

Chapter 22

Can the EU Sustainable Consumption and Production Action Plan Realize the Sustainable Development Principle?

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Abstract The paper describes the idea of Sustainable Development in the European Union Policy as well as in the EU environmental law. The discussion is based on the Strategy of Sustainable Development on the basis of which the concept is realized. The EU Strategy concerning sustainable development contains seven main challenges which are necessary to be fulfilled in order to achieve the sustainable development or the path leading to the sustainable development. These challenges are: Climate change and clean energy, Sustainable transport, Sustainable production and consumption, Better management of natural resources, Public health threats, Social inclusion, demography and migration and Fighting global poverty. The one which is the most interesting from the point of view of this article is the challenge concerning Sustainable production and consumption. That is why the text is based on the problem of realization of the Sustainable production and consumption—in order to answer the question if the legal measures which are adopted on the basis of this challenge can lead to that point. The legal measures which are examined are: Ecolabel Regulation, Ecodesign Directive, Energy Labelling Directive.

Keywords Sustainable development • Sustainable consumption and production action plan • Environmental law • Sustainable development strategy

The sustainable development principle occurred in the primary law in the Treaty of Amsterdam.¹ The Preamble of the EU Treaty and its article 2 as well as in articles 2 and 6 of the EC Treaty contained the notion of sustainable development. The EU

¹Treaty of Amsterdam (1997) O.J. (C340).

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Treaty and the EC Treaty understood sustainable development in the same way as the “Our Common Future” Report.²

During the Göteborg Summit in 2001, a decision was made to create the Sustainable Development Strategy and its main stipulations treated it as the fundamental aim of the treaty. The European Council in Göteborg (2001) adopted the first EU Sustainable Development Strategy (SDS).³ This was complemented by an external dimension in 2002 by the European Council in Barcelona in view of the World Summit on Sustainable Development in Johannesburg (2002).

According to the Strategy, the sustainable development principle and the question of environmental protection should be included in each of the European Policies. It can be stated that because of that, the sustainable development concept changed the whole EU Policy. EU Policies should sustain each other in the three dimensions—economic, social and environmental.

In June 2006, the Sustainable Development Strategy was changed. The New Strategy⁴ indicated that the sustainable development is the major aim of the EU. According to the new Strategy, SD is the rule which should be reflected in each action of the European Union. As the Strategy states, it is possible to achieve the state of sustainable development when the societies are based on the rule of sustainability. Strategy stresses that “EU SDS recognises that investments in human, social and environmental capital as well as technological innovation are the prerequisites for long-term competitiveness and economic prosperity, social cohesion, quality employment and better environmental protection”.⁵

The Renewed Strategy from 2006 notices that despite the efforts made since the first Strategy adopted in Göteborg, the aim of the Strategy, which is achievement of the sustainability, was not done as the Strategy stresses; EU was not even on the path to sustainability. According to the Strategy, since 2006 the unsustainable trends are still observed. It is noticeable, especially in the fields of climate change and energy use, threats to public health, poverty and social exclusion, demographic pressure and ageing, management of natural resources, biodiversity loss, land use and transport.⁶

Having in mind the obstacles in achieving sustainable development, the Renewed Strategy (2006) indicated that the main problem is to change the existing models of consumption and production. The main challenge is to gradually change our current unsustainable consumption and production patterns and the nonintegrated approach to policy-making.

²Report of the World Commission on Environment and Development: Our Common Future Transmitted to the General Assembly as an Annex to document A/42/427—Development and International Co-operation: Environment.

³COM (2001).

⁴Renewed EU Sustainable Development Strategy, Brussels, 9 June 2006, 10117/06.

⁵Renewed EU Sustainable Development Strategy.

⁶See footnote 5.

The EU Strategy concerning sustainable development contains seven main challenges which are necessary to be fulfilled in order to achieve the sustainable development or the path leading to the sustainable development. These challenges are: Climate change and clean energy, Sustainable transport, Sustainable production and consumption, Better management of natural resources, Public health threats, Social inclusion, demography and migration and Fighting global poverty. The one which is the most interesting from the point of view of this article is the challenge concerning Sustainable production and consumption.

The question of realization of one of the challenges, which is sustainable consumption and production, is enclosed in The Sustainable Consumption and Production Action Plan included in the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions from (2008).⁷

The Action Plan states that the challenges are directly linked to our way of life. This is because of our consumption and production methods we contribute to global warming, pollution, material use and natural resource depletion.⁸ That is why the Commission stresses the urgent need of more sustainable patterns of consumption and production.⁹

As it is stressed in the document, the aim of the Action Plan is to create measures which will improve the environmental and energy performance of products. This also should be popularized among consumers. In order to achieve this, the ambitious standards should be established throughout the Internal Market. It can be achieved by a more coherent and easier labelling system of the energy efficiency products. Such change will raise the level of awareness among consumers about the environmentally friendly products. As the Action Plan stresses, the approach is to address mainly the products that have a large potential for reducing its environmental negative influence.¹⁰ The measures, which are predicted in the Action Plan, concern the improvement of the environmental performance of the products during their life cycle. The most attention in the product policy is devoted to its energy efficiency, which is one of the aspects of the climate change policy. That is why the Action Plan pays attention to the promotion and stimulation of the demand for better products and production technologies and “helping consumers to make better choices through a more coherent and simplified labeling”.¹¹

⁷The Sustainable Consumption and Production Action Plan included in the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions from (2008), Brussels, 16.7.2008, COM(2008) 397.

⁸Environmental Impact of Products (EIPRO), Joint Research Centre—IPTS; National Accounting.

Matrix with Environmental Accounts (NAMEA), EEA. These studies show that in the EU, the consumption areas of eating and drinking, housing (including: heating, water, domestic appliances), and travelling bear between 70 and 80 % of all environmental impacts.

⁹The Sustainable Consumption and Production Action Plan.

¹⁰See footnote 9.

¹¹See footnote 9.

The Action Plan indicates the legal measures which should be implemented in order to improve the environmental performance of the product. As mentioned, the aim of the product policy is also to improve the energy performance of the product. That, according to the plan, can be achieved by the amendment or by the implementation of the new legal measures concerning the product's energy efficiency.

One such measure is the Ecodesign (EuP) Directive.¹² The Directive establishes a framework for setting Ecodesign requirements for energy-using products. Measures predicted by the Action Plan include also the schemes concerning product labelling. EU environmental law predicts such labelling schemes: Energy Labelling Directive¹³ or the Ecolabel Regulation.¹⁴ As the Action Plan mentions, there are also other schemes that have been developed by Member States, retailers and other economic operators which provide consumers with information on the energy and environmental performance of products.¹⁵

In order to achieve the model of sustainable production and consumption, the Action Plan predicted the amendment of the norm mentioned above. In this paper, these norms of the Action Plan which are devoted to the product, especially product energy efficiency, will be the only norms presented.

The first norm mentioned in the Action Plan which, according to the document, should realize the concept of the sustainable consumption and production is the Directive on the ecodesign. The aim of the Directive is to reduce the environmental impact of products, including the energy consumption throughout their entire life cycle. According to the Action Plan, the scope of the Directive on the ecodesign of energy-using products should be extended in order to cover all energy-related products.

The new Directive 2009/125/WE of ecodesign was adopted by the EU on 21 October 2009.¹⁶ This Directive replaced the Directive 2005/32/EC of the European Parliament and of the Council of 6 July 2005, establishing a framework for the setting of ecodesign requirements for energy-using products.¹⁷

The aim of the Directive is to achieve a high level of protection for the environment. It can be done by decreasing the negative environmental impact of the products which are energy related. As the Directive states, it will be beneficial to consumers and other end-users.

¹²Directive (EC) (2009).

¹³Directive (EU) (2010).

¹⁴Regulation (EU) (2010).

¹⁵See footnote 9.

¹⁶OJ L 285/10, 31.10.2009.

¹⁷OJ L 191, 22.7.2005, p. 29.

According to the amendment Directive,¹⁸ the ecodesign of products is a crucial factor in the Community Strategy on Integrated Product Policy. It realizes the prevention principle, one of the European Environmental Law principles, which is stipulated in the Treaty.¹⁹ It is designed in order to optimize the environmental performance of products while maintaining their functional qualities.²⁰

The concept of the ecodesign implies taking action on the energy-related products already at the stage of design. As the Directive stresses, pollution caused during a product's life cycle is determined at that stage, and most of the costs involved are committed then.²¹ To aim at continuous improvement of products, implementing measures will also indicate a date for the review of minimum requirements and benchmarks on the basis of the foreseeable pace of technological change for the product group concerned.²²

As the Action Plan stipulated, the scope of the Directive was widened. According to the new Directive, it covers all energy-related products. As the Directive states, the extension of the scope to all energy-related products ensures that ecodesign requirements for all significant energy-related products can be harmonized at the Community level.²³

The Directive enables the Commission, assisted by a Committee, to enact implementing measures on specific products and their environmental aspects (such as energy consumption, waste generation, water consumption, extension of life time) following impact assessment and consultation of interested parties.

Is it then possible to state that the amendment of the Directive, which is the result of the realization of the measures predicted by the Action Plan on the sustainable consumption and production, can realize the concept of sustainable development? As the amendment Directive states "Sustainable development also requires proper consideration of the health, social and economic impact of the measures envisaged. Improving the energy and resource efficiency of products (which is the aim of the Directive—JKM.) contributes to the security of the energy supply and to the reduction of the demand on natural resources, which are preconditions of sound economic activity and therefore of sustainable development".²⁴

The Directive also stresses that "in the interest of sustainable development, continuous improvement in the overall environmental impact of those products should be encouraged, notably by identifying the major sources of negative environmental impacts and avoiding transfer of pollution, when this improvement does not entail excessive costs".²⁵

¹⁸Directive 2009/125/WE, OJ L 285/10, 31.10.2009.

¹⁹Art. 192 of Treaty.

²⁰See footnote 18.

²¹See footnote 18.

²²See footnote 9.

²³See footnote 18.

²⁴See footnote 18.

²⁵See footnote 18.

It then can be summarized that the aim of the Directive, as well as the scope of its amendment, intends to realize the concept of sustainable development. In addition, having in mind that the scope of the Directive is now widened, it can be concluded that the measure included in the Action Plan can contribute to the realization of the concept. Products which use energy, as the Directive notes, take a large share of the market being the subjects of a broad consumption and have an important impact on the environment. Increasing the impact of the Directive by enhancing products in relation to which they are applied, ecodesign causes a positive impact on the environment through this change. Because of that, more products achieve more suitable character. Thus, it can be stated that the amendment of the Directive contributes to the realization of the concept of sustainable development. Besides, that Directive states that its aim, which is the enhancement of the energy efficiency of the product, is to contribute to the program of the sustainable production which is a part of the 10-year framework of programs on sustainable production and consumption adopted during the World Summit on Sustainable Development in Johannesburg in (2002).²⁶

The second norm, which should be examined in light of the realization of the concept of the sustainable consumption and production, is product labelling under the Energy Labelling Directive and Ecolabel Regulation.

Directive 2010/30/EU on energy labels was adopted by the EU on 19 May 2010.²⁷ The aim of the Energy labels is to help consumers in choosing energy-saving products, which at the same time are cost effective. Simultaneously, they provide incentives for the industry to develop and invest in energy efficient product design.²⁸

Directive 2010/30/EU replaced the Directive 92/75/EEC,²⁹ the scope of which was very narrow. It referred only to household appliances. The Action Plan³⁰ mentioned above also indicated the necessity of the extension of the scope of Directive 92/75/EEC. According to the Action Plan, the Directive should also be applicable to the energy-related products which have a significant direct or indirect impact on energy consumption during use. Directive reinforce potential synergies between existing legislative measures, in particular Directive 2009/125/EC of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products³¹ (which was the subject of the previous paragraph—JKM.).

²⁶See footnote 18.

²⁷See footnote 13.

²⁸Available at: http://ec.europa.eu/energy/efficiency/labelling/labelling_en.htm, 23.08.2012.

²⁹Council Directive (1992).

³⁰See footnote 9.

³¹Directive 2010/30/EU OJ L 153/1, 18.6.2010.

As indicated in the Action Plan, the scope of the Directive had been widened. The Energy Labelling Directive is extended in order to cover a wider range of products, including energy-using and other energy-related products.

The Directive³² states that there is a need for a compulsory scheme; the voluntary one would not be efficient, as only some products will fulfil the requirements and thereby only some of them would be labelled or supplied only with standard product information. This could lead to the misinformation for some of the end-users. The amendment Directive stipulates that the labelling, which informs about the consumption of energy and other essential resources, is addressed to all the products concerned.

In order to be able to determine the extent to which the revised Directive could contribute to the concept of sustainable consumption and production, it seems necessary to refer to the content of the Directive. This is because the Directive states that the answer to this question will provide an overview of progress and report on the implementation of the Action Plan on Sustainable Consumption and Production and Sustainable Industrial Policy, which will be carried out by the Commission in 2012.³³ In the overview, the Commission will, as the Directive states in particular, check if there is a necessity for further action in order to improve the energy efficiency of the products. The Commission will also review if it is possible to inform consumers about the carbon footprint of products or the products' environmental impact during their life cycle.

It also should be mentioned that this Directive should not prejudice the application of Directive 2009/125/EC. According to the norm, this Directive and other Union instruments form part of a broader legal framework and, in the context of a holistic approach, bring about additional energy savings and environmental gains.³⁴ This statement could create the argument that the mentioned norms together, being complementary to each other, contribute to the realization of the concept of the sustainable consumption and production.

The third norm which should be presented is the EU Regulation concerning Ecolabel. The amendment Regulation of the European Parliament and of the Council on the EU Ecolabel 66/2010/EC was adopted on the 25 of November 2009.³⁵

The Ecolabel is a voluntary scheme. That means it is possible for the producers, importers and retailers to apply for the label, which could be added to their products. The aim of the previous regulation concerning the Ecolabel scheme, which was the Regulation (EC) 1980/2000 of the European Parliament and of the Council of 17 July 2000 on a revised Community ecolabel award scheme,³⁶ was to create a voluntary ecolabel award scheme that aimed to promote products with

³²See footnote 31.

³³See footnote 31.

³⁴See footnote 31.

³⁵Regulation 66/2010/EC OJ L 27/1, 30.01.2010.

³⁶Regulation (EC) No. 1980/2000, OJ L 237, 21.9.2000, p. 1.

a reduced negative environmental impact which is measured during its whole life cycle. Science-based information on the characteristics of the environmentally friendly products should be delivered to the consumers in the most reliable way by the ecolabel.³⁷ According to the Action Plan, the ecolabel will complement the information provided to consumers as a voluntary label. “It will act as a ‘label of excellence’ to signal to consumers those products that perform at such a level when many environmental criteria are considered over the whole life-cycle”.³⁸

The current Regulation stresses that the Ecolabel scheme is part of the sustainable consumption and production policy of the European Union. The aim of the scheme is to promote products in an environmentally friendly method through the use of the EU Ecolabel.

To this effect, it is appropriate to require that the criteria with which products must comply in order to bear the EU Ecolabel be based on the best environmental performance achieved by products on the Community market. Those criteria should be simple to understand and to use and should be based on scientific evidence, taking into consideration the latest technological developments. Those criteria should be market oriented and limited to the most significant environmental impacts of products during their whole life cycle.³⁹

The way the environmental criteria are built was predicted in art. 6 of the Regulation. According to the article, Ecolabel criteria should be based on the environmental performance of products, taking into account the latest strategic objectives of the EU in the field of the environment.⁴⁰ The criteria are necessary to be fulfilled in order to receive the product label. The criteria are based on the scientific basis, which concerns the whole life cycle of the product. These are determined by: their impact on climate change, on nature and biodiversity, energy and resource consumption, generation of waste, emissions to all environmental media, pollution through physical effects and use and release of hazardous substances, the substitution of hazardous substances with safer substances, as such or via the use of alternative materials or designs, wherever it is technically feasible; the potential to reduce environmental impacts due to durability and reusability of products; the net environmental balance between the environmental benefits and burdens, including health and safety aspects, at the various life stages of the products; where appropriate, social and ethical aspects.⁴¹

The Ecolabel Regulation is to be revised to simplify and streamline the process of obtaining an ecolabel and extend the product coverage.

³⁷See footnote 35.

³⁸See footnote 9.

³⁹See footnote 35.

⁴⁰See footnote 35.

⁴¹See footnote 35.

According to the Action Plan, the norms mentioned above are to be further developed and, following a review of the Ecodesign Directive in 2012, complemented as appropriate by an Ecodesign Labelling Directive to provide consumers with information about the energy and/or environmental performance of products.⁴²

In 2009, the Commission prepared communication including the Review of the European Union Strategy for Sustainable Development.⁴³ According to the second Progress Report, some development in the scope of Sustainable Consumption and Production has been achieved since the previous revision. However, these changes, as stated in the report, showed a rather mixed picture.⁴⁴ The better results were more noticeable in the sphere of sustainable production than consumption. According to the Commission, some progress was achieved in the production sphere. The Commission noted that the positive trends could be observed in isolation of economic growth from natural resource consumption but still in the consumption area there were unfavourable signs.⁴⁵

The Action Plan stipulated that the review of the progress of its implementation would be conducted in 2012. The report, which would then be prepared by the Commission, should analyse whether further action to improve the energy and environmental performance of products was needed, in particular by extending the Ecodesign and Labelling Directives to cover nonenergy-related products.⁴⁶ However, no report had been prepared. Ahead of this 2012 review, the Commission was reviewing the progress of the Action Plan by means of this mid-term evaluation. A new report was prepared for the Commission by ECORYS in 2011 titled: Mid-term Evaluation of the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan.⁴⁷

The evaluation stated that the Action Plan includes varied instruments which aim to create more sustainable consumption and production. At the same time, these instruments provided competitiveness in the European economy.⁴⁸ In the evaluation, there were recommendations which include actions necessary to implement the concept of the sustainable consumption and production.

It also should be mentioned that the Action Plan noticed the obstacles in its realization.

⁴²See footnote 9.

⁴³Brussels, 24.7.2009, COM (2009).

⁴⁴See footnote 43.

⁴⁵See footnote 43.

⁴⁶See footnote 9.

⁴⁷Available at: <http://ec.europa.eu/environment/eussd/pdf/14.%20SCP-SIP%20AP%20Mid%20Term%20-%20Final%20Report.pdf>, 24.08.2012.

⁴⁸Mid-term Evaluation of the Sustainable Consumption and Production and Sustainable Industrial Policy Action Plan.

As the Action Plan stressed, the realization of the sustainable consumption and production might be weakened as the measures concerning the product policy addressed only the specific aspects of the product's life cycle. The other question, which did not influence positively the realization of the concept, was that the measures of the obligatory and voluntary character were not connected, which was why the potential effect of synergies between them was not used.⁴⁹ The potential effect of the Internal Market, which could help the effectiveness of the concept, was also not used. It happened because as the Action Plan stressed, the requirements built on the national and regional level were not coherent. This caused the misunderstandings between the producers, and because of that, these measures rested ineffective.⁵⁰

According to the recommendations in the area of sustainable consumption and production, there is still a need for more ambitious and effective policy. The problem of the source scarcity still exists, and there are still growing negative effects of the excessive consumption; these effects are especially noticeable in climate change. That is why there should be undertaken the measures which will change the European economy. This could be achieved by introducing the eco-innovation measures. However, as the estimating document stated, "the high level indicators on resource efficiency are proving difficult to move in the correct direction".⁵¹ The recommendation states that the high level policy statement should include the long-term objective of reducing consumption, having in mind that it is not a fast process. Recommendations stressed that its achievement was difficult and required further researches. This was because it aimed for hardly achievable targets for resource efficiency and linked them with the targets such as energy efficiency, waste generation, competitiveness, integrated product policy, sustainable development and social inclusion which are also high level aims.⁵²

As the recommendation suggested, in order for the Action Plan to achieve its goals, it should include the aspects as follows: the level of the awareness between the consumers should be widened; this would have influence on the more environmentally friendly behaviour. Besides that, according to the recommendation, in order to achieve greater participation in the Action Plan by the society, it should take advantage of the existing activity like the Competitiveness and Innovation Programme, Life+ and Interreg and new activity, which aim to change the consumers' behaviour by being more conscious of their environmental impact.

⁴⁹See footnote 9.

⁵⁰See footnote 9.

⁵¹See footnote 48.

⁵²Ibidem.

Despite the necessary action which aimed to influence consumers' behaviour, the recommendation noticed the low impact of Ecolabel. Authors of the report stressed that the scheme suffered from low awareness and low uptake. Such evaluation did not allow the conclusion that the current system contributes to the concept of sustainable consumption and production. The authors of the report then stated that there are two options for its future appearance: "to be either to stay as a small, niche [sic] label or to radically alter its criteria and nature possibly by seeking to set principles to which sector and MS specific labelling schemes could adhere".

In relation to the Ecodesign process, the recommendation summarized that the Action Plan had not done much in order to develop it. The reason for the low development of the Ecodesign scheme was the complexity of the modification of the scope of products, from energy using to energy related had a role. The other obstacle, which might be the reason for the weak popularity of the scheme, was the inherent technical complexity, resistance by some stakeholders and lack of political drive.⁵³

Summarizing the scope and realization of the Action Plan, the recommendation stressed that the wide scope of issues that the Action Plan sought to address "makes it difficult to achieve a balance that is seen as ideal in the eyes of all stakeholders".⁵⁴ It happened, as the report observed, because each stakeholder tended to have a focus on a particular issue/objective and in their eyes, this objective was to be the most important.

Assessing the Action Plan for implementation of the sustainable development concept in light of the three criteria of sustainability, economic, environmental and social, the authors of the report noticed the environmental issues were covered in the most comprehensive way. Also, economic issues received, as the authors stated, reasonable coverage. It happened by the measures including the promotion of eco-industry, or by encouraging it to produce goods with a lower environmental impact. The report stressed that the third dimension of the sustainable development concept was not clearly defined by the Action Plan.

Despite that, the report stated that having in mind the fact that the low budget was associated with the Action Plan, which made its realization harder and gave the plan as a whole a relatively short life, it could be regarded as a satisfactory performance.

The estimation of the norms, which are the subject of the paper, shows that the mandatory instruments, Energy Labelling and Ecodesign, have been achieving their goal, so it then could be stated that they contribute to the realization of the concept of sustainable consumption and production. They play a greater role compared to the voluntary schemes. But the overall effect is not as satisfactory as the

⁵³Ibidem.

⁵⁴Ibidem.

authors of the Action Plan wished to achieve. According to the report, the improvement is noticeable but still too small; at the same time, it is very hard to prove that the changes are the result of the instruments included in the Action Plan.⁵⁵

On the other hand, the report states that the instruments predicted in the Action Plan can be seen as “a good conceptual match with the objectives”. That means that the report estimates that the measures of the plan can realize its aim. The report states that the instruments adopted in the Action Plan might influence production and consumption.⁵⁶ But, it also stresses that the nature of these instruments is too soft and because of that, they are not able to achieve the expected scale of change.⁵⁷ The other weakness of the Action Plan is the lack of high level targets. Such a situation does not help in estimating if they are fulfilled. These refer also to each of the instruments predicted in the Action Plan. They also do not have clear targets. Because of that, the answer to the question the instruments predicted in the Sustainable Consumption and Production Action Plan can realize that the sustainable concept is not clear. As the report stated, the main idea of the norms, which were included in the Action Plan as those which contributed to the realization of the concept, was correct. However, lack of their clear targets and problems with their estimation made it so it was not possible to give a straight answer to this question. Despite the troubles concerning the clear estimation of the measures predicted by the Plan, the report indicted some data of the effects of its realization. The Action Plan and the following reports and policy measures were valuable experiences paving the way to sustainable consumption and production in the EU. Works and actions still are in progress, and they are increasingly more ambitious.

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⁵⁵Ibidem.

⁵⁶Ibidem.

⁵⁷Ibidem.

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Treaty of Amsterdam (1997) O.J. (C340)