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THE CONCEPT OF SUSTAINABLE DEVELOPMENT IN THE EUROPEAN UNION POLICY AND LAW

Maria M. Kenig-Witkowska*

INTRODUCTION

The concept of sustainable development introduced in 1987 in the Report of World Commission for the Environment and Development (WCED) - so called Bruntland Report has become the turning-point in a global dimension in an approach to issues connected with the environment and socio-economic aspects of development processes.¹ The report of WCED was in principle the first, also in legal terms, proposal of an integrated approach to issues of social and economic development from the environmental perspective. The term sustainable development, as formulated in the Bruntland Report, stands for meeting the needs of present generations without jeopardizing the ability of future generations to meet their own needs.

The definition/term - sustainable development - contained in the WCDE report gives ground for identifying its four key elements: 1) the necessity of taking into account the needs of present and future generations; 2) the acceptance of limitations in satisfying, among others, the exploitation of natural resources; 3) recognition of inter-generation justice in the division of rights and duties; and 4) integrated approach to issues of environment and development.

Attempts to determine the legal status of the concept of sustainable development appeared mainly in the doctrine of international law almost immediately after the announcement of the WCED Report. This discussion continues until today. Other disciplines of law, as well as representatives of other disciplines also have taken it up, such as political scientists, geographers, sociologists, or economists. Summarizing the results of the discussions by lawyers, theorists and practitioners, one can say that for the part of the doctrine it is still a political category, while others believe that we are now faced already with the principle of international law, and even the formation of a new branch of law - international law of sustainable development.² As it seems, to put forward the thesis about the existence of the rule of law in this matter is not entirely legitimate. Although the concept of sustainable

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¹ World Commission on Environment and Development (WCED), Our Common Future, UN General Assembly, Doc. A/42/427, Sect.4.

² For the issue of international sustainable development law see for example chapter 1 and 2 in: S.A. Atapattu, *Emerging Principles of International Environmental Law*, Transnational Publishers 2006.

development is still at the stage of formation of legal arguments for the doctrine of sustainable development, one can already see outlining the policy elements in practice, in the form of a general legal standard of intergenerational and intra-generational equity and integrated approach to development and the environment. From this perspective, the dominant concepts of sustainable development are the requirements of the environment.

The concept of sustainable development finds very wide resonance not only in the legal field, and proved to be very politically sounded slogan, which means that the term sustainable development is overused and loses its social and legal sense. Also in the doctrine European law it is believed that the term "sustainable development" is commonly misused (it is written for example about sustainable transport, lasting tourism, sustainable consumption, etc.), which makes it a rather political clue than a legal concept. That fact was noted and commented, *inter alia*, by the European Commission in its Communication on policy review.³

There are a few authors who draw attention to the fact that the operational side of the concept of sustainable development has changed little since the publication of the WCSD Report and that we see today more and more difficulties in its application. They emphasize the need to redefine the concept of sustainable development and base it on the grounds of the European Union (EU) concept of an operational nature. In this context, one should mention an operational concept of S.R.W. van Hees, who starts with the conclusion that the definition of sustainable development included into Regulation 2493/2000/EC is more suitable than the Bruntland Report's definition, because it reflects at least one policy-guiding principle - integration policy. The goal of development should not only be achieved as a positive economic outcome, which guarantees that economic development runs in parallel to the possibility of present and future generations to satisfy their needs. The practice of addressing these critical for the concept of sustainable development questions as part of a decision-making process is a sustainability impact assessment, which would have to be applied to every important decision taken at the EU and Member-State level.⁴

I. SUSTAINABLE DEVELOPMENT AS THE EUROPEAN UNION GOAL

The EU concept of sustainable development in practice indicates its operational nature in the form of a goal to achieve, entered into the general

³ Communication from the Commission to the Council and the European Parliament, 2003, Environmental Policy Review. Consolidating the environmental pillar of sustainable development, COM 2003/745 final.

⁴ Comp. S.R.W. van Hees, Sustainable Development in the EU: Redefining and Operationalizing the Concept, <http://www.utrechtlawreview.org/> Volume 10, Issue 2(May) 2014.

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treaty goals of the European Union in relation to Europe and Earth (sustainable development of Europe and sustainable development of the Earth), among many other goals of an economic nature, for example sustainable economic growth, social nature, full employment and social progress, a high level of protection and improvement of the environment, and political goals such as to promote peace and welfare of the peoples - Art. 3, Treaty on European Union, (later - TEU). The term sustainable growth used earlier in the Maastricht Treaty was criticized as a departure from the more useful formula for sustainable development, well known from the Report of the World Commission on Environment and Development and from the Rio Declaration of 1992. The Treaty establishing the European Community in the version of Amsterdam Treaty has used the expression “balanced and sustainable” and put it into the category of EU goals to be achieved according to provisions of Art. 3. The Nice Treaty repeated the above wording. It was only the Lisbon Treaty that made changes introducing the notion of sustainable development of Europe and sustainable development of Earth as goals of the EU. The term sustainable development has been also introduced into the preamble and Art. 37 of the EU Charter of Fundamental Rights, which states that a high level of protection and improvement of the quality of the environment must be integrated into the Unions’ policies and ensured in accordance with the principle of sustainable development.

Legal standards of the provisions of Article 3 on sustainable development of Europe point on promotion of the European integration processes somehow limited to the Union’s level, what seems to be proved by the particular concept of Union’s values listed in Art. 2 of the EU Treaty and well-being of its citizen and *mutatis mutandis* political ideology of Union’s integration based on balanced economic growth, social market economy and a high level of protection and improvement of the environment, further described in more detail in Article 3(3). However, this union-centric point of reference to sustainable development of Europe should not be considered as an exclusion for broader perspective, since all components of the sustainable development concept are interconnected and have global consequences. The next level of sustainable development promoted by European Union is the sustainable development of Earth (Art. 3(5)). This provision has to be perceived from the perspective of EU external relations and confirm Union’s commitments in these matters listed in Title V of provisions of the EU Treaty, and in Article 21 (f) in particular which stipulates that the Union helps in developing international measures to preserve and improve the quality of the environment and the sustainable management of the global natural resources, in order to ensure sustainable development. The EU also fosters the sustainable economic, social and environmental development of developing countries, with the primary aim of poverty eradication (Art. 21(d)) towards the

UN Millennium Declaration.⁵

Sustainable development, laid down in the EU Treaties as a legally binding objective of the European Union is an objective that the Union should pursue. Although the Union's treaties do not provide a definition of the concept, it can be deduced from the Art. 3 provisions that sustainable development relates closely to the integration clause embodied in Art. 11 of the Treaty on Functioning of the European Union (later- TFEU), as a concept bringing together the EU different policy and activities areas. Article 11 of the TFEU says that 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. The importance of the policy integration is further enhanced by the general integration principle of Article 7, which imposes an important legal obligation on the EU's institutions, stating that the Union shall ensure consistency between its policies and activities, taking all its objectives into account and in accordance with the principle of conferral powers. Secondary legislation, such as Directive 2009/147 on the conservation of wild birds,⁶ Directive 92/43 on the conservation of natural habitats and of wild fauna and flora,⁷ Directive 2009/125 establishing a framework for the setting of ecodesign requirements for energy-related products,⁸ Directive 2008/56 establishing a framework for community action on marine water quality in the field of marine environmental policy,⁹ Directive 2009/28 on the promotion of the use of energy from renewable sources,¹⁰ Regulation on measures to promote the full integration of the environmental dimension in the development process of developing countries 2493/2000/EC,¹¹ use similar terminology as one of their goals.

Sustainable development as one the EU goals has not been defined in any of the EU treaties and one can say that it still remains unclear. The standards of its implementation would be perhaps more clear if the formulation of the objective of sustainable development contained in the treaties was in some manner connected with the principle of integrity expressed in Art. 11 of TFEU.

Assuming the unity and complementarity of the Union goals contained

⁵ See the EU commitments towards the Millennium Declaration:

www.un.org/millennium/declaration/areas

⁶ 2010 OJ L 20/7.

⁷ 1992 OJ L 206/7.

⁸ 2009 OJ L 285/10.

⁹ 2008 OJ 164/19.

¹⁰ 2009 OJ L 140/16.

¹¹ 2000 OJ L 288/1.

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in the Treaty on European Union as well as the Treaty on functioning of the European Union, the thesis perhaps should be set that the general goals stemming out from treaties are of the legally binding character in relation to all institutions functioning within the EU. They do not have, however, the legally binding character in relation to EU Member States, although some elements of such obligation could be derived from provisions of item 3 TUE, which stipulates that Member States of the EU do facilitate the Union in the accomplishment of its goals, and do not take any measures that could jeopardize that process. Those obligations are clearly visible from the perspective of sectoral goals that are accomplished at national level by means of the implementation of the provisions of the EU derivative law into national laws.

The legally binding character of regulations concerning goals and tasks is generally such that they may be helpful in interpretation and application of the EU law, and as well as in developing the basis of the control criteria for the legality of the EU institutions acts. The thesis on legally binding character of the EU goals is supported by the jurisprudence of the Tribunal of Justice of the EU, which indicates that regulations related to goals and tasks of the EU are not only of the character of general programmatic assumptions but they are legally binding.¹² The legally binding character of goals contained in the Treaties is also confirmed by the functioning in the EU law concept of the complimentary competencies (Art. 352 TFEU). While sharing this opinion one should however have in mind certain limitations linked with that point of view because, generally speaking, the EU Treaties' provisions related to goals do not contain provisions directly addressing the competency issues.

The environmental requirements of the concept of sustainable development shall be specified similarly as in the case of integration clause in regulations concerning the EU policy on environment (Art. 11 TFEU). Article 3 of the TEU lists *explicite* the goal of high level of the protection and improvement of the quality of natural environment. In the context of goals stipulated by TEU which refer to problems of environment one can find the general goal i.e. the activities for the sustainable development of Europe and Earth, and whose concept of sustainable development is connected with the necessity of taking into account of the environmental requirements in the process of social and economic development.

From an operational perspective, it needs to be taken that this goal has been in some sense specified in Art. 191 TFEU, which stipulates that the EU policy in the field of environment contributes to the accomplishment of such goals as: preservation, protection and improvement of the quality of environment, protection of human health, cautious and rational exploitation of

¹² On that issue see: M.M. Kenig-Witkowska, *Prawo środowiska Unii Europejskiej. Zagadnienia systemowe, Environmental law of the European Union. A systemic approach*, Chapter II, Wolters Kluwer 2011.

natural resources, promotion – at international level – of measures aiming at resolving regional or global problems of natural environment, combating of climate change in particular, and high level of the protection of environment keeping in mind the diversity of situation on various EU regions.

From the analysis of TEU and TFEU provisions no hierarchical dependency between the goals of the European Union can be derived. Here the question comes up if and in what sequence various goals related to policy in the field of environment and the field of environment and other policies should be accomplished? In other words, is there any hierarchy of goals related to environment, and whether the other treaty goals stand in any other relationship hierarchy towards the goals related to environment? There are many examples of conflicts of law caused by the activities linked for instance to the functioning of internal market and environmental requirements stemming from the EU treaties. It comes from the principles of the EU law that in such circumstances the EU institutions have to make efforts to reach the compromise for the EU activities and should aim at the achievement of various goals, including goals related to environment listed in TEU and TFEU. Generally speaking, there are no treaty grounds for the development of any goal hierarchy. The principle of subsidiarity and proportionality is the only operational element that may have influence on the hierarchy of the EU goals.

II. THE NOTION OF SUSTAINABLE DEVELOPMENT IN THE EUROPEAN UNION POLICY DOCUMENTS – AN OVERVIEW

One needs to agree with views that the goal of sustainable development is difficult to define in an operational way and that the closest to such definition of sustainable development is still the formula contained in the Bruntland Report that defines it as the development that fulfills the needs of present generations without jeopardizing the abilities of future generations to satisfy their needs. Generally, the point is that it concerns an integrated approach to issues of environment and socio-economic development. In other words, it means such policy of socio-economic development that takes into account the importance of environmental requirements, and economic development that does not take into account the problems of environment will not fulfill the criteria proper for the concept of sustainable development.¹³

In secondary EU law, the term “sustainable development” was defined only once, but that definition does not contribute much to its operational meaning.¹⁴ The EU institutions still search for such a definition, trying to

¹³ M.M. Kenig-Witkowska, *Koncepcja sustainable development w prawie międzynarodowym* (The concept of sustainable development in international law), *Państwo i Prawo* 1998, No 8,; Birnie, A. Boyle, *International Law and the Environment*, Oxford 2002, s. 45.

¹⁴ Comp. Regulation (EC) 3062/95 on tropical forest, 1995 OJ L 327/9, art. 2; Regulation (EC) 2493/2000 on measures to promote the full integration of the environmental dimension in the development process of developing countries, OJ 2000, L 288/1.

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define reciprocal relations between development, social issues and environmental requirements.

In 2002, Eurostat published a study that listed 63 economic, social, environmental and institutional indicators related with the concept of sustainable development. “Environmental” indicators refer to the use of energy and natural resources, water, soil, the needs of transport and agriculture, and the protection of biological diversity.¹⁵ According to some representatives of the doctrine of European environmental law, some conclusions of that study do not contribute much to the definition of relationship between the three components of the concept of sustainable development, particularly looking at it from the normative perspective.¹⁶

Also the Fifth Program of Action devoted to the development of legal standards for the concept of sustainable development does not contribute much to that either.¹⁷ This Program delineates strategic goals, principles and general framework for the accomplishment of the goal of sustainable development and for implementation, by the EU and its Members, of the Rio Declaration and recommendations of Agenda 21. In the light of the provisions of the Fifth Program of Action, sustainable development is to be a reflection of policy and strategy of sustainable social and economic development without any harm to natural environment and resources which affects the development and activities of man.

In one of the report reviewing policies in the field of environment, the Commission clearly indicates problems linked with the accomplishment of the goal of sustainable development caused, for example, by the fact that institutions responsible for decisions at the EU level, as well as the institutions of Member States are not capable of properly balancing social, economic and environmental factors in the process of making such decisions. Meanwhile, according to the Communication from the Commission, the rightness of such decisions depends on the recognition of environmental requirements as key components of the EU and its Members States policy on socio-economic development.¹⁸

The standpoint of the Commission expressed in its Communication does not solely point out the necessity of the proper balancing of those above-mentioned three elements of the concept of sustainable development, but also

¹⁵ Eurostat: Environment and Energy, Topic 8, 2/2002.

¹⁶ Comp. L. Krämer, *EU Environmental Law*, Sweet & Maxwell, 2011, Chapter 1.

¹⁷ Fifth Environmental Action Programme: Towards Sustainability. A European Community programme of policy and action in relation to the environment and sustainable development, OJ 1993, C 138/1.

¹⁸ Communication from the Commission to the Council and the European Parliament, 2003, Environmental Policy Review. Consolidating the environmental pillar of sustainable development, COM 2003/745 final.

for the consequence of not using that balancing. It underlines the environment as key element that affects costs in the case when such non-balancing does not take place, for example, when it comes to expenses connected with the cure of diseases caused by the degradation of environment, or economical losses caused by the necessity of taking actions in order to dispose the contamination or elimination of other harms to the environment. The Communication also clearly indicates that such an approach to the concept of sustainable development causes real threat to the quality of life of the EU citizens. In its conclusion, the Commission's Communication lists elements needed for the implementation of the concept of sustainable development and groups them in three categories, namely: 1) implementation of the environmental law 2) integration of all EU policies with the environmental protection requirements 3) "environmental dimension" of the development goal, and 4) international dimension of the development goal.

The Communication from the Commission directly relates to the indicators developed by Eurostat for the purpose of the accomplishment of sustainable development and makes an effort to formulate it as a dynamic system of mutual relations. At the EU level, the Communication recognizes the integration principle (Art. 11 TFEU) and market instruments as key elements of the protection of environment.

Sustainable development seems to be a key concept for all European Union policies. To achieve sustainable development of Europe and globally, the European Union and its Member States are committed to pursue specific objectives defined in an operational manner in Council Conclusion.¹⁹ The specific objectives listed in these conclusions are as follow: 1) environmental protection; 2) social equity and cohesion; 3) economic prosperity; and 4) meeting international responsibilities.

Environmental protection as a notion is well known from the primary and secondary legislation whose provisions generally point on safeguarding the Earth's capacity to support life in all its diversity, respecting the limits of the planet's natural resources and ensuring a high level of protection and improvement of the environment, preventing and reducing environmental pollution and breaking the links between economic growth and environmental degradation. Also social equity and cohesion as a specific operational objective is quite well elaborated in the EU secondary law promoting a democratic, inclusive, cohesive, healthy and safe society with respect for fundamental rights and cultural diversity without any form of discrimination. Economic prosperity as a specific objective directly refers to Art. 3 of TEU. It is closely linked with policy instruments that promote an innovative, knowledge-rich, competitive and eco-efficient economy, and helps achieving the sustainable development goal. Meeting international responsibilities means

¹⁹ Council of the European Union, Presidency Conclusion, Doc.10255/05, Brussels, European Council, 16 and 17 June 2005.

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to ensure that the European Union's internal and external policies are consistent with global sustainable development goals.

III. EU GUIDING POLICY PRINCIPLES FOR SUSTAINABLE DEVELOPMENT

In 2005, the Council of the European Union adopted also Declaration on Guiding Principles for Sustainable Development to be followed in achieving the sustainable development goal of the EU.²⁰ According to this document, the EU is committed to pursue and respect the following policy principles in relevance to sustainable development as a goal to be attained: 1) promotion and protection of fundamental rights; 2) intra- and intergenerational equity; 3) open and democratic society; 4) involvement of citizens; 5) involvement of businesses and social partners; 6) policy coherence and governance; 7) policy integration; 8) use best available knowledge; 9) precautionary principle; 10) polluter pays principle.

Promotion and protection of fundamental rights is an important element of sustainable development. Art. 37 of the Charter on Fundamental Rights refers to sustainable development that is in line with the objectives and values listed in Art. 2 and 3 of the EU Treaty, which emphasize the importance of human rights protection inside and outside the EU. The EU is founded on values of respecting human rights, including the rights of minorities. These values are common to the Member States in a society where pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. It is an unquestionable achievement of the EU that all Union's institutions and the Member States are equally bound by the Charter therefore placing human beings at the centre of the European Union's policies, by promoting fundamental rights, by combating all forms of discrimination and contributing to the reduction of poverty worldwide.

Intra and intergenerational equity principle addresses the needs of current generations without compromising the ability of future generations to meet their needs in the EU and elsewhere that means solidarity within and between generations. This is an ultimate goal of sustainable development and not a principle, as suggested by the Sustainable Development Strategies (later - SDS).

The principle on involvement of citizens and on open and democratic society are to be analyzed together. They are about the citizens' rights of access to information and ensured access to justice. This is illustrated by the provision of Art. 10(3) TEU, which states that every citizen has the right to participate in the democratic life of the EU. All decisions shall be taken as openly and as closely as possible. A good example of that is the EU secondary

²⁰ Council of the European Union, Presidency Conclusion, Doc. 10255/05, Brussels, European Council, 16 and 17 June 2005, Declaration on Guiding Principles for Sustainable Development.

legislation on implementing the Aarhus Convention. Open and democratic society principle is about the involvement of citizens in decision-making processes and developing adequate consultation and participatory channels for all interested parties and associations. It is also about enhancing the participation of citizens in decision-making processes, which is particularly important in cases where administrative decisions are facing criticism from citizens, despite the fact that those decisions contribute to achieving the sustainable development goals.

Generally, the principle on involvement of businesses and social partners is about enhancement of the social dialogue, corporate social responsibility and private-public partnerships to foster cooperation and common responsibilities to achieve sustainable production and consumption. European Union considers businesses as very important partners helping in achieving the EU's sustainable development goal. The EU recognizes self-regulation and co-regulation as well as voluntary commitments as important contributions to the sustainable development goals.²¹ This is also about education and public awareness of sustainable development and about business' and social partners' impact on the environment and their options for making more sustainable choices.

Policy integration and policy coherence principles are about promoting coherence between all European Union policies and coherence between local, regional, national and global actions in order to increase their contribution to sustainable development. This is about integration of environmental protection requirements into the definition of the Union policies and activities, in particular with a view to promoting sustainable development (Art. 11 of TFEU). This principle is also about integration of economic, social and environmental considerations so that they are coherent and mutually reinforce each other by making full use of instruments for better regulation, such as balanced impact assessment and stakeholder consultations. The policy of integration requires that the EU takes under consideration all sustainability related policy objectives in the decisions they make.

The EU committed itself to developing policies based on the best available knowledge. Principle of using best available knowledge is to ensure that policies are developed, assessed and implemented based on the best available knowledge, and that they are cost-effective and economically sound. The wording of this principle can be easily compared with a similar principle that one can see in many EU environmental directives.²²

The precautionary principle is about taking a precautionary approach where there is objective scientific uncertainty in order to avoid potential

²¹ Comp. Communication from the Commission, COM (2011) 681 final, pp. 1-15.

²² For example Directive 2010/75/EU on industrial emissions (integrated pollution, prevention and control) 2010 OJ L 334/17.

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damage to people's health or to the environment and take preventive action. According to the Court of Justice of the EU, the precautionary principle justifies the adoption of restrictive measures when it is impossible to determine with certainty the existence or extent of the alleged risk, and when the likelihood of real harm to public health persists, should the risk materialize.²³ The Court held that the precautionary principle is a general principle of Community Law. According to the Court, the principle should be applied also outside the specific field of environmental policy.

Polluter-pays principle (PPP) seeks to ensure that prices reflect the real costs to society of production and consumption activities and that polluters pay for the damage they cause to human health and the environment. In the EU, it has been argued that PPP should encompass not only the prevention and control costs but also the costs of damage recovery. This idea has been reflected in the so-called Environmental Liability Directive of 2004.²⁴

While commenting this catalogue of policy principles one should remember that they are considered by the Council only as the policy guidelines. However, some of those principles are well known from the EU treaties provisions, some from other legal and policy documents. Therefore their legal values are different, as their saturation with the normativity is different. Promotion and protection of human rights, intra and intergenerational equity, public participation, integration principle, PPP, precautionary principle, all of them are well known not only in the EU but also in international law, although not all of them enjoy the legally binding status.²⁵

All those principles are to be used in legal acts of the EU following the EU strategies on sustainable development. Importance of those policy-making documents consists of the fact that they constitute legal basis for the EU legally binding acts. The EU strategies on sustainable development are looking at sustainable development from both the civilization and ecological perspective. In the legal system of the EU, those strategies serve first as a base for the development of conditions for such stimulation of the development processes that they would to a minimum extent endanger the environment. The implementation of these postulates must not, at the same time, reduce the pace of economic growth or widen the poverty margin that, in turn, would create unwanted social and economic tensions. The guiding principles correspond to the underlying values of the EU model of democratic society and are to help integrate the internal and external dimensions of sustainability.

²³ See: Case C-77/09.

²⁴ Directive 2004/35, on environmental liability with regard to the prevention and repairing of environmental damage, 2004 OJ L 143/56.

²⁵ Comp. on that subject, M.M. Kenig-Witkowska, *Reviewing Principles of International Environmental Law*, *Studia Iuridica* 2012, Nr 54, pp. 91-109.

IV. A SHORT OVERVIEW OF THE EU SUSTAINABLE DEVELOPMENT STRATEGIES

European Union launched its first EU sustainable development strategy based on the proposal from the European Commission at the Gothenburg Summit in 2001.²⁶ The strategy proposed objectives and policy measures to tackle a number key unsustainable trends and called for a new approach to policy-making that ensures the EU's economic, social, and environmental policies mutually reinforce each other.

The first strategy formed the core of the EU's policies towards sustainable development setting objectives and defining actions for seven key challenges for the period until 2010: 1) climate change and clean energy; 2) sustainable transport; 3) sustainable consumption and production; 4) conservation and management of natural resources; 5) public health; 6) social inclusion, demography and migration; 7) global poverty and sustainable development challenges. In addition, a more integrated approach to policy-making was proposed, to improve synergies and reduce trade-offs. The external dimension of sustainable development like global resource use, international development concerns, etc., was also introduced into EU internal policy making.

The EU Sustainable Development Strategy was prepared for the whole Union, therefore its mechanisms were established for improving the coordination with other levels of governments and call upon business, NGO's, and citizens to become more involved in working for sustainable development. An example of this was the launch of process for voluntary peer reviews of national sustainable development strategies, aimed at improving the sharing of good practices.

According to EU official data, despite the achievements in implementing the Strategy, unsustainable trends persist. This required a new sustainable development strategy. In December 2005, the Commission presented a proposal for a review strategy and platform for further action. The result was a renewed strategy for an enlarged EU in 2006.²⁷ The renewed Sustainable Development Strategy refers to priority challenges pointed out in the first Strategy. It recognises the need to gradually change our current unsustainable consumption and production patterns and move towards a better-integrated approach to policy-making. It reaffirmed the need for global solidarity and recognised the importance of strengthening the EU work with partners outside the EU.

²⁶ Commission Communication, A sustainable Europe for better world: A European strategy for Sustainable Development, COM 2001, 264 final.

²⁷ Review of the EU Sustainable Development Strategy – Renewed Strategy, Council of the European Union, Brussels, 9 June 2006, Doc. 10117/06.

In July 2009, the Commission adopted the Review of EU Sustainable Development Strategy underlining that the European Union has mainstreamed sustainable development into a broad range of its policies.²⁸ In particular, the EU has taken the lead in the fight against climate change and the promotion of low-carbon economy. The European Council in December 2009 confirmed that sustainable development remains a fundamental goal of the EU under the Lisbon Treaty and that the strategy will continue to provide a long-term vision and constitute the overarching policy framework for Union's policies and strategies. It pointed on the fact that a number of unsustainable trends require urgent action, such as actions to prevent the climate change, to decrease high-energy consumption in the transport sector and reverse the current loss of biodiversity and natural resources.

The 2020 Strategy on sustainable development, adopted in 2010,²⁹ contributes to moving Europe out of crisis and laying the foundations for a more sustainable future, built on sustainable and inclusive growth. Key areas for mainstreaming are for example, the European Fund for Strategic Investment, through the energy union and climate policy, but in particular the work on the circular economy. Such a horizontal approach is in line with the Treaty integration principle set out in Art. 11 TFEU and has so far proven its worth. For instance, external audits have concluded that the Commission's impact assessment system works effectively and that sustainability issues are appropriately addressed within it.

V. THE CONCEPT OF SUSTAINABLE DEVELOPMENT IN THE EU MEMBER-STATES - AN EXAMPLE OF POLAND

Poland appears to be a good example illustrating uncertainty as far as the notion and content of sustainable development is concerned. Even up to the present day, there is still no uniformity in this respect. In academic papers in particular, one finds a certain kind of semantic chaos where various expressions are used in order to translate the English term "sustainable development," such as for example, durable development, continuous development, eco-development, etc. Although there are good arguments for nearly all these commonly used expressions, the Constitution of the Polish Republic from 1997 incorporates the term whose reverse translation into English means the equivalent of "balanced development." Once such a term has been incorporated into the Constitution and become a legal term, there is no ground to dispute it in official documents, despite the fact, that for many lawyers as well as for politicians this term does not properly depict the essence

²⁸ 2009 Review of the EU Sustainable Development Strategy, COM (2009) 400.

²⁹ For details see: Europe 2020: Europe's growth strategy, European Commission, November 2014, NAO414862 ENC_002. Pdf.

of the concept of sustainable development. The official translation of the European Union Treaty may be considered as proof since it well differentiates between sustainable and balanced development.

The semantic content of the term “sustainable development” seems to be relatively clear. The majority of lawyers use the notion of the term “sustainable development” according to the 1987 Report of the World Commission for Environment and Development (WCED) and further developed in the documents of the Rio Earth Summit. For Polish legal reasoning, linking within one legal concept such elements as the economy, social issues and the environment appears to be a relatively complicated approach, and it results in the prevailing of the traditional understanding of that complex process, for example thinking of the environment exclusively in the categories of protection of nature, while the environment should be perceived from the perspective of the socio-economic processes and, on the other hand, the development should be perceived from the environmental requirements point of view, also because of the requirements stemming from the principle of intra and inter-generation equity.

In Polish theory and practice, there are at least two ways to perceive sustainable development: ecological and civilization. In the ecological aspect (eco-development), sustainable development is perceived as the process of limitation of the impact on environment and its improvement by means of the “ecologisation” of economic processes and implementation of the integrated systems of the protection of environment. In the civilization aspect, sustainable development is understood as the process of searching for, and implementation of, the new forms of economic development, new technologies, new sources of energy, new means of social communication, and also new forms of non-economical activities of the society. In addition, although, in general, both perspectives of the perception of sustainable development are expected to result in the achievement of the same goal, the roads that lead to that goal are perceived differently. Unfortunately, it seems that, after all, both approaches inadequately integrate the environmental, social and development concerns.

For example, the first National Environmental Policy of Poland of 1991 defined sustainable development from the environmental perspective, placing this concept among the main foundations of the national environmental policy.³⁰ In so-called “New Ecological Policy of State,” some principles useful in describing the operational part of the concept of sustainable development, as a guidance for the state ecological policy, are listed: 1) the principle of equal access to the environment; 2) regionalization of the state ecological policy; 3) socialization of the state ecological policy; 4)

³⁰ See: *Monitor Polski*, 1991, nr 18, item 18. For the English text see the website: <http://www.mos.gov.pl>

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the polluter pays; 5) anticipation; 6) prevention; 7) elimination of pollution, nuisance and dangers at the source; 8) integrated approach to the protection of environment; 9) principle of the protection of environment at the highest level; 10) principle of subsidiarity and proportionality; 11) ecological and economical effectiveness.³¹ As one can see, the understanding of the constitutional principle of sustainable development, clearly points on its eco-development scope.

That document has become the base for the adoption by the Government, in August 2000, of its final, slightly modified version, called "The Second Ecological Policy of State." The following principles have been listed as a guidance for implementing this strategy: 1) precautionary principle; 2) high level of environmental protection; 3) equal access to the natural environment; 4) regionalization of the State ecological policy; 5) polluter pays; 6) prevention; 7) applying the best available technique; 8) subsidiarity; 9) security clause; 10) environmental effectiveness and economic efficiency. Although this document is much less in terms of environmental character in comparison to the "New Ecological Policy of State," it still maintains a lot of that character.³²

The document "The Strategy for Sustainable Development in Poland until the year 2025" is an example of perceiving sustainable development mainly from the civilization perspective.³³ It recognized that Poland owing to its achievements, stepped into the club of countries, which are to participate in the global process of sustainable development. That is why in the above Strategy only some principles of the Rio Declaration (1, 2, 3, 4, 5, 7, 8, 10, 11, 13, 16, 17, and 27) were directly adopted. It stipulates that the sustainable development strategy should serve first as a base for the development of conditions for such stimulation of the development processes that they would endanger the environment to minimum extent. The implementation of these postulates must not, at the same time, reduce the pace of economic growth or widen the poverty margin which, in turn, would create social and economic tensions. The Strategy is no doubt the document, which looks at sustainable development more from the perspective of civilization than the preceding one.

The international legal concept of sustainable development has been written down in the Polish Constitution as a principle.³⁴ Article 5 of Chapter I of the Constitution stipulates that the Republic of Poland safeguards the independence and sovereignty of its territory, ensures freedom and human and citizens' rights as well as security of citizens, safeguards the national heritage

³¹ For English text see the website: <http://www.mos.gov.pl>

³² For English text see the website: <http://www.mos.gov.pl>

³³ For English text see the website: <http://www.mos.gov.pl>

³⁴ For English text see: Polish Constitutional Law – the Constitution and Selected materials, Warsaw, Chancellery of the Sejm (Polish Parliament) 2000, pp. 27-90.

and ensures the protection of environment, following the principle of sustainable development. This provision indicates that the Republic of Poland considers the issue of environment as one of the most important. In connection with that, the Constitution orders public authorities to carry on the policy of ensuring ecological safety for present and future generations, and also stipulates that the protection of environment is one of the duties of public authorities, which have to support the activities of citizens for the protection and improvement of the environment (Article 74).

Placing the environmental issues in the highest rank document such as the Constitution must be then reflected in the appropriate law-making processes. One of the most important laws adopted by Polish Parliament, which directly refers to the concept of sustainable development, is the Law on the Protection of Environment, adopted on 27 April 2001.³⁵ In addition, the Law on Town and Country Planning of 27th March 2003³⁶ has taken the concept of sustainable development as a directive. The above-mentioned examples certainly do not exhaust the whole amount of the achievements of Polish legislative authorities, as far as the introducing of the concept of sustainable development into a legal circulation is concerned.

This brief review of Polish legislation concerning sustainable development demonstrates the adoption and incorporation into Polish law of an international legal concept of sustainable development with an emphasis on its pro-environmental dimension. Polish legislative experiences show that the aspect of socio-economic development of the sustainable development concept has been generally subordinated to the classic principle of the preservation of nature.

Among the academics, as well as in the practitioners' circles, a view is often expressed that Poland's weaknesses in implementation of the concept of sustainable development have little to do with the relevant legislation (where there is still room for improvement) but they concern mostly the sphere of its implementation and compliance. However, it must not also be forgotten that one of the conditions of compliance with law is its clarity and precision, which at times are missing in the Polish legislation.

SOME SUMMARIZING REMARKS

1) The concept of sustainable development as an approach which links environmental requirements with the socio-economic requirements of development has been introduced into the EU legal system for the first time by virtue of the Amsterdam Treaty, and then developed by upcoming treaties; the

³⁵ See: *Dziennik Ustaw*, 2008, nr 25, poz. 150.

³⁶ See: *Dziennik Ustaw*, 2003, nr 80, poz. 117, with further amendments..

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Lisbon Treaty has introduced the term sustainable development of Europe and Earth, underlining the EU engagement in the global issues;

- 2) There is no legal definition of sustainable development in the EU system, which follows Brundland's Report definition in this matter;
- 3) European Union listed sustainable development among other Union's goals to be achieved;
- 4) The EU political basis for achieving sustainable development are first of all the EU primary law and sustainable strategies;
- 5) The EU has adopted principles guiding processes of implementing those strategies into legal acts; it points on and tries to balance the two approaches to sustainable development – ecological and civilization;
- 6) Practice of implementation of the EU sustainable development strategies in Member-States points to differences between countries while approaching the sustainable development goals;
- 7) An overview of the EU sustainable development strategies shows many areas of the EU policy and practice where sustainable development goals have been approached in unsatisfactional way;
- 8) Academics also share this view and point to relatively low operational level of those strategies, which later results in inadequate legal instruments.