

Avosetta Meeting 2017  
Uniwersytet Jagielloński (Krakow)  
27 May 2017



# The Failures of EU Environmental Law

**Prof. Massimiliano Montini**

University of Siena (Italy)

E-mail: [massimiliano.montini@gmail.com](mailto:massimiliano.montini@gmail.com)

# The evolution of environmental law

Over the last forty years, (EU) environmental law has evolved through two main phases, corresponding to two opposing trends:



**regulatory** trend



**de-regulatory** trend

# The regulatory trend

- The regulatory trend has been characterised by an attempt to protect the environment through the adoption of legislation aimed at managing negative environmental externalities of economic activities.

Major criticalities of the regulatory trend:

- emergency response approach;
- lack of medium-long term vision;
- support of the mainstream economic model (infinite growth paradigm on a finite planet).

Example: EU ambient air quality legislation

Result: failure = 'environmental regulation paradox'

# The deregulatory trend

- The deregulatory trend has been characterised by an attempt to revise environmental legislation in order to streamline, simplify and reduce it.


Major criticalities of the deregulatory trend:

- decrease in the level of environmental protection;
- continued support of the mainstream economic model (infinite growth paradigm on a finite planet).

Example: EU ETS/climate change legislation

Result: failure = increased deterioration of the environment

# The failure of (de)regulation (I)



- The regulatory and deregulatory trends are characterised by the following failures:
  - Regulatory trend: failure for the environment and failure for business;
  - Deregulatory trend: failure for the environment and short-term gain for business.
- Both trends share a lack of long-term vision.

# The failure of (de)regulation (II)



- The double failure of the regulatory and deregulatory trends leads to the necessity to:
  - firstly, understand the causes of such a double failure and rethink environmental law;
  - secondly, promote a shift from a (de)regulatory regime aimed at managing negative environmental externalities to a new regulatory system, based on a new reference paradigm.

# The causes of the double failure



- Two main causes of the double failure have been detected:
  - The first cause refers to a lack of effectiveness;
  - The second cause consists in the fact that both regulation and deregulation have been based on the wrong reference object.

# The lack of effectiveness



- The lack of effectiveness may be assessed through a conceptual framework based on three reference meanings of the term effectiveness: legal effectiveness, behavioural effectiveness and problem-solving effectiveness (Bondansky / Young).
- The main reason for the double failure of environmental regulation and deregulation consist in their tendency to focus on legal and behavioural effectiveness only, coped with their inability to adopt a problem-solving approach.



# The wrong reference object



- The wrong reference object consists in the fact that environmental regulation and deregulation merely aim at the protection of the environment from the negative externalities caused by economic activities.
- This has contributed to support, validate and reinforce the neo-classical economic model, based on an unrestricted economic growth as a priority objective, without questioning its continued validity, despite the growing evidence of the progressive deterioration of Planet Earth.

# The change of perspective



- The new priority objective of protection should consist in the preservation of the health and integrity of the ecosystems.
- In this way, the implementation and enforcement of environmental law could be linked to the promotion of sustainable patterns of development.
- Environmental protection should be the bottom line for economic and social development, in harmony with nature.

# The way forward



- The way forward is to determine a tentative agenda for the reform of EU environmental law.
- This should consist in:
  - Adopting a new priority objective of protection;
  - Promoting a shift in the way environmental law is implemented and enforced;
  - Re-assessing and revising the existing corpus of environmental law - fit for ‘which’ purpose?