

What makes environmental law sustainable?

General regulatory keys to environmental sustainability



Contribution to 5th EELF Conference 28-30 September, Copenhagen
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General regulatory keys to environmental sustainability

1. **What is environmental sustainability?**
2. **Political core challenges of environmental sustainability**
3. **Regulatory keys to environmental sustainability**
4. **Perspectives for environmental law development**

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What is environmental sustainability?

Political concepts and theory

UN SDGs

National, local & sector concepts

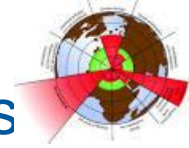
Rio-Decl./ Agenda 21

Brundlandt-Rep.
Meadows Rep.

Forestry 18th Century

- **Long-term preservation of natural living conditions and a decent environment for future generations** („Sust. Dev. is development that meets the needs of the present without comprising the ability of future generations to meet their own needs“ (Brundtland-Rep. 1987)
- **High-level durable balance between environmental, economic and social needs**

Planetary Boundaries



Transdimensional & integrative concepts

Strong or weak STB?

3-Dimension-Concept

ecological sust.
management rules

Political core challenges of environmental sustainability

- **Committ:** Find a general societal agreement to follow a sustainability path,
- **Aim:** determine the level of env. conservation and durable E-E-S-balance,
- **Assess:** develop needed sustainability knowledge, evaluate sustainability of sector developments and deal rationally with uncertainties,
- **Plan:** develop integrated long-term development corridors and *transition* programmes for relevant sector policies,
- **Include:** provide sufficient acceptance.

Long-term
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High-level sustainable
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Political core challenges of environmental sustainability

Find a general societal agreement to follow a sustainability path

- **Formal anchorage of the sustainability concept in the relevant laws:** If the concept of sustainable development is to be taken into account in the relevant decision-making procedures, there is a need for it to be legally anchored at the level of constitutional law or of lower-level law.

Cases: Art. 11 TFEU, Art. 3.3 and 5 TEU; Art. 20a German Basic Law

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Political core challenges of environmental sustainability

Determine the level of env. conservation and durable E-E-S-balance

- **Orientation towards environmental quality objectives:** In order to operationalize the fundamental concept of long-term socio-ecological balance in terms of environmental impacts, it is imperative to define clearly the level of ecological quality we wish to preserve as part of a sustainable balance with social and economic interests.

Cases: GHG-reduction and decarbonisation targets; EQS of Water Framework Directive; nature conservation, restoration and species protection targets e.g. of Natura 2000 Directives; also offset-obligations

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Political core challenges of environmental sustainability

Develop sustainability knowledge, evaluate sustainability of sector developments and deal rationally with uncertainties.

- **Sust. assessment obligations:** Needed on both legislative and administrative levels including monitoring and continuous revision

Examples: EU legislative impact assessment (??); Monitoring obligations in Habitats Directive /WFD; SEIA/EIA – however, no long-term assessment

- **State responsibility for knowledge generation:** Research and dissemination infrastructure as a public good

Cases: Env. agencies, knowl. platforms, obligatory status analysis WFD; traditionally mostly on voluntary fiscal basis

Long-term preservation of natural living conditions

High-level sustainable env., econ. & social balance

Political core challenges of environmental sustainability

Develop integrated long-term development perspectives/transition programmes for relevant sector policies.

- **Integrated management and transition regimes:**
Obligation to draw up and regularly adapt long-term development/transition plans and programs of measures linked to sust.-objectives; provide proportionate transition periods, integrate/interlink relevant actors and sector-administrations

Cases: Water-POMs according to WFD; water-, transport-, energy-infrastructure; climate-Adaptation; spatial planning; Urban Development

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Political core challenges of environmental sustainability

Inclusion of stakeholders, acceptance

- Maintaining an optimal balance between environmental, economic and social needs requires that such interests can be openly expressed and discussed by the relevant stakeholders. Meaningful participation is frequently highlighted, therefore, as a fundamental procedural element of sustainable development and needs to be included in definition of local sust. goals and early planning stages.

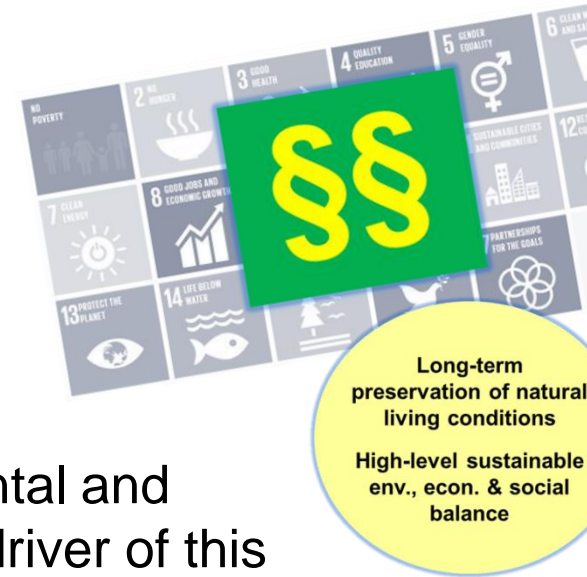
Cases: traditional participation only come into play when objectives and major arrangements are already determined. Earlier stages of participation may be needed in order to obtain the relevant stakeholder preferences.

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Conceptual perspectives for sust. environmental law development – Towards ...

- further quality and long-term orientation,
- a new generation of transition-oriented environmental and infrastructure planning regimes: The EU as a key driver of this development,
- a tighter interlinking of sector policies, especially within the planning framework,
- stronger obligations/institutions for knowledge generation, sustainability assessment and monitoring,
- earlier participation on (local) sustainability objectives, land-use and infrastructure decisions.



Thank you for your interest!