



Universidad
Carlos III de Madrid
www.uc3m.es



El Modelo Europea de Sostenibilidad: An open-ended process.

Maria Dolores Sánchez Galera



GOBIERNO
DE ESPAÑA

MINISTERIO
DE ECONOMÍA
Y COMPETITIVIDAD



GOBIERNO
DE ESPAÑA

MINISTERIO
DE EDUCACIÓN, CULTURA
Y DEPORTE



OVERVIEW

- **Introduction and conceptual approach**

I PARTE

- Legal evolution of European Environmental Law towards sustainability

II PARTE

- The Most Recent Developments of the European Strategy towards Sustainable Development
- The EU and the Sustainability Global Action
- **Conclusions**



Universidad
Carlos III de Madrid
www.uc3m.es





Universidad
Carlos III de Madrid
www.uc3m.es



**small
is
beautiful**

**a study of economics
as if people mattered**

EF Schumacher



THE MODERN WORLD (quoted from “Small is beautiful”

- THE MODERN WORLD

The Problem of Production

One of the most fateful errors of our age is the belief that 'the problem of production' has been solved. Not only is this belief firmly held by people remote from production and therefore professionally unacquainted with the facts - it is held by virtually all the experts, the captains of industry, the economic managers in the governments of the world, the academic and not-so-academic economists, not to mention the economic journalists. They may disagree on many things but they all agree that the problem of production has been solved; that mankind has at last come of age. For the rich countries, they say, the most important task now is 'education for leisure' and, for the poor countries, the 'transfer of technology',



Universidad
Carlos III de
www.uc3m.es



**FOREWORD BY
BAN KI-MOON**

**THE AGE OF
SUSTAINABLE
DEVELOPMENT**

JEFFREY D. SACHS



The long history of sustainability

Nachhaltigkeit (“sustainability”) was the guiding economic principle prior to the Industrial Revolution ensuring the indefinite availability of natural resources. See e.g. Hans Carl von Carlowitz, *Sylvicultura Oeconomica*, 1713; Ulrich Grober, *Sustainability: A cultural history*, 2012

-Sustainability is the antithesis of collapse/breakdown.
See e.g. *Limits of Growth*, Club of Rome Report, 1972

- Brundtland Commission set up in 1983 to find solutions based on the findings of the Club of Rome Report





Evolution of Environmental Law Policy

From 1958 up to 1972

1st EAP of the ECC July 1973



From Different national standards for particular products to Cross- border pollution

- No specific environmental competence.
- Case C-302/86 Commission v Denmark (*Dannish Bottles case*).
- An important motivation driving the EU's emerging environmental policy was the increasing international politisation of environmental problems: Environmental pollution did not stop at national borders.



Evolution of Environmental Law and Policy

1986 Single European Act – amending the EEC Treaty

- Environment Title VII, Articles 130r, 130s, 130t EEC
- Approximation of laws, Article 100a(3) (4)EEC
- High level of environmental protection

1992 Treaty on European Union – amending

The European Community Treaty

- Environment Title XVI, Arts. 174, 175, 176 EC
- Codecision – general rule



1997 Treaty of Amsterdam

- Article 2 EC Sustainable Development
- Article 3(1)(l) EC policy in sphere of environment
- New Article 6 EC [Now Article 11 TFEU]
'environmental protection requirements must be *integrated* into the definition and implementation of *other* Community policies and activities... , with a view to *promoting sustainable development*'
- Articles 174, 175 and 176EC



Basic principles of EU Environmental Law already enshrined by Article 174 (2) EC Treaty

- **high level of protection**
- **precautionary principle**
- **principle of preventive action**
- **principle of rectification at source**
- **polluter pays principle**



European Environmental Agency

- The European Environment Agency
- The EEA is an EU agency that operates at the interface of science and policy.
- With a network of more than 300 institutions in 39 European countries, the EEA provides timely, reliable and relevant information to support sustainable development.
- EEA work is targeted at EU institutions, EEA MMSS, civil society and general public.



BSE case - Case N. 180/96, United Kingdom vs. Commission

- 98. “At the time when the contested decision was adopted, there was great uncertainty as to the risks posed by live animals, bovine meat and derived products.”
- 99. Where there is uncertainty as to the existence or extent of risks to human health, the institutions may take protective measures without having to wait until the reality and seriousness of those risks become fully apparent.
- 100. That approach is borne out by Article 130r(1) of the EC Treaty, according to which Community policy on the environment is to pursue the objective *inter alia* of protecting human health. Article 130r(2) provides that that policy is to aim at a high level of protection and is to be based in particular on the principles that preventive action should be taken and that environmental protection requirements must be integrated into the definition and implementation of other Community policies.”



2007 Treaty of Lisbon consolidation of environmental primary law

- Now Environment Title XX
- Articles 191, 192 and 193 TFEU
- Objectives, principles and procedures



Art. 191(1) of the TFEU: Objectives

To preserve, protect and improve environmental quality,

2. To protect human health,

3. Prudent and rational utilisation of natural resources,

4. Promoting measures at international level to deal with regional or worldwide environmental problems, *and in particular climate change.*



Fundamental Right to Environment

- 2000 and 2007 **Charter of Fundamental Rights of the European Union - Article 37**
“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”.



The novelties of the Treaty of Lisbon

- Article 3 TEU Objectives
- New Article 4(2)(e) Shared competence
- New Article 13 TFEU Animal Welfare
- Animals - sentient beings – Treaty basis
- Article 191 – New - **Climate change**
- **New Title XXI Energy: Article 194 TFEU**



Art. 194 (2)

- (a) ensure the functioning of the energy market
- (b) ensure security of energy supply in the Union
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy
- (d) promote the interconnection of energy networks



- IS EU'S ENVIRONMENTAL POLICY AN EFFECTIVE ONE?



Seveso dioxin cloud

- On July 10, 1976, an explosion at a northern Italian chemical plant released a thick, white cloud of dioxin that quickly settled on the town of Seveso, north of Milan. "One farmer saw his cat keel over, and when he went to pick up the body, the tail fell off. When authorities dug the cat up for examination two days later, said the farmer, all that was left was its skull." It was four days before people began to feel ill effects — including "nausea, blurred vision and, especially among children, the disfiguring sores of a skin disease known as chloracne"



Universidad
Carlos III de Madrid
www.uc3m.es





Universidad
Carlos III de Madrid
www.uc3m.es





Universidad
Carlos III de Madrid
www.uc3m.es



Photo of the Urban Guide Plan of 1962 in Madrid by Agustín Ruiz



Big infringement case 16/10/2014

- The European Commission is taking further steps against Italy in an effort to reduce the environmental impact of the ILVA steel plant in Taranto (hereafter "ILVA"), Europe's largest iron and steel works.



Environmental Policy Legislative instruments

- **EU institutions have supranational legislative authority and can issue**
 - ***Directives***: binding upon each Member State as to the result to be achieved, but choice of form and methods left to national authorities
 - ***Regulations***: binding and directly applicable in all Member States
- **Primacy of EU law**
- **Main legislative instrument = Directive**



STRUCTURE OF EU ENVIRONMENTAL LAW

- ***Substantive* environmental standards applying to specific environmental media or sources of environmental interference (sectorial)**
- ***Procedural* environmental standards applying to conduct of environmental policy by public authorities and environmental rights of citizens (horizontal)**



SUBSTANTIVE EU LAW: *MAIN AREAS COVERED*

- **Water quality**
- **Air quality**
- **Noise control**
- **Industrial pollution control**
- **Waste prevention and management**
- **Management of chemicals /GMOs**
- **Nature conservation and biodiversity**
- **Renewable Energy Resources**
- **GHG Emissions (Agriculture, industry...)**
- **Transport**
- **Education**
- **Urban design and development**



PROCEDURAL ENVIRONMENTAL LAW

- **Integrated environmental permits (IPPC)**
- **Environmental impact assessment (EIA)**
- **Strategic environmental assessment (SEA)**
- **Environmental management and audit (EMAS)**
- **Freedom of access to environmental information**
- **Public participation in environmental decision-making**
- **Access to justice in environmental matters**



Article 1 of Aarhus Convention (approved by EC 2005)

- **»In order to contribute to the protection of the *right of every person of present and future generations to live in an environment adequate to his or her health and well-being*, each Party shall guarantee the *rights of access to information, public participation in decision-making, and access to justice* in environmental matters in accordance with the provisions of this Convention”**



II PART

MOST RECENT EU LAW DEVELOPMENTS ON SD



Universidad
Carlos III de Madrid
www.uc3m.es



1998 Cardiff process. - 2001 **first**
EU sustainable development strategy.



- **A sustainable Europe for a better world: A European Union strategy for sustainable development. Communication from the Commission to the Council and the European Parliament. COM (2001) 264 final.**

The link address is: http://europa.eu.int/eur-lex/en/com/cnc/2001/com2001_0264en01.pdf

Remarks: Long term strategy /Annex: Social Policy of the Lisbon Strategy 2000.

- 1: A set of cross-cutting proposals and recommendations to improve the effectiveness of policy and make sustainable development happen. This means making sure that different policies reinforce one another rather than pulling in opposite directions.
- 2: A set of headline objectives and specific measures at EU level to tackle the issues which pose the biggest challenges to sustainable development in Europe.
- 3: Steps to implement the strategy and review its progress.
- **Communication from the Commission to the Council and the European Parliament on the review of the Sustainable Development Strategy - A platform for action /* COM/2005/0658 final */**
- **26-27 June 2014 STRATEGIC AGENDA FOR THE UNION IN TIMES OF CHANGE- Priorities** which will guide the work of the European Union over the next five years: stronger economies with more jobs; societies enabled to empower and protect; a secure energy and climate future; a trusted area of fundamental freedoms; effective joint action in the world.
- **Next steps for a sustainable European future European action for sustainability {SWD(2016) 390 final}**



Lisbon Treaty: EU Constitutional framework under the paradigm of Sustainability

Art. 3 (3) TEU

Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth (...) and social progress, and a high level of protection and improvement of the quality of environment.

Art. 11 TFEU.

Environmental protection requirements must be integrated into the definition and implementation of the Union policies and activities, in particular **with a view** to promoting **sustainable development.**



EU : Global Governance

- **Art. 3 (5) TEU** In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.



Art. 21.2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order

21.2.(d) foster the sustainable economic, social and environmental development of developing countries, with the primary aim of eradicating poverty;



Universidad
Carlos III de Madrid
www.uc3m.es



Western Mediterranean: Action for a sustainable environment





Universidad
Carlos III de Madrid
www.uc3m.es



*European action for sustainability,
COM(2016) 739 final*



International Cooperation

Development has become prominent!!



The 2030 Agenda integrates in a balanced manner the three dimensions of sustainable development - economic, social and environmental - and reflects for the first time an international consensus that peace, security, justice for all, and social inclusion are not only to be pursued on their own but that they reinforce each other. See further, *European action for sustainability*, COM(2016) 739



European Climate Change Programme

The 2030 climate and energy framework sets three key targets for the year 2030:

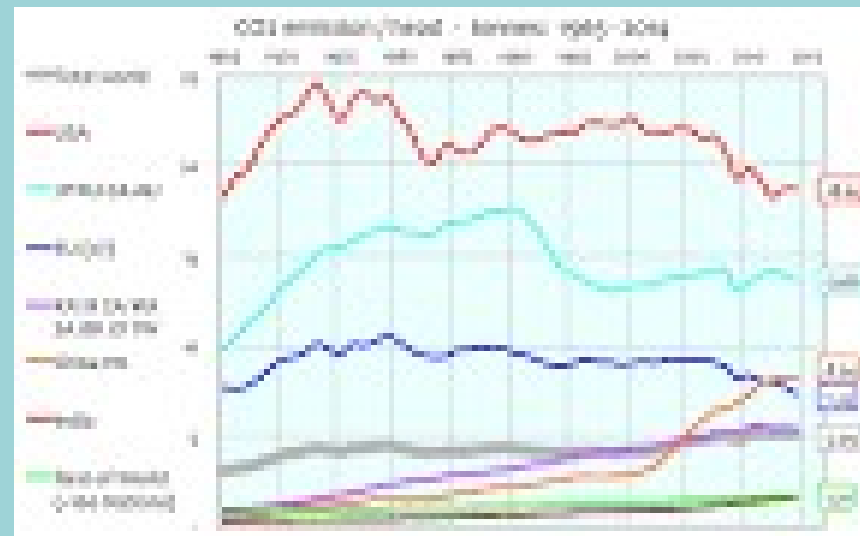
- At least 40% cuts in **greenhouse gas emissions** (from 1990 levels)
- At least 27% share for **renewable energy**
- At least 27% improvement in **energy efficiency**

The framework was adopted by EU leaders in October 2014. It builds on the [2020 climate and energy package](#).

In line with the longer term perspective set out in the [Roadmap for moving to a competitive low carbon economy in 2050](#), the [Energy Roadmap 2050](#) and the [Transport White Paper](#).

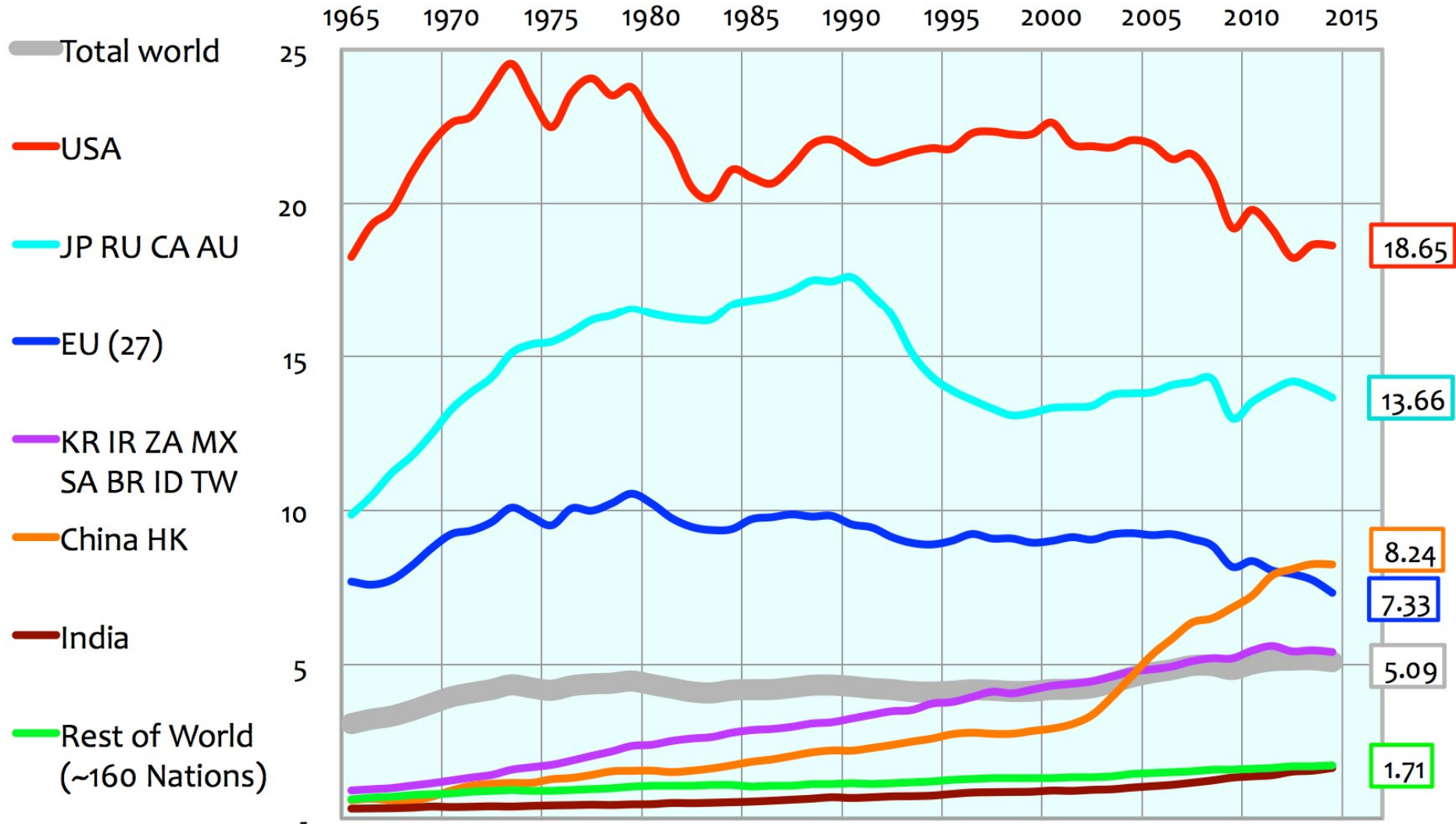


- UNFCCC
- Kyoto Protocol
- Paris Agreement
CoP21





CO2 emission / head - tonnes: 1965 - 2014





EU Energy and Environmental legal framework: *Perplexities*





Integrated Energy and Climate Action

- Currently implementing the 3rd Energy Package
- New Winter Package



2015 Framework Strategy for a Resilient Energy Union with a Forward Looking Climate Change Policy COM (2015) 80 final: *“The goal of a resilient Energy Union with an ambitious climate policy at its core is to give EU consumers households and business-secure, sustainable, competitive and affordable energy. Achieving this goal will require a transformation of Europe’s energy system”*.



Failing results in the EUCJ case law

C-573/12 Ålands Vindkraft v. AB Energimyndigheten EU:C:2014:2037.

The semi-autonomous Finnish archipelago Åland is located in the Baltic Sea, right in the middle between Finland and Sweden. In the 2000s, a Finnish company named Ålands Vindkraft AB set up a wind farm there named Oskar. The electricity from this installation was used on Åland, but also distributed to Sweden through its only mainland power link. Electricity from wind farms had not reached grid parity at the time, so more or less all wind farms built had to get public support to be economically beneficial for their investors.

Your first impression is that that sounds just fair, doesn't it – that electricity used should be supported without taking into account of the origin of the good. The Swedish Energy Authority (Energimyndigheten), did however not agree to this reasoning, and did not accept the application in 2009.



The EU Court upheld in its ruling that «The Swedish support scheme promoting green energy production in the national territory is compatible with EU law». In other words, Sweden could limit its support scheme to Swedish producers to ensure its effectiveness, although it presents a barrier to free electricity trade. This is also underlined by the ECJ when assessing the wording of Article 3(3) of the Directive. The Court further emphasized the importance of environmental protection as a justification for the potential hindrance of trade the national support measures may actually or potentially represent. The Court upheld that «as the EU law currently stands, such a territorial limitation may in itself be regarded as necessary in order to attain the legitimate objective pursued in the circumstances, which is to promote increased use of renewable energy sources in the production of electricity».

However, environmental protection is not listed in the Treaty under the overriding requirements justifying a barrier to the free movement of goods. This creates a very important legal question both on the methodology and reasoning of the Court. Thus, the Åland case elevates environmental protection to new heights within EU law practice. In other words, the Åland case may be viewed as a case where environmental protection is seen as predominant and where the ECJ create a more nuanced path towards the legitimate objective concerning the promotion of renewable energy in Europe. Thus, the EU shows that it is more than merely a protector of free movement of goods or competition and the Court's reasoning may be seen as a starting point for further legal development and political evolution of the EU when dealing with environmental protection.



CIRCULAR ECONOMY

2015 Circular economy package under Commission Juncker

Proposals for a Directive of the European Parliament and of the Council

- amending Directive 2008/98/EC on waste (Commission Directive (EU) 2015/1127 of 10 July 2015 amending Annex II to Directive 2008/98/EC of the European Parliament and of the Council on waste and repealing certain Directives (Text with EEA relevance))
- amending Directive 1999/31/EC on the landfill of waste
- amending Directive 94/62/EC on packaging and packaging waste
- amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment



Crossing the loop. An EU action Plan for the Circular Economy COM (2015)614 final

(visit link: <http://www.europarl.europa.eu/EPRS/EPRS-Briefing-573936-Circular-economy-package-FINAL.pdf>)



Waste hierarchy

- PREVENTION
- PREPARING FOR RE-USE
- RECYCLING
- (ENERGY)
- RECOVERY



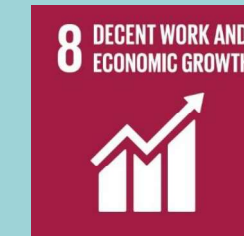
January 2018 New set of measures on the Circular Economy Action Plan

- **Novelties:**
- A Europe-wide EU Strategy for Plastics in the Circular economy
- By 2030 all plastic packaging should be recycled.



Sustainable Development Goals and 7EAP priorities

- Priority Objective 1: To protect, conserve and enhance the Union's natural capital (SDGs 6, 14, 15);
- Priority Objective 2: To turn the Union into a resource-efficient, green, and competitive low-carbon economy (SDGs 7, 8, 9, 11, 12, 13);
- Priority Objective 3: To safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing (SDGs 2, 3).





SUSTAINABILITY: One the Union's 'environmental acquis'

- One example where the EU's normative power in promoting sustainable development is particularly prominent is in its enlargement policy.
- It is the Commission's view that, in the long term, enlargement 'may in fact be the biggest single contribution to global sustainable development that the EU can make', allowing new members to leapfrog traditional stages of development and upgrade environmental protection, social development and economic growth by adopting some 300 legislative acts constituting the Union's 'environmental acquis'



WHAT CAN WE DO IN ORDER TO STRENGTHEN THE ECOLOGICAL HEART OF SUSTAINABILITY

- Oslo Manifesto “From Environmental Law to Ecological Law www.elga.world/oslo-manifesto/ Adopted by ca. 100 environmental law scholars at the 2016 IUCN Academy of Environmental Law Colloquium in Oslo
- Ecological Law and Governance Association (ELGA) www.elga.world To be launched in Siena/Italy, 11-13 October 2017



CONCLUSIONS

- **EU integration and cooperation at risk.** What Brexit means for the future of Europe.
- **EU Existing high protection standards** (*acquis communautaire*).
- **Key EU priorities are aiming at strenghting the social component of SD policy?:** (1) Jobs and growth, (2) Investment Agenda, (3) Climate and Energy, (4) Social Agenda and Industrial innovation, (5) Global efforts on S.D.
- We should think of the **common good** and forget about trade feeding corporations and industry interests!



Universidad
Carlos III de Madrid
www.uc3m.es



- THANK YOU!!!!!!!

