General presentation of the thesis
Legal means and instruments for environmental protection in the European Union
Phd. Student ILINCA ELENA ALEXANDRA

The thesis begins with an introductory section which states the premises of the study and expounds the legal categories under analysis while concurrently putting forth the first important categorization proposed in the present paper, that of instruments and means. Its role is orientative, scholastic and purely conventional, although we caution on the fact that this conceptual classification is essential for the clarity of exposition and for facilitating the correct understanding of the introduced concepts.

CHAPTER I – *THE DEVELOPMENT OF LEGAL MEANS AND INSTRUMENTS FOR ENVIRONMENTAL PROTECTION IN THE EUROPEAN UNION*, is meant mainly as an preamble. It follows the historical evolution of European environmental law and policies with a focus on the development of legal instruments and means from a predominantly chronological perspective.

The evolution of the European environmental policy can be characterized as surprising, to say the least, as it moved quite swiftly from being a quasi-inexistent issue to the top of the European policy agenda. Naturally, this is not an instantaneous transformation but an evolutive process, with the accomplishment of successive phases, to be presented in more detail in the following. As any categorization in this field is purely conventional in nature, we found most suitable the choice of the Constitutive Treaties as landmarks on the time continuum.

This chapter attempts to present and analyze the evolution of European environmental law and policy, from the symbolic genesis of the "Communitary edifice" with the Treaty of Rome (1957) to the present, more precisely, the adoption of the Lisbon Treaty (2009) for the reform of, this time around, the "European edifice".

In a time when the European environmental policy has become a topic of interest for the general public, interest groups and industry representatives alike, it is of paramount importance to ensure a correct and complete understanding of its historical evolution as a single entity.

(1.1) Legal means and instruments specific to the first development phase of European environmental law The absence of express competencies – during this initial stage environmental legislation is the subject of a double restriction: the lack of explicit legal provision and the imposition of a direct link to the economic or the harmonization objectives. While during this initial phase the European institutions showed a complete lack of interest of in the development of an environmental policy, the sprouts of the future policy were being created. We refer here to measures aimed at the development of the common market, some of which included considerations on the environment. Retrospectively, these considerations can be catalogued as measures for environmental protection.

The first three such measures are: the Council Directive on the classification and labelling of chemicals for reproductive toxicity, the Council Directive relating to the permissible sound level and the exhaust system of motor vehicles and the Council Directive on measures to be taken against air pollution by gases from positive-ignition engines of motor vehicles. At the time, the goal of this legislation was the approximation of the laws of the Member States with a view to preventing the formation of green barriers between them, as that would have constituted an obstacle to free trade and most likely would have generated competition distortions. For the adoption of these directives the Council had recourse to article 100 of the CEE Treaty, under the provision of which the Council could adopt in unanimity at the proposal of the Commission, directives for the approximation of the laws of the Member States which conflicted with the functioning of the common market.

The author concludes that in this first phase, comprising the first 15 years of existence of the European Community, despite the fact that some of the adopted measures contributed to environmental protection development it fell short of a coherent, proper policy.

(1.2) Legal means and instruments specific to the second development phase of European environmental law: the development of European environmental law and the use of alternative legal bases

The second phase of European environmental law development started in 1972, with the European Council statement/declaration on economic expansion not being a goal in itself, but an instrumental factor in the reduction of disparities in living conditions. On this occasion, the importance of the development of a common environmental policy is emphasized for the first time and an explicit request is made to Community institutions for the design of an action program no later than the 31 of July 1973. This first Community action program should be viewed as an important milestone in the evolution of European environmental law as it marks the creation of a proper policy in the field. It did so by establishing the objectives, stating the principles, defining the priorities and describing the measures to be taken in various branches of environmental protection for the period it referred to.

The author appreciates that the true significance of this decisive moment resides in the reinterpretation of economic expansion in both quantitative and qualitative terms .

Faced with the problem of the absence of express competencies the Community had to resort to the use of an alternative legal basis, which conferred various competencies and allowed for indirectly following environmental objectives through the adoption of dispositions. The alternative legal basis used was two-faceted, relying on article 100 (on harmonization) and article 235 (on implicit competencies for the achievement of objectives stated in the Treaty) EECT.

This indirect regulation mechanism was exploited for the entire duration of the second development phase of European environmental law, in other words until the adoption of the Single European Act in 1986. Paradoxically, while this phase is characterized by the lack of express competencies it was also the most prolific, as some of the most significant environmental regulations can be traced back to it. Moreover, during this phase, the first three multi-annual action programs for environmental protection were elaborated for the periods 1973-1977, 1978-1981 and 1982-1986. they represented an innovative technique for the creation of Community regulation and a new law source, provisioning courses of action for a predetermined period.

(1.3) Legal means and instruments specific to the second development phase of European environmental law: the "Constitutionalization" of Community environmental policy and the new legal bases established by the CEE Treaty

The third development phase of European environmental law started with the enactment of the Single European Act (1987) and continues up to the enactment of the Maastricht Treaty (1993) on the European Union. As far as we are concerned here, the great novelty the Single European Act introduced was Title VII called "The environment" in the third part of the CEE Treaty on European Community policy, which lead to the creation of a European environmental policy not just de facto but also de jure.

The new legal instrument used in the design of environmental policies had become article 100A. Its impact in the field was massive as it allowed for more flexibility in voting with the introduction of the qualified majority mechanism and Parliamentary cooperation. Despite it not being direct at environmental policy as such, the Court validated it for use in this sector which allowed for the adoption of numerous, highly relevant legal environmental norms.

The author concludes on this third development phase that the Single European Act's influence on Community environmental policy was threefold. To begin with, through generalized institutional change, most important of which were majority voting and the cooperation procedure. Secondly, through the common market development objective and finally, through the introduction of innovative legal provisions effectively defining the common environmental policy.

(1.4) Legal means and instruments specific to the fourth development phase of European environmental law. The fourth development phase of European environmental law encompasses the post-Maastricht period, which started in 1993 with the enactment of the Maastricht Treaty and ended six years later with the enactment of the Treaty of Amsterdam. Most significant for this period is the introduction, for the first time, of the term "law" in articles 2 and 3 of the EC Treaty on the objectives and activities of the Community.

The author considers this phase to mark the threshold beyond which the Community confronted the challenge of environmental protection in its entirety, inclusive of all possible perspectives on the topic.

(1.5) Legal means and instruments specific to the fifth development phase of European environmental law: post Amsterdam and Nice – The clarification of the constitutional status of environmental protection - The fifth development phase debuts with the enactment of the Treaty of Amsterdam on the 1st of May 1999. It brought an array of interesting changes in the legal framework of environmental policy, with the mention of environmental protection as one of the missions of the European Community. Article 2 CE treaty states the mission of promoting a high level of environmental protection and improving the quality of the environment. Equally important was the decision to unify the process of environmental policy adoption whether the main objective was environmental protection or the establishing and well functioning of the common market. The cooperation procedure is substituted by co-decision. The Treaty of Nice has had a primarily indirect impact on environmental policy, through the changes on decision making procedures and institutional design aimed at accommodating the Union enlargement. One conceptual innovation worth mentioning here was the provision of articles 2 paragraph 1 EUT and article 2 ECT on sustainable development as a mission of the Union.

The author appreciates the inclusion of environmental protection as a mission of the Union represented a major progress: the emphasis on the importance of environmental policy within European law is an expression of the legislator's will to recognize it as binding.

(1.6) Means and instruments of environmental law applied after the enactment of the Lisbon Treaty: From Community law to European law - The beginning of this last development phase of the European environmental policy is marked by the transformation, be it only formal and concerning exclusively the terminology, of Community environmental law and policy to European environmental law and policy. This phase, starting on the first of December 2009 and is still ongoing.

The impact of the Lisbon Treaty on European environmental policy is limited. It conserves the characteristic of the need to equilibrate the economic development objective and the imperative of environmental protection. As far as environmental policy is concerned the Treaty is of very little effect, with two noteworthy exceptions: the listing of the *fight against climate change* as one of the primary objectives of environmental policy and conferring *legal force to the obligation to integrate high standards of environmental protection and the improvement of environmental quality with other European policies, stated in the Charter of fundamental rights of the European Union.*

The author's opinion on the Lisbon Treaty is that, despite not introducing changes as significant as those of institutional nature, is stands out through the continuation of the effort to "green" all fundamental European values. We consider the historical evolution of environmental policy to be marked by the Treaties adopted through time, all of which brought some innovation and improvements over the status quo allowing for a gradual deepening and widening of activities in this field. We could label European environmental policy as progressive and evolving.

CHAPTER II – *THE ACCOMPLISHMENT OF EUROPEAN ENVIRONMENTAL LAW – A LEGAL MEANS FOR ENVIRONMENTAL PROTECTION* - The accomplishment of an European Environmental Law presumes the implementation of EU legislation into the internal legal frameworks of member states. Implementation implies, before all else, the correct transcription of the provisions of European regulations, followed by the correct application of these provisions, such that the initially set objectives can be achieved. Should one of these elements be lacking or only marginally present the achievement of the objectives becomes uncertain, if not completely compromised. Consequently, a third phase of the accomplishment of European Environmental Law can be defined: the enforcement of European regulation both intra-nationally and internationally – community level. In order for the implementation and the enforcement of European environmental law to be effective their accomplishment in fact and in law are equally necessary.

(2.2)The implementation of European Environmental Law in member states' legislation
In all domains of EU intervention member states retain, in principle, the obligation to accomplish and enforce European Law. Environmental policy is no exception, as expressly provisioned by art. 192(4) TFUE: it is the obligation of member states "to implement environmental policies" and to do so "without causing any prejudice to certain measures adopted by the European Union". Complementary, the European Union has the duty to oversee and control the enforcement of environmental law by member states, doubling the control exercised by national courts on the adoption of environmental law. The activity of oversight and control at the European level is carried out by the European Commission.

From a technical point of view, the accomplishment of European environmental law represents a complex endeavour, which implies the analysis of member states' duties, the oversight of the transposition and implementation processes and the sanctions applied should environmental policy not be implemented. All these activities received the necessary attention, including all relevant aspects, in specifically designed sections and subsections as part of this chapter.

Synthesizing, we show that the implementation of European environmental legislation comprises three main elements: the first is the transposition of European directives in the national law by introducing and adapting internal law; the second component is represented by the doubling of this formal legal transposition by practical results with a measurable impact; the third component refers to the enforcement of the policies and the monitoring mechanisms which ensure a correct and complete implementation. Therefore, we must emphasize the fact that the implementation of environmental policies implies more than the mere adoption of legislation, even if this legislation would perfectly reflect the obligations set forth by the directives.

Thus, implementation represents the process by which legal obligations provisioned in European legislation are fulfilled, while enforcement refers to available mechanisms for ensuring implementation is carried through.

Should the Commission establish that a member state failed to satisfactorily fulfill its obligations, it can initiate the infringement procedure by forwarding to the member state a motivated opinion, detailing on what the violations are and requiring an answer. If during this stage the situation is not resolved the Commission can file a case with the European Court of Justice as provisioned by art. 258 FTEU, which remains the central legal instrument used to coerce member states to fulfill their implementation obligations.

The author's opinion is that the EU Treaty should be revised to include citizens rights to attack EU decisions and the lack of implementation of environmental law in front of the European Court of Justice, as the present restrictive interpretation contradicts the approach of national courts and the European environmental policy itself.

(2.3) The 'Status of implementation in member states. Evaluation and tendencies' presents the degree of implementation of European environmental legislation in member states' law, as it is reflected by data collection on the initiation and unfolding of infringement procedures caused by the violation of environmental obligations. This section comprises a set of European Commission statistical data, situations, formal reports and graphical representations, on the basis of which the author formulates a series of opinions and evaluations.

(2.4) The configuration of European environmental law - The European Union has numerous judicial instruments at its disposal: regulations, directives, decisions, recommendations and opinions. Despite this, there seems to be a lack of creativity in utilizing these instruments for environmental law: roughly 90% of European environmental legislation is in the form of directives. We must clarify here that European normative acts encompass multiple categories depending on the application method: regulations – directly applicable, in all member states, without the intervention of a transposition act; directives and decisions – presuppose the adoption of specific implementation measures according to the options member states have when adopting legislative, regulatory or administrative directives internally. It is this precise situation that has lead to numerous litigations on the lack of transposition of directives in national law, the delayed transposition (failing to meet prescribed deadlines), insufficient transposition and even erroneous transposition by member states.

One of the factors causing these type of problems is, without a doubt, the form of the adopted legislation. For this reason, the author dedicated the mandated attention to the problems caused by the implementation of European legislation in the case of each type of European norms in the body of the thesis.

(2.5) The issue of transposing European environmental legislation in member states

Despite the fact that regulations are directly applicable in member states and, consequently, are not the object of transposition in national law to enter into force, national authorities might be faced with the necessity to eradicate some rules, especially concerning the execution domains and the designation of competent public authorities. In this situation the choice of the appropriate national legal instrument in view of implementation becomes a problem, of increasing relevance when confronted with environmental policy making through regulations.

(2.6) The obligation to transpose European environmental directives in national legislation - Practically, all environmental directives include a provision requiring member states to transpose the content of the directive in national legislation. In general, the transposition must be made through an express and mandatory legal disposition, in order to ensure the full implementation of the directives not just in fact but also in law. The transposition of an environmental directive which contains mandatory requirements cannot be accomplished by a legal measure that doesn't have a obligatory power, especially administrative, as that would imply that it could be modified by the authorities at any point, which would directly impact on citizens' equality of obligations and responsibilities as conferred by the directive. The member states retain the decision power on adapting the content of directive to internal environmental law and the national legal system and has the freedom to utilize its own legal instruments, its own legal terminology and a specific form of distribution of institutional powers. This subchapter addresses these issues, focusing in particular on the orientation provided by the ECJ in its jurisprudence.

On the issues exposed in the above the author expresses a series of opinions. Among them: the appreciation that the literal (mot a mot) transposition of European law in national law is not recommendable, as the same word could be employed for very different concepts in the European and the national legislation. What is more, as European legislation stems from a different source than national legislation the concepts, theories and structures it employs are different and do not match the national legal and administrative framework.

The author also expresses the opinion that the transposition is necessary also in those cases where the member state respect in fact the requirements of a directive. The legal safety (the certainty and predictability of the law) that economic operators and citizens are entitled to expect would be undermined if the national, regional or local administration could argue that the facts correspond to the requirements of the directive and impose the duty to prove that facts are no so to the person arguing that transposition is necessary. A concrete transposition presupposes the establishing of applicable sanctions for nonconformity with European law.

The study analyses (2.7.) Aspects concerning the transposition of European environmental law in the legislation of the member states, including (2.7.1.) Provisions subject to transposition, (2.7.2.) The necessity to use legally binding dispositions, (2.7.3.) Transposition using non-binding measures- the case of administrative circulars and environmental agreements, (2.7.4.) Implementation by compliance in fact, (2.7.5.) Implementation by local

administration authorities, (2.7.6.) Justification by "force majeure" for the failure to fulfil an obligation imposed by the European environmental law.

(2.8.) The Enforcement of European Environmental Law. One of the features of European Union Environmental law is that its application and enforcement are a duty of the member states through their political and administrative national structures according to the intern power separation.

In those cases when the text of the directives does not expressly state specific provisions concerning the introduction of sanctions by the state for the violation of implementing legislation, it comes to the member states the task of finding the appropriate solutions in order to assure the conformity of the factual situation with the legal situation. Beyond this, the Commission has the competence to control the manner that the member states enforce the European environmental law and in those cases when an inappropriate enforcement of the environmental legislation- in law or in fact- is acknowledged, it has the possibility to begin the infringement procedure.

Concerning this matter, the author concludes that the measures available in order to ensure the enforcement of the environmental directives are various. Considering the fact that some of the directives do not state any provisions concerning enforcement measures, we consider that for the moment a coherent European enforcement policy cannot be constituted.

The section also analyses (2.8.1.) enforcement in law and in fact, (2.8.2.) the IMPEL network and the revising initiative of IMPEL (IRI) Romania.

(2.9.) The control exerted by the institutions of the European Union concerning the enforcement of European environmental law. The enforcement of the European environmental law by the member states has as its final stage the control exerted by European institutions - *external control*, or the one exerted by national institutions - *internal control*. The primarily and immediate control of effective compliance with the European environmental legislation is the internal control accomplished by the national courts that have the duty- as well as the European courts- to guarantee the , the effectiveness, efficiency and supremacy of the European law over the internal law.

The formal control consists in the abstract comparison of norms or legislative measures by which the Commission ascertains whether the obligation of transposition concerning European directives has been correctly and timely accomplished by the member states.

The control of effective compliance implies a much more complex and profound activity in order to establish whether the European environmental legislation is effectively applied in fact and if the national authorities have adopted all necessary measures and have executed all the necessary actions in order to attain the requested objectives and to fulfil the obligations imposed by the European legislation, especially by the directives undergoing implementation.

(2.10.) Citizen complaints- in the investigation of the implementation process, The Commission has no specific, systematic means of information collection. The complaints of the citizens and environmental protection organisations represent the most important source by which the Commission stays informed in terms of possible breaches of European environmental law. The complaints concerning environment are usually the most numerous of all domains, representing approximately a third of the total number of complaints.

(2.11.) Repression of the anti-juridical behaviours –the legal protection under article 258 TFEU. The most important instrument available to the Commission in its supervision activity is the control procedure stated by art. 258 TFEU that allows the Commission to bring a case in front of the European Union Court of Justice in those situations when it considers that a member state is guilty of breaching an European obligation. The expression "infringement" is an equivalent of that of "breach", "violation" or "infraction" and has to be interpreted extensively, as symbolising any type of incorrect legislative or administrative enforcement or non-application of a European environmental law provision by a national public authority.

The sub-chapter discusses the following matters: (2.11.1.) Types of infringements of European environmental law, (2.11.2.) The formal procedures applicable to infringements of European environmental law, (2.11.3.) The phases of the infringement procedure according to article 258 TFEU.

Other two instrument made available by the treaty system for the enforcement of the European environmental law are the (2.12.) The legal action under art.259 TFEU that gives the possibility to member states to bring each other in front of the Court for infringements of European environmental law and respectively (2.13.) The legal action under art.260 TFEU that considers the situation when a member state perseveres in breaching European environmental law by violating a decision of the European Court.

The author's conclusion on this matter is that a defective implementation or one with deficiencies implies the risk of losing or altering the credibility of the European environmental policy. Although for the moment the attention given to the improvement of implementation is on an ascending trend we consider that the main difficulty

resides in the reticent attitude of the member states in admitting that the EU needs to have o more significant role in monitoring and enforcing the environmental policy as well as in developing it.

The author underlines the fact that the political factor has an important role in the enforcement process of the European environmental law, underlining the importance of a real internal political will, the importance of the active involvement of privates as well as the assuming of their role in completing the obligations taken by the national judges and public authorities.

CHAPTER III -*THE LITIGATION OF EUROPEAN ENVIRONMENTAL LAW- LEGAL MEANS OF ENVIRONMENTAL PROTECTION* has as its main premise the fact that the enforcement control of the European environmental law by the institutions of the European Union is not directly available to individuals and legal persons from the member states. Only those legal control mechanisms made available by each member state can be used by privates. This is the reason why the author analyses the internal situation concerning the legal protection accomplished by the national judges as well as the situation at European level, in front of the Court of Justice of the European Union in the European environmental protection field. The accomplishment of the European environmental law is attained in legal terms by a scheme structured on several levels and plans. At central level- EU level- the application of the European environmental law is accomplished by the Court of Justice of the European Union, while at internal level it is accomplished by the national courts of the member states. The link between these two levels is realized by the cooperation between the national courts with the CJEU through references for a preliminary ruling. The European environmental law is applied by the national courts using three specific means: (3.3.) The Direct Effect of the European environmental law, (3.4.) The Doctrine of consistent interpretation of the internal law with the provisions of the European environmental law, also known as the indirect effect, (3.6.) The responsibility of the state for breaches of the European environmental law. The chapter also includes themes as (3.2.) the role of the privates and the role of judiciary cooperation for the process of assuring legal protection concerning environmental law. In order to provide the complete panorama of the relation between the national and the European law, attention is also given to (3.5.) The principle of European law supremacy over the national law of member states. The final part of the chapter is dedicated to the problems concerning (3.7.) The legal protection in front of the CJEU through actions for annulment and references for a preliminary ruling.

The author considers that internal procedural provisions specific to each legal system of the member states have a remarkable relevance for the environmental law, being able to considerably influence the final solution given to cases involving provisions of European environmental law having direct effect.

The author also believes that, in the future, the Court's orientation to purge any provision of internal law that comes in contradiction with the European rules could be expanded by analogy to cases that involve the guiding principles of European environmental law stated in article 191(2) TFEU. It is to be seen whether and to what extent the jurisprudence of the CJEU will follow this orientation in the environmental protection field.

The author considers that the refusal to recognize the horizontal direct effect of directives leads to an unfortunate discrimination between the private and the public sphere. In this situation, the author is in favor of the recognition of the horizontal direct effect as she estimates such an evolution for the closer or farer future considering the Court's tendency to attenuate the effects of the rule "directives do not have direct effect", keeping in mind the necessity of assuring the predictability of law in order to avoid placing privates in a position of legal incertitude.

Also, as a conclusion, the author considers that the obligations and rights conferred by a European environmental directive have to be determined on the basis of a case-to-case and detailed analysis of the directive's provisions especially because in this field generalization and creation of clear and certain categories are not advisable or possible. In such a situation it comes to the internal courts the difficult burden to closely examine each directive with reference to each case in order to appreciate in whether and to what amount the local authorities can apply the provisions of European directives that have not been correctly implemented, considering the rights conferred and the obligations imposed by those directives.

An opinion is also expressed in relation to the legal protection conferred to third parties in the actions for annulment in front of the European court. The author considers that the protection accorded is limited, if not even confined for third parties against the decisions of European institutions in the environmental field. In our opinion, the amending of the old text of article 230(4) EC, by the Lisbon Treaty, has the potential of improving the situation in the case of environmental decisions, by eliminating the condition of individual interest for the cases in which the legal norms are of direct interest and dot not imply supplementary implementation measures. The certain answer concerning the way this change will be reflected in practice, is going to be given by the future jurisprudence of the European Court.

CHAPTER IV- *EUROPEAN UNION INSTRUMENTS OF ENVIRONMENTAL PROTECTION*. The efficient and unitary application of the European environmental law in all the member states is conditioned by the

correct choice from different types of regulation that can be used in order to guarantee the environmental protection. This is the case of choosing between various types of instruments of secondary legislation or in the case of choosing the right level of protection. This is in essence, the motive why it is important to bring out the main types of regulation and the domains in which these are able to achieve the best results.

In the specialized juridical literature numerous classifications of these instruments used at European level in the environmental protection field are encountered.

Personally, we opted for a classification inspired by the one used at European Union level and expressed through the Fifth Environmental Action Program concerning the instruments used in order to execute its environmental policy.

The detected categories are examined each and every in an especially dedicated chapter, in which the relevant and representative instruments for each of the categories are carefully analysed. The first category, composed of juridical instruments having a political and strategic character comprises the European environmental action programmes and the principles specific to the European environmental policy, considering their general applicability and their introductive specific, is included in chapter IV alongside the general considerations concerning the juridical instruments of environmental protection. In author's opinion, the environmental action programmes are European instruments having political and strategic nature that contain, on their turn, a series of measures and means, both technical and juridical, that are recommended for the European action and reflect the changes suffered by the general political climate of the period that they represent. These instruments are not legally binding (do not have legal compulsory force) even when they contain detailed lists of measures to be taken or planned activities of environmental protection. Within the European environmental policies and action programmes a series of rules having principle value have been delineated and are known to give consistency to the European environmental activity. A part of these principles, without substituting themselves to the general principles of the European environmental law, have gained legal acknowledgement. Their role is to firm up and develop the significance of the existing legal provisions and also to help the affirmation of European rules, contributing to the correct understating, interpreting and application of the existing European law and its development perspectives. This is the motive why the author appreciates that these principles represent European instruments that contribute to the environmental protection by orienting the political conduct of the European Union member states.

CHAPTER V- *EUROPEAN JURIDICAL INSTRUMENTS OF ENVIRONMENTAL PROTECTION*

The legal European provisions stipulate a series of specific instruments and techniques of environmental protection, that aim to the duly influence of the behaviour and attitude of the natural and legal persons. Their vast majority is contained in European directives. Mainly, these are measures that are also encountered at national and international level. Three groups of such juridical instruments are more frequently utilised: the adoption of standards or norms; the regulation of restrictions or prohibition; and the licensing of environmentally dangerous activities and the environmental impact assessment. Through all the strategies used for environmental protection, the oldest and most used are the restrictive measures having statutory character, but the exclusive utilization of such "command and control" measures is not advisable as they have specific limitations. The pure restrictive character of these measures does not allow an active approach and does not encourage partnerships or the public to get involved and in the same time it does not stimulate innovation. This is the reason why the author recommends the alternative and combined utilisation of the purely juridical instruments alongside with instruments from the other categories presented, according to the specific of the addressed problem.

CHAPTER VI- *JURIDICAL- FINANCIARY AND FISCAL INSTRUMENTS OF ENVIRONMENTAL PROTECTION*

Through all the instruments used by the "new" European environmental policy having a juridical character, a special attention is given to those of fiscal or financial inspiration, that are used in order to stimulate or inhibit certain behaviours having totally opposed effects on the environment, a positive one in the first case and a negative one in the second. The European environmental action programmes have underlined the importance of these instruments, bringing out the fact that their main objective is to prevent for environmentally friendly products, having a reduced environmental impact, to be put in a competition disadvantageous situation. The importance of these mechanisms has been underlined and in the same time two major orientations in the domain have been brought out: the modification of the subvention regime that have a negative impact on the environment and the promotion of fiscal measures such as taxes and environmental subsidies, at national or European level. (6.2.) The juridical-financial instruments mainly (but not exclusively) analysed are: (I) those which do not have as their exclusive or main objective the environmental protection, but other scopes like encouraging the regional, social, economical or research development, and still they are able to strongly influence the European environmental condition; (II) and those instruments that have as their single objective the stimulation and support of the environmental protection.

Amongst those from the first category a special relevance has the financial aid system created by European Union under the mark of the Structural Funds and the Cohesion Fund. Concerning the second category, the main instrument by which the European Union operates is the LIFE financial instrument, to which the author dedicated special attention within the especially dedicated section.

(6.3.) The juridical-fiscal instruments of environmental protection. The main juridical instruments of environmental protection with fiscal character used at European level are those utilizing the taxation technique as well as that of de-taxation and subsidies. The functioning mechanism is that of regulation of fiscal measures that hint at encouraging or discouraging certain environmental behaviours. In the fiscal domain, in spite of the initiatives and efforts concerning unitary European measures, the development of the fiscal measures takes place at national level and even at this level numerous impediments are encountered. The author is in favour of instituting the European eco-taxation and shows that the possibility to create an European eco-tax does not encounter major theoretical impediments. The element that has to be in the centre of European institutions' attention is the political aspect, in order to obtain the consensus, bearing in mind the fact that the real difficulty in implementing the eco-taxes is of political nature

CHAPTER VII- *JURIDICAL - ECONOMIC INSTRUMENTS OF ENVIRONMENTAL PROTECTION* - represents the centre of author's attention and in the same time the main coordinate of her contribution, which is materialised especially through the analysis of the implementation of two instruments highly relevant at internal level and the conception of questionnaires used for the data collection and having as principal objective an evaluation of the internal situation and the consequent formulation of opinions, proposals and recommendations.

The juridical-economic instruments were developed as an expression of the tendency of reconciliation of the economic development and the objective of environmental protection. Also, a strong interdependence exists between the utilization of these instruments and the objective of sustainable development.

The multifaceted legal framework of the sustainable development reflects the fact that the environmental problems are not entirely dependent to the economic factor. The environmental regulation and the choice between the various techniques and mechanisms of regulation have a profound political character, the general environmental objectives have to be politically determined, while the economic instruments have to be utilised in order to implement these general objectives.

This category of legal instruments proves to be useful as the polluters have a behaviour based on economic reasons, which valorises the market logic. In such conditions, in order to answer to the negative consequences of their behaviour, the most fitful instruments prove to be those that address the same economic behaviours, utilising the same logic and having the same functioning mode.

Be bear in mind the fact the many times the impact of these instruments is unpredictable because it depends on economic calculations that sometimes are inaccurate as well as on the anticipation of polluters' behaviour which is not always perfectly rational. This is the motive why without minimising the benefits brought by the utilization of these instruments we cannot generalise by appreciating them to be the ideal solution to any scenario.

The following instruments are carefully analysed during the final chapter of the work: (7.2.) Environmental cost internalisation; (7.3.) The European system of negotiable permits of greenhouse gas emissions; (7.4.) Integrated product policy and Life cycle analyses; (7.5.) Green public procurement; (7.6.) Eco-design; (7.7.) The European Eco-label; (7.8.) EMAS- The European Environmental management and audit scheme.

During the entire chapter the author presents numerous personal considerations, recommendations and *de lege ferenda* proposals that are meant to amend various imperfections and lacunas observed in the regulation and implementation of the analysed instruments.

The thesis finishes with the exposal of the final general conclusions of the author on the study, which are different of those inserted along the study, at the end of chapters and sections, which enlighten the personal view of the theme, conclusions that are symmetrically placed compared to the introduction that presented the objectives proposed for debate and analysis.