Union (EU) environmental policies run parallel with the European integration process. Along this process, nature has gradually modified its relevance and meaning: from abbreviated and incidental non-tariff barrier to headline of the latest regulatory project launched by the Commission, the European Green Deal (EGD).¹

This article focuses on the component of the EGD expressively devoted to “bringing back the nature into our lives”, namely the EU Biodiversity Strategy for 2030.² Given its still declaratory status pending implementation, the inquiry on the policy document would benefit of a parallel discourse analysis, in the attempt to grasp the political thinking behind its contents and to anticipate its future unfolding. The following intertwines legal and discourse analysis, by juxtaposing the Strategy to the evolution of EU environmental law and policy and to the dominant discourse developed therein.

The article is organized as follows. It opens by recalling the major steps in the evolution of the EU environmental law and policy: notably, it points to the passage from a fragmented set of initiatives to a strategic policy framework on

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¹ COM (2019) 640 final.

² EU Biodiversity Strategy for 2030. Bringing nature back into our lives COM (2020) 380 final.

biodiversity (§ 2). Following, the study moves on the discourse level to conceptualise the origin and implication of EU's commitment to sustainable development (SD), standing out in primary legal sources as well as secondary legislation and policies (§ 3). These two sections pave the way to a discussion of the Biodiversity Strategy for 2030, which is examined both for its contents and for the environmental thinking being conveyed (§ 4). The final pages present some general conclusions on the overall picture (§ 5).

2. *Perspective: Biodiversity Protection in the European Integration Process*

The history of environmental protection in the EU order runs parallel to that of the European integration process.³ Along its unfolding, the role and status of nature expands and is enriched, both at legal and policy level. The following section tries to give a sense of both dimensions. The growing commitment of the European institutions to the safeguard of the natural environment is also read in dialogue with the evolving international agenda. For the purpose of our analysis, the focus is narrowed on the crucial role played by the adoption of the Convention of Biological Diversity (CBD) on the development of EU policy response for biodiversity protection: this moment gave a sort of strategic orientation to all the following programmes.

2.1. *The Paris Summit*

³ See E. ORLANDO, *The evolution of EU legislation and policy in the environmental field: achievements and current challenges*, in C. BAKKER - F. FRANCONI (eds.), *The EU, the US and global climate governance*, Routledge, London, 2014, pp. 61-81. The citations of the following law cases have been drawn from this contribution. For a brief overview, see also: H. SELIN - S.D. VANDEEER, *EU Environmental Policy Making and Implementation: Changing Processes and Mixed Outcomes*, Paper presented at the 14th Biennial Conference of European Union Studies Association, Boston, March 2015. For a broader study: E. REHBINDER - R. STEWART, *Environmental protection policy*, Vol. 2 in M. CAPPELLETTI et al. (eds.), *Integration through law: Europe and the American federal experience*, Walter de Gruyter, Berlin and New York, 1985; L. KRAMER, *EU Environmental Law (8th ed.)*, Sweet & Maxwell, London, 2016; L. KRAMER, *Casebook on EU Environmental Law*, Hart, Oxford - Portland, 2002; N. DE SADELEER, *EU environmental law and the internal market*, Oxford University Press, Oxford, 2014; G.V. CALSTER - L. REINS, *EU Environmental Law*, Edward Elgar, Cheltenham (UK) – Northampton (MA), 2017.

The commonly accepted starting point of this path is traced back to the Paris Summit, held in 1972⁴ among the heads of state and government of the former nine European Member States. The Summit legitimised, although without the Treaty of Rome's revision, the intervention of the then Communities into new policy areas, adjacent and functional to the economic dimension. The session followed an event of international importance, the United Nations Conference on the Human Environment in Stockholm.⁵ In line with the attention towards nature protection, that the UN Conference catalysed, the formal statement of the Summit did not leave environment out of its scope. Point 8 introduced the practice of setting periodical Environmental Action Programmes (EAPs) and, the same year, a first unit devoted to environmental subjects was established within the Directorate-General (DG) Industry.⁶

In Weiler's interpretation and explanation of the "transformation of Europe", the Paris Summit was a key event in the second phase of the evolution of the European legal order, a phase going from 1973 until mid-1980 and characterized by a remarkable mutation of jurisdiction and competences, including the erosion of the enumerated powers principle.⁷ In the environmental policy area, we can observe what he refers to as the "expansion" of the Community's material jurisdiction.⁸ The paradigm shift rested on the passage from a restrictive use of Article 235 of the EEC Treaty,⁹ as a mere codification of

⁴ Bulletin of the European Communities. October 1972, No 10. Luxembourg: Office for official publications of the European Communities. "Statement from the Paris Summit", p. 14-26. Available on: https://www.cvce.eu/obj/statement_from_the_paris_summit_19_to_21_october_1972-en-b1dd3d57-5f31-4796-85c3-cfd2210d6901.html. However, there are some isolated acts of secondary legislation with implications in the environmental sphere preceding this event, see P. SANDS, *European Community environmental law: the evolution of a regional regime of international environmental protection*, in *Yale LJ*, Vol. 100, 1990, p. 2512.

⁵ UN General Assembly, United Nations Conference on the Human Environment, 15 December 1972, A/RES/2994

⁶ E. SCHÖN-QUINLIVAN, *The European Commission*, in A.J. JORDAN – C. ADELLE (eds.), *Environmental Policy in the European Union: Contexts, Actors and Policy Dynamics*, 3d edn., Earthscan, London and Sterling, 2012. A fully-fledged DG XI for environment is established in the '80s.

⁷ J.H.H. WEILER, *The transformation of Europe*, in *Yale Law Journal*, 1991, pp. 2403-2483.

⁸ P. SANDS, *European Community environmental law: the evolution of a regional regime of international environmental protection*, cit., p. 2513.

⁹ According to art. 235, EEC, the Council is legitimated to act unanimously, even where the «Treaty has not provided the necessary powers, whether the Community should prove necessary to attain, in the course of the operation of the common market, one of the objectives of the Community». Art.235 of the EEC is today replaced by art.352 of TFEU.

the implied power doctrine - thus intended to give the Community an instrument in a field within which it already has competence¹⁰ - to its quantitatively and qualitatively extensive usage in new policy fields.

At that time, the burgeoning of secondary legislations on environmental protection were, indeed, based on both such “elastic clause”¹¹ (Article 235 of the EEC Treaty) and on Article 100 of the EEC Treaty,¹² and were mostly focused on pollution rights. The justification for their adoption was that the divergences among member states’ legal measures raised non-tariff barriers to the completion of the common market, hence they had to be harmonized. Environmental law entered the EU legal order in the form of social regulation, in order to regulate market failures.¹³

Anyway, not all norms fit this paradigm. Article 235 of the EEC Treaty was ill-suited for the scope of nature conservation. Indeed, the legal basis of the first directive in this genre - Birds Directive 79/409/EEC - has been questioned by many, as the measure blatantly transcended the Community’s objective of economic mutual co-operation.¹⁴ In its preamble, the Birds Directive sought an anchor in the more congruous lines of the Treaty of Rome: «the Community's objectives regarding the improvement of living conditions, a harmonious development of economic activities throughout the Community and a continuous and balanced expansion».¹⁵ Equally questionable is the signature of the Convention on the Conservation of Migratory Species of Wild Animals (CMS) at Bonn the same year.

It is worth underscoring that such growing legislative action could not have been possible without, besides the Commission’s “entrepreneurism”,¹⁶ the

¹⁰ J. H. WEILER, *The transformation of Europe*, cit., p. 2443.

¹¹ *Id.*, *ibidem*.

¹² Art. 100, EEC allowed the Council «by acting unanimously (...) to issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market». Art.100 EEC is replaced by art.115 TFEU.

¹³ G. MAJONE, *The European Community between Social Policy and Social Regulation*, in *Journal of Common Market Studies*, 1993, Vol.31, pp. 153 ff.

¹⁴ S.P. JOHNSON - G. CORCELLE, *The Environmental Policy of the European Communities*, Kluwer, London, 1995.

¹⁵ Art. 2, EEC.

¹⁶ Among numerous sources giving account of the Commission’s “entrepreneurism”, see A. LENSCHOW, *Environmental Policy: Contending Dynamics of Policy Change*, in H. WALLACE - M.A. POLLACK - C. ROEDERER - RYNNING - A. R. YOUNG (eds.), *Policy-making in the European Union*, Oxford University Press, Oxford, 2015, pp. 324-326.

European Parliament¹⁷ and Court of Justice's alliance. The Court legitimised the Community's internal¹⁸ and external¹⁹ competence in this sphere. Moreover, it went further declaring the environmental protection as «one of the Community's essential objectives» and that «the freedom of trade is not to be viewed in absolute terms, but is subject to certain limits justified by the objectives of general interest pursued by the Community».²⁰

2.2. *The Single European Act*

Another major milestone along this path has been the signature of the Single European Act (SEA) in 1986, which finally introduced Title VII on “Environment” in the Treaty of Rome. Articles 130 r-t not only set the explicit legal bases for the community's internal and external competence in the environmental field, but also consolidated some key principles: that of preventive action, that the polluter pays, and that environmental damages have to be rectified at source.

The SEA subscribed the interconnection between social, environmental and economic dimensions; environmental protection finally appeared within the primary law, the EU constitutional legal basis, although still functional to the completion of the single market. The year 1987 gave way to a very prolific and ambitious law-making in new substantive areas, extending the former engagement on pollution rights to a more horizontal level.²¹ Much is owed to the flexible use made by the Commission of Article 100a of the EEC Treaty - devoted to the establishment and functioning of the internal market – which required a more easily obtainable qualified majority, compared to the unanimity asked by

¹⁷ *Id.*, *op. ult. cit.*, p. 328 «traditionally, the EP has been the “greenest” of the three main environmental policy-making bodies. Already in the early 1970s, the EP was instrumental in the emerging EU-level nature-protection policy – that is, a sub-field of environmental policy that was hard to link to the internal-market agenda and thus dependent on broad societal support. The 1979 Wild Birds Directive (79/409/EEC) is a prime example: it can be traced back to 1971 when the EP requested the Commission to take up this issue».

¹⁸ ECJ 1980, *Commission v. Italy*, Case 92/79; ECJ 1982, *Commission v. Belgium*, Opinion in Cases 68/81 to 73/81.

¹⁹ ECJ 1971, *Commission v Council AERT*, Case 22/70.

²⁰ ECJ 1985, *Procureur de la République v. Association de défense des brûleurs d'huiles usages (ADBHU)*, Case 240/83.

²¹ P. SANDS, *European Community environmental law: the evolution of a regional regime of international environmental protection*, cit., pp. 2515-2517.

Article 130s. Nonetheless, this did not come always smoothly. This strategy sparked some institutional clashes between intergovernmental and supranational instances over the proper legal basis to employ.²² The entrepreneurship of the Commission can be also measured on a number of infringement proceedings moved against member states, the other side of the coin being, however, the general lack of implementation that these efforts suffered.²³

Despite the institutional tensions and the many deficiencies, this second stage in the evolution of environmental protection in the European order sustained the rise of a regulatory state²⁴ in the environmental sphere. Moreover, the three EAPs developed in the meantime generally manifest a gradual learning-process²⁵ in terms of a broadening and specializing policy agenda.

2.3. From the Convention on Biological Diversity thereafter: towards a Strategic Approach

Intuitively, the legal and political watershed in the evolution of EU environmental protection was the Earth Summit in 1992. Among other precious documents²⁶ and agreements,²⁷ the Earth Summit produced the Convention on Biological Diversity (CBD) that “named” biodiversity in the international arena and addressed it with a tailored attention. The passage it is also conceptual. The most authoritative political and normative voice, the UN, gave back to nature all its complexity, by recognising its tight interdependence, as source and foundation of human and earth’s life and welfare. The agreement also stressed the social, political and economic dimensions in play when regulating biodiversity. The

²² Among many, Case C-300/89 Commission of the European Communities v Council of the European Communities on the annulment of Directive 89/428 on waste from the titanium dioxide industry.

²³ E. ORLANDO, *The evolution of EU legislation and policy in the environmental field: achievements and current challenges*, cit., p. 65.

²⁴ G. MAJONE, *Regulating Europe*, Routledge, London, 1996.

²⁵ C. HEY, III, *EU Environmental Policies: A short history of the policy strategies*. *EU Environmental Policy Handbook*, 2007, EU Commission -Working Paper.

²⁶ Rio Declaration on Environment and Development (A/CONF.151/26, vol. I), Agenda 21 (A/CONF.151/26, Vol. II), the Statement of principles for the Sustainable Management of Forests (A/CONF.151/26, Vol. III) adopted by the United Nations Conference on Environment and Development on 14 June 1992.

²⁷ The Convention on Biological Diversity of 5 June 1992 (1760 U.N.T.S. 69); UN General Assembly, United Nations Framework Convention on Climate Change, 20 January 1994, A/RES/48/189; United Nations Convention to Combat Desertification (UNCCD).

three main objectives laid down were: the conservation of biological diversity; the sustainable use of the components of biological diversity; and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Especially the third appeal resurfaced the commercial core of the subject debated, and the latent dispute opposing developed and developing countries over the regulation of biotechnologies and intellectual property.²⁸

Europe had an important leading role in the negotiations,²⁹ as well as conversely the adoption of the CBD had been very influential in shaping European biodiversity policies. In this case, we can talk of a double-speed response to the ratification of the CBD.³⁰

First, Europe integrated the CBD's principles in the 5th EAP (1993-2000).³¹ The 5th EAP was expressly entitled to "sustainability".³² Accordingly, much emphasis was placed on environmental policy integration (EPI), one of the sustainable development's key features, although it remained vague on how to achieve it in practice. It also evolved a sectoral³³ and themed³⁴ approach, and was aligned to the spirit of shared responsibility, by making appeal to all levels of society.³⁵ Its 3 main goals were: 1. maintenance or restoration of natural habitats and species of wild fauna and flora at a favourable conservation status; 2. the creation Natura 2000; 3. strict control of abuse and trade of wild species. The

²⁸ See BP-317E Background paper The Rio Earth Summit: Summary of the United Nations Conference on Environment and Development, Prepared by: Stephanie Meakin Science and Technology Division November 1992. The USA was the only attending party not to sign the Convention fearing that a regulation over biotechnologies could have undermined the competitiveness of its industries. See the country profile on: <https://www.cbd.int/countries/?country=us>. Such the contention about the topic, that the subsequent Cartagena and Nagoya protocols have greatly delayed their entry into force.

²⁹ S. BAKER, *The dynamics of European Union biodiversity policy: interactive, functional and institutional logics*, in *Environmental Politics*, Vol. 12, No. 3, 2003, pp. 27 ff.

³⁰ *Ibidem*.

³¹ Commission on the first report of the implementation of the COM (1998) 42 final p. 69. Available on <https://www.cbd.int/doc/world/eur/eur-nr-01-en.pdf>.

³² The Fifth EC Environmental Action Programme, "Towards Sustainability" the European Community Programme of policy and action in relation to the environment and sustainable development, Official Journal of the European Communities, No C 138/5.

³³ The focus on 5 sectors: industry, energy, transport, agriculture, and tourism.

³⁴ Climate change; acidification and air quality; protection of nature and biodiversity; management of water resources; the urban environment; coastal zones; and waste management. See 5th EAP p. 51.

³⁵ The actors: EC, Member States, Local Authorities, NGOs, farmers, UNEP (United Nation Environment Programme).

constitution of Natura 2000, by coupling the Birds and Habitats Directives,³⁶ is certainly still the cornerstone of nature conservation in Europe.³⁷ At the same time, the first report to the CoP of the CBD³⁸ also recalled the constitutional amendments complying with the international agreement. Among the most relevant elements, the Maastricht Treaty included the principle of precaution,³⁹ emphasised the EPI principle and introduced the double formula of sustainable growth⁴⁰ and sustainable development;⁴¹ whereas the Amsterdam Treaty moved EPI up to Title I,⁴² among the general principles, and centralised the position of SD as one of the Union's objectives.^{43,44}

Second, the Union, pursuant to Article 6 of the CBD,⁴⁵ introduced a "strategic" approach. In line with the evolutions of the Cardiff process⁴⁶ within the European Council, the Union set forth the first Biodiversity Strategy in 1998.⁴⁷ The strategy was also accompanied by some administrative adjustments,

³⁶ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats.

³⁷ Natura 2000 is said to be «the largest coordinated network of protected areas in the world». It stretches over all 27 EU countries, both on land and sea, to protect valuable habitat and species under threat of extinction. It comprises strict nature reserves as well as area where human activities are allowed but are tried to be maintained sustainable. The programme is funded by Financial Instrument for Environment (LIFE) under LIFE Nature Budget. The Natura 2000 network is made up of Special Protection Areas (SPAs) classified under the Birds Directive, and Special Areas of Conservation (SACs) designated under the Habitats Directive.

³⁸ Note 31.

³⁹ Art.130s, TEU.

⁴⁰ Art.2 TEU.

⁴¹ Art.130u TEU.

⁴² Art.2 TEC and TEU.

⁴³ Art.6 TEC.

⁴⁴ Among a vast Italian literature, for a comprehensive overview of European principles of environmental protection see A. GRASSO - A. MARZANATI - A. RUSSO, *Ambiente, articolazioni di settore e normativa di riferimento*, in M.P. CHITI - G. GRECO (eds.), *Trattato di diritto amministrativo europeo*, 2 edn., Giuffrè, Milano, 2007, Part II, Volume I, pp. 157-269; F. FONDERICO, *Ambiente*, in S. Cassese (ed.), *Dizionario di diritto pubblico*, Giuffrè, Milano, 2006, *ad vocem*; M. CAFAGNO, *Principi e strumenti di tutela dell'ambiente. Come sistema complesso, adattativo, comune*, in F. G. SCOCA - R. ROVERSI MONACO - G. MORBIDELLI (eds.), *Sistema di diritto amministrativo italiano*, Giappichelli, Torino, 2007; M. RENNA, *I principi in materia di tutela dell'ambiente*, in *Rivista Quadrimestrale di Diritto Ambiente*, No. 1-2, 2012, pp. 62-83.

⁴⁵ Art.6 of the CBD requires to implement a strategic response.

⁴⁶ Communication from the Commission to the European Council of 27 May 1998 on a partnership for integration: a strategy for integrating the environment into EU policies (Cardiff, June 1998) (COM (1998) 333).

⁴⁷ Communication from the Commission to the Council and the European Parliament on a European Community biodiversity strategy COM (1998) 42.

such as the appointment of “integration correspondents” and the inclusion of special environmental units within the Commission DGs.⁴⁸

Since 1998, we observe a tendency to incrementalism, at least in biodiversity policies. The Union improved its action, by broadening and deepening the biodiversity policy agenda. The adoption of a series of Biodiversity Action Plans⁴⁹ was accompanied by a continuous and responsive engagement with the evolving international agenda. Some constitutional amendments strengthened the standing of environmental protection. The Lisbon Treaty made explicit reference to the climate change concern and further stressed the leading role of the EU in the promotion of sustainable development.

While a full account of the wide policy production falls out of the scope of our analysis, it is appropriate to point at its main patterns. There has been a clear orientation towards differentiation and flexibility, at the regulatory and implementation level, mainly triggered by the progressive enlargement of membership in the EU.⁵⁰ The use of subsidiarity and a growing recourse to New Environmental Policy Instruments (NEPIs) has been generalised. Nevertheless, the policy-making progress has not often been accompanied by an equal improvement in the implementation. The initial difficulties⁵¹ encountered to monitor and to enforce the programmes at the member states level have remained unsolved. Another major obstacle has always been the insufficient integration of biodiversity protection within other sectoral policies.⁵²

⁴⁸ S. BAKER, *The dynamics of European Union biodiversity policy: interactive, functional and institutional logics*, cit., p. 33.

⁴⁹ Communication from the Commission to the Council and the European Parliament - Biodiversity Action Plans in the areas of Conservation of Natural Resources, Agriculture, Fisheries, and Development and Economic Co-operation COM/2001/0162 final.

⁵⁰ G. DE BURCA – J. SCOTT (eds.), *Constitutional Change in the EU. From Uniformity to Flexibility*, Hart, 2000.

⁵¹ 1st National Report for the Convention on Biological Diversity (1998). Available on: <https://www.cbd.int/doc/world/eur/eur-nr-01-en.pdf>.

⁵² See the 6th National Report for the Convention on Biological Diversity (2019) Section II. Implementation measures, their effectiveness, and associated obstacles and scientific and technical needs to achieve national targets pp. 13 ff. Available on <https://chm.cbd.int/pdf/documents/nationalReport6/243509/1>. Among the primary difficulties for the full implementation of the Birds and Habitat Directives - target1 of the Biodiversity Strategy for 2020 – there are the weak intervention on the member states level and the limited budget devolved.

3. Understanding the Ambivalent Commitment to Sustainable Development and Economic Growth in EU

Whereas the previous section intended to provide a perspective in the text, by retracing in broad lines the progressive settlement of environmental protection within the EU law and by pointing at the moments that had particularly orientated the state of art of biodiversity policies, this part moves on another level of analysis, that of the language in use in these documents.

Discourse analysis has often found its way into research agendas on environmental policy and politics. A major contribution made by this approach is that of restoring complexity and antagonism to the study of policy texts. Evolved within the social constructivist tradition of social science,⁵³ the basic assumption from which discourse analysis evolves is that «language profoundly shape one's view of the world and reality».⁵⁴ As for our context, the main implication of this premise is that discourses orient outcomes; they shape «what can and cannot be thought, delimit the range of policy options and thereby serve as precursors to policy outcomes».⁵⁵

In this view, delving into the dominant discourses employed by EU in environmental law and policy, and confronting them to those seemingly entrenched in the EGD, and specifically in the latest Biodiversity Strategy would be beneficial to our analysis, as to detect whether something has changed and what might be its unfolding.

This section engages with the end point of our previous reconstruction, that is EU's leading commitment to sustainable development. The pledge is to read in juxtaposition to the historical objective of enhancing a competitive economy. Besides pervading policy programmes, countless declaratory statements and secondary legislations, the most telling assertion of such an ambivalent commitment can be found within the EU primary legal sources.

Art. 3(3) TEU states: «The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced

⁵³ M. HAJER -W.VERSTEEG, *A decade of discourse analysis of environmental politics: Achievements, challenges, perspectives*, in *Journal of environmental policy & planning*, Vol. 7, No. 3, 2005, pp. 175-184 refers to E. G. GUBA - Y. LINCOLN, *Fourth generation evaluation*, Sage, 1989.

⁵⁴ M. HAJER -W.VERSTEEG, *A decade of discourse analysis of environmental politics: Achievements, challenges, perspectives*, cit., p. 176.

⁵⁵ ID., *op. ult. cit.*, p. 178.

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». In another primary source, the Charter of Fundamental Right (CFR), «the Union (...) seeks to promote balanced and sustainable development and ensures free movement of persons, services, goods and capital, and the freedom of establishment» (art. 37). Ultimately, art.11 TFEU reads «environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular with a view to promoting sustainable development».

The building of a strong and competitive economy has, since the outset, been the manifesto of the integration process. Yet, where does the concept of SD come from? And how to read its association to economic growth?

3.1. *The International Origin of SD, a Multi-Dimensional Concept*

The term, before entering the European lexicon, has been consecrated in the international arena by the Brundtland Commission report in 1987.⁵⁶ The document defined SD as a «development which meets the needs of the present without compromising the ability of future generations to meet their own needs». Not invented in that occasion,⁵⁷ but certainly popularized worldwide, this concept has ever since been very debated, in a way that it is hard to find a “common” understanding of its meaning in the literature. However, a great part of commentators might likely agree on the multi-dimensionality of such a concept, probably at the source of the general discord on its interpretation.

Economic growth forms a central part of it and is also the component that has seemingly been more emphasized by scholars. The accent on growth in the report has been accused of being ambiguous and contradictory⁵⁸ or of concealing

⁵⁶ UN-sponsored World Commission on Environment and Development (WCED) (A/42/427) named after Gro Harlem Brundtland, then Prime Minister of Norway, Chairman of the Commission. The text of the report is available on <https://sustainabledevelopment.un.org/content/documents/5987our-common-future.pdf>.

⁵⁷ On the origins of the term prior to 1987, see P. MCMANUS, *Contested terrains: Politics, stories and discourses of sustainability*, Environmental Politics, Vol. 5, No. 1, 1996, pp. 48-73; O. LANGHELLE, *Why ecological modernization and sustainable development should not be conflated*, in *Journal of environmental policy and planning*, Vol. 2, No. 4, 2000, pp. 303-322.

⁵⁸ Among many H. E. DALY, *Toward some operational principles of sustainable development*, Ecological economics, Vol. 2, No. 1, pp. 1-6.

an underlying allegiance to an Ecological Modernization (EC) theorem.⁵⁹ Nonetheless, others⁶⁰ place the report in the groove of the “limits to growth” debate,⁶¹ which had taken hold in the '70s and is still today very significant in the environmental movements milieu. Such compatibility is explained by elucidating the SD's multi-dimensionality and giving a prospective reading to the WCED's mandate.

The report states «(SD) contains within it two key concepts: i) the concept of “needs”, in particular the essential needs of the world's poor, to which overriding priority should be given; ii) and the idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs».⁶²

These two concepts can be rationalised as a “goal of development” and a “proviso of sustainability”.⁶³

The reliance on growth goes under the “goal of development”, functionalised to the ultimate goal⁶⁴ of ensuring the satisfaction of people's needs. In this sense, the report incorporates intra-generational social justice in its pro-growth programme.⁶⁵ This positioning can be seen as a reaction to the conversationist-environmentalist orientation informing the previous World

⁵⁹ O. LANGHELLE, *Why ecological modernization and sustainable development should not be conflated*, cit., p. 1 refers to M. A. HAJER, *The politics of environmental discourse: Ecological modernization and the policy process*, Oxford University Press, 1995, p. 26; A. WEALE, *The new politics of pollution*, Manchester University Press, Manchester, 1992, p. 31.

⁶⁰ O. LANGHELLE, *Why ecological modernization and sustainable development should not be conflated*, cit., *passim*. on which the core argument of this contribution stands.

⁶¹ See the seminal D.H. MEADOWS - D.L. MEADOWS - J.RANDERS - W.W. BEHRENS, *The limits to growth*, Universe Book, New York, Vol. 102, No. 27, 1972; R. CARSON, *Silent Spring*, Houghton Mifflin, Boston, 1962.

⁶² WCED, cit., p. 41.

⁶³ O. LANGHELLE, *Sustainable development: exploring the ethics of Our Common Future*, International Political Science Review, Vol. 20, No. 2, 1999, p. 133 refers to MALNES, *The environment and Duties to Future Generations*, Fridtjof Nansen Institute, 1990. For a conceptualisation of the principle of SD see also in the Italian literature, among many contributions: F. FRACCHIA, *Lo sviluppo sostenibile. La voce flebile dell'altro tra protezione dell'ambiente e tutela della specie umana*, Editoriale scientifica, Napoli, 2010; F. FRACCHIA, *Il principio dello sviluppo sostenibile*, in G. ROSSI (ed.), *Diritto dell'ambiente*, 3d edn., Giappichelli, Torino, 2015, pp. 175-185; S. SALARDI, *Sustainable development: Definitions and models of legal regulation. Some legal-theoretical outlines on the role of law*, in *Rivista quadrimestrale di diritto dell'ambiente*, No. 1, 2011, pp. 77-100.

⁶⁴ WCED, cit., p. 8 «first and foremost our message is directed towards people, whose well being is the ultimate goal of all environment and development policies».

⁶⁵ O. LANGHELLE, *Sustainable development and social justice: expanding the Rawlsian framework of global justice*, in *Environmental Values*, Vol. 9, No.3, 2000, pp. 295-323.

Conservation Strategy (WCS),⁶⁶ which, once published, had raised a number of criticisms for having an alleged “anti-poverty” profile.⁶⁷ In a rather anthropocentric way, Our Common Future, instead, by prioritizing social justice and global solidarity, bridged developed and developing countries requests, for environmental protection and development, under the same agenda.

On the other hand, the “proviso of sustainability” calls for constraining growth within social and environmental limits, in order to preserve not so much the conservation of nature, as rather the “development” of present and future generations. It is requested to change the “quality of growth”, in order «to make it less material- and energy-intensive and more equitable in its impact», by improving the distribution of income.⁶⁸ In the “proviso” is sown the inter-generational dimension of social justice and the appeal to respect natural boundaries.

The connection between growth and sustainability may be condensed in these lines: «(SD) can be consistent with economic growth, provided the content of growth reflects the broad principles of sustainability and non-exploitation of others. But growth by itself is not enough. High levels of productive activity and widespread poverty can coexist, and can endanger the environment».⁶⁹ Growth is recognised as an empty shell and the WCED makes sense of it through its appeal to social justice, the safeguard of planetary boundaries and global solidarity. “Goal” and “proviso” are to read interdependently.

Another teaching from discourse analysis school would tell us that «the meaning of the policy principle never solidifies, but is constantly the object of political contestation».⁷⁰ This applies to SD as well. Nonetheless, the Agenda 2030,⁷¹ which is the latest authoritative document precisely devoted to sustainable development goals (SDGs), definitely furthers the direction set by Brundtland. The dimensions of social justice, global solidarity and ecological boundaries are broadened and deepened.

⁶⁶ International Union for Conservation of Nature and Natural Resources, ed. *World Conservation Strategy: Living Resource Conservation for Sustainable Development*. IUCN–UNEP–WWF, 1980.

⁶⁷ O. LANGHELLE, *Sustainable development: exploring the ethics of Our Common Future*, cit., p. 132.

⁶⁸ WCED, cit., under Part I.2.III.1.2. *Changing the quality of Growth*, p. 48.

⁶⁹ WCED, cit., p. 41.

⁷⁰ M. HAJER - W. VERSTEEG, *A decade of discourse analysis of environmental politics: Achievements, challenges, perspectives*, cit., p. 177.

⁷¹ UN General Assembly, *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, A/RES/70/1.

3.2. *The EU's reception, the Ecological Modernization Route*

The first reception of SD in the EU can be found in the Declaration on the Environment issued by the then EC heads of state and government in December 1988, «sustainable development must be one of the over-riding objectives of all Community policies».⁷² Yet, in the following Rome Summit, the newly coined “sustainable growth” made its first entrance.⁷³ The Maastricht Treaty ambiguously made use of both formulas, referring “SD” to the external cooperative action in developing countries,⁷⁴ whereas “sustainable growth” to the internal politics.⁷⁵ Beside the uncertainties of what could have appeared as a double standard,⁷⁶ later overcome in the Amsterdam Treaty, the main difficulty in understanding EU's operationalisation of the Brundtland legacy, rests on the meaning of its historical loyalty to the economic growth. What does the European “growth” entail?

As premised, growth does not per se contradict SD, if respectful of environmental boundaries and committed to social justice. However, much of the elements informing EU politics seemingly departs from the “proviso” submitted by the WCED. There is an almost shared consensus to relate them to the Ecological Modernization (EM) theorem.⁷⁷

⁷² D. WILKINSON, *Maastricht and the Environment: the Implications for the EC's Environment policy of the Treaty on European Union*, in *Journal of Environmental Law*, Vol. 4, No.2, 1992, p. 223.

⁷³ S. BAKER, *The evolution of European Union environmental policy From growth to sustainable development?*, in S. BAKER - M. KOUSIS - S. YOUNG - D. RICHARDSON (eds.), *The politics of sustainable development: theory, policy and practice within the European Union*, Routledge, London, 1997, p. 90.

⁷⁴ Art.130u, TEU.

⁷⁵ Art.2, TEU.

⁷⁶ S. BAKER, *The evolution of European Union environmental policy From growth to sustainable development?*, cit., p. 91 the author referring to B. VERHOEVE - G. BENNETT - D. WILKINSON, *Maastricht and the Environment*, Institute for European Environmental Affairs, 1992 warns that we cannot attach a mere arbitrariness to the terminology employed. She reminds «the sensitive bargaining among member states that accompanied the Treaty negotiations and the unsuccessful pressure to revert to the original term “sustainable development”».

⁷⁷ For an insight on this debate, have a look at the rich bibliography mentioned by A. MACHIN, *Changing the story? The discourse of ecological modernisation in the European Union*, *Environmental Politics*, Vol. 28, No.2, 2019, pp. 208-227 and S. BAKER, *Sustainable development as symbolic commitment: Declaratory politics and the seductive appeal of ecological modernisation in the European Union*, in *Environmental politics*, Vol. 16, No. 2, 2007, pp. 297-317.

The emergence of the EM theory can be reconnected to the studies of some of its most renowned founding fathers, Jänicke and Huber.⁷⁸ The theorem has developed over the years with very diverse nuances and among numerous scholarships from different backgrounds, yet it is generally recognized, at least for its origins, as a western-centric paradigm. For the purpose of our analysis, we will not delve into the varieties of shapes and connotations evolved so far, yet we will account for its main tenets.

The core idea underlying EM is the alleged synergy bridging environmental protection to economic growth. This paradigm turns the ecological emergency into an opportunity to advance the economy, by relying on the innovations that industrial and technological sectors may develop in order to “decouple” growth from resource use. Besides the primary role occupied by science and technology, a great emphasis is also placed on market dynamics and economic agents as «carriers of ecological restructuring».⁷⁹ Hence, the EM hands over a more flexible and decentralised governance model, promoting the usage of new environmental policy instruments (NEPIs), namely market-based and voluntary tools. The technological “fix” proposed herein is reassuring, as it permits to further the same socio-economic patterns with a sort of managerial twist. The trajectory of modernity is preserved while the “common but differentiated responsibilities”⁸⁰ pass silent.

The distinction between SD and EM may be blurred by the common appeal to growth. Yet, a line of demarcation can be traced, and it rests upon that multi-dimensionality of SD referred above: social justice, planetary boundaries and global solidarity do not enter the EM paradigm.

Not surprisingly, as it dispels any inherent antagonism to the environmental *problématique* by means of a win-win rationale, the EM «increasingly dominates within political rhetoric and frames policy-making at various levels of governance».⁸¹ In a way that it has consolidated as a “common

⁷⁸ A.P. MOL - D.A. SONNENFELD, *Ecological Modernization around the World: Debates and Critical Perspectives*, Routledge, London, 2000; O. LANGHELLE, *Why ecological modernization and sustainable development should not be conflated*, cit., p. 305.

⁷⁹ A.P. MOL - D.A. SONNENFELD, *Ecological Modernization around the World: Debates and Critical Perspectives*, cit., p. 6.

⁸⁰ Principle of international environmental law formalized at the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro.

⁸¹ A. MACHIN, *Changing the story? The discourse of ecological modernisation in the European Union*, cit., p. 209.

sense”.⁸² EU has been among those heralding this message. One evidence of the “institutionalization”⁸³ of EM may be found in the establishment of the Emission Trading Scheme (ETS) as a cornerstone of the EU climate policy. Not least, the *raison d'être* of the original European project, absorbed of ordoliberal rationale,⁸⁴ cannot but to ask for the prioritization of a competitive economy over the social and environmental dimensions. As Scharpf brought up, quite some time ago now, the very “success” of European economic and monetary integration has constrained member states’ interventions in several policy areas - he refers especially to «taxation of mobile capital and businesses, macroeconomic employment policy, industrial relations and social policy»⁸⁵ – and, with that, slowly eroded the core of their welfare state. The constraints imposed upon members states’ regulatory capacity in those policy areas have not, indeed, been counterbalanced by strengthening the EU’s one. Such a governance deficit has engendered what he called “problem-solving gaps”,⁸⁶ which have undermined the very social legitimacy⁸⁷ of the national and European legal and political orders. It is also worth noting that the growing system of EU social policies cannot be called to invalidate Scharpf’s argumentation. Social policies have developed in EU in an unconventional way: whereas «social policy had generally been seen as spontaneous “protective reaction” against market expansion, as an outcome of politics against market»,⁸⁸ in EU it has been «tightly connected to market-building (...), has been an integral part of the market-building itself».⁸⁹

Not only the historical disengagement of the social from the economic constitution of EU, but also, as we saw in the previous § 2, the evolutionary path of EU environmental legislation in the form of social regulation reflect the

⁸² ID., *ibidem*.

⁸³ ID., *ibidem* refers to M. A. HAJER, *Coalitions, practices, and meaning in environmental politics: From acid rain to BSE*, in *Discourse theory in European politics*, Palgrave Macmillan, London, 2005, pp. 297-315.

⁸⁴ C. JOERGES- F. RODL, “Social Market Economy” as Europe’s Social Model?, EUI Working Paper Law No. 2004/8.

⁸⁵ F.W. SCHARPF, *The Joint-Decision Trap Revisited*, *Journal of Common Market Studies*, Vol. 44, No. 4, 2006, pp. 845-864.

⁸⁶ ID., *ibidem*.

⁸⁷ ID., *ibidem*; ID., *Economic integration, democracy and the welfare state*, in *Journal of European public policy*, Vol. 4, No.1, 1997, pp. 18-36.

⁸⁸ S. LEIBFRIED, *Left to the Judges and the Markets?*, in H. WALLACE - M.A. POLLACK - C. ROEDERER - RYNNING - A.R. YOUNG (eds.), *Policy-making in the European Union*, Oxford University Press, Oxford, 2015, p. 289 which refers to K. POLANYI, *The great transformation*, Beacon press, 1944.

⁸⁹ ID., *ibidem*.

entrenchment of EM within the EU polity. Nonetheless, as concerns our main research focus, biodiversity protection has always been ill-suited to the social regulation model. In truth, social regulations aim at integrating public objectives within the market, redesigning it from a purely economic-driven space to a socio-economic one, yet without challenging its foundational rationale. The aspect of biodiversity protection policy related to nature conservation, instead, carves a space for the environment “out of the market” instead of within it. However, it has been precisely the language of biodiversity policies, in our view, to manage the assembling of both the economic and nature conservation spheres. Looking at previous policy programmes, we find the Commission very scrupulously emphasizing the economic functionality underlying its proposals. The most evident expression of it may be the headline of the strategy to 2020, “our life insurance, our natural capital”.⁹⁰ Nature has not-so-naturally turned into “capital” and, on the same line, within the text the Commission warns that «biodiversity loss itself is costly for society as a whole, particularly for economic actors in sectors that depend directly on ecosystem services».⁹¹

That’s when EM gets through the back door so as to preside even over the subjects less compatible to its rationale.

Considering the foregoing, one may question why the EU has continued to make declaratory commitments to SD. There has aptly been proposed a “symbolic” reading of such a behaviour: the appeal to SD has served the political cause of construing and presenting a certain “identity”.⁹² For the constituencies, SD has acted «as a legitimising, mobilising value for the European integration process»;⁹³ the social and ecological dimensions composing SD have the charisma to touch upon a collective ethos of shared values, hence connecting people to the integration cause.⁹⁴ Beyond the borders, SD also functioned as a

⁹⁰ Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions ‘Our life insurance, our natural capital: an EU biodiversity strategy to 2020’ (COM (2011)0244).

⁹¹ *Id.*, *op. ult. cit.*, p. 3.

⁹² S. BAKER, *Sustainable development as symbolic commitment: Declaratory politics and the seductive appeal of ecological modernisation in the European Union*, in *Environmental politics*, Vol.16, No. 2, 2007, pp. 297-317.

⁹³ *Id.*, *op. ult. cit.*, p. 311.

⁹⁴ J.H.H. WEILER, *Ideals and idolatry in the European construct*, in McSweeney B. (ed.), *Moral Issues in International Affairs*, Palgrave Macmillan, London, 1998, pp. 55-88.

bridge, it «enabled the EU to align itself with international best practice and to forge links, particularly with the Third World groupings in the United Nations».⁹⁵

4. *Biodiversity Strategy as a Policy and a Discourse*

Published in the middle of a global pandemic and the worst economic recession since the World War II,⁹⁶ the Biodiversity Strategy for 2030 programme has to be welcomed for confirming the EU Commission's commitment to environmental safeguard, in spite of the growing concerns for the economic recovery. In its first lines, the Strategy stresses how the gravity of the COVID-19 crisis has actually raised awareness about the interconnectedness between “our own health and the health of ecosystems” and thus the need not to exceed the planetary boundaries. In line with this, the Commission has upheld support to the One Health approach,⁹⁷ based on such interdependency between human, animal and nature health, and placed the Strategy within the EU's economic recovery plan.

Such straightforward positioning could not have been given for granted. A strand of studies had postulated the dismantling and disintegration of the EU environmental policy during the former presidency, as the economic and financial recovery was prioritized to the environmental agenda.⁹⁸ Some scholars characterized as “hypocritical” the attitude of the former Commission towards environmental policies in the post-economic crisis time. Through an empirical analysis, they show the decoupling of the Commission's ambitious talk from the actual decisions and actions taken in the same direction. The institution could, in this way, sustain the reputational façade of being an “environmental

⁹⁵ S. BAKER, *Sustainable development as symbolic commitment: Declaratory politics and the seductive appeal of ecological modernisation in the European Union*, cit., p. 312.

⁹⁶ The World Bank press release, June 8, 2020. Available online on: <https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recession-since-world-war-ii>.

⁹⁷ On the World Health Organization webpage see: <https://www.who.int/news-room/q-a-detail/one-health>.

⁹⁸ For a symposium article A. LENSCHOW - C. BURNS - A. ZITO, *Dismantling, disintegration or continuing stealthy integration in European Union environmental policy?*, Public Administration, Vol. 98, No. 2, 2020, pp. 340-348. The authors, however, conclude for a resistance to an outright dismantling.

entrepreneur”.⁹⁹ Although for the most skeptical the declaratory emphasis in the Strategy might not exclude a similar outcome, we should not forget to contextualise the document within the renewed European and international landscape. In the light of the enhanced public awareness of the climate emergency and its increasing urgency, the ever-growing societal mobilisation, the flourishing of Green Deals across the world - prompted, in part, by the favourable framework of the Paris Agreement¹⁰⁰ - that this is not just a “talk” but a structural cross-sectoral regulatory project seems to us the most convincing option. The quasi-messianic language of the EGD, recalling that of the Shuman Declaration,¹⁰¹ allegedly supports our position.

Nonetheless, the Biodiversity Strategy for 2030 is still a mere declaratory commitment, waiting to be operationalised, thus only time will test our assumptions.

In the following, we will try to approach the text on two levels of analysis. On the one hand, juxtaposing its contents to the state of art of the biodiversity policy strategies, introduced through an historical perspective in §2, on the other, from a discourse perspective relying on the appraisal of §3.

4.1. *Policy Contents and Instruments, an Incremental Response*

The very design of a horizontal “strategy” to address biodiversity protection, not least required by the CBD, has been proven the most suitable policy layout. Biodiversity, as expression of the multi-level interdependency of the ecosystem life, cannot but be dealt with in its whole. The Biodiversity Strategy for 2030 embraces such a complexity, by laying down a very wide-ranging programme.

⁹⁹ C. KNILL - Y. STEINEBACH - X. FERNÁNDEZ-I-MARÍN, *Hypocrisy as a crisis response? Assessing changes in talk, decisions, and actions of the European Commission in EU environmental policy*, in *Public administration*, Vol. 98, No. 2, 2020, pp. 363-377.

¹⁰⁰ G. ÇAPAR, *What have the Green New Deals to do with the Paris Agreement? An Experimental Governance*, in this Symposium.

¹⁰¹ J.H.H. WEILER, *In the face of crisis: Input legitimacy, output legitimacy and the political messianism of European integration*, in *Journal of European integration*, Vol. 34, No.7, 2012, pp. 825-841.

Compared to the previous Strategy to 2020, the format is different. Whereas the previous programme is structured in six targets,¹⁰² the new Strategy seems to be clustered around two main objectives: widening a coherent network of protected areas and setting a nature restoration plan. Both macro-objectives are presented as key nature-based solutions to climate change mitigation and adaptation.

Under their umbrella is an ambitious catalogue of commitments and actions to be carried out jointly by the Commission and member states in a short timeframe. Whereas the conservation objective simply strengthens the regulatory framework already in place - that of Natura 2000 - and raises its targets, the restoration plan appears more challenging both for its goals and for the regulatory instruments to be set up. Accordingly, the Annex counts 20 key actions, stretching over multiple policy areas, in order to recover land, freshwater and marine ecosystems and to address the five main drivers of biodiversity loss: the changes in land and sea use; overexploitation; pollution; climate change; and invasive alien species.

The European Environmental Bureau (EEB)¹⁰³ as well as some NGOs are generally satisfied with the ambition placed therein,¹⁰⁴ yet manifest few doubts as regards the cross-sectoral integration of these targets. The compatibility of the Common Agricultural Policy (CAP) to these commitments,¹⁰⁵ and the

¹⁰² Under the headlines: conserving and restoring nature; maintaining and enhance ecosystems and their services; ensuring sustainability of agriculture, forestry and fisheries; combating invasive alien species; addressing the global biodiversity crisis.

¹⁰³ EEB Assessment of the EU Biodiversity Strategy for 2030, available on: <https://eeb.org/publications/54/nature/101581/eeb-assessment-of-the-biodiversity-strategy.pdf>.

¹⁰⁴ ClientEarth Press release: Lawyers react to new EU strategies: ambition welcome but policy clashes must be resolved, 20 May 2020, on: <https://www.clientearth.org/latest/press-office/press/lawyers-react-to-new-eu-strategies-ambition-welcome-but-policy-clashes-must-be-resolved/>.

¹⁰⁵ Open letter to the President of the European Commission, the Presidency of the Council of the European Union, and the Conference of Presidents of the European Parliament calling for full alignment of the reformed Common Agricultural Policy with the European Green Deal, Brussels, 30th September 2020, by a number of environmental NGOs, see on: <https://www.documents.clientearth.org/wp-content/uploads/library/2020-09-30-open-letter-for-full-alignment-between-the-reformed-common-agricultural-policy-and-the-european-green-deal-coll-en.pdf>.

questionable adequacy of the Strategy as to protecting marine ecosystems and fisheries resources are the two main thorny points.¹⁰⁶

An important section of the Strategy also covers EU's external action, reaffirming its historical "actorness" to set the global agenda.¹⁰⁷ A great emphasis is given on ensuring the compliance of the forthcoming post-2020 global framework for biodiversity - to be set in the 15th CoP to the CBD – with the goals of the 2030 Agenda for Sustainable Development¹⁰⁸ and on advancing the International Ocean Governance agenda.¹⁰⁹ The necessary strengthening of measures against illegal wildlife trade and the mobilization of financial resources for developing countries are not left aside.

The EEB, nonetheless, warns that EU's international pledges «will be much more credible if the ambition is backed by concrete actions within the EU and by taking steps to significantly reduce the global footprint of the EU». The Bureau complains about «the reintroduction of harmful subsidies in the next European Maritime and Fisheries Fund (EMFF) and harmful subsidies through the CAP» and argues that «the strategy has very little substance on reducing and changing consumption».¹¹⁰

Therefore, despite the engagement with the global agenda, on a declaratory level, is clearly enriched - compared to the previous biodiversity strategies - these discrepancies run against its credibility.

As above premised, the most challenging issues, when it comes to biodiversity policies, are often implementation and enforcement of the regulatory measures. Neither the 2020 biodiversity strategy objectives nor the global Aichi Biodiversity Targets, adopted under the CBD,¹¹¹ have been fully met by the

¹⁰⁶ ClientEarth and others NGOs, Back to the source: saving Europe's biodiversity starts in the ocean, November 2020 on https://www.clientearth.org/media/taqh0xq1/back-to-the-source_saving-europe-s-biodiversity-starts-in-the-ocean.pdf.

¹⁰⁷ J. VOGLER, *The European Union as an actor in international environmental politics*, in *Environmental Politics*, Vol. 8, No.3, 1999, pp. 24-48.

¹⁰⁸ UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015 (A/RES/70/1).

¹⁰⁹ Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions International Ocean Governance: an Agenda for the Future of our Oceans, JOIN (2016)49 final.

¹¹⁰ Note 103.

¹¹¹ Convention on Biological Diversity. COP 10 Decision X/2: Strategic Plan for Biodiversity 2011–2020. See on <http://www.cbd.int/decision/cop/?id=12268>.

EU.¹¹² Comprehensively, the fact that the contents of latest Strategy are in line with the UN 2030 Agenda for Sustainable development, the Paris Agreement,¹¹³ and also goes beyond the 20 Aichi Targets, cannot be enough. In this sense, the most encouraging innovation is the increased attention devoted to the “enabling framework”, namely the instruments and channels to deliver the programme.

First, the Commission calls civil society to act as a compliance watchdog.¹¹⁴ It intends to amend the Aarhus Regulation,¹¹⁵ in order to improve the access to justice in environmental matters for individuals and NGOs.¹¹⁶ Along the aim of social mobilisation comes the initiative directed to invest in research and education, in order to integrate environmental awareness into school, higher education programmes as well as professional training.¹¹⁷ Third, the Commission turns to businesses, invoking a partnership to ensure that environmental and social interests are embedded into corporate strategies.¹¹⁸ Finally, some economic instruments are lined up. On the one hand, it is planned to unlock and to broaden public investments and to attract private capitals by developing a sustainable finance taxonomy, namely a tool to guide investors towards green solutions. On the other, tax and pricing techniques are promoted so as to reflect the environmental/biodiversity costs in the production of goods and services, hence in order to influence consumers and producers' choices.¹¹⁹ Much in line with a well-established trend, in the striving to prompt a behavioural change, the command-and-control regulatory approach is complemented by a great emphasis

¹¹² Global Assessment Report on Biodiversity and Ecosystem Services of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) of 31 May 2019; European Parliament, Draft Report on the EU Biodiversity Strategy for 2030: Bringing nature back into our lives (2020/0000(INI)) Committee on the Environment, Public Health and Food Safety Rapporteur: César Luena.

¹¹³ Conference of the Parties, Adoption of the Paris Agreement, Dec. 12, 2015. U.N. Doc. FCCC/CP/2015/L.9/Rev/1.

¹¹⁴ COM (2020) 380 final, p. 16.

¹¹⁵ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264, 25.9.2006, pp. 13-19.

¹¹⁶ European Commission, Proposal for a Regulation of the European Parliament and of the Council on amending Regulation (EC) No 1367/2006, COM (2020) 642 final.

¹¹⁷ COM (2020) 380 final, pp. 18-19.

¹¹⁸ COM (2020) 380 final, p. 16.

¹¹⁹ COM (2020) 380 final, p.17.

on voluntary and market forces, falling under the category of the new environmental policy instruments (NEPIs).¹²⁰

All in all, the Biodiversity Strategy for 2030 reflects and reasserts the incrementalism and learning-process that have advanced the evolution of the EU environmental policy. It is a further step forward, building on past experiences, while at the same time enriching and detailing the contents of the previous strategies, and making full use of all the available policy instruments developed so far. No radical changes can be evidenced in its contents.

4.2. *Two Parallel Discourses*

The undertaking of assessing a manifesto of declaratory commitments, as a policy strategy in part being, entails a number of difficulties. They all converge to the trial of navigating the ambiguity of the language of politics; a language aimed at reaching and bridging a vast and variegated range of addressees frequently bearing conflictual interests. Hence, these documents are likely to employ simultaneously vocabularies alluding to different political narratives. A latent tension between discordant storylines exists herein as well.

The Biodiversity Strategy for 2030 condenses elements alluding to a change of paradigm in the understanding of the relationship between nature and the socio-economic dimension as well as others directly linked to the evergreen EM theorem.

The appeal of building partnerships with businesses, the call to tax and pricing tools, and the allusion to “win-win solutions for energy generation”¹²¹ may align the Strategy to this scheme. The test case yet seems to be in the introduction of the Communication. The very fact that the Commission justifies its plan – “the need for urgent action” - by stressing the GDP value of biodiversity, its cost/benefit ratio, and the economic multiplier effect of natural capital investments, reveals a rooted common sense: that our economic model is the measure of ecological and social interests. Finally, reading the Strategy within the whole EGD makes these considerations louder, since the echoes of the EM are there much more frequent.

¹²⁰ A. JORDAN - R. WURZEL - A. ZITO, *How 'new' environmental policy instruments (NEPIs) spread in the European Union: An analysis of the role of the EU in shaping environmental governance*, Paper presented at the Second ECPR Conference, Marburg, September 18-21, 2003.

¹²¹ COM (2020) 380 final, p.10.

Yet, the strong commitment with the Agenda 2030 for Sustainable Development presumably moves towards another direction. In the toolkit accompanying the Strategy, the Commission relies directly on the Stockholm Resilience Centre's reading of the 2030 Agenda to picture the biosphere as underpinning the society as well as the economic system.¹²² The straightforward pledge to design an economic recovery in the respect of planetary boundaries as well as the connection stipulated between our health and the health of the ecosystem are similarly powerful. This parallel storyline hints to a sort of "Ecological Primacy" principle, as we decided to call it. The Ecological Primacy, in other words, resumes one of the dimensions of SD, its plea to live within the ecosystem limits.

What do these two parallel narratives mean within the EU's constitutional framework?

Whereas a reading of the Strategy consistent with the EM paradigm will not change the current direction of the European integration project, Ecological Primacy might deeply question it.

Reconstructing the socio-economic system in function of environmental protection, and not the other way around, would likely have disruptive implications. It would require a reversal from the prevalently negative to a progressively positive integration, namely made of wide cross-sectoral market-correcting interventions. Yet, there are structural difficulties in pursuing this type of "political legislation" in Europe, since it would require high convergence among members states' interests.¹²³ Given the socio-economic fragmentation characterizing the EU polity, only the strengthening of solidarity among Member States could pool them towards a common political direction and allow this new social order to realise.

Hence, the potential of this new principle may be very radical. Yet, we stay vaguely at the crossroad between the path-dependent EM's road and the new route opened by the Ecological Primacy.

5. Conclusions

¹²² See on https://ec.europa.eu/info/sites/info/files/biodiversity_en.pdf p.3.

¹²³ F.W. SCHARPF, *The Joint-Decision Trap Revisited*, cit., *passim*.

This section can finally line up the considerations drawn from our parallel policy and discourse analyses.

The contents of the Biodiversity Strategy for 2030 reveal a document by and large in line with the traditional EU policy trajectory, that of incrementalism. Seen in perspective, as it is done in §2, environmental protection law and policy have certainly walked a long way up to now. Nature from a non-tariff barrier upgraded to a significant component within the integration process. Institutional alliances have progressively advanced Union's ambitions, although at times with difficulties. Nonetheless, the rationale underlying this long journey has habitually subjected nature to the establishment and adjustment of the internal market. Despite the consistent symbolic commitments to SD, the EM theorem has prevailed. Therefore, there have been no very disruptive changes along this way.

EM and policy incrementalism are two faces of the same coin: they "constrain" the policy imagery, and with that, its actual production. In this light, it is better explained why our analysis had to proceed on both a policy and a discourse level. Through this dual lens, even the reference to Ecological Primacy is better understood for all its potential: this new discourse may shake the traditional policy trajectory of incrementalism and prompt some radical transformations.

The indeterminacy given by the presence in the Strategy of two parallel rationales would create space for different political agendas in the future. There is a chance for the way opened by the Commission's Ecological Primacy discourse to be furthered, hence to resume the ecological dimension of the SD principle in the EU's polity. We look forward to seeing how this scenario will evolve. A last question yet remains on the background. It regards the SD's complementary dimension of social justice, which this article could not engage with as centred on the Biodiversity Strategy study. Does it find any place in the latest EGD? A future contribution might elaborate on this.

ABSTRACT

Michela Biscosi - *Two Parallel Discourses and a New Path for Policy-Making. The Biodiversity Strategy for 2030*

The undertaking of assessing a manifesto of declaratory commitments, as a policy strategy in part being, entails several difficulties. They all converge to the trial of navigating the ambiguity of the language of politics; a language aimed at reaching and bridging a vast and variegated range of addressees frequently bearing conflictual interests. Hence, these documents are likely to employ simultaneously vocabularies alluding to different political narratives. A latent tension between discordant storylines exists in the Biodiversity Strategy for 2030 as well. The document condenses elements directly linked to the evergreen Ecological Modernization (EM) theorem as well as others hinting at a change of paradigm for the understanding of the relationship between nature and the socio-economic dimension. We called this new standard “Ecological Primacy”, as it seemingly resumes one of the core dimensions of sustainable development, namely its plea to live within the ecosystem limits. Through a dual policy and discourse analysis, starting with a survey of the historical evolution of the EU environmental law and policy and a reflection upon their ambivalent commitment to sustainable development and competitive growth, this contribution reconstructs the coexistence of these two parallel narratives. By juxtaposing the reading of the latest Strategy to the European integration process, the study ultimately questions the potential significance of this document on the future of the European constitutional framework.

KEY WORDS: *EU Biodiversity Strategy for 2030; sustainable development; Ecological Modernization; Ecological Primacy; discourse analysis.*