


Chapter 3

Is EU Law Conducive to the SDG 15? Interests Reflected in the Legal Representation of the Sustainability Principle in the EU

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ABSTRACT

Is EU law conducive to successful implementation of SDG 15? This chapter assesses the effectiveness of the legal representation of sustainability in EU biodiversity law and the foundation it establishes for ensuring biodiversity protection. It identifies the policy anchors that foster the human self-entitlement and the various forms of interest involved in the legal representation of the principle of sustainable development, and which impede the effectiveness of EU law intended to protect biodiversity. Advocacy is made to review the accurate transposition of the Brundtland report into legal principles and to incorporate the newly acknowledged human right to a clean environment in EU law, as a footing to facilitate effective biodiversity protection.

INTRODUCTION

Sustainable Development Goal (SDG) 15 calls to “Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss,” (UN, n.d.). This chapter discusses the implementation of SDG 15 on biodiversity protection through EU environmental law. As part of this, it is assessed how the sustainability principle as carried forward by the SDGs, is transposed in EU environmental law.

The recent monitoring of the SDG implementation by the EU noted “continued and strong declines in biodiversity and species abundance, and continued land degradation,” (2022). The UN reports that

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“the risk of species extinction is increasing at a rate unprecedented in human history,” (2022). The Global Assessment Report on Biodiversity and Ecosystem Services attests that the “negative trends in biodiversity and ecosystem services are expected to hinder progress towards the Agenda 2030 and its SDG targets,” (EU, n.d). The following analysis seeks to identify the starting point of the barriers to effective biodiversity protection in the EU. It calls for a fundamental correction of the anthropocentric misinterpretation of the sustainability principle in EU environmental law. It is argued that the Rio Declaration on Environment and Development 1992 - the starting point of bundling global sustainability commitments into sets of goals, first the MDGs, which were succeeded by the SDGs - does not actually fully capture the spirit of its foundational source, the Brundtland Report, (UN, 1987). It is suggested to readjust the representation of the originally clearly divergent morale of sustainability, as multiple legal documents refer to the declaration and it shapes modern policy and law.

The questions raised rank around the effectiveness of the EU legal framework to protect biodiversity. EU statute law represents a series of interests and rights in the legal transposition of the sustainability principle. Based on it, environmental exploitation can take place in the name of development. As long as considerations of environmental protection will remain subordinated to economic interests with the support of law, it will not be effective in fulfilling its purpose. The references that legal documents make to the sustainability principle, which is captured in the first principle of the Rio Declaration on Environment and Development in 1992 and has become customary, epitomize the critical subject. Priorities must shift away from humans’ self-entitlement in the interest of humankind. The Chapter examines the exhibition of ‘interest’ in EU law, including interest that may override a legal provision. To support effective implementation of the SDG 15 and other important international commitments that aim at biodiversity protection, it is strongly suggested to review and revise the legal references to the sustainability principle and to the Rio Summit, and correct the anthropocentric interpretation that EU legislation has adopted in conjunction with the sustainability principle in general and with biodiversity protection specifically. The Chapter further advocates to timely accommodate the newly acknowledged human right to a clean and healthy environment in law. Effective biodiversity protection must be backed by effective law, and governance must reflect the uncompromised willingness to prioritise the safeguarding of biodiversity.

SUSTAINABLE DEVELOPMENT

The Rio Declaration was grounded in the landmark report of the Brundtland commission ‘Our Common Future’ (‘Brundtland Report’) from 1987, which was endorsed by the UN General Assembly in Resolution 42/187 (Figure 1). Through the Brundtland Report, the commonly applied definition of ‘sustainable development’ was born: ‘Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs,’ (UN, 1987). The Rio Declaration, which took up this definition is not legally binding, but handed over a significant foundation for EU environmental law.

Through its very first principle, however, the Rio Declaration has enshrined an anthropocentric approach to the apprehension of sustainable development in international environmental law. It reads: ‘Human beings are at the centre of concerns for sustainable development. They are entitled to a healthy and productive life in harmony with nature.’ While generally appearing positive, the statement sets an inhibition by entitling humans as the centre point of a balancing of interests. This is cause of concern for the success prospects of biodiversity protection. In the phraseology of the Rio Declaration, ‘neither

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