MECHANISMS OF TRANSNATIONAL ADMINISTRATIVE COOPERATION UNDER EU ENVIRONMENTAL LAW

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Abstract

Environmental problems ignore political boundaries, which means that they can only be adequately addressed through cooperation between States. The several cooperation duties that emerge from international law in this field are implemented, in the majority of cases, through EU Law, which is the main focus of this article. A tentative taxonomy of mechanisms of transnational administrative cooperation in EU environmental law is provided. The first is the establishment of a consultation stage of Member States and/or EU, in the framework of a national decision-making procedure. There are cases where the decision-making procedure not only involves a consultation stage, but also prior consent by another Member State or the Commission. Other mechanisms demand coordination of Member States action, namely in the management of shared resources. Composite decision-making procedures – i.e., procedures that have stages at both the national and the Union level, requiring the active participation of both levels – can also be seen as mechanisms of cooperation. Finally, duties of exchange of information and of notification are also presented as cooperation mechanisms.

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1. Introduction

As environmental problems ignore political boundaries, it is generally agreed that they can only be adequately addressed through cooperation between States. That is why international cooperation is central to the field of environmental law.

In this context, the duty of inter-State cooperation in environmental matters is especially developed in the context of European integration and EU law.

Cooperation in this field has its origins in the principle of territorial jurisdiction, which entails that the State that intents to conduct or authorize an activity in its territory which have transnational effects, should hear the States whose territories are potentially affected by those activities. Under the principle of sovereignty over natural resources[1], also the management of shared resources is dependant of cooperation between the States involved.

In both these cases, the duty to cooperate entails a proceduralization of the decision-making of the States, in the sense that cooperation may take place either in the form of a specific stage in national procedures or the establishment of a composite transnational procedure, in order to allow the dialogue between the several States involved. This, in turn, allow the decision to be perceived as legitimate, because it is taken following a cooperative procedure and the participation of the affected States.

Seen from this perspective, the adoption of cooperation mechanisms also allows for the avoidance of international conflicts, because the different parties should be able to resolve their differences through the legal decision-making procedures established. This also provides a legal framework to answer potential conflicts between the States involved – avoiding potential diplomatic escalation – and allowing the recourse to judicial review of municipal or international courts.

EU law absorbs this international law framework for cooperation and converts it into EU legal duties of cooperation between the Member States. In this sense, the Court of Justice of the EU plays a major role as the forum to adjudicate conflicts between Member States in this matter. The recourse to cooperation duties, in the framework of the more general principle of sincere cooperation, also represents a consequence of the principle of subsidiarity – in

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[1] General Assembly resolution 1803 (XVII) of 14 December 1962, 'Permanent sovereignty over natural resources'.

the sense that the EU is using decentralized tools of implementation of EU law, instead of centralizing it at the European level.

The use of transnational cooperation mechanisms is also present in the more recent package of legislation in climate law, namely in the Fit for 55 package (which is one of the initiatives included in the European Green Deal[2]) - as some of the examples given will show. For instance, cooperation is at the center of the EU efforts in climate law (Article 2(2) of the European Climate Law[3]). In that sense, transnational cooperation is still used by the EU as one of the key tools to ensure a smooth implementation by Member States, despite some centralization trends, that can be found, for instance in the amendments to the Emission Trading Directive[4] concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system.

In this article, a presentation of the legal framework of environmental transnational administrative cooperation is given. Following that, a tentative taxonomy of mechanisms of transnational administrative cooperation in EU environmental law is provided. The first is the establishment of a consultation stage of Member States and/or EU, in the framework of a national decision-making procedure. There are cases where the decision-making procedure not only involves a consultation stage, but also prior consent by another Member State or the Commission. Other mechanisms demand coordination of Member States action, namely in the management of shared resources. Composite decision-making procedures – i.e., procedures that have stages at both the national and the Union level, requiring the active participation of both levels – can also be seen as mechanisms of

[2] The Fit for 55 package is a set of proposals to revise and update EU with the aim of ensuring that EU policies are into line with the EU climate goals. See https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55/.

[3] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), ELI: http://data.europa.eu/eli/reg/2021/1119/oj.

[4] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC, ELI: http://data.europa.eu/eli/dir/2003/87/2024-03-01, as amended by Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system, ELI: http://data.europa.eu/eli/dir/2023/959/oj.

cooperation. Finally, duties of exchange of information and of notification are also presented as cooperation mechanisms. In the final part of the article, some conclusions are drawn.

2. Legal framework of environmental transnational administrative cooperation

The legal framework of transnational administrative cooperation in the field of environmental policy is multi-layered, including sources from general international law, regional European international law, and EU law.

The obligation on States to cooperate in addressing international issues is recognized as a fundamental rule of general international law, as exemplified in Articles 55 and 56 of the Charter of the United Nations, emanating from the principle of 'good neighbourliness' enunciated in Article 74 of the Charter, and applies on the global, regional, and bilateral levels. In the specific area of international environmental law, the duty to cooperate between States must be considered a general principle.[5] This principle is laid down in 'soft law' instruments such as in Principle 24 of the Stockholm Declaration and in Principles 7 of the Rio Declaration[6], which codify the obligation on States to cooperate 'in good faith and in a spirit of partnership' in all matters concerning protection of the environment. While the precise nature and extent of this obligation remains a matter of debate,[7] its customary status, at least, is not contested.[8] It should be noted, however, that the obligation to cooperate does not mandate a specific outcome or the prior consent of potentially affected States.[9] The proper adherence to the principle of cooperation in International Law (only) requires

[5] M. Valverde Soto, General Principles of International Environmental Law, 3 ILSA J. Int.'l & Compar. L. 193 (1996), 197-199; J.A.R. Nafziger, Basic Functions and Principles of International Environmental Law in the Context of Managing Water Resources, 39 Denv. J. Int'l L. & Pol'y 381 (2011); M. Moïse Mbengue & B. Mcgarry, General Principles of International Environmental Law in the Case Law of International Courts and Tribunals, in M. Andenas et al. (ed.). General Principles and the Coherence of International Law (2019); P. Sands et al., General principles and rules, in Principles of International Environmental Law (2018), 213-217.

[6] See also Principles 9, 14, 19, and 27 of the Rio Declaration.

[7] See, e.g., Pulp Mills on the River Uruguay (Argentina v. Uruguay).

[8] See, e.g., *Gabčikovo-Nagymaros*, paras 141–142; *Mox Plant (Ireland v. UK)* (Provisional Measures) ITLOS, Order of 3 December 1981, para. 83.

[9] See, e.g., *Lac Lanoux Arbitration (France v. Spain)* (1957) 12 RIAA 281; 24 ILR 101 and Pulp Mills.

fulfilment of certain procedural obligations such as those relating to environmental assessment, exchange of information, notification, consultation and negotiation.[10] There are also examples of cooperation duties in specific areas established in international conventions[11], notably duties to cooperate in the production and exchange of information.[12]

The principle of international cooperation places an obligation for States to ensure that activities undertaken on their territories do not cause damage to the environment of other States or which could harm the health of their inhabitants (the 'no harm rule').[13] It was established since the first international judicial decisions with an environmental dimension, *i.e.* the Trail Smelter case[14], and is referred to by the ICJ in the Corfu Channel case.[15] It both builds on and expands the principle of 'good neighbourliness'.[16] From the principle of international cooperation in Environmental Law stem: *i)* a duty of due diligence to prevent or reduce transboundary harm by controlling the activities on its territory; *ii)* a duty to notify, exchange relevant information, and consult with other States on possible transboundary harm,

[10] As an example, Principle 19 of the Rio Declaration merely requires States to 'provide prior and timely notification and relevant information to potentially affected states on activities that may have a significant transboundary environmental effect and to consult with those states at an early stage and in good faith'. Another example can also be found in Principle 14 of the Rio Declaration, which requires States to cooperate 'effectively' to 'discourage or prevent the relocation and transfer to other states of any activities and substances that cause severe environmental degradation or are found to be harmful to human health'.

[11] For example, in Article 197 of the 1982 UN Convention on Law of the Sea (UNCLOS).

[12] Law of the Sea, supra note 11, at art. 200; U.N. Convention on Biological Diversity, supra note 6, at art. 17; Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Mar. 17, 1992, art. 8, 31 I.L.M. 1312; Convention for the Protection of the Ozone Layer, Mar. 22, 1985, art. 4, 26 I.L.M 1517 [hereinafter Ozone Protection Convention].

[13] As recognized by the International Court of Justice in Corfu Channel (U.K. v. Albania), 1949 I.C.J. (April 22). See also Lac Lanoux Arbitration (France v Spain), 12 R.I.A.A. 285 (Arbitral Tribunal affirmed 'France is entitled to exercise her rights; she cannot ignore the Spanish interests.'). Island of Palmas (U.S. v. Netherland), 11 R.I.A.A. 829. H. Kelsen, *Principles of International Law* (1966), 205-206.

[14] Arbitral Awards, April 16, 1938 and March 11, 1941, *Trail Smelter (United States v. Canada)*, R.S.A., Vol III, p. 1965.

[15] ICJ, Judgment of 9 April 1949, *Corfu Channel Case*, Rec. 1949, p. 4

[16] The maxim was invoked as a rule by Hungary in the Gabcikovo-Nagymaros Project (Hungary v. Slovakia), 1992 I.C.J. 32. Hungary supported its submission in Corfu Channel, the Stockholm Declaration, the Rio Declaration, and the International Law Commission Draft Articles On State Responsibility (1990).

hazardous activities and risks, and emergencies[17]; and *iii)* the duty to carry out cross border environmental impact assessments if risk of significant cross border effects.

At a regional level, in Europe, these duties of cooperation have been codified in several international conventions. Under the auspices of the United Nations Economic Commission for Europe (UNECE) one can find the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).[18] This Convention establishes the main international framework for transnational consultations during an environmental impact assessment of projects. The Kiev Protocol to the Espoo Convention[19] set forth the procedure for transnational consultation in the case of strategic environmental assessment, conducted at the level of plans and programmes. Other examples are the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention),[20] which aims to ensure the sustainable use of transboundary water resources by facilitating cooperation, the Convention on the Transboundary Effects of Industrial Accidents (TEIA Convention),[21] which helps Parties to prevent industrial accidents that can have transboundary effects and to prepare for, and respond to, accidents if they occur, and the Convention on Long-range Transboundary Air Pollution (LRTAP Convention),[22] laying down the general principles of international cooperation for air pollution abatement. Finally, the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, also known as the Aarhus Convention.[23] This Convention establishes the right of the

[17] 1986 Vienna convention on Early Notification of a Nuclear Accident (the "Chernobyl convention").

[18] Usually referred to as the Espoo Convention, because it was signed in that Finnish city in 1991. The Convention was adopted in 1991 and entered into force in 1997. On the Espoo Convention, see A. Boyle, *Developments in the International Law of Environmental Impact Assessments and their Relation to the Espoo Convention*, 20 Rev. Eur. Cmty. Int'l Env'l L. 227 (2011).

[19] Signed in 2003 and entered into force in 2010.

[20] Adopted in Helsinki, on 17 March 1992, and entered into force on 6 October 1996.

[21] The Convention was signed on 17 March 1992 in Helsinki and entered into force on 19 April 2000.

[22] Adopted in Geneva, on 13 November 1979, and entered into force on 16 March 1983.

[23] The Aarhus Convention was adopted on 25 June 1998 in the Danish city of Aarhus and entered into force on 30 October 2001, after obtaining ratifications by sixteen of the signatory parties. E. Pozo Vera, *The Aarhus Convention: a tool for environmental democracy and defending consumers rights on the environment*, 21 Eur. J. Consumer L. 53 (2011), pp. 53-83; M.

public to have access to information, to have the possibility to participate in decision-making, and to have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile, also in the transboundary context.

EU law takes a special interest in environmental policy. The EU Treaties establish that the EU shall pursue a policy in the field of environment with objectives to ensure a high level of protection and improvement of the quality of the environment, protect human health, and promote prudent and rational utilisation of natural resources (Article 3(3) TEU and Article 191(1) TFEU). EU environmental policy builds on the principles of preventive action, rectification of pollution at source, precaution and polluter pays (Article 191(2) TFEU).

In order to achieve these aims, the EU depends on a framework of cooperation both between institutions, bodies, and agencies, between the EU and its Member States, and also amongst the Member States themselves. In this context, environmental policy is an area of shared competence between the EU and the Member States (Article 4(2)(e) TFEU).[24] While, for some environmental problems, a response at national level is adequate, other cases of environmental degradation can only be adequately addressed at EU level, in line with the principle of subsidiarity.

This framework relies on the principle of sincere cooperation, which is one of the pillars of European integration, has a general legal basis in Article 4(3) TFEU. In this context, the principle of sincere cooperation guarantees the existence of general mutual duties of respect, assistance, articulation, and non-contradiction – of coherence of action – between all the public entities covered by the EU legal order, through actions or omissions. The principle of sincere cooperation, with its multiple characteristics, has a particular importance in environmental policy field. The integration of environmental protection across EU policies and activities is also mandated by Article 11 TFEU and requires cooperation between Member States and the EU, and between EU institutions, bodies, and organisms.[25]

Prieur, *La Convention d'Aarhus, instrument universel de la démocratie environnementale*, Revue Juridique de l'Environnement 9 (1999).

[24] See H. Tegner Anker, Competences for EU environmental legislation: about blurry boundaries and potential opportunities, in M. Peeters & M. Eliantonio (eds.), Research Handbook on EU Environmental Law (2020).

[25] According to Article 11 TFEU, EU institutions, bodies, and organisms must integrate environmental protection 'into the definition and implementation of the Union's policies

The complex environmental international law framework of mutual duties of sharing information, giving notice to or consulting with neighbouring states, or assessing transboundary impacts have mostly been transposed into the EU legal order through several legal acts, being transformed into EU legal duties binding the Member States in their mutual relations, as well as the EU institutions, bodies, and agencies. For instance, the duty to carry out cross border environmental impact assessments and consultations if there are risks of significant cross border effects, codified in the Espoo Convention and in the Kiev Protocol, were implemented by Article 7 of the EIA Directive[26] and Article 7 of the SEA Directive[27], respectively.

3. Mechanisms of transnational administrative cooperation

It is extremely hard to draw a taxonomy of mechanisms of administrative cooperation in the field of EU environmental law. The multi-layered character of the sources of cooperation duties, its quantity and complex nature is partly responsible for this difficulty. In fact, one can find several duties to cooperate in this area, in a horizontal (between Member States, or between EU institutions, bodies or organisms) or a vertical axis (between Member States and the EU level).

Cooperation duties are present in different types of administrative decision-making procedures.[28] There are cases of national administrative procedures where other States may

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and activities, in particular with a view to promoting sustainable development'. Article 37 of the Charter of Fundamental Rights of the EU also establishes that 'a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development'. However, the way in which this objective is to be implemented is not entirely clear. A. Volpato & E. Vos, *The institutional architecture of EU environmental governance: the role of EU agencies*, in M. Peeters & M. Eliantonio (eds.), *Research Handbook on EU Environmental Law*, cit. at 24, 54, note 7.

[26] Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (codification), ELI: http://data.europa.eu/eli/dir/2011/92/2014-05-15.

[27] Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment, ELI: http://data.europa.eu/eli/dir/2001/42/oj.

[28] L. De Lucia, Strumenti di cooperazione per l'esecuzione del diritto europeo, in L. De Lucia & B. Marchetti (eds.), L'amministrazione europea e le sue regole, (2015); E. Schmidt-Aβman, Verwaltungskooperation und Verwaltungskooperationsrecht in der Europäischen Gemeinschaft, 31 EuR 270 (1996).

participate or give input in a specific stage. In some other cases, it is the EU decision-making procedures that rely on data provided by the Member States or depend on national enforcement proceedings. Finally, composite decision-making procedures – *i.e.*, procedures that have stages at both the national and the Union level, requiring the active participation of both levels – can also be seen as mechanisms of cooperation.[29]

In the next points several mechanisms of cooperation are presented. The first is the establishment of a consultation stage of Member States and/or EU institutions, bodies, or agencies, in the framework of a national decision-making procedure. There are cases where the decision-making procedure not only involves a consultation stage, but also prior consent by another Member State or the Commission. Other mechanisms demand coordination of Member States action, namely in the management of shared resources. Composite decision-making procedures, as well as the exchange of information and of notification can also be seen as cooperation mechanisms.

3.1. Consultation in national decision-making procedures

One of the mechanisms of administrative transboundary cooperation in the field of environmental law is the establishment, in national decision-making procedures, of a consultation stage of other Member States. This mechanism derives from international law, especially the already mentioned no-harm rule and the duty to prevent or mitigate cross-border environmental damages that would result from the activities or projects in question.

The potentially affected Member States should have access to information on the activity, project, or plan in question, in order to ensure that they are able i) to decide whether to participate or not in the procedure; and ii) to adopt a position regarding the proposal

[29] See Article I-4 (Definitions) of the 2014 ReNEUAL Model Rules on EU Administrative Procedure, which reads as follows: "'Composite procedure" means an administrative procedure where EU authorities and the authorities of a Member State or of different Member States have distinct functions which are inter-dependent. A composite procedure may also mean the combination of two administrative procedures that are directly linked.' On the concept of composite procedure its different classifications, see S. Cassese, *European Administrative Proceedings*, 68 Law & Contemp. Probs. 21 (2004); M. Chiti, *Forms of European Administrative Action*, 68 Law & Contemp. Probs. 37 (2004); and G. della Cananea, *The European Union's mixed administrative proceedings*, 68 Law & Contemp. Probs. 197 (2004); M. Eliantonio, *Judicial Review in an Integrated Administration: the Case of Composite Procedures*, 7 Rev. Eur. Admin. L. 65, 66 (2014).

in question. Although the Member State conducting the decision-making procedure is not bound by the opinions of the consulted States, it should take them into account.

The main example of this cooperation mechanism is the consultation stage of the environmental impact assessment (EIA) procedure in a transboundary context.

The EIA procedure, in the EU, is regulated by the EIA Directive as a national procedure, under the responsibility of the Member State in whose territory the project in question is intended to be carried out.[30] The international obligations to cooperate, namely under the Espoo Convention, were implemented at EU level by Article 7 of the EIA Directive. The cooperation mechanism has three stages. In the first stage, there must be an exchange of information. If a Member State finds that a project is likely to have significant effects on the environment in another Member State, the latter must be given information on the project and on the procedure. This can also happen at the request of the Member State likely to be significantly affected. In both cases, the national procedure must establish a legal duty to transmit the information.[31]

The need for a transboundary environmental impact assessment in these cases cannot be avoided not even under Article 2(4) which allows Member States, in exceptional cases, to exempt a specific project in whole or in part from the provisions of the EIA Directive.[32]

It is not necessary for a project to be transboundary in nature to be considered to have significant effects on the environment in another Member State. The EIA Directive adopted an overall assessment of the effects of projects on the environment, which may extend to the territory of a number of Member States.[33] If a project is located close to a border, the CJEU has already considered that it was 'indisputable that the project could also have significant effects on the environment in the [other] Member State, within the

[30] J.H. Jans & H.H.B. Vedder, European Environmental Law: After Lisbon (2012), 311-319; A. García-Ureta, Environmental Impact Assessment in the EU, in M. Peeters & M. Eliantonio (eds.), Research Handbook on EU Environmental Law, cit. at 24.

[31] Case *Commission v Ireland*, C-392/96, ECLI:EU:C:1999:431, para. 92.

[32] Opinion of Advocate General Kokott delivered on 29 November 2018, Case Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2018:972, para. 163, and Case Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, para. 72.

[33] Case *Umweltanwalt von Kärnten*, C-205/08, ECLI:EU:C:2009:767, paragraph 51

meaning of Article 7(1)' of the EIA Directive.[34] This also means that projects listed in Annex I to the EIA Directive which extend to the territory of several Member States cannot be exempted from the application of the Directive. The CJEU considered that such an exemption would seriously interfere with the objective of the EIA Directive and seriously compromise its effectiveness. [35]

If the Member State which receives the information indicates that it intends to participate in the environmental decision-making procedure, a consultation stage ensues (Article 7(4) of the Directive).

In this case, the other Member State and its citizens have the possibility to participate in the environmental decision-making procedures of the Member State conducting the EIA, which must take into consideration the transboundary effects on the environment of the project in the national administrative decision-making procedure. Interestingly, the Espoo Convention and the EIA Directive go beyond intergovernmental cooperation and ensure the participation of local authorities and the public. The EIA Directive requires that the public in the affected Party be informed of the proposed activity and be given the opportunity to comment on or object to it – which is a reflection of the obligations stemming from the Espoo Convention and the Aarhus Convention. The EIA Directive goes further, ensuring that also the public authorities of the affected Member State likely to be concerned by the project by reason of their specific environmental responsibilities or local and regional competences, can effectively participate in EIA procedures in a transboundary context (Article 7(3) and (5) of the EIA Directive). [36] The information provided by the Member State conducting the EIA to the potentially affected Member State must be communicated to the public and to the authorities within a reasonable period of time and they must be given an opportunity, before development consent for the project is granted, to forward

[34] Case Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen, C-411/17, ECLI:EU:C:2019:622, para. 76-81.

[35] Case *Umweltanwalt von Kärnten*, C-205/08, ECLI:EU:C:2009:767, para. 54-55.

[36] The EIA Directive was amended in an extensive way in 2003, following the signing of the Aarhus Convention by the EU, through the Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, ELI: http://data.europa.eu/eli/dir/2003/35/2016-12-31.

their opinion within a reasonable time on the information supplied to the Member State responsible for the assessment.

In the final stage, the results of consultations and the information gathered must be duly considered in the development consent procedure by the Member State responsible for the assessment. After the national decision is taken, it must be notified to the affected Member State, including a summary of how the comments received from it have been incorporated or otherwise addressed in the decision (Articles 8 and 9(1)(b) and (2) of the Directive). The final decision must be also made available to the public and to the local authorities of the affected Member State at its request.

When cooperation fails, the affected Member State may resort to the infringement procedure established in Article 259 TFEU. An example of this is the case between the Czech Republic and Poland over lignite mining activities at the Turów mine (Case C-121/21). In this case, Poland granted development consent for the extraction of lignite in an open-cast mining project without any environmental-impact assessment or prior verification of the need for such an assessment. The Czech Republic lodged also an application for interim measures, which was granted by the Court.[37] The case was resolved without the need of a judgement, through an agreement between the parties in the dispute.[38]

Similar procedures of notice and consultation are established in Article 7 of the SEA Directive, when the implementation of a plan or programme being prepared is likely to have significant effects on the environment in another Member State, Article 14(3) of the Seveso Directive[39], and in Article 26 of the Industrial Emissions Directive[40], for the activities set out in its Annex I.

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[37] Order of the Vice-President of the Court of 21 May 2021, Case *Czech Republic v Poland*, C-121/21 R, ECLI:EU:C:2021:420. Poland was later ordered to pay the European Commission a penalty payment for not complying with that Order (Order of the Vice-President of the Court of 20 September 2021, Case *Czech Republic v Poland*, C-121/21 R, ECLI:EU:C:2021:752).

[38] Order of the President of the Court of 4 February 2022, Case *Czech Republic v Poland*, C-121/21, ECLI:EU:C:2022:82.

[39] Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC, ELI: http://data.europa.eu/eli/dir/2012/18/oj.

[40] Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control), ELI: http://data.europa.eu/eli/dir/2010/75/2011-01-06.

In all these procedures, the EU law establishes the need for a national decision-making procedure, that may include a horizontal consultation stage of potentially affected Member States. They (and their citizens) should be informed and have the power to issue opinions that must be taken into consideration by the Member State conducting the procedure. Thus, the national final decision must be reasoned in the light of the results of the cross-border consultation.

3.2. Prior informed consent or agreement

Another cooperation mechanism is the requirement of prior informed consent by the affected State. This is the case when the national administrative authority's decision produces effects in the territory of another State.

A possible example of this situation can be found in the area of transboundary movement of toxic or hazardous wastes. The need to ensure prior informed consent of the affected parties can be found in International Law, more specifically in the Basel Convention[41] as well as the Rotterdam, Stockholm, Bamako, and Waigani Conventions.[42]

The regimes applicable to the prior notification and consent in these cases in the EU, which is a Party to the Basel, Rotterdam, and Stockholm Conventions[43], was implemented through

[41] Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, Basel, 1989, 28 I.L.M. 649. See K. Kummer, *The Basel Convention: Ten Years On*, 7 Rev. Eur. Cmty. & Int'l Env'l L. 227 (1998); F. Bitar, *Les Mouvements Transfrontières de Déchets Dangereux Selon la Convention de Bâle* (1997); M.E. Allen, *Slowing Europe's hazardous waste trade: implementing the Basel Convention into European Union law*, 6 Colorado J. Int'l L. Pol'y 163 (1995); C. de Villeneuve, *Les mouvements transfrontières des déchets dangereux: Convention de Bâle et droit communautaire*, 340 *Revue du Marché Commun* 568 (1990).

[42] Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (adopted on 10 September 1998, entered into force on 24 February 2004) (1999) 38 ILM 1; Stockholm Convention on persistent organic pollutants (POPs), entered into force on 17 May 2004; Organization of African Unity: Bamako Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa, Jan. 29, 1991, art. 6, 30 I.L.M. 773, 785; Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes within the South Pacific Region (Waigani Convention), 2001. P. Birnie, A. Boyle & C. Redgwell, *International Law and the Environment* (2009), 476–7 and 486.

[43] In relation to the Basel Convention, through the Council Decision 93/98/EEC of 1 February 1993 on the conclusion, on behalf of the Community, of the Convention on the control of transboundary movements of hazardous wastes and their disposal (Basel Convention), ELI: http://data.europa.eu/eli/dec/1993/98/oj. In relation to the Rotterdam

regulations.[44] For instance, in the case of the enforcement of the Basel Convention, the shipment of certain types of waste within the EU must be notified to the competent authority of dispatch, which transmits the notification to the competent authority of destination with copies to any competent authorities of transit (Articles 3 and 7 of Regulation (EC) No 1013/2006). Only if all these authorities give their express or tacit consent is the shipment legal (Article 2(35) of the Regulation).

There are also cases where prior positive opinion of the Commission is required before the national administration can adopt an act. One example is established in the Habitats Directive.[45] Article 6(3) of this Directive requires that any plan or project likely to have a significant effect on a Natura 2000 site, must be subject to appropriate assessment of its implications in view of the sites' conservation objectives.[46] Only if the competent national authorities conclude that the plan or project will not adversely affect the integrity of the site concerned can they approve it. However, a plan or project which has had a negative appropriate assessment of its implications for a site may still be greenlighted, in the absence of alternative solutions, if the Member State invokes imperative reasons of overriding public interest, including those of a social or economic nature, if all compensatory measures necessary are taken (Article 6(4) of the Habitats Directive). If the site in question hosts a priority natural habitat type and/or a priority species, the plan or

Convention, by Council Decision 2003/106/EC of 19 December 2002 concerning the approval, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade, ELI: http://data.europa.eu/eli/dec/2003/106(1)/oj. In relation to the Stockholm Convention on POPs, by the Council Decision 2006/507/EC of 14 October 2004 concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants, ELI: http://data.europa.eu/eli/dec/2006/507/oj.

[44] Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, ELI: http://data.europa.eu/eli/reg/2006/1013/2021-01-11, Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals, ELI: http://data.europa.eu/eli/reg/2012/649/2020-09-01; and Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants, ELI: http://data.europa.eu/eli/reg/2019/1021/2021-03-15. See J.H. Jans & H.H.B. Vedder, *European Environmental Law*, cit. at 30, 438-445.

[45] Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, ELI: http://data.europa.eu/eli/dir/1992/43/2013-07-01.

[46] A. Cliquet, EU nature conservation law: fit for purpose, in M. Peeters & M. Eliantonio (eds.), Research Handbook on EU Environmental Law, cit. at 24, 273-275.

project can only be carried out if the Member State invokes reasons related to human health or public safety or beneficial consequences of primary importance for the environment or, after receiving the Commission's opinion, other imperative reasons of overriding public interest.[47] This opinion is, in substance, an authorisation by the Commission – without it the Member State cannot carry out the action in question.

In these cases, national decision-making procedures not only have a stage where other Member States or the Commission participate, but also are bound by the need of a prior positive decision by the other party before reaching the final decision. These cases are not the most common but may arise when the procedure impacts the sovereignty of another State or deals with shared resources.

3.3. Coordination of Member State action

A different type of cooperation mechanism is the establishment of duties of coordination of Member State action. In this case, national decision-making procedures must take into consideration the acts and positions of the other Member States involved. When several Member States are implementing the same set of EU law obligations, this may lead to joint action. The objective of this coordination is to ensure coherence of action and effective implementation of EU law.

This is especially relevant in cases of management of shared resources. A good example of this is provided by the regime established in the Water Framework Directive (WFD)[48] to shared bodies of water.[49] The basic operational entity of water management is the river basin, which are natural entities independent of administrative and political borders. A river basin extending over the territory of more than one Member State should be integrated into an international river basin district (Article 3(3)

[47] See Article 6(4) of the Habitats Directive. This provision must be interpreted restrictively and does not exempt an environmental assessment from being carried out (see ECJ judgment in Case C-304/05 *Commission v Italy* of 20 September 2007, paras. 81-83).

[48] Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy, ELI: http://data.europa.eu/eli/dir/2000/60/2014-11-20.

[49] J.H. Jans & H.H.B. Vedder, European Environmental Law, cit. at 30, 346-367; N. Hervé-Fournereau, Beyond the 2019 Fitness Check of the Water Framework Directive: designing the future of European Water Law, in M. Peeters & M. Eliantonio (eds.), Research Handbook on EU Environmental Law, cit. at 24.

of the WFD) and there is a duty of transboundary cooperation for their management. A general obligation to coordinate all programmes of measures for the whole of the river basin district, namely through existing structures stemming from international agreements (Article 3(4)-(5) of the WFD), can be distinguished from a more specific obligation regarding management plans. In international river basin district, Member States must ensure coordination with the aim of producing a single international river basin management plan (Article 13(2)-(3) of the WFD).[50] For river basins extending beyond the boundaries of the Union, Member States should equally ensure the appropriate coordination with the relevant non-member States.

Similar coordination duties can be found, for instance, in Article 3(4) of the Groundwater Directive[51], in case of shared bodies of groundwater, or in Articles 5(2) and 8(2) and (3) of the Floods Directive[52], for the identification of identify of potential significant flood risks and the production of flood risk management plans in at the level of the international river basin district.

The need to decarbonize the economy can also lead to the establishment of joint projects between Member States with regard to the production of electricity, heating or cooling from renewable sources (Article 9(1) of the Renewable Energy Directive[53]), through cooperation agreements that must be notified to the Commission. A recent amendment of the Directive, in the context of the Fit for 55 package, introduced the duty that 'by 31 December 2030, Member States [should] endeavour to agree on establishing at least two joint projects' (Article 9(1a) of the Renewable Energy Directive[54]).

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[50] If that is not possible, they are under the obligation to produce river basin management plans covering at least those parts of the international river basin district falling within their territory to achieve the objectives of this Directive.

[51] Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration, ELI: http://data.europa.eu/eli/dir/2006/118/oj

[52] Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks, ELI: http://data.europa.eu/eli/dir/2007/60/oj.

[53] Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), ELI: http://data.europa.eu/eli/dir/2018/2001/2023-11-20

[54] Introduced by Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, ELI: http://data.europa.eu/eli/dir/2023/2413/oj.

The need for coordination may also lead to duties to respect decisions taken by other Member States. An example of this can be found in the EU implementation regime of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)[55], which include the so-called Basic Regulation[56], as well as several implementing regulations. Under this regime permits and certificates issued by the competent authorities of the Member States in accordance with the CITES Basic Regulation are valid throughout the EU (Article 11(1) of the CITES Basic Regulation) – meaning that they have transnational effect.[57] This regime establishes a mechanism of coordination to ensure consistency of application: the duty of Member States to recognize the rejection of applications by the competent authorities of the other Member States, where such rejection is based on the provisions of the CITES Basic Regulation, according to its Article 6(4). To ensure the effectiveness of this regime, when a Member State rejects an application for a permit or certificate 'in a case of significance in respect of the objectives' of the Regulation, it must immediately inform the Commission which is responsible for informing the other Member States (Article 6(1) and (2) of the CITES Basic Regulation). Only if the circumstances have significantly changed or where new evidence to support an application has become available may the Member States fail to respect the previous rejection. In this case, if the management authority issues a permit or certificate, it must inform the Commission and state the reasons for issuance (Article 6(4) of the CITES Basic Regulation). This means that, in this case, the national decisions rejecting a request also have transnational value.

There are also cases where the Commission is empowered to issue generic guidelines to ensure the coordination of Member States' administrations. An example of this can be found in the

[55] CITES has created a system of permits and certificates for the import and export of specimens of endangered species, with different types of protection. All EU Member States are party to CITES, although the EU as an organisation is not.

[56] Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, ELI: http://data.europa.eu/eli/reg/1997/338/2020-01-01.

[57] See A. M. Keessen, European administrative decisions how the EU regulates products on the internal market (2009), 58; L. De Lucia & M.C. Romano, Transnational administrative acts in EU environmental law, in M. Peeters & M. Eliantonio (eds.), Research Handbook on EU Environmental Law, cit. at 24, 105-106; J.H. Jans & H.H.B. Vedder, European Environmental Law, cit. at 30, 463-64.

Industrial Emissions Directive (IDE), concerning the adoption of best available techniques (BAT).[58] Firstly, the Commission is responsible for drawing up BAT reference documents (BREFs) - which are documents describing, inter alia, the techniques used to determine best available techniques and BAT conclusions (Article 3(11) and (12) of the IED) - involving the participation of Member States, industry, non-governmental organisations, and the public (Article 13 of the IED). The part of the BREFs laying down the so-called 'BAT conclusions' are the reference for setting the permit conditions by the national permitting authorities (Article 14(3) of the IED). [59] BAT conclusions are the reference to the competent authority of Member States to set emission limit values that ensure that, under normal operating conditions, emissions do not exceed the emission levels associated with the BAT established therein (Article 15(3) of the IED). Derogations from these BAT associated emission levels, as resulting from the BAT conclusions, are foreseen if they would lead to disproportionately high costs compared to the environmental benefits obtained. However, also in this case, the Commission may, if necessary, issue further guidance, establishing the criteria to be considered, based on information provided by Member States (Article 15(4) of the IED).

Duties of coordination can also be found in the area of enforcement of EU law. Recommendation (2001/331/EC) providing for minimum criteria for environmental inspections in the Member States (RMCEI)[60] contains non-binding criteria for the planning, carrying out, following up and reporting on environmental inspections.[61] It recommends the coordination between Member States of inspections with regard to installations and activities which might have significant transboundary impact (Recommendation III(3) of RMCEI).

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[58] J.H. Jans & H.H.B. Vedder, European Environmental Law, cit. at 30, 324-327; L.S. Braaksma & H. Tolsma, Integrated Pollution and Prevention: A critical legal perspective on all-inclusive integration, in M. Peeters & M. Eliantonio (eds.), Research Handbook on EU Environmental Law, cit. at 24, 318-319.

[59] They are adopted by the Commission as implementing decisions in accordance with the examination procedure.

[60] Recommendation (2001/331/EC) of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States, ELI: http://data.europa.eu/eli/reco/2001/331/oj

[61] M. Hedemann-Robinson, Environmental Inspection by public authorities, in M. Peeters & M. Eliantonio (eds.), Research Handbook on EU Environmental Law, cit. at 24, 202-205.

3.4. Composite decision-making procedures

Another possible mechanism of cooperation is the establishment of a decision-making procedure with stages at both the national and the Union level, requiring the active participation of both levels, where the final decision may be taken by either one of these administrations (or by both together) – a composite decision-making procedure.[62] It may involve the establishment of procedural links between the national administrations and the EU (vertical cooperation), between Member State administrations (horizontal cooperation), or both.

The creation of composite procedures is based on a logic of administrative cooperation between Member States and the EU or between the Member States.[63] It implies a joint enforcement of EU law through concerted action between the various administrations. In the case of vertical cooperation, the composite decision-making procedure is able to reconcile the guarantee of coherent application of EU law, which is better achieved through the EU level insofar as the same bodies enforce the rule in question throughout the EU, with the greater effectiveness afforded by the Member State level, which is closer to the citizens (which serves the principle of subsidiarity) and has more means of enforcement. Moreover, the existence of a national stage also enables national administrations to represent the national interests of the Member States in the procedure concerned.

An example of a composite procedure is the designation of Special Areas of Conservation, under the Habitats Directive, to be

[62] See T. von Danwitz, Europäisches Verwaltungsrecht (2008), 609; S. Cassese, European Administrative Proceedings, cit. at 29, 21-36; G. della Cananea, The European Union's mixed administrative proceedings, cit. at 29, 198; M. P. Chiti, Diritto amministrativo europeo (2018), 469 ss.; C. Franchini, European Principles Governing National Administrative Proceedings, 68 Law & Contemp. Probs. 191 (2004); E. Schmidt-Aßmann, Introduction: European Composite Administration and the Role of European Administrative Law, in O. Jansen & B. Schöndorf-Haubold (eds.), The European Composite Administration (2011); H. Hofmann, Composite Decision Making Procedures in EU Administrative Law, in H. Hofmann & A. Türk (eds.), Legal Challenges in EU Administrative Law: Towards an Integrated Administration (2009); M. Eliantonio, Judicial Review in an Integrated Administration, cit. at 29.

[63] L. de Lucia, Conflict and Cooperation within European Composite Administration (between Philia and Eris), 9 Rev. Eur. Admin. L. 43 (2014).

part of the Natura 2000 network of sites. [64] This composite procedure has three stages.[65]

In the first stage, each Member State must compose a national list of sites on the basis of the criteria set out in the annexes to the Habitats Directive. The list is to be transmitted to the Commission, together with information on each site.[66] As a second step, based on the national lists and in coordination with the Member States, the Commission adopts, through an implementing decision, lists of sites of Community importance under the comitology procedure.[67] If the Commission establishes a national list fails to contain a site which should be there, it initiates a bilateral dialogue with the Member State. In the absence of agreement, the inclusion of the site on the Community list of sites may be decided on by the Council by unanimity (Article 5 of the Habitats Directive).

Sites considered to be of Community importance are immediately covered by the protection regime of the Habitats Directive.[68]

Finally, in a third stage, the Member States must designate the sites of Community importance as special areas of conservation

[64] Natura 2000 is an ecological network of protected areas established by the EU to ensure biodiversity by conserving natural habitats and wild fauna and flora of Community interest throughout the territory of the Member States by providing a common framework applicable to them is a network of ecological protection areas in the territory of the EU. See J.H. Jans & H.H.B. Vedder, *European Environmental Law*, cit. at 30, 451-463; A. Cliquet, *EU nature conservation law: fit for purpose*, cit. at 46, 265-279.

[65] A. Cliquet, EU nature conservation law: fit for purpose, cit. at 46, 269-272; H. Schoukens & H. E. Woldendorp, Site selection and designation under the habitats and birds directives: a Sisyphean task?, in C.-H. Born, A. Cliquet, H. Schoukens, D. Misonne, and G. Van Hoorick (eds.), The habitats directive in its EU environmental law context : European nature's best hope? (2015), 31–55.

[66] According to the ECJ, Article 4(1) of the Habitats Directive must be interpreted as meaning that a Member State may not take account of economic, social and cultural requirements or regional and local characteristics, as referred to in Article 2(3) of that directive, when selecting and delimiting sites to be proposed to the Commission for identification as sites of Community importance. See the judgment of the Court of Justice in Case C-371/98, *First Corporate Shipping*, of 7 November 2000.

[67] See Article 4(2) para 3 and Article 21 of the Habitats Directive. To the extent that Article 21 of the Directive refers to Article 5 of the repealed Comitology II Decision, the examination procedure (Article 5 of the Comitology Regulation) should be understood to apply and the basic act provides that in the absence of an opinion the Commission may not adopt the draft implementing act (Article 5(4)(b), *ex vi* Article 13(1)(c) of the Comitology Regulation).

[68] See the Judgement of the Court of Justice in Case C-117/03, *Società Italiana Dragaggi*, of 13 January 2005, ECLI:EU:C:2005:16.

within a maximum period of six years (Article 4(4) of the Habitats Directive).

This composite procedure is rather complex because it involves a national first stage, a second supranational stage and a third, again national, stage. The Commission has a significant role to play and may exclude sites list of sites of Community importance which were on the national list or suggest the addition of sites not included. The last stage, at national level, is a purely implementing stage since there does not seem to be any scope for Member States to refuse to designate sites as special areas of conservation.[69] The various stages, both national and supranational, serve specific objectives and allow for the representation of national interests of Member States and the EU (through the Commission).

3.5. Exchange of information and duties of notification

Finally, the exchange of information between public administrations at the national and EU levels can also be considered a mechanism of cooperation.

The exchange of information between Member States or between Member States and EU institutions, bodies, and organisms may take the form of a particular step in the decision-making process, an independent duty to inform, or may be institutionalized as a network for information exchange, allowing for a more dynamic exchange.

One example can be found in Article 27 of the Ambient Air Quality Directive[70], which establishes that Member States must provide information on ambient air quality to the Commission. Another example can be found in Article 18(1-2) of the Drinking Water Directive[71], that establishes that each Member State must create and update several data sets containing relevant information on the implementation of the Directive, ensuring access to these

[69] See the judgment of the Court of Justice in Case C-441/17, *Commission v. Poland [Białowieska Florest]*, of 17 April 2018, ECLI:EU:C:2019:669, para. 207.

[70] Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe, ELI: http://data.europa.eu/eli/dir/2008/50/2015-09-18. See J.H. Jans & H.H.B. Vedder, *European Environmental Law*, cit. at 30, 374-376; K. Pedrosa & B. Vanheusden, *EU Air Pollution Law: Comprehensive But Insufficient*, in M. Peeters & M. Eliantonio (eds.), *Research Handbook on EU Environmental Law*, cit. at 24.

[71] Directive (EU) 2020/2184 of the European Parliament and of the Council of 16 December 2020 on the quality of water intended for human consumption (recast), ELI: http://data.europa.eu/eli/dir/2020/2184/oj. See J.H. Jans & H.H.B. Vedder, *European Environmental Law*, cit. at 30, 366-367.

data sets by the Commission, the EEA and the European Centre for Disease Prevention and Control. send to the Commission a report every three years on the quality of water intended for human consumption. To ensure that the effective collection, exchange and use of environmental data and information across Europe, the 'Shared Environmental Information System' (SEIS) was established. It is a collaborative initiative of the European Commission[72] together with the EEA and the 39 countries of the Eionet.

In climate law, Article 10(6) of the Emissions Trading Directive establishes the duty of all the relevant competent authorities of the Member States and ESMA to cooperate and exchange detailed information on all types of transactions on the market for emission allowances and derivatives thereof.[73]

The exchange of information duties may lead to the creation of databases. One example of this is the database established in Article 21(3-4) of the Seveso Directive that contains the reports of Member States of major accidents meeting which have occurred within their territory. It is the Major Accident Reporting System (eMARS) the purpose of which is to facilitate exchange of lessons learned from accidents and near misses involving dangerous substances in order to improve chemical accident prevention and mitigation of potential consequences. The eMARS contains the reports provided to the Major Accident Hazards Bureau (MAHB) of the Commission's Joint Research Centre (JRC) from EU, EEA, OECD, and UNECE countries (under the TEIA Convention).[74]

The exchange of best practices between the competent national or regional authorities or bodies can be facilitated by the Commission in several ways, including through annual meetings of the regulatory bodies, public databases with information on the implementation of measures by Member States, and cross-country

[72] SEIS was proposed, in February 2008, by the European Commission (EC) Communication 'Towards a Shared Environmental Information System (SEIS)' [COM(2008) 46 final] as a solution to Europe's environmental information challenge.

[73] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC, ELI: http://data.europa.eu/eli/dir/2003/87/2024-03-01.

[74] For non-EU OECD and UNECE countries, reporting accidents to the eMARS database is voluntary.

comparisons. One example of this can be found in Article 30(6) of the Energy Efficiency Directive.[75]

Sometimes the duty to provide information takes the form of duties of notification, in cases where Member States must inform EU institutions and bodies or other Member States of decisions or actions they have taken. Sometimes, this duty of notification is connected to areas where EU legislation recognizes a margin of free appreciation to the Member States, allowing them to depart from the intended general rule. An example can be found in Article 2(4) of the EIA Directive, which establishes the possibility of Member States, in exceptional cases, exempt a specific project from going through an EIA, where the application of those provisions would result in adversely affecting the purpose of the project, provided the objectives of this Directive are met.[76] In such a case, the Member State must inform the Commission, prior to granting consent, of the reasons justifying the exemption granted, and provide it with the information made available, where applicable, to their own nationals. The Commission immediately forwards the documents received to the other Member States and reports annually to the European Parliament and to the Council on the application of this exemption. The mere fact that a Member State must notify the Commission – and that notification is made public – is a deterrent to the abuse of the powers attributed to the Member States, for instance, to exempt EU legal obligations. The Commission can also check, more easily, if the exemption was lawful.

There are also duties of notification of neighbouring Member States and/or the Commission in case of any natural disasters, industrial accidents, or other emergencies that are likely to produce transboundary effects.[77]

For example, the Air Quality Directive establishes the duty to inform the competent authorities in the neighbouring Member States concerned in case of the information threshold or alert thresholds being exceeded in zones or agglomerations close to national borders (Art. 25(3) of the Air quality Directive).

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[75] Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast), ELI: http://data.europa.eu/eli/dir/2023/1791/oj.

[76] See the judgment of the Court of Justice in Case C-411/17, *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministers*, of 29 July 2019, ECLI:EU:C:2019:622, para. 95-102.

[77] Rio Declaration, supra note 7, at principle 18.

4. Conclusions

It is no surprise that, given the transnational scope of the environmental problems, cooperation plays a central role in EU environmental law. In this sense, the EU legal order, which is deeply dependent on the principle of sincere cooperation, in environmental policy, implements and complements the international environmental law obligations.

Several cooperation mechanisms emerge from EU environmental law. In some cases, these are general duties of cooperation, present in other areas of EU law, such as the exchanging of information. However, one can find some specificalities in environmental policy. These are related, on the one hand to the potential transboundary nature of potential environmental damages – in a logic of prevention, mitigation, and remediation of their effects. The principle of good neighbourliness impose that that Member States and their citizens can have access to important information and may be consulted in the national decision-making procedure relative to projects or plans of other Member States that may have nefarious effects on their environment. In this case, we have a participatory right in the national procedure of a different Member State, such as an affected citizen of that state would have a right to be heard if potentially affected. In cases where a national decision involving potential threats to the environment has a direct impact over the territory of another state, such as in the case of trade in waste, the law may establish the need to obtain prior informed consent of the other State, equivalent to a veto power, because of the principle of sovereignty. The response to transboundary environmental damages is also justification for some of the alert mechanisms found.

On the other hand, as nature knows no borders, EU environmental law needs to deal with questions of management of shared resources – a watercourse, a biodiversity relevant site, or the atmosphere, for instance. Specifically, it is the justification for the composite decision-making procedure for the designation of Natura 2000 sites or the establishment, by the Commission, in cooperation with the Member States, of the parameters for industrial emissions.

This leads to the conclusion that environmental policy is an area of deep cooperation – both vertical and horizontal – that may serve as a laboratory to experiment cooperation mechanisms to be exported to other policy areas.