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# Corporate Social Responsibility in the European Union: the Role of Environmental Policies and Stakeholder Dialogue

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*Anything is possible*
*if you've got enough nerve*
*J.K. Rowling*

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**Corporate Social Responsibility in the European Union: the Role of Environmental Policies and Stakeholder Dialogue**


## Summary

The purpose of this research is to analyze the concept of Corporate Social Responsibility (CSR) in the context of the European Union (EU), by focusing on its environmental dimension. In the literature, CSR has always been defined as a voluntary concept, resting on non-binding regulatory frameworks and on the voluntariness of companies to engage in socially-responsible activities that, among other things, try to avoid harming the environment. However, it is questioned whether there may be other intervening factors that may bring companies to commit to high standards of environmental protection in several sectors. In particular, through analysis of documents of the EU and interviews with representatives of the EU institutions and of a multinational company operating in the beverage industry, the research has proven that the EU environmental policies and the dialogue between stakeholders and the EU institutions positively influences the CSR strategy of companies operating in the EU, by increasing their environmental concern. On the one hand, EU environmental policies, differently from the specific CSR policy of the EU, are binding and thus impose binding requirements on companies. On the other hand, a continuous and ongoing dialogue between stakeholders and the EU institutions on specific legislative dossiers plays a role in defining the resulting EU environmental policy, and thus contributes to the increase in environmental concern on the part of the companies. For the purpose of the research, the chosen case study focuses on the EU Single-Use Plastics Directive, a Directive that starting from 2021 will ban from the market some single-use plastic items and require specific requirements for the design of some other single-use plastic items, like plastic bottles, that will need to have their caps and lids attached. CSR becomes increasingly relevant everyday day that passes by, and too much often companies are regarded as responsible for harmful behaviour that negatively impacts the environment. This research provides a contribution to the topic by demonstrating that, either through voluntary commitments or through the EU environmental policy, which is mostly based on binding instruments, or a combination of both, companies that operate in the EU have an interest in being environmentally responsible, because of compliance reasons, and also because they try to anticipate future binding legislation on the part of the EU.

# I. Introduction

## 1.1 The relevance of CSR today: a focus on its environmental dimension

Corporate Social Responsibility (CSR) is increasing its relevance each day that passes by. In a world that is increasingly hit by climate change issues, like global warming caused by high carbon emissions, and in a planet constantly put at risk by high pollution levels, the responsibility of companies for their environmental impact is often appealed to. We wonder whether companies could be able to save the world rather than being considered as the main reason for its problems. CSR, and particularly its environmental dimension, can be considered a good example of how companies try to reduce their impact on the environment and be more responsible in terms of their activities. Moreover, it must also not be forgotten that CSR has also a social dimension, meaning that, at least the most enlightened companies, adopt social policies that put the employee at the centre and provide benefits that go beyond the simple salary, and they undertake initiatives that are not necessarily linked with the increase of their business, but aim at having a positive impact on the communities in which they operate. The environmental as well as the social dimension of CSR are particularly relevant in this period we are living, following the outbreak of the Covid-19 pandemic, which has overlapped with the newly announced European Green Deal. As a matter of fact, in December 2019 the European Commission presented the Green Deal as a plan to make the EU become climate neutral by 2050, by adopting several measures crosscutting all the fields of human life and productivity, from industrial production to food sustainability, from circular economy to sustainable green investments. The Covid-19 pandemic has shrunk the economies of all European countries due to the stop of all non-essential economic activities, but, surprisingly, the commitment to the Green Deal has remained high, and EU Member States will need to present national Recovery and Resilience Plans to get access to the funds agreed by the EU to recover from the crisis. What is striking is that the plans will need to respect high standards of sustainability, as all the investments that will be part of the plans will need to have a positive impact on the environment in order to be ratified by the EU institutions. In this context, both public institutions and companies are engaged in the development of proposals for projects that are expected to revive the economy and will necessarily be linked to the green transition in all sectors.

However, several authors have discussed CSR at the international and European Union (EU) level, and what emerges from the discussion is that it is a controversial topic. The reason for this is that it has been defined as a voluntary concept resting on mostly non-binding regulatory

frameworks, but that despite this, companies are found to be compliant with it. The main question is thus whether companies voluntarily commit to high standards of CSR and environmental initiatives, or whether there are other factors intervening in the process. For instance, in the case of the Green Deal and the national Recovery and Resilience Plans, the choice of companies to present green and sustainable projects for investment will not be voluntarily, but imposed by the EU institutions. However, even before the crisis, companies were and are engaged in environmental initiatives and business operations that try to reduce the impact on the environment. Thus, the purpose of the research is to investigate whether companies operating in the EU are committed to respect the environment because of their voluntary CSR initiative, or because they are obliged by law in the first place, or even because of a combination of both.

After a brief literature review on the concept of CSR at the EU and the international level, I will then address the methodology used for the purpose of the research and specify more in detail the research question to be answered.

According to Bronchain (2003) and Carroll (2008), the concept of CSR first appeared in the 1950s in the United States, following a debate on the social responsibility of firms. However, the subject entered the EU agenda only recently, specifically in 1993, when European Commission President Delors launched an appeal to European businesses to contribute to the fight against social exclusion through the European Business Manifesto Against Social Exclusion. The European Commission developed two definitions for CSR, and the current will be the one used in this research. According to the first working definition adopted in 2001, CSR is a concept "whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis" (European Commission, 2001), meaning that CSR is voluntary and companies are just encouraged to incorporate social and environmental concerns in their daily business operations. On the contrary, the latest and current definition of CSR adopted by the European Commission in 2011 describes it as the "responsibility of enterprises for their impacts on society" and "to fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders" (European Commission, 2011). For the purpose of this research, I will deal only with the environmental dimension of this definition of CSR. The literature generally agrees on one main point: the EU has adopted a voluntary rather than regulated mode of policy implementation for CSR (Fairbrass, 2011; De Schutter, 2008; Daugareilh, 2009). As a matter of fact, the Commission is the main actor in issuing the EU strategy on CSR in the form of a Communication to the

European Parliament (EP), the Council, the European Economic and Social Committee (ECOSOC) and the Committee of the Regions, as the latest one for 2011-2014, but there are very few binding pieces of legislation related directly to CSR, and one of these is Directive 2014/95/EU on non-financial reporting. The dominance of the voluntary approach is what De Schutter calls the "business case" for CSR, according to which a regulatory approach to manage CSR is not needed because competitive forces would by themselves incentivize businesses to adopt CSR practices, which also have a positive impact on the economic performance of companies. On the other hand, regulation is considered to be inappropriate because it would take the form of a "one-size-fits-all" approach, which would not reflect national and local specificities, and it would lead to a rigid compliance system that would have the counterproductive effect of reducing than increasing environmentally and socially responsible behaviour by businesses.

As far as the wider international context is concerned, organizations such as the United Nations (UN), the Organisation for Economic Co-operation and Development (OECD) and the International Labour Organization (ILO) started to engage in the CSR debate at the same time as the EU, during the 1990s. Their approach to CSR is similar to the one adopted by the EU, as their stakeholder engagement exercises have eventually led to the production of policy papers, recommendations, guidelines and codes of conduct that are all non-binding in nature (Ene, 2018; MacLeod, 2005, 2007). In 1999 the UN elaborated the Global Compact, a voluntary CSR initiative based on ten principles in the areas of human rights, labor, the environment and anti-corruption, and in 2003 they issued the Norms on the Responsibilities of Transnational Corporations and other Business Enterprises with regard to Human Rights (UN Norms), which were further updated through the UN Guiding Principles on Business and Human Rights in 2011. In 1976, the OECD adopted the Guidelines for Multinational Enterprises (the Guidelines), which were updated in 2011 and aim to promote responsible business conduct in multinational enterprises (MNEs). Although the Guidelines are voluntary and non-binding for MNEs, following the OECD Council Decision of June 2000 governments are obliged to establish National Contact Points (NCPs) in order to implement and disseminate the Guidelines among corporations operating in or from their territory. The ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy is at its fifth edition, from 2017, and offers non-binding guidelines on social policy and inclusive, responsible and sustainable workplace practices to MNEs, governments, and employers' and workers' organizations. The European Commission has incorporated all these international non-binding standards and principles in its latest strategy on CSR, stating that the European policy promoting CSR should be consistent with this existing global framework. However, as both

Ene and MacLeod point out, EU and international CSR principles all rely on a soft-norm approach, that has continued to triumph despite the opposition from NGOs, trade unions and civil society.

Another strand in the literature has dealt with CSR policy in the EU by placing it in the broader framework of sustainable development policies (Eberhard-Harribey, 2006; Huber, Nerudová and Rozmaehl, 2016; Yildiz and Ozerim, 2014; Hermann, 2004). In particular, Eberhard-Harribey questions whether it is possible to detect the emergence of a European public policy regarding CSR, or whether it should be better to consider it as linked to other long-established EU policies, like sustainable development. By using a mixed approach in public policy analysis founded on a causal analysis and a cognitive approach, and by examining the official documents of the EU, he has concluded that the discourse on CSR should be understood as a parameter of a more global strategy of the Union and as one of the components of the triptych "sustainable development, social agenda, governance". As a matter of fact, all EU texts on CSR must be reconsidered in the more global problematic of sustainable development, which has been addressed by EU official documents since the 1992 Maastricht Treaty. The 2002 "Communication of the Commission concerning the CSR: a contribution of companies to Sustainable Development" (COM 2002-347), appearing one year after the Green Paper, well consolidates this argument through its title. However, as also stated by the Commission in the Green Paper, CSR should not be seen as a substitute for already-existing legislation on social rights or environmental norms, but, rather as an element of transversal policy that gets intertwined with more longstanding Union policies, like the environmental ones. Therefore, as also argued by Yildiz and Ozerim, CSR has been a fundamental tool in terms of the EU strategy on sustainable development, with the Commission itself framing it as part of the route to achieve sustainable development. However, Eberhard-Harribey's argument of CSR as a transversal policy in the EU is also supported by Huber, Nerudová and Rozmaehl (2016), who state that existing EU regulatory frameworks cover many issues related to CSR – such as environmental protection, health and safety – because of the lack of a uniform EU-level binding CSR legislation.

CSR in the EU has also been addressed from an international human rights law perspective (Wouters and Chanet, 2008; Buhmann, 2011). Human rights and the consideration of international human rights instruments recur often in the normative objectives defined by the Commission in its Communications on CSR. According to Buhmann, international human rights law could help develop and define the EU policy on CSR, especially with a view to juridify it and add a new perspective to the understanding of CSR and its relation to law. However, this must not conflict with the definition of CSR as being voluntary on companies.

On the other hand, according to Wouters and Chanet, although the European Commission had set out great ambitions in the early development of CSR policy, it failed to substantively incorporate respect of human rights precisely because it adopted a voluntary approach to CSR, rather than what they call a mixed or hybrid approach, that should be based on a mixture of regulatory and voluntary elements.

Another strand in the literature has dealt with the role of business-led organizations in shaping the CSR of companies operating in the EU, focusing on their dialogue with EU institutions (Mănoiu and Gâdiuţă, 2016; Kinderman, 2013). After European Commission President Delors appealed on businesses to fight against social exclusion in 1993 and the European Business Declaration against Social Exclusion was adopted in 1995 by 20 leaders of Europe's business environment, a year later the European Business Network for Social Cohesion was established, then renamed as CSR Europe. At the same time as the European Commission published its Green Paper in 2001, the CSR Europe network initiated its first campaign to encourage companies to integrate a more responsible business conduct. From then on, CSR Europe, which represents multinational companies interested in promoting the integration of sustainability into business models, has always engaged with the EU institutions and the Commission in particular, to deliver programmes and action plans in line with the EU CSR policy and sustainable development strategy. This interaction was facilitated by the establishment of the European Alliance for CSR by the Commission in 2006, bringing together the business community and several EU-level business organizations like CSR Europe. After the establishment of Europe 2020 strategy in 2010, which aimed at a sustainable economic development up to 2020, CSR Europe launched the Enterprise 2020 program, in order to improve the coordination between EU institutions implementing the Europe 2020 Strategy and the actions of the business environment. It is thus relevant to see how a non-profit organization such as CSR Europe has had and continues to have a significant influence on public policy and on responsible businesses practice in the EU.

### 1.2 Methodology

From the literature review on CSR in the EU, the following independent variables explaining the environmental concern in the corporate social responsibility strategies of companies operating in the EU have emerged: a) the specific EU policy on CSR, developed mainly by the Commission as soft law, along with the few pieces of regulatory binding legislation adopted by Council and EP; b) the international standards on CSR set by other international organizations;

c) the sustainable development strategy and environmental policies of the EU; d) international human rights instruments; e) the dialogue between the EU institutions and companies and/or business organizations. For the purpose of the research, I will keep the specific EU policy on CSR, the environmental policies of the EU, and the dialogue between the EU institutions and companies and/or business organizations. In particular, the last two independent variables are the most interesting ones because there is no recent or updated literature on them. As a matter of fact, most academic research has focused on the specific EU policy on CSR, and it has dealt with the EU environmental policies just as a broader framework in which to include CSR, rather than addressing it as a policy that shapes the CSR policies of companies. Moreover, there is no recent academic work on the ongoing dialogue between the EU institutions and companies or business organizations – which are among the main stakeholders with respect to the EU CSR and environmental policies –, but there is only past research that focuses on the dialogue that has originally brought to the development of the EU policy on CSR. On the contrary, I decided to leave out as independent variables the international standards on CSR set by other international organizations and the international human rights instruments because they are already incorporated in the specific EU CSR policy, that must be consistent with them, and it would thus be useless to deal with them separately.

On the basis of the chosen independent variables, the theoretical framework will be the institutional one, as I will focus on the impact that the institutional context – specifically the EU institutional context, the policies that derive from it and the embedded dialogue of stakeholders with the EU institutions – have on the environmental dimension of the CSR strategies of companies operating in the EU. As a consequence, as anticipated above, the aim of the research will be to demonstrate whether and how the EU environmental policies and the dialogue between stakeholders and the EU institutions positively affect the environmental dimension of the CSR strategy of companies operating in the EU. The dependent variable of the research is thus the increase in environmental concern in the CSR strategy of companies operating in the EU.

As far as the data collection method is concerned, the research will rely mostly on document analysis, focusing on sources from the EU. However, I have also chosen a case study to observe in detail, the Single-Use Plastics Directive adopted on 5 June 2019, in order to collect data on the decision-making procedure and on the dialogue that has been undertaken between the stakeholders impacted by the Directive and the EU institutions, especially in the form of consultation processes. In particular, I interviewed representatives from the European Commission who have worked on the legislative dossier, from the European Parliament and from a multinational beverage company, which will be significantly affected by the Directive

as it requires beverage containers to adopt a new design and also sets consumption reduction goals to be achieved.

After this first introductory section, the second section of the research will address the CSR policy in the EU, focusing on its emergence and development and on how the voluntary approach to CSR prevailed over the regulatory one. The purpose of this section is also to cover the relationship between the EU CSR policy and the EU environmental policy, which, on the contrary, is binding.

The third section will deal with the EU environmental policy, from its emergence to how it stands today in the EU Treaties. Moreover, it will make a comparison between hard-law and soft-law instruments used in the EU environmental policy, also considering that CSR figures among the soft-law instruments. An analysis of the main actors involved in the policy will also tackle the organized interests from the private as well as the public sector, which have the opportunity to try and influence the EU decision-making process through lobbying activities. The final part of the chapter will deal with the current challenges of the EU environmental policy today, focusing on the European Green Deal proposed by the new European Commission at the beginning of its term in 2019 and its goals in terms of climate-related issues.

The fourth chapter will deal with the EU decision-making procedure for environmental policy – the ordinary legislative procedure – and with how stakeholders can influence it by gaining access to the EU institutions, namely the European Commission, the European Parliament and the Council and European Council. A special focus will be reserved to the consultation tools used by the Commission to collect the views of the stakeholders impacted by a particular policy proposal.

The fifth chapter is the one dedicated to the case study on the Single-Use Plastics Directive. After an overview of the Plastics Strategy of the European Union, the decision-making procedure and the text of the Directive are analysed. Finally, the data collected from the interviews will be helpful in gaining an understanding of the role that stakeholder consultation played during the decision-making procedure, and of the views of a multinational beverage company affected by the Directive.

## II. Corporate Social Responsibility policy in the European Union

### 2.1 What is CSR? A debated concept

It is universally agreed that the notion of Corporate Social Responsibility (CSR) is widely debated, as there is no agreement on a single definition for it in the academic and scientific community, so much that it has been referred to as a "contested and fuzzy" concept (Fairbrass, 2011). However, as attested by a literature review conducted by Buhmann (2011), its general meaning is that companies take responsibility for their social and environmental impact, either to prevent a negative one or to maximise a positive one. Moreover, CSR is often understood to be voluntary, in contrast to mandatory action. By voluntary, it is meant that companies act beyond what is required by the immediate compliance with the law applying to the specific company. Nevertheless, other interpretations, especially those of the organisational scholarship, assume that compliance with law is part of CSR, and it is then up to the company to decide whether to act even beyond it. In 1979, Archie B. Carroll provided a definition according to which "the social responsibility of business encompasses the economic, legal, ethical and discretionary expectations that society has of organizations at a given point in time" (Carroll, 1979), thus assuming that the social responsibility of companies encompasses compliance with the law intended as direcly applicable legal obligations. Also a later model by Carroll, the "CSR Pyramid" (1991), includes legal responsibility intended as obeying the law.

However, the legal field has not always been one of the arenas for discussions on CSR. As a matter of fact, the concept of CSR started to be a concern for business since the 1920s and 1930s in the United States (US), where it was considered an economic issue. In particular, the work of the American economist Howard R. Bowen (1953) was paramount in providing one of the first definitions of CSR, as "the obligations of businessmen to pursue those policies, to makes those decisions, or to follow those lines of action which are desirable in terms of the objectives and values of our society". He believed that if business recognized broader social goals in its decisions, social and economic benefits for society as a whole would increase. Also Davis (1960) gave a definition of CSR as "businessmen's decisions and actions taken for reasons at least partially beyond the firm's direct economic or technical interest", and, by proposing his "Iron Law of Responsibility", he maintained that the avoidance of social responsibility leads to gradual erosion of the social power of businessmen. In the 1970s, a more critical stance on the issue came from the neoliberal economist Milton Friedman, who in his

paper "The Social Responsibility of Business is to Increase its Profits" (1970), argued that the only social responsibility of business is to increase its profits, and that even if social responsibilities exist, they belong to individuals, not to businesses, thus attesting that that CSR is not only unnecessary but also damaging to the economy and society. But precisely because the idea of CSR generated from within the business community, emphasis was placed on its voluntary character, despite Carroll's understanding.

According to Buhmann (2011), a new interest for CSR developed in the legal field since the 1990s, due to a series of trends and reasons. Cases lodged in national courts, especially in the US, the United Kingdom (UK) and other European countries, have concretely shown that companies'impact on the environment, labour rights and human rights in general have legal relevance with regard to torts, compensation and legal practice. Increasingly, codes of conduct are integrated into contracts between supplier and buyer companies, with the buyer company being legally bound by specific CSR commitments. Some nation states, such as the UK, France, Sweden, Australia and Denmark, have adopted statutes establishing legally binding requirements on certain companies to report on the social and environmental impact of their business operations. Finally, at the same time, international organizations have approached the CSR topic through conventional instruments of international law - among which the Organization for Economic Development and Cooperation[1] (OECD), the International Labour Organization[2] (ILO) and the United Nations (UN) – and that will be analyzed in the following sections. Also the European Union (EU) has engaged in CSR policy-making since the end of the 1990s, and became one of the most prominent fora for the debate over whether CSR should be considered voluntary on companies or legally binding, as the chapter will later specify.
Such developments thus demonstrate that CSR has become a field of interaction between society and law, no longer relegated to the economic field. For this reason, the voluntary-mandatory dichotomy, by implying a distinction between legal compliance and voluntary justice, seems to do no justice to how much law permeates CSR, as demonstrated above. First, according to the organisational scholarship, CSR encompasses compliance with law. Second, in order to go beyond the law, one has to know at least what is required by law. Third, several states have imposed reporting requirements on companies to affect their actions prior to

[1] The Organization for Economic Cooperation and Development (OECD) is an international organization founded in 1961, as a successor to the Organization for European Economic Cooperation (OEEC). Comprising 36 Member States from the world, its aim is to stimulate economic progress and world trade, by collaborating on key global issues at national, regional and local levels.
[2] The International Labour Organization (ILO) is a UN specialized agency, the only one with a tripartite structure bringing together governments, employers and workers of 187 Member States. Founded in 1919 after World War I to pursue peace on the basis of social justice, it became the first specialized agency of the UN in 1946.

reporting. Therefore, as attested also by Lambooy (2014), CSR is a topic that is interconnected with many areas of law, including international and EU law, corporate law, contract law and environmental law, and it cannot thus be reduced to be just a business concern.
As regards the relationship between CSR and EU law, the following section will try to explain the reasons by which a EU CSR policy came to be necessary, before proceeding to a detailed analysis of the policy-making steps that eventually led to the current EU CSR framework.

### 2.2 The reasons for a EU policy on CSR

As mentioned above, for some academic authors and actors in the field, CSR is seen as a concept which is mainly business-driven and of a voluntary character, and generally viewed as an alternative to government regulation and public policy. However, this contrasts with what happens in practice, that is that governmental bodies are involved nevertheless. As a matter of fact, many governments and intergovernmental organizations have played an active role in promoting greater responsibility on the part of companies for their social and environmental impacts.
In particular, in the case of the EU, it appeared necessary to start intervening in the CSR field because public policies on CSR had already been developed in some Member States, like France. Therefore, as the EU in the 1990s was completing its single market, the need was felt to promote further integration also in this field, so as to harmonize the public policies adopted at the Member States' level (Moon and Vogel, 2008).
Moreover, given the multifaceted nature of CSR, its link with the concept of sustainable development was also crucial for raising interest at the EU level (Taliouris, 2018). As a matter of fact, the 1987 Brundtland Report of the UN-established World Commission on Environment and Development (WCED) had provided for the first time a definition for sustainable development as "the development that meets the needs of the present without compromising the future generations' ability to meet their own needs" (WCED, 1987). In the report, the linkage of sustainable development with the business sector and their social responsibility was highlighted in Chapter 3 "Ensuring Responsibility in Transnational Investment". When the 2000 European Council in Lisbon set the goal of making Europe a competitive economy by incorporating sustainable development and social cohesion, it gave impetus to the Commission to launch its first Green Paper on CSR in 2001. From 2001 to 2011, within a decade, the Commission provided two different definitions of CSR for the EU framework, never

disentagling them from their interconnection with the goal of sustainable development, which is also enshrined in article 3(3) of the Treaty on the European Union[3] (TEU).

However, as regards the framing of CSR within the EU policy competencies, there is no specific reference in any of the founding Treaties, because the EU CSR policy, as we shall see, is a transversal policy that, as Eberhard-Harribey points out (2006), touches some of the main EU policies, like the environment, competitiveness, consumer and employment and social affairs policies. However, what mainly distinguishes such policies from the EU CSR policy is that they are mostly binding policies that have a direct impact on either Member States or companies or both, because they are adopted through the ordinary legislative procedure and thus come in the form of directives and regulations of the Council of the European Union and of the European Parliament. Hence, the purpose of the research to investigate whether companies operating in the EU are committed to respect the environment - as they often highlight in their CSR reports - because of their voluntary CSR initiative, or because they are obliged by law in the first place. Currently, the European Commission's Directorate-General (DG) dealing with the EU CSR policy is the one for Internal Market, Industry, Entrepreneurship and SMEs, which, among other things, is responsible for helping turn the EU into a smart, sustainable, and inclusive economy. In particular, the CSR policy is included under the industry pillar, within the sustainability and circular economy heading.

### 2.3 Milestones in CSR policy-making within the EU

CSR officially entered the EU agenda at the turn of the millennium thanks to the 2001 European Commission Green Paper "Promoting a European framework for Corporate Social Responsibility". However, the origins of CSR in the EU actually reach back to the 1990s, although with a different label and, at first, with an exclusive focus on social issues. In 1993, the then President of the European Commission Jacques Delors launched an appeal to European businesses to contribute to the fight against social exclusion and unemployment, which led to the adoption of the "European Business Declaration against Social Exclusion", signed by 20 business leaders and the Commission President. The Manifesto resulted in the establishment of

[3] The Treaty on European Union (TEU), also known as the Maastricht Treaty, was a treaty signed on 7 February 1992 by the members of the European Communities . The treaty founded the European Union and established its pillar structure which stayed in place until the Lisbon Treaty came into force in 2009. The treaty also expanded the competences of the European Economic Community/European Union and led to the creation of the single European currency.

the European Business Network for Social Cohesion (EBNSC) in 1996, which was renamed CSR Europe in 2000 and is currently based in Brussels.

At the European Council in Lisbon in March 2000, the EU heads of state made the commitment to: "make Europe the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion by 2010" (European Council, 2000). The European Council also made a special appeal to companies' sense of social responsibility, calling for them to support CSR in terms of "lifelong learning, work organisation, equal opportunities, social inclusion and sustainable development" (European Council, 2000). Following the adoption of the Lisbon Strategy, the European Commission decided to engage strategically with business and stakeholders in developing a European Strategy on CSR. In July 2001, the Commission presented its Green Paper "Promoting a European Framework for Corporate Social Responsibility", as a way to launch a public consultation on the concept of CSR. This document defines CSR as "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis" (Commission, 2001), going therefore beyond their legal obligations. It also describes CSR as composed of two dimensions. The internal dimension involves socially responsible practices related to human resources management, health and safety at work, and adaptation to change, while the external dimension covers environmental concerns, sustainable development, human rights, and the relationship with local communities, business partners, consumers and suppliers. The consultation launched invited all interested stakeholders – public authorities at all levels, international organizations, enterprises from small and medium ones (SMEs) to multinationals (MNEs) and non-governmental organizations (NGOs) – to express views on the development of a new framework for the promotion of CSR, specifying that all proposals should take into account the voluntary nature of CSR. In July 2002, acting on the basis of the results of the consultation, the Commission presented its Communication "Corporate Social Responsibility: A business contribution to Sustainable Development", which inaugurated the first European strategy to promote CSR, and retained the definition of CSR originally set out in the 2001 Green Paper. Among the principles on which the Commission proposed to build its strategy:

– recognition of voluntary nature of CSR;

– need for credibility and transparency of CSR practices;

– balanced and all-encompassing approach to CSR, including economic, social and environmental issues as well as consumer interests;

– support and compatibility with existing international agreements and instruments (Commission, 2002).

Moreover, it proposed to launch a European Multi-Stakeholder Forum (EMSF) on CSR, integrate CSR into Community policies, facilitate convergence and transparency of CSR practices and tools, and work to increase knowledge about the positive impact of CSR on business and societies in Europe and abroad. The 2002 Commission Communication envisaged the EMSF as a platform for discussion between stakeholders, to understand whether there was consensus on the need for further initiatives on CSR at European level, and, if so, of what nature. The Forum, to be chaired by the Commission, would reunite around forty European representative organisations of employers, employees, consumers and civil society, along with business networks. After three experimental roundtables were held on specific issues like codes of conduct, CSR instruments and standards and CSR reporting, the Forum was formally established on October 16, 2002. However, in its mandate, reference to the aim of "identifying and exploring areas where additional action is needed at European level" (Commission, 2002) was abandoned, while the objectives of seeking to establish a common EU approach, guiding principles and the exchange of good practices between actors at EU level were retained. As the literal interpretation of the Forum's mandate meant that it would not be asked to make recommendations on any legislative action to be taken, the participants were left with the impossibility of making proposals for Community action. For this reason, it is widely agreed that the initiative was not successful (Fairbrass, 2011).

In 2006, the Commission presented its second Communication "Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on CSR". It preserved the 2001 definition of CSR, emphasizing again its voluntary character, and announced that businesses are the primary actors in relation to CSR. Hence, the proposal of the establishment of the European Alliance for CSR, a new business-led forum. The First High Level Meeting of the European Alliance was held in 2007.

The 2008 global economic crisis and its social consequences, coupled with the increasing pressure on companies to solve ethical, social and environmental problems (Yildiz and Ozerim, 2014), led the European Commission to underline the need for a new CSR strategy in its 2010 Communication "An Integrated Industrial Policy for the Globalisation Era Putting Competitiveness and Sustainability at Centre Stage". In October 2011, the Commission adopted the new strategy in the Communication "A renewed EU strategy 2011-14 for Corporate Social Responsibility", which provided for "a modern understanding of Corporate Social

Responsibility" (Commission, 2011) thanks to a new EU definition of CSR, which is also the current in place. CSR is defined as "the responsibility of enterprises for their impacts on society", also adding:

*Respect for applicable legislation, and for collective agreements between social partners, is a prerequisite for meeting that responsibility. To fully meet their corporate social responsibility, enterprises should have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of:*
*– maximising the creation of shared value for their owners/shareholders and for their other stakeholders and society at large;*
*– identifying, preventing and mitigating their possible adverse impacts* (Commission, 2011).

The modern understanding of CSR as presented by the Commission Communication also puts a strong focus on a set of internationally recognised principles and guidelines on CSR and provides that any EU policy promoting CSR should be made consistent with it. In particular, the OECD Guidelines for Multinational Enterprises, the ten principles of the UN Global Compact, the International Organization for Standardization[4] (ISO) 26000 Guidance Standard on Social Responsibility, the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the UN Guiding Principles on Business and Human Rights are the international standards and principles referred to, and to which the following section will be dedicated. Moreover, for the first time, the Commission officially recognizes that, although CSR should be led by companies themselves, the role of public authorities is also relevant in playing a supporting role through "a smart mix of voluntary policy measures and, where necessary, complementary regulation" (Commission, 2011). This marks another difference with the first EU conceptualization of CSR, as it is recognized that regulation may accompany the voluntary corporate initiatives.
The 2011-2014 Agenda covers eight areas, including the need to enhance the visibility of CSR and disseminate good practices, improve company disclosure of social and environmental information, integrate CSR into education, training and research, and better align European and global approaches to CSR.

[4] The International Organization for Standardization (ISO) is an independent, non-governmental international organization, composed of representatives from 164 national standards bodies. Founded in 1947, it brings together experts to share knowledge and develop voluntary, consensus-based International Standards, covering almost every industry, from technology, to food safety, to agriculture and healthcare.

Among the main features of the CSR strategy, the Commission thus supports a mandatory corporate reporting system for social and environmental information, which will result in one of the main and rare pieces of binding legislation adopted in the context of the EU CSR policy, Directive 2014/95/EU on non-financial reporting[5], on which I will focus in one of the following sections.

### 2.4 The incorporation of international instruments into the EU CSR policy

CSR entered the international agenda much before than the European one, thanks to the activity of public international bodies. However, their approach to CSR does not differ much from the one adopted by the EU, as all the existing international instruments strictly focused on CSR are non-binding in nature and mostly serve as guidance to adhering companies (Ene, 2018; MacLeod, 2005, 2007). It is relevant to address the international instruments referred to in the 2011 latest Commission Communication setting a renewed CSR strategy.

The OECD adopted the Guidelines for Multinational Enterprises in 1976, and their latest update took place in 2011 with the active participation of business, labour, NGOs, non-adhering countries and international organisations. They set recommendations from adhering governments for the responsible business conduct of MNEs, on a range of issues like the environment, labour and human rights. The Guidelines are not legally binding on companies, but they are binding on signatory governments, which oversee their implementation by MNEs. In particular, following the OECD Council Decision of June 2000[6], governments are obliged to establish National Contact Points (NCPs) to promote the OECD Guidelines and manage complaints against companies that may have failed to comply with them. The OECD framework thus establishes an international grievance mechanism backed by governments, in which complaints are handled through mediation or other conciliatory practices, with the aim to reach an agreement among parties on past acts and future goals.

[5] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. Under Directive 2014/95/EU, large companies have to publish reports on the policies they implement in relation to environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, diversity on company boards in terms of age, gender, educational and professional background.

[6] Decision of the Council on the OECD Guidelines for Multinational Enterprises, OECD/LEGAL/0307.

The UN Global Compact stems from a personal initiative of the then UN Secretary-General Kofi Annan, and was launched in 1999, to respond to the allegations of corporate misbehaviour in the human rights sphere. It is a principles-based framework to encourage businesses worldwide to adopt sustainable and socially responsible policies, and to report on their implementation. The ten principles of the Global Compact are derived from the Universal Declaration of Human Rights[7], the International Labour Organization's Declaration on Fundamental Principles and Rights at Work[8], the Rio Declaration on Environment and Development[9], and the United Nations Convention Against Corruption[10], and cut across the areas of human rights, labour, the environment and anti-corruption. Since its inception, the Global Compact was not conceived as a regulatory instrument, but rather as a voluntary initiative and a forum for discussion including governments, companies and labour organisations, which does not establish any monitoring or enforcement mechanism on the compliance with the ten principles. Despite the great emphasis on a participatory stakeholder approach, seeking to involve actors ranging from companies to civil society representatives, there is a fear that the Global Compact could be used by MNEs just as a mere marketing tool to uphold their reputation (MacLeod, 2007). However, while it does not impose binding standards on companies, it does recognize that the principles it promotes have their roots in the existing international legal principles cited above. Moreover, despite being a voluntary initiative, it requires companies to annually submit examples of measures taken to comply with the ten principles, as a condition of their participation to the Compact.

The UN Guiding Principles on Business and Human Rights were unanimously endorsed by the UN Human Rights Council[11] in 2011, from the initial proposal of the then UN Special Representative on business and human rights John Ruggie. They are a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in

[7] The Universal Declaration of Human Rights was adopted by the UN General Assembly on 10 December 1948 and is part of the International Bill of Human Rights. It set out, for the first time, fundamental human rights to be universally protected, even though, officially, it is a non-binding document.
[8] The Declaration on Fundamental Principles and Rights at Work was adopted in 1998, at the 86th International Labour Conference. The Declaration commits Member States to respect and promote principles and rights in four categories, whether or not they have ratified the relevant ILO Conventions, as it is an obligation arising from the membership in the Organization itself.
[9] The Rio Declaration on Environment and Development was one of the outcomes of the 1992 UN Conference on Environment and Development. The Declaration laid down 27 broad, non-binding principles for environmentally sound development.
[10] The United Nations Convention Against Corruption was adopted by the UN General Assembly in October 2003 and entered into force in December 2005. It is the only legally binding international anti-corruption treaty.
[11] The Human Rights Council is an intergovernmental body within the United Nations system made up of 47 States, whose mission is the promotion and protection of human rights around the globe. It was established by the UN General Assembly on March 15, 2006 to replace the UN Commission on Human Rights, that had been strongly criticised for allowing countries with poor human rights records to be members.

business operations. They build on the failure of 2003 of the Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with regard to human rights obligation[12], which for the first time sought to impose legally binding obligations upon transnational corporations and that exactly for this reason were rejected by Member States at the Commission on Human Rights. The UN Guiding Principles contain three chapters, or pillars: the State duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy. However, despite widespread support from the public and private sector, the UN Guiding Principles still remain a non-binding instrument lacking an enforcement mechanism.

The ILO adopted the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) in 1977, and it was lastly updated in 2017. It is the only ILO instrument offering direct guidance to enterprises, governments, employers' and workers' organizations on social policies and inclusive and sustainable workplace practices. The MNE Declaration is founded on principles contained in international labour Conventions and Recommendations and, as stated in the Declaration, "adherence by all concerned will contribute to a climate more conducive to decent work, inclusive economic growth and sustainable development" (ILO, 2017). The revised Declaration also contains operational tools to stimulate respect of its principles by all parties, among which a procedure for supporting dialogue on the application of the Declaration between enterprises and workers' representative organizations, and a procedure to interpret the provisions of the Declaration to solve a disagreement on their meaning between parties.

The ISO issued the ISO Guidance Standard on Social Responsibility 26000 in 2010, as a set of guidelines to promote voluntary commitment to social responsibility. After 10 years of studies and negotiations, ISO 26000 was the result of a multi-stakeholder process involving governments, NGOs, industry, consumer groups and labour organizations, which reached consensus on a common understanding of social responsibility. When adhering to ISO 26000, organizations must take into account issues such as environmental, social, cultural and organizational diversity, as well as differences in economic conditions, while maintaining at the same time consistency with international norms of behaviour. It is important to note that ISO 26000 contains voluntary guidance and that, unlike other ISO standards, cannot be

[12] The Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights were approved on 13 August 2003 by the UN Sub- Commission on the Promotion and Protection of Human Rights. The Norms were considered by the UN Commission on Human Rights in April 2004, which did not approve them.

appropriated for certification purposes, as it does not contain *requirements* but just *guidance* (Buchner, 2012; Idowu, Sitnikos and Moravis, 2019).

In its latest CSR strategy of 2011, the European Commission calls for the integration of all these international principles and standards into the EU CSR policies (Commission, 2011) and invites EU enterprises to continue in their effort to respect them. However, this integration process was not straightforward, but has been going on since the adoption of the first Commission Communication on CSR in 2002, and the establishment of the EMSF.

The EMSF had two main interconnected objectives: on the one hand, to be a learning forum on CSR to exchange the experiences and good practice of participants, while on the other, to seek whether it would be appropriate to establish common principles for CSR practices and instruments by taking into account key international instruments. Besides soft law instruments, the mandate of the Commission for the EMSF indicated that this process should consider also the International Covenant on Economic, Social and Cultural Rights[13], the International Covenant on Civil and Political Rights[14], the ILO main conventions – all treaties that, as such, are hard law – as well as the Universal Declaration of Human Rights, which for some legal scholars has become binding as a part of customary international law. However, during the meetings of the EMSF there was no agreement on the role that international law instruments should play in informing CSR normatively (Buhmann, 2011). Only civil society organisations called for international law to inform CSR so that CSR could be measured in the same way as, and objectively verified against, internationally agreed instruments, both in the form of hard law and soft law. Conversely, business and employers' organizations were in favour of a limited role for international law. Eventually, in the Final Report produced by the EMSF, the listing of international instruments was limited compared with that made by the Commission in its mandate. The main instruments noted in the Final Report as reference for CSR are those developed with the involvement of businesses and directly addressed to them, but which, at the same time, are non-binding: the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Guidelines for MNEs and the UN

[13] The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966 through GA. Resolution 2200A (XXI), and came in force from 3 January 1976.It commits its parties to work toward the granting of economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories and individuals, including labour rights and the right to health, the right to education, and the right to an adequate standard of living.

[14] The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, and in force from 23 March 1976. The covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. It is part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR)

Global Compact. Stronger instruments are defined as addressed to states and containing values that can inspire companies when developing their CSR, such as the Universal Declaration of Human Rights, the Council of Europe Convention for Protection of Human Rights and Fundamental Principles and the ILO Declaration on fundamental principles and rights at work. Therefore, no integration of international hard law instruments into CSR was suggested. Also the European Alliance for CSR, established by the 2006 Commission Communication on CSR, confirmed this view, with limited direct references to international law instruments.
Ultimately, the Commission's latest CSR strategy of 2011 mentions for the first time the notion of "integrating" internationally recognized principles and guidelines into the EU CSR policies, while at the same time excluding any reference to hard law instruments. Therefore, such international standards and frameworks remain non-binding, as described above, and adhering to them is a voluntary act on the part of the companies. And even once a company has adhered to one or more of these standards and frameworks, there is no enforcement mechanism to monitor compliance and implementation of the principles of conduct embedded in them. In the following section, I will analyse more deeply the reasons why such voluntary approach to CSR, based mostly on soft law, non-binding instruments, has prevailed at the level of EU policy-making on CSR.

### 2.5 EU CSR policy implementation: how the voluntary soft law approach prevailed over the regulatory binding approach

As it is clear from the two previous sections, the voluntary, soft law approach to the implementation of CSR has always been dominant, both at the EU and the international level, in contrast with a regulated mode of implementation, which would have to be based on binding rules and enforcement mechanisms. In his work, Fairbrass (2011) employs the theory of discursive institutionalism to argue that the development of the EU CSR policy was an interactive process in which competing ideas over the mode of implementation of the policy fought against each other. In particular, policy actors were, and continue to be divided over whether CSR should be a voluntary activity on the part of the companies, or whether it should be regulated in its implementation. Eventually, the institutional debate led to policy winners and losers, as the competition between the various sets of ideas resulted in the dominance of the coalition advocating for the voluntary approach: the anti-regulation actors – the Commission, business interests and some national governments like the United Kingdom –

prevailed over the pro-regulation advocates – the European Parliament (EP), the French government, trade unions, environmental groups and other civil society organizations.

The deliberation process started with the consultation launched by the Commission's Green Paper on CSR in 2001, which prompted responses from about 260 organizations and individuals, with the majority coming from organized interests. The establishment of the EMSF on CSR by the 2002 Commission Communication marked the second stage of the deliberation process, in which the number of actors invited to participate was narrowed, and mostly restricted to large stakeholder groups at the EU level. About 30 organizations participated – including employers' organizations such as Eurocommerce, trade unions, business organizations such as CSR Europe, and civil society organizations like Oxfam – and produced a final report in 2004. Apart from public and private bodies, it was thus not open to members of the wider public. Moreover, when the Commission announced the establishment of the business-led Alliance for CSR in its 2006 Communication,, stating that companies are the main actors involved in CSR (Commission, 2006), it took another step in excluding all types of interests except businesses, thus limiting the openness and inclusivity of the policy-making process.

Therefore, the ideas of the anti-regulation coalition were able to resonate more strongly. They tried to warn against the dangers implied by regulation: it damages competition, represses innovation and creates administrative burden. On the other hand, they promoted what is generally called the "business-case" for CSR (De Schutter, 2008): the market forces are sufficient to encourage companies to behave responsibly, as the market rewards best practices and punishes the worst, and for this reason the role of public authorities should be limited to promote the exchange of such best practices. By contrast, the pro-regulation coalition was in a minority position and was less cohesive. The European Parliament adopted a resolution on CSR (European Parliament, 2007), calling for regulation. Trade unions, environmental groups and other civil society organizations considered the voluntary approach as inherently weak, lacking credibility and not creating serious standards of social and environmental conduct for businesses. At the same time, they also prioritized different issue areas depending on their interests: for instance, trade unions were more committed to labour matters, environmental NGOs were in favour of more support for green interests. However, all the actors had in common their opposition to the voluntary approach, coupled with a deep distrust of businesses.

The evolution of the EU approach to the implementation of the CSR policy is also reflected by the role of the Commission, which can be divided into three periods that mirror different European integration projects: regulated social-liberal capitalism and neo-liberalism

(Kinderman, 2013). As a matter of fact, since its emergence on the EU agenda, CSR policy has changed from social-liberal standard setting to a neo-liberal business agenda, and has only more recently shifted again to limited interventionism.

When Commission President Delors, a social democrat, called for business to face the problems of unemployment and social exclusion in 1993, he aligned what would later officially become the EU CSR policy with regulated capitalism, "a project to build environmental, social, infrastructural, and redistributive policy at the European level" sponsored by social democrats to promote further European integration (Marks and Steenbergen, 2002). However, over time, the social-liberal project failed because of employers' resistance, and the Commission and business associations aligned the EU CSR policy with market liberalism, a neo-liberal project rejecting supranational authority and calling for minimal European regulation to instead promote regulatory competition among national governments. Under the first term of Commission President Barroso (2004-2009), the Commission's CSR policy resisted regulation and was against any role of public authorities in standard-setting. Subsequently, under his second term (2009-2014), in the context of the eurozone and financial crisis and the development of CSR frameworks at the international level, the Commission launched a renewed agenda for CSR (Commission, 2011), shifting away from market liberalism by proposing for the first time a regulatory piece of legislation on CSR, the Non-Financial Reporting Directive[15], which will be later analysed as one of the rare examples of hard, binding law within the EU CSR policy.

The initial, social-liberal phase of the EU CSR policy started in a moment of economic downturn, high unemployment and an impasse in European integration. One of the outcomes of the above-mentioned European Declaration of Businesses against Social Exclusion was the founding of the European Business Network for Social Cohesion (EBNSC) in 1996, as a learning organization for responsible business. The Commission had a fundamental role in its creation, and could thus influence its agenda, while at the same time the EBSNC's activities legitimated the Commission's stance as an advocate of economic advance and social progress. However, companies, represented by BusinessEurope[16], were suspicious of a possible hidden regulatory agenda in the hands of both DG Employment and Social Affairs and the EBNSC. As a matter of fact, companies viewed CSR as a voluntary activity that must remain free of

[15] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

[16] BusinessEurope is the shortened name for the Confederation of European Business, a lobby group representing enterprises of the EU and of six non-EU European countries. Members of the organization are 40 national industry and employers'organizations.

regulation, in contrast with social-democratic and social-liberal policymakers like Delors who considered it as a tool to promote social goals.

Following the clash between the EBNSC - renamed CSR Europe in 2000 - and BusinessEurope, the former gradually aligned its position with that of the latter. The "social case" for CSR weakened in favour of the "business-case", at the same time as the scope of CSR Europe was broadened to encompass issues ranging from environmental sustainability to responsibility in global supply chains, leaving the social agenda in the background. The complete shift to the neo-liberal agenda by the Commission itself happened in 2006, when the European Alliance for CSR was established, and the leadership of the CSR file moved from DG Employment and Social Affairs to DG Enterprise. Heavily influenced by BusinessEurope's lobbying, the Commission started to embrace the view of CSR as an activity reserved to business, where the EU could only have a promoter role.

The final shift of the Commission's approach to CSR policy is embedded in its 2011 renewed strategy. The redefinition of CSR as "the responsibility of enterprises for their impacts on society" (Commission, 2011) from the initial "a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis" (Commission, 2002) broadens the scope of CSR to include all the impacts of business on society, meaning that CSR is always present in a company's activities, and, for the first time, takes out the voluntary aspect of CSR, at least on paper. The strategy stresses the need for complementary regulation in creating an environment more favourable for enterprises to meet their social responsibility. According to Kinderman (2013), three developments explain this shift. The financial and eurozone crisis weakened business legitimacy and started to re-legitimate the role of public authorities that had been discredited by neo-liberalism. The international policy developments on CSR gave new impetus to the role of standard setting, and the increase in CSR awards and networks globally became so relevant that the Commission sensed the need to take action and put CSR back on the agenda strongly. Finally, the appointment of Michel Barnier as Internal Market Commissioner was fundamental, as he fought for introducing a legislative proposal on the disclosure of non-financial information by companies. The reaction of business to the new agenda was critical of its reference to regulation, but nothing prevented the Commission from developing its proposal for what then became known as the Non-Financial Reporting Directive.

## 2.6 The Non-Financial Reporting Directive: an example of EU binding CSR law

The 2011 Commission Communication on a renewed strategy for CSR specified that, as announced in the Single Market Act[17], the Commission would present "a legislative proposal on the transparency of the social and environmental information provided by companies in all sectors" (Commission, 2011). It had already become common practice for companies to voluntarily make corporate responsibility disclosures through specific reports called sustainability or corporate responsibility reports. The aim of such reporting is to provide stakeholders with information on the adoption by the company of socially responsible practices in areas like employment, environmental impact and human rights. However, the absence of a common and harmonized regulation in the field may lead companies to report more on the favourable aspects of their activities and policies, rather than the negative ones, for a matter of reputation with respect to the market and the consumers (Ahern, 2016). Recognizing this and that in 2011 just half of the EU Member States had national policy frameworks for CSR, the Commission believed that introducing mandatory reporting on CSR would harmonize the practice at the EU level. Moreover, the Commission also acknowledged the role that mandatory non-financial reporting could have in restoring consumer trust in business in the context of the financial crisis.

In April 2013, the Commission presented a Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC18 and 83/349/EEC19 as regards disclosure of non-financial and diversity information by certain large companies and groups. Such Council Directives were the Accounting Directives and dealt with the preparation of annual and consolidated financial statements and reports. They were subsequently repealed by Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings[20], which was adopted on the basis of Article

[17] The Single Market Act presented by the Commission in April 2011 set out twelve levers to boost growth and strengthen confidence in the economy.

[18] Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies. The Directive used to coordinate Member States' provisions concerning the presentation and content of annual accounts and annual reports, the valuation methods used and their publication in respect of all companies with limited liability. No longer in force since July 18, 2013, it was repealed by Directive 2013/34/EU.

[19] Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54 (3) (g) of the Treaty on consolidated accounts. It used to oordinatee national laws on consolidated – group - accounts. With the Fourth Directive on the annual accounts of public limited liability companies, it belonged to the family of "accounting directives" that formed the arsenal of Community legal acts governing company accounts. No longer in force since July 18, 2013, it was repealed by Directive 2013/34/EU.

[20] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending

50(1) of the Treaty on the Functioning of the European Union[21] (TFEU), that is the legal basis for adopting Union measures aimed at achieving an internal market in company law. Article 19(1) of such Directive, dealing with the elements to include in the company's management report, provides that "to the extent necessary for an understanding of the undertaking's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matters" (Council of the EU and European Parliament, 2013). Therefore, it did not establish a binding obligation on companies to disclose non-financial information related to CSR matters, but rather an invitation to do it.

The 2013 Commission's proposal aimed to introduce a binding obligation on companies to disclose in a transparent way a non-financial statement containing information on at least environmental, employee, human rights and bribery issues, as well as a description of the company's diversity policy on aspects like age, gender and educational and professional background. The final act was jointly adopted by the European Parliament and the Council through the ordinary legislative procedure on October 22, 2014, as Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, always on the basis of article 50(1) TFEU. However, the Directive does not encompass all existing undertakings, but only applies to large undertakings with more than 500 employees and a balance sheet total of €20 million or a net turnover of €40 million, thus not including small and medium sized enterprises. Article 19a(1) contains the reporting requirements, which oblige companies to include in the management report a non-financial statement "containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters" (Council of the EU and European Parliament, 2014). In transposing the Directive by 6 December 2016, Member States are left free to allow companies within the scope of the Directive to rely on national, EU or international reporting frameworks.

Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

[21] The Treaty on the Functioning of the European Union (TFEU) is one of two treaties forming the constitutional basis of the EU, the other being the Treaty on European Union (or Maastricht Treaty), following the 2007 Treaty of Lisbon. It originated as the 1957 Treaty of Rome, or Treaty Establishing the European Economic Community (EEC Treaty). Its name has been amended twice: by the 1992 Maastricht Treaty, when it became the Treaty on the European Community, and by the Treaty of Lisbon, when it became the Treaty on the Functioning of the European Union.

This means that the Directive is not prescriptive in relation to the reporting standard to be followed.

Among the international standards that companies can employ to report on non-financial information there are the Eco-Management and Audit Scheme[22] (EMAS) as a voluntary Union-based environmental instrument, the OECD Guidelines for Multinational Enterprises, the UN Global Compact and the ISO 26000 standard on Social Responsibility. However, the globally dominant model is the GRI Sustainability Reporting Standards (GRI Standards). GRI is an independent international organization that is considered the pioneer in sustainability reporting since 1997, and the GRI Standards have become the first and most widely adopted global standards for reporting on environmental, economic and social impacts. Moreover, article 2 of the Non-Financial Reporting Directive has allowed the Commission to prepare non-binding guidelines to help companies disclose non-financial information in a more comparable manner. In October 2017, the Commission published the Guidelines on non-financial reporting in a Communication (Commission, 2017), and they were subsequently supplemented by the Guidelines on reporting climate-related information, released in June 2019 (Commission, 2019).

Although there are limits to the Non-Financial Reporting Directive – notably in the flexibility allowed to companies in the reporting methodology –, it still represents a fundamental step in the evolution of CSR regulation at EU level, as also attested by Ahern (2016). As a matter of fact, it is a rare example of a binding piece of legislation in the field of the EU CSR policy, which contrasts with the standard voluntary approach to CSR that has been advocated since the emergence of the topic on the EU agenda.

### 2.7 The relationship between the EU CSR policy and EU environmental policies: filling the gaps of the voluntary approach?

Although the EU CSR policy came to the fore on the basis of a social agenda initiated by Commission President Delors, according to Eberhard-Harribey (2006) it is also advisable to consider it in the wider problematic of sustainable development, which was formally enshrined into one of the objectives of the EU by the 1992 Maastricht Treaty, also known as Treaty on

[22] The Eco-Management and Audit Scheme (EMAS) is a voluntary environmental management instrument, developed in 1993 by the European Commission. It enables organizations to evaluate, report and improve their environmental performance.

the European Union[23] (TEU). As a matter of fact, according to article 2 TEU, one of the tasks of the European Community would be, among other things, to "promote sustainable and non-inflationary growth respecting the environment", through the means of the establishment of a common market and of an economic and monetary union. Moreover, Article 130r(2) TEU states that "environmental protection requirements must be integrated into the definition and implementation of other Community policies", meaning that, apart from already being an official EU policy since the 1986 Single European Act (SEA)[24], environmental policy was a crosscutting issue that needed to be taken into account in all the other policies. The 2000 Lisbon Strategy must be understood in the same spirit, as its declared aim was to make Europe an economy capable of sustainable economic growth (European Council, 2000). At the Lisbon summit, the heads of states and governments called upon the sense of responsibility of companies, ranging from good practices linked to education and training to sustainable development. Then, the European Council of Goteborg of June 2001 launched the first European strategy for sustainable development, calling for a new approach to policy-making that would ensure that the EU's economic, social and environmental policies mutually reinforce each other. The emergence of the concept of CSR must thus be understood in this context, as an element enhancing the issue of sustainable development. This is clear also from the title of the first Commission's Communication on CSR from 2002: "Communication from the Commission concerning Corporate Social Responsibility: A business contribution to Sustainable Development". Therefore, as highlighted by Eberhard-Harribey, the EU CSR policy should be contextualized within the wider triptych "CSR-sustainable development-governance".

However, at the same time, Eberhard-Harribey argues that, more than being a specialized policy of the EU, CSR is a transversal policy that cuts across several other EU policies, among which the environmental one. For this reason, any regulatory action of the EU by the way of CSR may have implications on other policies and on companies, and, viceversa, the other policies can impact the CSR strategies of companies. This is especially true if we consider that CSR policy is mostly based on soft-law, non-binding initiatives, while other policies, including the

[23] The Maastricht Treaty (officially the Treaty on European Union) was a treaty signed on 7 February 1992 by the members of the European Communities . The treaty founded the European Union and established its pillar structure which stayed in place until the Lisbon Treaty came into force in 2009. The treaty also expanded the competences of the EEC/EU and led to the creation of the single European currency.

[24] The 1986 Single European Act was the first major revision of the 1957 Treaty of Rome, which had founded the European Economic Community. The Act set the European Community, an objective of establishing a single market by 31 December 1992, and introduced several new policy areas in which decisions would be taken by qualified majority, including the environmental policy.

environmental one, impose binding obligations through directives and regulations. According to Kingston et al. (2017), voluntary, soft-law initiatives can only contribute to enhance environmental protection by complementing, though not replacing, direct regulation. Their disadvantage lies in their non-compulsory nature, which means that they cannot be relied upon to address immediate and serious environmental risks. Considering the voluntary nature of CSR not only at the EU level but also at the international one, the question remains whether companies respect the environment because of their own voluntary decision, or because they are just complying with the established legislation - in the specific case, EU environmental legislation - or a mixture of the two hypotheses. For the purpose of the research, I will now proceed to analyze the EU environmental policy, from its history to its actors and functioning.

# III. EU Environmental policy and related soft law instruments

## 3.1 The emergence of environmental policy in the EU agenda

Despite the undoubtable importance that the EU environmental policy plays nowadays, at its early beginnings the EU did not have any competence in environmental matters. The Treaty of Rome, signed on 25 March 1957, established the European Economic Community (EEC), and the intention of the six founding States – Belgium, France, Italy, Luxembourg, the Netherlands and Federal Republic of Germany – was to create a common space to cooperate in order to reach ambitious economic and commercial aims, so that the Community was not eventually endowed with any environmental competence. According to Suzanne Kingtston (2019), the main reasons for this were that the field of environmental law barely existed in the founding Member States, and that the environmental discourse started to be increasingly relevant at the international level only from the 1960s and 1970s. This explains also why the establishing treaties of the other two European Communities created by the aforementioned States between 1954 and 1957 – the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM) – also remained silent on the topic, despite being called to discipline the exploitation of specific natural resources with undoubtable environmental impact. However, in this period, a small amount of legislation that would now be considered as environmental was adopted thanks to two legal bases, which both required unanimity in the Council: articles 100 and 235 of the EEC Treaty. Article 100 referred to situations where differences in national environmental legislation had detrimental effect on the common market, while Article 235 covered instances where Community action is necessary to attain, in the course of the operation of the common market, one of the Community's objectives, and the Treaty has not provided the necessary powers. As attested by Munari and Schiano Di Pepe (2012), this early legislation was thus premised on economic, rather than environmental, reasoning, so that any achievement of environmental improvement by Community legislation was just a side effect. The first decisions of the Heads of State and Government of the EEC Member States on the protection of the ecosystem and human health were taken at the Paris European Summit, held between 19 and 21 October 1972, in concomitance with the adoption of the Stockholm Declaration in the context of the UN Conference on the Human Environment. The Paris Summit Declaration stated that economic expansion was not an end in itself and that "special attention will be paid to nonmaterial values and wealth and to protection of the environment so that progress shall serve mankind" (European Council, 1972). Following this,

the first European Action Programme for the Environment (EAP) was adopted in 1973, setting out the Community's environmental programme for the next four years. By reading into article 2 of the EEC Treaty – on the aims of the Community – environmental protection as a necessary component of the aim of achieving economic growth, the EAP opened the way for further adoption of Community environmental legislation. To this end, articles 100 and 235 of the EEC Treaty continued to be used as legal bases. Also the role of the Court of Justice of the European Union (CJEU) was paramount in determining that environmental policy fell within the legal competences of the EEC (Munari, Schiano Di Pepe, 2012). In 1985, in the *ADBHU* case (Case 240/83), also known as *Waste Oils*, judges affirmed that Directive 75/439/EEC of 16 June 1975, which aimed to guarantee that the disposal of waste oils had to be made so as not to damage the environment, had to be placed within the context of environmental protection, which, according to the Court, had to be considered one of the essential objectives of the EEC. Such affirmation has allowed the Court to conclude that the system of prior approval on the disposal of waste oils foreseen by the directive, despite having a potential restrictive effect on the freedom of trade and competition, if applied proportionately and in a non-discriminatory way, "pursues an aim which is of general interest, by seeking to ensure that the disposal of waste oils is carried out in a way which avoids harm to the environment" (Decision of the ECJ, of 7 February 1985, case C-240/83, Procureur de la République v. Association de Défense des bruleurs des Huiles Usagés). Moreover, by the 1980s, on the request of the European Commission, the CJEU started several infringement procedures against Member States not complying with environmental policy obligations under law. Rulings by the CJEU also confirmed the possibility for Member States to go beyond the existing EEC policies and standards, as long as the domestic restrictions imposed by the Member States on environmental grounds were non-discriminatory and proportional (Selin, VanDeveer, 2008).

Officially, the Community acquired a specific legal competence on the environment thanks to article 25 of the 1986 Single European Act (SEA), which introduced a new Title VII on the Environment into the EEC Treaty. The Title contained three articles that represented the first specific legal bases for environmental legislation – articles 130r, 130s and 130t – focusing explicitly on the need for environmental protection measures, while article 100a – relating to the approximation of laws, regulations, and administrative practices in the Member States for the establishment and functioning of the internal market – could still be used to adopt environmental measures to further harmonize the single market. However, decisions under Articles 130r–t still had to be taken unanimously by all Member States in the Council, while Article 100a for the first time required only a qualified majority. According to Kingston (2019),

these changes led, among other things, to a relevant increase in the amount and scope of Community environmental legislation, and to the creation of a separate DG for the Environment in the Commission, followed by the creation of the European Environment Agency[25] (EEA).

With the 1992 Treaty of Maastricht, or Treaty on European Union (TEU), which created the European Union with a three-pillar structure and turned the name of the EEC into European Community (EC), environmental protection was formally included among the objectives of Community enunciated in Article 2 of the newly renamed EC Treaty. Article 2 now read, among the objectives, "the promotion, throughout the Community, of a harmonious and balanced development of economic activities, sustainable and non-inflationary growth respecting the environment". Moreover, Maastricht introduced qualified majority voting for the environmental legal basis of Article 130s EC, subject to certain express exceptions, and the formalisation of the environmental action programme. In addition, Community financial support for environmental projects was supported by the introduction of Article 130d(2), which provided for a Cohesion Fund to be established in the field of the environment.

The 1997 Treaty of Amsterdam further strengthened the status of environmental protection as a Community's objective, by introducing "a high level of protection and improvement of the quality of the environment" into article 2 EC, and modifying the SEA's wording by referring to the promotion of "harmonious, balanced and sustainable development of economic activities". It also reinforced the role of the EP by introducing the co-decision procedure as the general decision-making procedure in environmental matters. The decision-making procedure thus evolved from the original unanimous decision-making by the Council to majority voting and participation by the EP. Finally, I will address the status of environmental today, as it stands in the 2007 Lisbon Treaty, in the following section.

### 3.2 The EU environmental competence today

The 2007 Treaty of Lisbon, which incorporates the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) – the former but progressively

[25] The European Environment Agency (EEA) is the agency of the EU providing independent information on the environment. Its task is to help those involved in developing, implementing and evaluating environmental policy, and to inform the general public. It was established by the European Economic Community (EEC) Regulation 1210/1990. is governed by a management board composed of representatives of the governments of its 33 member states, a European Commission representative and two scientists appointed by the European Parliament, assisted by a committee of scientists.

amended Treaty of Rome or EEC Treaty –, largely maintained the status quo in terms of its environmental provisions, while at the same time renumbering the provisions, so that the legal basis for environmental measures is now found in Article 192 TFEU, whereas Article 114 TFEU provides the basis for measures primarily relating to the internal market.. Environmental values are not mentioned in the list of values upon which the Union is founded of Article 2 TEU. However, Article 3 TEU, which now contains the Union's objectives, repeats the Treaty of Amsterdam's formulation of the aim of a high level of protection and improvement of the quality of the environment in its second paragraph. Moreover, in Article 3(5) TEU, it is specified for the first time that one of the goals of the Union's external relations policy is the sustainable development of the Earth. In the TFEU, Article 191(1) added the fight against climate change among the EU's environmental policy aims.

According to Article 4 TFEU, the environmental competence is a shared competence between the Union and the Member States, meaning that both the Union and the Member States may legislate and adopt binding acts in this field. However, the Member States may exercise their competence only as long as the Union has not exercised its competence, as specified in Article 2(2) TFEU.

Currently, the specific legal basis for the adoption of environmental measures is Article 192 TFEU, which is also accompanied by Articles 191 and 193, that define the content and effects of the legal measures adopted on the basis of Article 192 (Langlet, Mahmoudi, 2016). This set of articles originates from the SEA, that, as noted above, had introduced articles 130r-t as the first express provisions on environmental protection. Moreover, the SEA had established Article 100a as the provision providing the basis for the adoption of measures aimed at the establishment and functioning of the internal market, which is now instead found in Article 114 TFEU. Also this article is currently used as a legal basis for adoption of environmental measures, as it used to happen also in the past. In terms of choosing which legal basis would be the best to adopt a legal act, as attested by Langlet and Mahmoudi (2016), the choice is based on what is considered to be the "centre of gravity" of the legal act in question. Therefore, if a legal act has environmental protection as its centre of gravity, it should be based on Article 192 TFEU, although it also has the purpose to uphold the internal market, and viceversa. I will now proceed to analyze Articles 191-193 TFEU, before moving to the internal market legal basis of Article 114 TFEU.

Article 191 sets out the objectives of the EU policy on the environment and factors that are to be taken account of. It also includes provisions on cooperation with third countries and with international organisations in the field of environmental protection. As regards the objectives

of the EU environmental policy, they are the preservation, protection and improvement of the quality of the environment, the safeguard of human health, the prudent and rational use of natural resources, and the advancement of measures at the international level to address regional or global environmental problems, with a specific focus on the fight against climate change. When preparing its environmental policy, the Union should take into account available scientific data, the environmental conditions in the Union's regions, and the potential benefits and disadvantages of either action or lack of action.

Article 192 provides the decision-making procedure to adopt legal environmental measures. The European Parliament and the Council act in accordance with the ordinary legislative procedure, after consulting the Economic and Social Committee[26] and the Committee of the Regions[27]. The ordinary legislative procedure – which will be better detailed in the following chapter – consists in the adoption of a legal act by qualified majority voting in the Council and the EP, which need to adopt the same legal text. However, as explained by Article 192(2), the Council can still take decisions by unanimity and after just consulting the EP for provisions of a fiscal nature, for measures affecting town and country planning, quantitative management of water resources, land use (with the exception of waste management), as well as for measures affecting a Member State's choice between different energy sources and the general structure of its energy supply. The ordinary legislative procedure can be applied also to these matters, but only after a decision by unanimity in the Council. According to Langlet and Mahmoudi (2016), it is very unlikely for this to happen, as all these measures are close to the core of national sovereignty. According to Article 192(3), general action programmes such as the EAP, establishing priority objectives to be attained, must be adopted by the EP and the Council in accordance with the ordinary legislative procedure.

Article 193 provides instead for the right of individual Member States to maintain or introduce more stringent protective measures, as long as they are consistent with the Treaties and are notified to the Commission.

Article 114 TFEU is the provision regulating the adoption of measures for the "approximation", or "harmonisation" of laws, which aim to reduce regulatory differences between the Member States. Measures taken on this legal basis are adopted to achieve the objectives set out in Article

[26] The Economic and Social Committee is a consultative body of the EU. It is an advisory assembly composed of social partners, namely employers' organisations, trade unions and representatives of various other interests. It was established by the 1957 Treaty of Rome in order to unite different economic interest groups to establish a single market. The creation of this committee gave such groups an institution to allow their voices to be heard by the European Commission, the Council and the European Parliament.

[27] The Committee of the Regions is the EU's assembly of local and regional representatives that provides sub-national authorities - regions, counties, provinces, municipalities and cities - with a direct voice within the EU's institutional framework. It was established by the 1992 Maastricht Treaty.

26 TFEU, that are establishing or ensuring the functioning of the internal market as an area without internal frontiers in which the free movement of goods, persons, services, and capital is ensured in accordance with the Treaties' provisions. Approximation measures – normally directives or regulations – are adopted by the Council and the EP in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee. Fiscal provisions and those relating to the free movement of persons or to the rights and interests of employed persons are exempted must instead be adopted unanimously by the Council after consulting the EP. Having the power of legislative initiative, the Commission, in its proposals for measures under Article 114 concerning health, safety, environmental protection and consumer protection, must take as a base a high level of protection, which should be based on an assessment of any new development attested by scientific facts.

Despite the existence of a specific legal competence for environmental matters, and the recognized role of the internal market competence also for adopting measures of environmental concern, also legal acts based on other legal bases are of equal significance for the environmental impact of EU law (Langlet, Mahmoudi, 2016). This is clear from the principle of integration contained in Article 11 TFEU, according to which environmental protection requirements must be integrated into the definition and implementation of all EU policies and activities.

The need to integrate environmental concerns into the other EU policies first appeared in the third EAP of 1982, after it was acknowledged that also agriculture, transport and regional policies had an impact on the environment. The SEA then introduced integration into the EEC Treaty as an environmental principle, which was later turned by the Treaty of Amsterdam into a general independent principle contained in Article 6 of the EC Treaty, which is now instead reflected in Article 11 TFEU. Already during the preparatory work of the conference that adopted the Treaty of Amsterdam, the Commission committed to make environmental impact assessments for all its future proposals that could likely have an impact on the environment. In June 1999, the European Council established the principle that all important Commission proposals must include an assessment of the measure's potential impact on the environment. From then on, the integration of environmental concerns into all other policy areas became a central priority for all the subsequent EAPs, up to the latest one adopted in 2013.

Therefore, the principle of integration of environmental concerns has been interpreted as the possibility of adopting measures aimed at environmental protection also within policy areas other than the environmental one, and thus based on other legal grounds than Article 192 TFEU (Langlet, Mahmoudi, 2016). The CJEU already noted this in 1999 in the case *Hellenic Republic*

*v Council* (Case C-62/88), relating to a legal act that after the Chernobyl disaster limited imports of agricultural products from third countries. Greece questioned the legal basis of the act by arguing that since its main purpose was to protect human health, it should be based on the equivalent of the current Article 192 and not on the article on common trade policy, which the Council had decided. The Court rejected this argument by appealing to the fact that all EU measures must satisfy the requirements of environmental protection, and a measure did not need to be considered as a part of environmental policy just because it concerned environmental protection.

### 3.3 The EU environmental policy instruments: hard-law and soft-law instruments

According to Kingston (2019), direct regulation has been the main regulatory tool of EU environmental policy, thanks to the deployment of a range of both legally binding and soft-law instruments. For this reason, Giandomenico Majone (1994) has famously defined the EU as a "regulatory state", due its longstanding reliance on direct regulation, which can also be referred to as "command and control" regulation. However, more recent trends show an increasing reliance on market-based instruments and voluntary approaches, of which CSR is an example. This section will first focus on regulations, directives and decisions as legally binding instruments used in EU environmental policy. Then, it will address soft-law instruments employed in the field. Finally, it will provide an overview of market-based instruments and voluntary approaches that have been used in recent times.

Within the meaning of Article 288 TFEU, regulations, directives and decisions are legally binding acts, and since the emergence of the EU environmental policy, they have retained a central role.

Regulations are legally binding acts applicable to all Member States. They are binding in their entirety and are self-executing in all Member States, which means that they are directly applicable in Member States without the need to transpose them within the national legal system. Therefore, regulations are used in environmental law when there is agreement on the need for a homogenous approach. However, this does not prevent the Member States from passing national measures or amending existing legislation to ensure compliance with a regulation. As such, regulations ensure the uniform application of EU environmental law in the entire Union. Moreover, they are also used to transpose obligations of international environmental conventions into EU law.

Directives are instead the most frequently used instrument in EU environmental policy, precisely because of their legal nature. A directive is binding on the Member States for the result to be achieved, but leaves discretion to the Member States as to the forms and methods of implementation. It must be transposed into a national legal system within the time limit prescribed by it. The time limit for the transposition usually depends on the complexity of the directive and the costs involved. A directive can be transposed into a national legal system through the adoption of one or more national measures, or amendment of existing national laws and regulations. Despite being the preferred tool for EU environmental policy, directives can also pose problems at the level of the Member States. As a matter of fact, they can be vague in what they prescribe, and thus lead to divergent interpretations of the text or different approaches to implementation. Moreover, transposition of a directive may be challenging, as Member States have already developed practices, procedures or instruments difficult to change. A recent trend has been the adoption of framework-style directives, which set out the essential principles and regulatory architecture for the field in question, but leave it to other subsequent "daughter" directives to establish details for particular sub-fields. As attested by Langlet and Mahmoudi (2016), this leaves the Member States with a higher level of discretion on how to implement the objectives of the directive in a consistent and appropriate manner with respect to the environmental conditions of their State.
A decision is binding in its entirety and specifies to whom it is addressed. Only who is addressed by the decision is bound by it. They often accompany directives by containing questionnaires to be compiled by the Member States for notifying the Commission on the transponsition of the directives. Moreover, they are used as an instrument of ratification for international conventions, while, as mentioned above, regulations integrate such international instruments into EU law.

Always within the meaning of Article 288 TFEU, recommendations and opinions have no binding force, and thus amound to soft-law instruments. In particular, recommendations can be a useful instrument to bridge different legal traditions and practices in environmental regulation among the different Member States (Kingston, 2019). An example is the Recommendation of the European Parliament and of the Council of 4 April 2001 providing for minimum criteria for environmental inspections in the Member States. However, also the use of a wider range of soft-law instruments is typical of the environmental policy area. Linda Senden is among the most influential scholars in providing a categorization of EU soft-law instruments (2004) . First of all, she provides a definition of soft law as "rules of conduct that are laid down in instruments which have not been attributed legally binding force as such, but nevertheless may have certain

(indirect) legal effects, and that are aimed at and may produce practical effects" (Senden, 2004). From such definition, it is clear that the element of legal effect – the attribution of legally binding force or not – is what distinguishes soft law from hard law. Senden identifies three main categories of soft-law instruments: preparatory and informative instruments, interpretative and decisional instruments, and steering instruments.

Preparatory and informative instruments are adopted to prepare further EU law and policy, and/or provide information on EU action. Preparatory acts encompass Green Papers, White Papers and action programmes adopted by the Commission. Informative instruments involve instead inter-institutional communications, informative communications and individual communications. In EU environmental policy, the most common used instruments are Green Papers, White Papers and action programmes. Green Papers are documents drafted with the aim to raise a public debate and consultation. They usually start with the overview of the current situation in a particular policy, and then identify problems and challenges, with a view to analyze possible options for action. They are addressed to all interested parties, which for instance may be the Member States, business, NGOs and institutions. They are published as COM documents, often under the heading of "Communication from the Commission". After the results of the launched consultation process have come in, the Commission often drafts a follow-up to the Green Paper, in the form of a White Paper. White Papers establish general proposals on an issue by presenting a policy for discussion and political decision. With respect to Green Papers, they contain concrete proposals for action on the basis of the outcome of the debate on the related Green Paper. Unlike Green Papers, they do not specify to whom they are addressed, but they are mainly aimed at the Member States and the other EU institutions. They are published as COM documents, sometimes under the heading of "Commission Communication". Action programmes are even more concrete than Green and White Papers, as they set the agenda on a certain policy area, by listing the precise legislative or non-legislative actions to be undertaken within a fixed time limit. The Commission may draw up an action programme by its own initiative, or may be called to do so by Resolutions of the European Parliament and of the Council , or by the Member States. This explains why sometimes an action programme may be formally adopted under Article 288 TFEU, in the form of a decision. When this is the case, the Commission may decide to set the action programme in the form of a proposal for legislation. When, on the other hand, the action programme remains only a Commission act, it is published as a COM document. Informative instruments aim instead at providing information on EU action. They do not lay down any legally binding rules. Inter-institutional communications are communications where the Commission expresses its view with respect of a certain issue, indicates actions that may be taken, and formulates possible

proposals. They are addressed to the European Parliament and the Council, and sometimes also to the Committee of the Regions and the European Economic and Social Committee, as their objective is to promote inter-institutional dialogue. Purely informative communications aim only at informing the general public on EU action, by providing information on the state of affairs or actions on certain policy areas. For this reason, they are mostly not addressed to anyone in particular. Individual communications concern instead communications on the application of EU law in a concrete case. Communications on appointment of certain persons and notices of the date of entry into force of international agreements are examples. However, they can also invite interested parties to respond to the proposed application of a specific law in a certain case. This applies in all those areas where the Commission has competence to enforce EU law directly.

Interpretative and decisional instruments provide guidance on the interpretation and application of existing EU law. They indicate in what way a EU institution shall apply EU law provisions in cases where it has implementing powers. As attested by Senden (2004), to this category belong the Commission's communications and notices, and also some guidelines, codes and frameworks. Since interpretatative instruments aim, in principle to clarify the interpretation that should be given to the exisiting body of EU law, they don't have the objective to create new legal rules. To do so, the Commission often refers to already existing interpretations provided by the CJEU in specific cases addressing EU legislation. Or, by drawing from the interpretation of the CJEU, it may also infer new rules. On the other hand, decisional instruments go further than the interpretative ones, as they are not limited to simple interpretation, but lay down general rules regarding the way the Commission will exercise its implementing powers in a specific case where it has such power.

Steering instruments aim at establishing or providing further effect to EU objectives and policies, either in a declaratory way, or with a view to promote closer cooperation and harmonization between Member States, in a non-binding way. Their primary aim is thus to steer or guide action, but in a legally non-binding way, as opposed to legislative instruments. For Senden (2004), recommendations, opinions, resolutions, codes of conduct, conclusions and declarations fall within this category. Recommendations and opinions can be considered formal steering instruments because they are recognized by Article 288 TFEU, which describes them as having no legal binding force. Recommendations are usually adopted by the Commission and the Council, while opinions mostly by the Commission. The other instruments belonging to the category are instead considered as non-formal steering instruments, which have emerged from EU practice.

Market-based and voluntary policy instruments complement direct-regulation instruments in the EU. Their use adds to the overall environmental policy toolbox, but they still remain minority instruments.

As regards market-based instruments, they started to emerge in EU environmental policy in the 1990s. Their logic is based on assumption that market mechanisms can provide incentives to guide behaviour towards environmentally favourable outcomes. One example is the mechanism of putting a price on pollution, which is what tradable permit schemes consist of. A tradable permit scheme is a regime by which polluters are grande a certain number of pollution rights. If they pollute less than what is allowed by their permit, they may sell their excess to other polluters. In the case of emissions trading schemes, the rights in question are the rights to emit. According to Kingston (2019), tradable permit schemes can thus minimise costs, by allowing firms that would find it costly to lower their emissions to purchase the right to pollute from firms for which the cost is lower. In this way, economic development is reconciled with environmental protection.

On the other hand, in the context of voluntary instruments, the role of the regulator is to enable and incentivize a series of corporate and social actors to achieve environmental objectives. When the actor in question is a corporation, such regulatory techniques fall under the scope of CSR practices, which have been addressed in the second chapter. As seen, CSR-inspired regulatory techniques have led to the adoption of voluntary agreements, environmental codes and charters and voluntary environmental management systems. As market-based instruments, the aim of such techniques is to combine economic growth with environmental protection. On the side of the regulator, however, the difficulty is to create a regulatory environment that favours voluntary pro-environmental activity, without at the same time imposing it or mandating it. The main discourse employed to encourage CSR, is that greener behaviour can give firms a market advantage, as consumers, investors and employees shall prefer greener firms, or also reduce environmental costs in terms of energy or pollution. Moreover, if companies provide consumers and other stakeholders with information on their environmental performance, market transparency is increased. However, the downside of voluntary environmental initiatives is that they may be used by undertakings to escape being regulated. In general, one advantage of voluntary initiatives is that they can contribute to achieve a higher level of environmental protection by complementing, though not replacing, direct regulation. At the same time, their main disadvantage lies in their non-compulsory nature and therefore their inability to respond to immediate environmental risks. Moreover, as noted by Selin and VanDeveer (2015), the EU's ability to adopt voluntary agreements remains limited, as they are not officially recognized in the Treaties. Sometimes, it may happen that an earlier voluntary

agreement is followed by a binding legal act, like in the case of the 2009 Regulation on car emissions (Regulation 443/2009/EU), which superseded an earlier voluntary agreement concluded with the car industry to reduce carbon dioxide emissions, dating to 1999.

All the aforementioned instruments are even more relevant if we consider that the EU is not an isolated system, but is comprised within the wider system of environmental global governance. As a matter of fact, as argued by Eckes (2012), the EU has established itself as an independent actor alongside Member States in the international environmental policy field. This is reflected by the fact that the EU has assumed a leading role in global environmental negotiations, and that most environmental legal regimes provide for the possibility of EU accession. Moreover, environmental law itself has become more internationalized in recent years, as it is increasingly shaped through participation in global environmental rule-making procedures and fora.

Article 191(1) TFEU and Article 191(4) TFEU concern the EU competence to take external actions to protect the environment. Article 191(1) states that the EU environmental policy shall contribute to promote measures at the international level to address regional or global environmental problems. Article 191(4) provides instead for the possibility of the EU and the Member States to cooperate with third countries and international organizations to reach this objective. In particular, the EU can become part of agreements with the third parties concerned, but this must be without prejudice to Member States' competence to negotiate in international bodies and conclude international agreements. According to Eckes (2012), this formula expresses the concern that EU's external action in the environmental policy field could prejudice Member States' powers and increasingly preempt them from participating in the international environmental debate. According to Morgera (2012), the EU has made use of three modalities to support the development and implementation of international environmental law. First, the EU uses its external action capabilities to support the implementation of existing multilateral environmental agreements beyond its borders. Second, the EU seeks to build alliances with third countries, regions or groups of countries with the aim to influence ongoing international environmental negotiations. Finally, the EU is also trying to make progress on environmental issues on which the international community has been unable to launch multilateral environmental negotiations, so as to adopt a bottom-up strategy by building consensus with other willing countries. What emerges from these three strategies is that the EU aims to use its unilateral or bilateral approach as a complement, rather than as an alternative to multilateralism.

The relevance of EU environmental policy in the wider international system is also evident when considering the climate change issue. As a matter of fact, climate change is one of the

main global phenomena of 21st century, and has been defined as an arena of transnational environmental law (Etty et al., 2012). Within the context of the UN Framework Convention on Climate Change (UNFCCC), parties to the convention have met annually from 1995 in Conferences of the Parties (COP) to assess progress in dealing with climate change and greenhouse gas emissions reduction. The latest adopted agreement is the 2015 Paris Agreement, to which the EU is a party, and which aims to limit global warming to well below 2°C and pursue efforts to limit it to 1.5°C. EU Member States are signatories on their own, but they coordinate their positions together and set common emission reduction goals at the EU level. a detailed analysis for the current state of play of the EU in approaching the transnational problem of climate change will be provided in the section below dealing with the European Green Deal.

### 3.4 The actors of the EU environmental policy

Several key institutions and actors are involved in the formulation of EU environmental law and policy, ranging from the core EU institutions to interest groups, from both the public and the business field. I will first address the main EU institutions involved – European Commission, Council of the European Union, European Parliament and European Council– while briefly mentioning other engaged EU actors, before moving to analyze the role played by public and business interest groups.

According to Kingston (2019), the European Commission is often considered as the institution underpinning the EU environmental policy, and that has greatly contributed to its development. It is headed by the College of Commissioners, composed of one Commissioner per Member State, appointed for five years. Each Commissioner has a cabinet composed of political advisers, in order to better manage their portfolios. Currently, the environment portfolio includes also oceans and fisheries, and is held by Virginijus Sinkevičius, the Commissioner for Lithuania. Moreover, the portfolio is also represented by an Executive Vicepresident, Frans Timmermans, who is responsible for a much broader range of policy issues under the umbrella of the European Green Deal[28]. As mentioned before, the Commission is organised into policy departments known as Directorates-General or DGs, which are tasked with the development, implementation and management of EU policy and law. DG Environment is the one primarily

[28] The European Green Deal is a set of policy initiatives put forward by the European Commission in its current 2019-2024 term with the aim of making Europe climate neutral by 2050. The plan includes the increase of the EU's greenhouse gas emission reductions target for 2030 to at least 50% and towards 55% compared with 1990 levels. Existing laws are being reviewed on their climate merits and new legislation is being proposed on circular economy, biodiversity and farming.

in charge of environmental issues, although there are also other DGs dealing with topics closely related to the environment, like DG Climate Change, DG Energy, DG Agriculture and Rural Development, DG Maritime Affairs and Fisheries, DG Health and Food Safety and DG Internal Market, Industry, Entrepreneurship and SMEs. DG Environment was originally established in 1983 as a team of five people in a branch of DG Industry, and became a separate DG only in 1991. As of data from 2019 (Kingston), it employs around 500 staff members and receives about €400 million annually from the EU budget.

As prescribed by Article 17 TEU, the Commission enjoys wide competencies, the most significant of which is its exclusive power to make legislative proposals, and therefore also in the environmental field. The legislative activism of the Commission in this field is reflected by the fact that the EU environmental *acquis* comprises around 200 legal acts. DG Environment plays a major role in formulating all the Commission's environmental proposals, and to do so, it greatly relies on the input of expert groups, which include participants representing diverse interests, including scientists, academics, industry and NGOs. Before submitting a draft proposal to the College of Commissioners, DG Environment must consult the other DGs whose scope of work relates to the environmental issue under consideration. If the consulted DGs expressed opposing views during the consultation, their differing views must be attached to the proposal. Then, the proposal is adopted by the College of Commissioners by consensus.

The Commission has also the competence to propose the EAPs, as well as to set the legislative programme for each year, which determines measures to be taken in each policy area. The Commission also influences the development of EU environmental policy thanks to soft-law instruments, as it will be better detailed in the next section, such as white and green papers and inter-institutional communications.

The Council of the European Union is the EU institution representing the interests of the Member States, composed of representatives of each Member State at ministerial level. Because of its composition, it works in ten different configurations, where the Environment Council is made up of ministers responsible for environmental matters at the national level. This Council configuration was established in 1983 due to the increase in awareness for environmental protection matters, and its number of meeting sessions has grown over the years, up to four sessions per year. The Council meetings are chaired by the relevant minister of the Member State holding the Council Presidency. In general, every eighteen months a pre-established group of three Member States will hold the Presidency for that period, and each of the three Member States will specificially hold the Presidency for 6 months. The group of Member States prepare a draft programme for Council activities, to ensure consistency in the three consecutive

rotations of the presidency. Although the Presidency should be neutral and impartial in its role, it still provides an opportunity for the sitting Member State to pursue its policy objectives in the six months term. This becomes even more relevant when we acknowledge that not all EU Member States possess the same stance towards environmental policy. Rather, according to Tanja Borzel (2000), there is a division between the so-called "leaders and laggards" of EU environmental policy: among the leaders, Denmark, Germany, Netherlands, Austria, Finland and Sweden, while among the laggards Spain, Italy and Greece.

In its work, the Council is assisted by the General Secretariat and a Committee of Permanent Representatives (COREPER). The General Secretariat provides technical and logistical assistance, and includes the Directorate-General "Environment, Education, Transport and Energy". The COREPER examines all the legislative proposals on the Council's agenda and tries to reach an agreement before the proposals are submitted to the Council for adoption. Its work depends on discussions previously held in the working groups, composed of representatives from Member States who are experts in particular policy fields. The most relevant working groups for environmental policy are the Working Party on Environment – responsible for environmental matters within the EU – and the Working Party on International Environmental Issues – tasked with coordinating and negotiating international environmental issues.

The European Parliament, whose members are directly elected by the citizens of the EU Member States, has gained significant powers since its creation by the 1957 Treaty of Rome. It currently exercises legislative, budgetary and supervisory functions. In the legislative process, a paramount role is played by the committees, which have the task to scrutinize the Commission's legislative proposals and prepare reports on them. The Environment, Public Health and Food Safety Committee, or just simply Environment Committee, was established in 1983 and represents one of the largest committees in the EP. Moreover, any EAP must be adopted by the European Parliament and the Council in accordance with the ordinary legislative procedure. What also contributes to greening the EP's agenda is the presence of the Green Party.

According to Jordan and Adelle (2013), it is widely acknowledged that although the EP is more powerful in the environmental policy area than in many others, it is not as environmentally radical as it could be expected. First, because the Environment Committee lacks the expert and scientific knowledge needed to assess the Commission's legislative proposals. Second, because changes in membership of the Committee over consecutive parliamentary terms may affect the passage of environmental legislation. Nevertheless, the EP has increased interaction with other

actors involved in the legislative process for environmental acts (Kingston, 2019). For instance, the Commission takes part in the meetings of the Environment Committee and supports consultations with Members of the European Parliament (MEPs).

The European Council, as prescribed by Article 15 TEU, defines the general political direction and priorities of the European Union. Bringing together the Heads of State or Government of the Member States, its meetings were initially informal and gradually became more institutionalized since the 1980s (Jordan, Adelle, 2013). However, only the 2007 Lisbon Treaty turned it into a formal EU institution. As outlined in the section above, it was the European Council that in 1973 called on the Commission to develop the first EAP. Subsequently, also other European Council meetings contributed to the further development of environmental law and policy. The Dublin European Council in 1990 was especially important, as the European Council highlighted the need for a more systematic approach in environmental protection and the improvement of environmental monitoring and research (European Council, 1990). The 2000 Lisbon Strategy, aiming to make the EU the most competitive knowledge-based economy by 2010, failed to make environmental protection one of its core aims. However, the 2001 Gothenburg Council, under the Swedish Presidency, agreed on a strategy for sustainable development and added an environmental dimension to the Lisbon strategy. In recent years, the European Council agenda has started to focus on urgent issues such as global warming and climate change, also as a way to answer to the growing international efforts to tackle them and position itself as a major global actor in relation to them. The frequency of the European Council meetings has also increased significantly in recent years, which indicates its more prominent role.

Along with shaping the environmental agenda, the European Council also facilitates the legislative process by interacting with the other institutions. Its relationship with the Commission as the main driver of environmental policy was improved thanks to the participation of the President of the Commission to European Council's meetings. Moreover, consistency between the work of the European Council and of the Council is ensured by the General Affairs Council, which prepares the follow-up to every European Council's meeting.

Other EU bodies that are involved in environmental policy are the Economic and Social Committee, the Committee of the Regions, the European Environment Agency and the European Investment Bank.

The Economic and Social Committee is an EU advisory body representing the interests of employers, workers and social, economic and cultural organizations. It must be consulted prior

to the adoption of legislation based on the environmental legal basis of Article 192 TFEU, or can also give opinions of its own initiative. By operating through six specialised sections, the one responsible for environmental issues is the Agriculture, Rural Development and the Environment section (NAT).

The Committee of the Regions is another EU advisory body composed of representatives of regional and local bodies. Like the Economic and Social Committee, it must be consulted when adopting environmental legislation on the basis of Article 192 TFEU. By operating through six commissions, the Environment, Climate Change and Energy Commission (ENVE) is responsible for the environmental portfolio, whose main task is to prepare opinions to submit as a response to a legislative proposal on environmental issues.

The European Environment Agency was established in 1990 and became operational in 1994. Its main task is to collect and disseminate information on the state of the environment to the EU institutions and Member States. However, it is also in the environmental policy process, as it provides specific support to the work of DG Environment and the other environment-related DGs.

The European Investment Bank is not an institution directly associated with environmental protection but plays a twofold role in relation to it. First, it finances various environmental projects that help in the implementation of EU environmental policy. Second, it promotes environmental sustainability by ensuring that all the projects it finances protect and improve the natural and urban environment. To guarantee this, applicants for each project must submit data to prove that the project will not have an adverse impact on the environment.

Alongside the specific EU institutions, also organized interests from the private sector and civil society have the opportunity to influence the EU environmental agenda and policy proposals. As a matter of fact, as the EU acquired greater authority over more policy areas over the years, several private sector and civil society groups increasingly established offices in Brussels, focusing directly on EU bodies and policies (Selin, VanDeveer, 2015) and establishing close ties especially with the Commission and the European Parliament. In particular, I will now address environmental NGOs and business interest groups. However, a more detailed discussion on why and how such actors have access to the EU institutions will be provided by the following chapter.

Environmental NGOs and other public interest groups represent a variety of broad and different interests. Their impact on EU policy-making depends on their resources, organisational structure and level of expertise. These problems may be overcome by joining umbrella

organizations like the European Environmental Bureau[29]. However, the problem of funding is sometimes solved by the fact that environmental advocacy groups receive financial support from the European Commission and/or national governments (Selin, VanDeveer, 2015). The reason for such funding is that these groups often have less resources than private sector organizations, and in this way the Commission tries to ensure a broad and equal access to participation in policy debates. At the same time, this practice is not without criticism, as environmental advocacy groups may hesitate to oppose the Commission and Member State governments to avoid losing funding.

Business interest groups, differently from environmental NGOs, are mostly considered as more organized, and as having a very specific technical expertise (Kingston, 2019). Businesses have an interest in influencing the EU decision-making process because most of the Commission's legislative proposals impact their operations, in either a direct or indirect way. At the same time, however, there are rising concerns that since business organizations have more resources and wealth, they have more access to the EU institutions than other smaller organized interests. This raises the risk that economic interests become prioritized over the general need to protect the environment. As a matter of fact, the main interests of private sector actors are the economic and industrial policies and the smooth functioning of the single market, which gives them a direct stake in EU environmental law, when new policies aim to harmonize regulations or reduce trade barriers. However, some firms may also have an interest in the raise of environmental standards at the level of the Member States, and could decide to ally with environmental advocacy groups to push for such higher standards (Selin, VanDeveer, 2015).

### 3.5 Sustainable Development and EU environmental law

For the purpose to more comprehensively address environmental law within the EU, it is relevant to deal with one of its underlying concepts: sustainable development.

The concept of sustainable development dates back to the 1972 UN Conference on the Human Environment, held in Stockholm, where the international community met for the first time to consider global environment and development needs together (De Sadeleer, 2015). However, a proper definition of sustainable development has only been later provided by the Brundtland report, prepared by the World Commission on Environment and Development of the UN

[29] The European Environmental Bureau is a network of 143 environmental citizens' organizations based in all the EU Member States and some accession and neighbouring countries. Its aim is to protect and improve Europe's environment and to enable Europe's citizens to play a part in reaching that goal. Its office was established in Brussels in 1974 to monitor and respond to the EU's emerging environmental policy.

(WCED) in 1987. According to this definition, sustainable development is a "development by means of which needs of present generations can be met without compromising the ability of future generations to meet their own needs" (WCED, 1987). The underlying idea was to strike a balance between, on the one hand, the social and economic advantages of development providing jobs and amenities for the present generation and, on the other, the need to preserve a sufficient amount of natural resources for future generations, with the ultimate aim to reconcile the needs of development with environmental protection. Since its proclamation in 1987, sustainable development has been on the agenda of numerous international declarations and academic writings. The concept was subsequently popularized at the 1992 UN Conference on Environment and Development, held in Rio de Janeiro, whose outcome was the Rio Declaration, a document where the idea of sustainable development has been detailed in 27 points. Specifically, these points are further explanations of what are considered the three pillars, or principles of sustainable development: economic, social and environmental development. In 2000, the Millennium Summit of the UN adopted the Millennium Development Goals (MDGs). The MDGs set eight international development goals to be achieved by 2015, among which the aim to eradicate extreme poverty, achieve universal primary education, reduce child mortality, combat diseases, ensure environmental sustainability and promote gender equality. As it was later assessed that most of the goals had not been reached, the Sustainable Development Goals (SDGs) were developed to succeed the MDGs, and were adopted by the UN General Assembly in 2015 through the 2030 Agenda for Sustainable Development.

Given the interest of the wider international community for sustainable development, it is not surprising that also the EU has integrated it into its founding Treaties. In particular, the 1997 Amsterdam treaty gave status to sustainable development in its Article 2, which defined the objectives of the European Community and stated that the Community shall have as its task the promotion of a harmonious, balanced and sustainable development of economic activities. However, according to De Sadeleer (2015), this formulation still linked sustainability with economic growth, rather than considering it as an aim in itself. It was only through the entry into force of the Treaty of Lisbon in 2009 that the concept of sustainable development was recognized as an objective of the EU in itself. Currently, the concept is enshrined in various treaty provisions. Article 3(3) TEU reiterates the commitment to sustainable development and to achieve a high level of environmental protection, but in doing so, it does not refer exclusively to economic growth, as it states that "the Union shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection

and improvement of the quality of the environment". Moreover, this formulation clearly includes the three pillars of sustainable development. Moreover, Articles 3(5) and 21(2)(d) TEU arestablish sustainable development as one of the corner stones of the EU external policy, as a principle that should guide the relations of the EU with the rest of the world, with a view to promote the sustainable economic, social and environmental development of developing countries.

Nevertheless, De Sadeleer (2015) also argues that although the concept of sustainable development is referred to in three different provisions of the Treaties, it still a concept with a controversial legal status. As a matter of fact, it is not clear whether it amounts more to a principle or to an objective, where the term "principle" implies a higher normative content than "objective", as principles of EU law allow the EU courts to review the powers of the institutions. According to Voigt (2013), more than an objective, a concept or a process, sustainable development is a general principle of law, as shown by its normative force, broad scope and support in the international community. More specifically, sustainable development has been classified as a general principle of law according to Article 38(1)(c) of the Statute of the International Court of Justice, and this has legitimized its widespread use in many national legal systems and in international law.

As mentioned above, the sustainable development became a fundamental objective of the EU thanks to the Treaty of Amsterdam. Subsequently, at the Gothenburg Summit in June 2001, the EU leaders meeting at the European Council launched the first EU Sustainable Development Strategy (EU SDS) based on a proposal from the European Commission, which was complementary to the 2001 Lisbon Strategy of economic and social renewal, as it added to it an environmental dimension. The first part of the strategy proposed objectives and policy measures to tackle unsustainable trends, while the second part called for a new approach to policy-making that would ensure that the EU economic, social and environmental policies mutually reinforce each other. This would be achieved through the introduction of an Impact Assessment by the Commission to each new legislative proposal (Montini, 2013). The latest review of the EU SDS occured in 2009 and was undertaken by the Commission, which has recognized the substantial progress the EU has made in mainstreaming sustainable development into many of its policies, but also that further efforts are required. In particular, it remains debatable how to check progress of EU Member States in implementing sustainable development's commitments. As a matter of fact, as argued by Grzebyk and Stec (2015), sustainable development is such a complex phenomenon covering many factors, that it is impossible to evaluate its state of implementation without common, clear and comparable indicators among countries.

### 3.6 The European Green Deal

In the wider discussion on EU environmental policy, it is finally necessary to address its current state of play. In particular, the new European Commission, which will be in place for the 2019-2024 term, has presented the European Green Deal in December 2019, in the form of a Communication. President Von der Leyen has decided to make the Green Deal as the landmark of her Commission, as it will be the new growth strategy of the EU. As such, it aims to transform the EU economy into a climate-neutral economy by 2050, with no net emissions of greenhouse gases. To reach this objective, a set of policy initiatives and roadmaps has been presented, and they cover far-reaching policy areas, as the transformation will require the contribution of all sectors of the economy.

In terms of the climate neutrality objective by 2050, the Commission aims to increase the EU's greenhouse gas emission reductions target for 2030 to at least 50% and towards 55% compared with 1990 levels. In addition, a proposal for a European Climate Law has been presented in March 2020, with a view to enshrine the 2050 climate neutrality objective into legislation, and ensure that all EU policies and sectors play their part in contributing to it.

With a view to reach these objectives in 2030 and 2050, decarbonizing the energy system is seen as essential by the European Green Deal. Renewable energy sources and their smart integration will have a fundamental role in achieving decarbonization, as well as coherent, innovative and functioning infrastructures. As also attested by Kemfert (2019), currently the EU energy supply is still largely based on fossil fuels often imported from outside the Union. According to her, the European Green Deal may contribute to lead to fewer fossil fuel wars by promoting the use of a higher share of renewable resources. In addition, the European Green Deal envisages that all the industry must be mobilized to achieve a climate neutral and circular economy. For this reason, in March 2020 the Commission has adopted a new EU Industrial Strategy as part of the European Green Deal, and has coupled it with the publication of a new EU Circular Economy Action Plan. The Circular Economy Action Plan includes a series of measures aimed at strengthening the production of sustainable products across all the value chain, so as to make them easier to recycle or reuse. It also foresees the adoption of legislation that will set minimum requirements to prevent environmentally harmful products from being placed on the EU market. Moreover, the aim of the plan is to propose also legislation with a view to empower consumers in the green transition, meaning that buyers will be helped through labelling requirements and more detailed information in making more sustainable decisions when buying.

Also the construction sector and the use and renovation of buildings is addressed by the European Green Deal. As a matter of fact, buildings account for 40% of the energy consumed (Commission, 2019). In particular, a renovation wave of public and private buildings is envisaged, which for instance may start to include incentives for the uptake of electric vehicles' charging infrastructure within buildings. In relation to this, the Deal also aims to accelerate the shift to sustainable and smart mobility, as according to the studies conducted by the Commission, a 90% reduction in transport emissions is needed by 2050 to achieve climate neutrality. All transport sectors, from road to rail, to maritime and aviation will have to contribute to this reduction. To this aim, the Commission will adopt a strategy for sustainable and smart mobility by the end of 2020. Moreover, the uptake of new clean and efficient technologies will need to be promoted, among which vehicles based on sustainable alternative transport fuels, like those based on electricity. As a matter of fact, the Commission expects that by 2025 about 1 million public recharging and refueling stations will be needed to to support the 13 million zero-and-low-emission vehicles that will be present on European roads. Moreover, as it is currently not possible to completely phase out cars emitting CO2, the Commission will review by June 2021 the current legislation on $CO_2$ emission performance standards for cars and vans, to ensure a pathway from 2025 onwards towards zero-emission mobility.

The Commission also aims to make European food the global standard for sustainability. With the presentation of the Farm to Fork Strategy, it will launch a stakeholder debate covering all the stages of the food chain, to pave the way for a more sustainable food policy. In this context, there is the ambition to reduce the use of chemical pesticides, fertilisers and antibiotics. Moreover, the Farm to Fork Strategy will contribute to achieve a circular economy by reducing th impact of food processing by taking action on transport, storage, packaging and food waste. Just like for the Circular Economy Action Plan, even here the Commission envisages to propose new ways to help consumers choose healthy and sustainable diets, and provide them with better information on details like food origin, its nutritional value and its environmental footprint. However, food couldn't be sustainable if it didn't come from protected and healthy ecosystems. For this reason, the Commission has also included in the European Green Deal the objective of preserving and restoring ecosystems and biodiversity. With a view to enable the EU to participate and play a role in the next Conference of the Parties to the Convention on Biological Diversity[30], the Commission will present a Biodiversity Strategy, which will identify the

[30] The Convention on Biological Diversity (CBD) was opened for signature at the Earth Summit in Rio de Janeiro on 5 June 1992 and entered into force on 29 December 1993. It is an international legally-binding treaty with three main goals: conservation of biodiversity; sustainable use of biodiversity; fair and equitable sharing of the benefits

measures that will help Member States improve and restore damaged ecosystems. Moreover, a new EU Forest Strategy will be presented, having as its main objectives forest preservation and restoration in Europe, to help increase the absorption of $CO_2$ and promote bioeconomy.

More generally, all the transformations required by the European Green Deal will need massive investments, which the Commission expects to amount to €260 billion of additional annual investment. In particular, these investments will need to address those countries that will need more help in the transition to a climate-neutral economy, namely the countries that are still very dependent on carbon and other fossil fuels. For this reason, the Commission has proposed a Just Transition Mechanism, which will include a Fund aimed at helping these countries. Also the private sector will be key in financing the green transition. Thus, Parliament and Council will need to adopt a taxonomy to classify environmentally sustainable investments.

On a comprehensive analysis, and also as attested by Gaventa (2019), what emerges is the European Green Deal is a climate, social, economic and European project. As a climate project, this initiative will need to show the utmost urgency in tackling the climate emergency and answer to the unprecedented citizen concern that has developed around it. As a social project, it will need to ensure that the green transition is fair and inclusive, and does not leave any regions or social groups behind. As an economic project, it has the potential to stimulate investment in new environmentally friendly ways, as well as to support the European industry in achieving a zero-carbon economy. Finally, as a European project, the European Green Deal aims to engage citizens in the green transition, by providing them with more direct instruments to be informed about green processes. This is even more relevant if we consider the current youth movement organizing global climate strikes, and the question is thus posed: can the Green Deal save us? (Seitz, Krutka, 2020).

Moreover, it has to be aknowledged that the current COVID-19 crisis will certainly have an impact on the environmental policy agenda, as it is transforming into a new economic crisis derived from the health crisis. As reported by Burns et al. (2019), the environmental policy ambition was one of the victims of the 2007-2008 global financial and economic crisis, as it is well established that during economic crises environmental policy is no longer the first item on the policy agenda, with long-term consequences for environmental quality. Therefore, it will be relevant to observe how the EU will react to the current crisis, also acknowledging that the agenda for many policy initiatives of the European Green Deal has already changed, as many items have been postponed to 2021 for presentation.

arising from the use of genetic resources. The CBD's governing body is the Conference of the Parties (COP), which meets every two years to review progress, set priorities and commit to work plans.

# IV. Access of stakeholders to the EU decision-making process

## 4.1 EU decision-making procedure in environmental policy

As mentioned in the previous chapter, most of EU environmental policies are adopted according to the ordinary legislative procedure, as indicated by Article 192 TFEU. The purpose of this section is to detail the ordinary legislative procedure used to adopt EU environmental legislation, before passing to the next sections to analyze the points of access for stakeholders to influence the decision-making process.

The ordinary legislative procedure consists of seven stages. Article 294 TFEU defines five stages, while the two other stages are provided by Article 297 TFEU. According to the procedure, the European Parliament and the Council act as co-legislators with symmetric procedural rights, and the resulting European legislation is thus seen as the product of a joint adoption by both institutions (Kingston, 2019). To explain the stages in the procedure, I will refer to the scholar Schütze (2015), who has referred to them as: proposal stage, first reading, second reading, conciliation stage, third reading, signing and publication.

In the proposal stage, the Commission submits a legislative proposal. At first reading, the Commission proposal goes to the European Parliament, which will act by a majority of the votes cast, that is the majority of the physically present members. It can either reject the proposal, approve it or amend it. The bill then moves to the Council, which will act by a qualified majority of its members. If it agrees with the Parliament's position, the bill is adopted at first reading. If it disagrees, the Council must provide its own position and communicate it with reasons to the Parliament.

In the second reading stage, the bill lies for the second time in the Parliament, which has three choices. It can approve the Council's position by a majority of the votes cast, reject it by a majority of its component members or propose amendments. If amended, the bill is forwarded to the Council and the Commission. The Commission must deliver an opinion on the amendments. If the Council approves all of Parliament's amendments, the legislative act is adopted, acting by qualified majority. Where the Council cannot approve all of Parliament's amendments, the bill enters the conciliation stage.

In the conciliation stage, a Conciliation Committee is created with the mandate to draft a joint text on the basis of the positions of the European Parliament and the Council at second reading. The Committee is composed of members representing the Council, and of an equal number of members representing the European Parliament. The Commission takes part in the Committee

as a catalyst for conciliation. If the Committee does not reach an agreement for a joint text, the legislative bill has failed. If a joint text is approved, it returns to Parliament and Council for a third reading.

At third reading, Parliament and Council cannot amend the joint text, but just endorse it or reject it. If one of the two legislators disagrees with the joint text, the bill fails and is not adopted. If instead the Parliament endorses it by a majority of the votes cast, and the Council by qualified majoirty, the bill is adopted. At this point, according to Article 297 TFEU, in order to become law the bill must be signed by the President of the European Parliament and by the President of the Council, and subsequently published in the Official Journal of the European Union.

However, considering the length and weight of this decision-making procedure, informal institutional practices have developed, especially in the form of tripartite meetings, also known as "trilogues" (Schütze, 2015). Trilogues are an informal procedure not codified in the European Treaties, made up by members of the European Commission, of the Council and of the European Parliament. Although the ordinary legislative procedure is designed to find a compromise between the Council and the Parliament by itself – by including additional readings and even the possibility of the Conciliation Committee – the majority of European legislation is approved at the first reading, and this is mostly thanks to the presence of trilogues. As a matter of fact, trilogues are informal meetings between the European institutions aimed at resolving conflicts early on during the ordinary legislative procedure. They combine representatives of European Parliament, Council and Commission in an informal framework, where the representatives are chosen by each institution. For the Parliament, the Chair of the responsible Committee and the Rapporteur[31] are usually involved. The Council's negotiating team generally involves the Permanent Representative of the Member State holding the Council Presidency and the Chair of the relevant Council Working Group, while the Commission is typically represented by a negotiating team chaired by the relevant Director-General. The task of trilogues is to create informal bridges during the ordinary legislative procedure to try and reach agreements as soon as possible, at first or second reading, and avoid recurring to the Conciliation Committee. Therefore, the trilogue system has shortened the time required to reach a compromise on the legislative text and adopt it, with most trilogues taking place between 7 and 12 months. Despite the informal status of trilogues, the Rules of Procedure of the European Parliament acknowledge the presence of inter-institutional negotiations in Section 3 of Chapter 3. According to such rules, the European Parliament's committee with the task to oversee the

[31] The Rapporteur is an MEP, member of the relevant committee with the task to oversee a specific legislative proposal, who is appointed to draft a report on the legislative proposal. Such report is adopted by the committee and then sent to the plenary for eventual amendments and, if possible, adoption.

legislative proposal may decide, by a majority of its own votes, to enter into negotiations with the Council to find a preliminary agreement, even before the first reading in plenary. According to Coen and Richardson (2009), the reasons why both Parliament and Council may prefer a speedy first reading adoption through trilogues are several. It may be because the issue in question is purely technical, or because they want to avoid subsequent windows of opportunity for other actors to intervene with a legislative dossier. It could also be due to a wish to speed up the adoption and entry into force of an act in order to improve the public image of the EU's capacity to act.

However, before 2018 the trilogues were usually known to be highly untransparent. Since the early years of co-decision, and then also with the ordinary legislative procedure, there was a fear that the increasing use of informal trilogues would have an impact on the legitimacy and transparency of EU law-making (Brandsma, 2015). In particular, worries for a decline in legitimacy have mainly concerned the role of the European Parliament, rather than that of the Commission or of the Council, because it is the only directly-elected institution. As a matter of fact, it is possible to observe what comes into trilogue, as legislative proposals are published by the Commission as well as initial reports by both Council and Parliament, and also what comes out of it, in terms of the legislation that is eventually adopted by the Parliament in plenary and by the Council, and then published in the Official Journal of the European Union. However, it is very difficult to obtain knowledge about what happens during trilogues, and trace the origins and reasons behind amendments to proposed legislation, and this is why trilogues are often defined as the "black box" of EU law-making (Alemanno, Bodson, 2018).

The provisional agreements reached in trialogue are published on the fourth column of trilogue documents, but this column is not disclosed to the general public, or even under request. The situation changed with the *De Capitani* judgement by the ECJ. The case concerned a former EU civil servant, Emilio De Capitani, who had requested the European Parliament to have access to the fourth column of ongoing trilogue documents on proposed police cooperation legislation, but the Parliament refused to grant it. In Court, the Parliament argued that granting authorization to De Capitani to see the draft compromise agreement would affect the decision-making process, damage the cooperative relationship between the Member States and EU institutions, and that the positions of the institutions may change during the trilogue dialogue, thus risking disclosing a position that wasn't necessarily final. For both the European Parliament and the Council, within the decision-making process, the principles of transparency and participative democracy should be balanced against the need for an efficient legislative procedure (Ninatti, Tanca, 2018). Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and

Commission documents, in recital 6 of the preamble, also points out that wider access should be granted to documents when institutions act in their legislative capacity, while at the same time preserving the effectiveness of the decision-making process.

The ECJ disagreed with the positions of the Parliament and the Council, and found that the principles of publicity and transparency were inherent to the EU legislative process, by referring to previous jurisprudence, Article 15(2) TFEU[32] and Regulation (EC) 1049/2001 (Decision of the ECJ, of 22 March 2018, Case T540/15 De Capitani v. European Parliament). Therefore, because of transparency requirements, the ECJ ruled in favour of De Capitani and annulled the decision by the European Parliament not to allow him access to the fourth column of the trilogue document. Moreover, the ECJ has recognized trilogues as a fundamental stage of the legislative procedure and not as a "space to think" of its own (Ninatti, Tanca, 2018). Extended in general terms, the *Capitani* judgement should theoretically allow European citizens to request access to ongoing trilogue dialogues between the European institutions. However, Alemanno and Bodson (2018) are sceptical about the increase in transparency of trilogues that could be brought about by the decision. As a matter of fact, the parties to the trilogues may decide in advance what to include and not in the fourth column of the trilogue document, if they know that the document will be accessible and public.

There is also another problem related to the lack of transparency during trilogues, part of a larger debate on organised interests. Although requestors or the general public are not able to access trilogue draft agreements, interest representatives manage to come into possession of them, following informal meetings with the interested institutions. Up until *De Capitani*, organized interests and lobbyists were effectively gaining access to leaked documents. In the next sections, we will analyze the tools and procedures by which organized interests, lobbyists and stakeholders in general are involved in the EU decision-making process, focusing on the access to the European Commission, the European Parliament and the Council of the European Union.

### 4.2 Stakeholder involvement in the EU decision-making process

As mentioned in the previous chapter, the increase of EU competence on more policy areas as a consequence of further integration has led to an increase of actors interested in influencing the decision-making process at the EU level, and thus to the practice of "EU lobbying" (Greenwood, 2017). Such actors can be in the form of organized interest groups – like industry

[32] Article 15(2) TFEU: "The European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act".

organizations or NGOs –, companies acting through their public affairs departments, or public affairs consultancies representing specific clients, be them businesses or other associations. Therefore, the gradual transfer of regulatory functions from the competence of the Member States to the competence of the EU institutions – in areas like environmental standards, health and safety, product quality, and competititon law – has led to the Europeanization of interest groups (Coen, 2007). What is relevant to understand is that during the policy cycle different actors talk to different EU institutions according to different strategies that emerged. However, it is clear that in all these scenarios, the relationship between the interest groups and the EU institutions must not be seen as a unidirectional activity, but rather as an exchange relation between interpendent actors: for access to the policy process, institutions demand to interest groups a certain supply, and viceversa, interest groups supply different policy goods to the institutions in order to access the policy process (Coen, Richardson, 2009). According to Bouwen (2002), in return for access to the EU agenda-setting and decision-making process, the EU institutions want mainly three access goods from the private actors, and that concern three different types of information: expert knowledge, information about the European encompassing interest, and information about the domestic encompassing interest. As an access good, expert knowledge concerns the expertise and technical knowledge of the private sector, which is needed by the EU institutions to develop effective EU legislation in a specific policy area. Information about the European encompassing interest refers to the needs and interests of a sector in the EU internal market. Information about the domestic encompassing interest refers to the information required from the private sector on the needs and interests of a certain sector in the domestic market. Overall, access goods are essential for business interests to gain access to the EU institutions, and the highest degree of access is give to those private actors that can provide the access goods most needed by the EU institutions.

On their part, interest groups and stakeholders in general, interested in influencing the EU decision-making process, try to collect relevant information about the arena in which they are moving before starting any lobbying activity (van Schendelen, 2013), with a focus on the relevant stakeholders, the issues at stake, time dynamics and arena boundaries. First, an inventory of stakeholders that may intervene in the decision-making process is elaborated, including the officials working on the matter at stake. Then, the stakeholders are assessed in terms of relevance, where a relevant stakeholder is one who will intervene actively and has sufficient capabilities and resources to become influential. The position and interest of each stakeholder on the issues at stake must be identified, as well as the right timing to intervene in the decision-making process. Finally, attention must be paid to any possible change in the arena of the decision-making process.

Moreover, access of stakeholders to the EU institutions is regulated by the EU Transparency Register. For this reason, after addressing the access for stakeholders to the European Commission, the European Parliament and the Council, a section of the chapter will be dedicated to the regulation of lobbying activity in Brussels through the EU Transparency Register.

### 4.3 Access to the Commission: the presence of extensive consultation procedures with stakeholders

In the case of the Commission, its main legislative and executive functions affect the style of lobbying and access of stakeholders to its procedures.
In legislative terms, the Commission plays a central role as the sole institution with the right of legislative initiative, by means of which it is responsible for the drafting of legislative proposals. However, the drafting of such proposals, which takes place in the first phase of the legislative process, requires a substantial amount of technical and political information (Bouwen, 2002; Majone, 2003). As the Commission is considered to be an under-resourced institution, with a small administrative staff of around 15.000 functionaries, it depends largely on external resources to obtain the information it needs, and it therefore makes use of the input provided by private interests, who are mostly recognized as legitimate and effective interlocutors in the policy process. On their side, private interests adopt the strategic choice of "early lobbying" to influence the agenda-setting role of the Commission during the first phase of the EU legislative process, on a common knowledge that, as attested by Gardner (1991), as long as no formal documents are produced during the policy formulation stage, any change to the legislative proposals can be made more easily. In executive terms instead, the Commission is involved in the management, supervision and implementation of EU policies, and is in particular responsible for the management of EU finances. Within this context, private interests engage in lobbying strategies to secure grants or participate in expenditure programmes.

As stated above, the Commission is eager to interact with interest organizations and lobbyists so as to acquire the resources needed to fulfil its institutional role. On the other hand, lobbyists and organized interests need access to the Commission to influence the early phase of the legislative process. According to Bouwen (2002), in this process of resource exchange, the Commission, in return for access to its policy formulation stage, demands expert knowledge and legitimacy as resources useful for its own functioning. Expert knowledge is necessary to draft the legislative proposals, and can be supplied by lobbyists gaining access to the

Commission and interacting with the officials dealing with the relevant policy proposal. On the other hand, legitimacy is gained by increasing dialogue and consultation with private interests, and the Commission needs it to secure support for its proposals during the later stages of the legislative process (Bouwen, 2006). According to Coen and Richardson (2009), the Commission has two main instruments to shape the relationship with private and organized interests and thus obtain the two aforementioned resources it needs: financial resources and rule-making power.

In terms of the financial resources instrument, the Commission often directly funds EU interest groups, with the aim to promote a more balanced dialogue with civil society. Within this context, it attempts not to subsidize equally across interest groups types, as it is conscious that in terms of access to financial resources, some organizations, like citizens or social organizations, need more resources than, for instance, organizations representing producers' interests (Greenwood, 1997). It thus wants to avoid that some organizations may have an easier access to lobbying the Commissions over others.

The power of the Commission to adopt rules and guidelines has also been relevant in organizing and shaping the interaction with private interests at the EU level. Most of these rules are not the result of a legislative process, but take the form of informal rules that have mostly been presented through Commission Communications. In particular, two prominent documents in this field are the 2001 White Paper on European Governance and the 2002 Commission Communication "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission". For the first time, the Commission tried to institutionalize and provide detailed guidelines on the stakeholder consultation process that was already taking an informal hold in the Commission, and which represents the core of the dialogue between the Commission and the relevant stakeholders preceding any new legislative proposal. Below, I will thus address the extensive consultation culture that developed in the Commission, as well as its juridical basis according to the Treaty of Lisbon.

Extensive consultations are being held on almost every single legislative subject, preceding the introduction of a legislative proposal by the Commission. As attested by Obradovic (2009), the tools used for consultations are several and include consultative committees, expert groups, open hearings, ad hoc meetings, Internet consultations, questionnaires, focus groups, seminars/workshops, and others, depending on the specific topic, time, resources, and who the Commission thinks should be consulted. Article 11 TEU has enshrined into the Treaties the Commission's mandate to hold consultations, by stating that "the institutions shall, by

appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action [...] maintain an open, transparent and regular dialogue with representative associations and civil society» and that «the European Commission shall carry out broad consultations with parties concerned in order to ensure that its actions are coherent and transparent". Article 11 TEU was added by the Treaty of Lisbon, but it is not the only juridical basis for the presence of an extensive consultation culture within the Commission. Another innovation was created in the same Treaty by Protocol No.2 on the application of the principles of subsidiarity and proportionality. Fasone and Lupo (2013) have referred to article 2 of such protocol as an additional mandate for the Commission to hold consultations. As a matter of fact, Article 2 acts as an additional procedure to ensure that the principle of subsidiarity is respected, where the objective of the principle of subsidiarity, as stated by the Preamble of the Protocol, is that "decisions are taken as closely as possible to the citizens of the Union". Nevertheless, a consultation culture was present even before the juridical basis for it was enshrined by the Treaty of Lisbon. This culture was established by the Commission itself, mostly through its 2001 White Paper on European Governance, and the adoption of the General principles and minimum standards for consultation in 2002.

The objective of the 2001 White Paper on European Governance was to open up the policy-making process to have more people and organizations involved in shaping and delivering EU policy. As a matter of fact, the first proposal for change encouraged by the White Paper was to increase involvement and openness. To this view, the Commission would broaden the existing consultation process that was already taking place and involve a larger variety of participants outside of business interests, including non-business actors such as consumer groups, human rights groups and environmentalists. To remedy the lack of clarity revolving around consultations and institutionalize a culture of consultation on a firmer ground, the Commission also proposed to establish minimum standards for consultation on EU policy. As a result, the Commission published in 2002 the Communication "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission". This document is still the one used today to establish consultations in the pre-legislative phase. First of all, the general principles and minimum standards apply to consultations meant as those "processes through which the Commission wishes to trigger input from outside interested parties for the shaping of policy prior to a decision by the Commission" (Commission, 2002). Four general principles govern the stakeholder consultation process: participation, openness and accountability, effectiveness and coherence. Taken together, these principles refer to the need to consult as widely as possible on major policy initiatives, make the consultation process and how it has affected policymaking

transparent to those involved and to the general public, and consult at a time where stakeholder views can still make a difference, in a consistent and coherent way. These four principles are then complemented by five minimum standards that all consultations have to respect. First, all communications relating to the consultation should be clear and coincise, and include all necessary information to facilitate responses. Second, the Commission should identify the target groups for the consultation, ensuring that all relevant parties have an opportunity to express their opinions. In particular, the relevant parties are those affected by the policy, those who will be involved in its implementation, and bodies that have stated objectives giving them a direct interest in the policy. Third, the Commission should ensure an a
dequate publication of the consultation and adapt its communication channels to meet the needs of all target audiences. Specifically, all open public consultations should be published on the Internet on a single access point, which today is accessible on the "Consultations" section of the European Commission's website. Fourth, the Commission should provide stakeholders with sufficient time for planning and delivering responses to the consultation, while at the same time striking a balance between the need for adequate input and that for swift decision-making. Finally, receipt of contributions should be acknowledged by publishing them on the single access point, and adequate feedback should be given on how the results of the consultation have been taken into account. The principles and standards have been subsequently integrated into the so-called "Better Regulation Agenda", launched by the Commission in 2015. According to Schout and Schwieter (2018), this initiative can be considered the successor of the 2001 White Paper on European Governance, as it aims to outline better rules and better tools to provide timely and sound policy decisions. Among the objectives of the Agenda, there was also that of further opening up policy-making by, among other things, consulting more and listening better. Building on the previously existing minimum standards for consultations, the Commission published new Better Regulation Guidelines, which in Chapter VII provide the Guidelines for Stakeholder Consultation. The main changes lie in the possibility for stakeholders to express their view over the entire lifecycle of a policy, and not just on the legislative proposal itself. To this view, roadmaps and inception impact assessments are published to give stakeholders the chance to provide feedback from the very start of the work on a new legislative initiative. Moreover, consultations are now launched also for the evaluation of existing legislation, the so-called "fitness check". Finally, stakeholders are now able to provide feedback on the delegated acts, that are acts setting out technical or specific elements needed to implement the legislation adopted by the European Parliament and the Council, as they are published for consultation on the Commission's website.

Among the instruments for consultation, it is relevant to highlight also the expert groups. The expert groups are formed by the Commission for providing it with expertise and advice on its planned legislative proposals (van Schendelen, 2013). Each group is led by a chef de dossier, with a mandate established by the upper levels of the Commission, including policy frame, legal basis, budget and timeline. They are composed of people who represent a specific stakeholders' platform, organization, domestic authority or simply personal expertise. They usually work following three steps. First, they start addressing the problem at stake in a green paper, then they select solutions to the problem in a white paper, and finally they consider the pre-draft text of the legislative proposal.
In the next section, access of stakeholders to the European Parliament will be addressed.

### 4.4 Access to the European Parliament

Thanks to the progressive extension of its legislative powers, the European Parliament has become another important venue to which stakeholders like companies, trade associations and citizens' groups seek access (Coen, Richardson, 2009). The main reasons why stakeholders seek access to the European Parliament are to convey selected and well-prepared information to the MEPs, underline particular aspects of a legislative proposal discussed in Parliament, and thus, more generally, influence the regulatory environment according to their own interests. Differently from the Commission, the European Parliament does not provide consultation processes open to stakeholders. This means that effective interest representation relies mostly on good networking and non-technical approaches (Bouwen, 2002).
An important access point for influencing negotiations in the European Parliament is the committee stage. Committees do the preparatory work for the European Parliament's plenary sitting. Whenever a new legislative proposal arrives, a committee that deals with the issue involved is charged with adopting a report to then be presented to all MEPs in plenary. The committee appoints a MEP to prepare the report, known as the rapporteur. After consulting with the political groups and with experts, sometimes during specially organised hearings, the rapporteur drafts a text, which the committee then votes on. Subsequently, all MEPs vote on the report during a plenary session. To follow the progress of a report in the committee, political groups have the possibility to appoint shadow rapporteurs. They are responsible for the subject in question within their political group and play an important role by facilitating the search for a compromise on the legislative proposal. Organized interests and stakeholders start to focus on the European Parliament as soon as the rapporteur of the competent committee is appointed

and starts to prepare the report. However, the appointment of the rapporteur is difficult to anticipate from the outside. There may be efforts from organized interests to influence the appointment of an MEP as rapporteur, for instance to avoid that MEPs are appointed as rapporteurs for subjects for which they are known to be critical. However, this is very difficult, as the appointment is left to the internal procedures of the Parliament, and seniority, standing in the group, and individual qualities of MEPs are important criteria for this selection. Thus, according to Coen and Richardson (2009), at committee stage, rapporteur, shadow rapporteurs, as well as the chair of the committee with the assistance of the committee secretariat are the main gatekeepers in forming the Parliament's opinion. Later negotiations, particularly if the legislative procedure arrives at the Conciliation Committee, are more formalized, and access becomes more difficult. In plenary, due to the tight deadlines for the readings, opportunities of access and lobbying must be sought out swiftly and with precision.

It is also relevant to highlight the role played by committee hearings as forums where the Parliament invites organizations to provide information and debate on policy issues. According to Coen and Katsaitis (2018), hearings can be used for three main purposes. First they can be employed as a coordinative procedure that allows stakeholders and policy-makers to frame the discussion over an issue. Second, they can be used to invite organizations that, with their expertise, play a de-politicizing role. Third, they maximize the European Parliament's democratic legitimacy.

Moreover, access to the European Parliament can also be provided by the participation in the intergroups. Intergroups are groupings of MEPs who are interested in a topic that may not necessarily be within the scope of the European Parliament's normal work, but that may be of interest to society. For this reason, external stakeholders can join intergroup meetings. The intergroups are not official bodies of Parliament, and have an informal status, but they can play a role in pushing a certain interest on the EU agenda, by adopting formally non-binding resolutions, to be accepted then by the plenary of the Parliament.

When the European Parliament finally acquired greater standing because of the introduction of the co-decision procedure, organized interests and stakeholders soon designed it as a new channel of influence. At first, less organized interest groups tried to ally with the Parliament on issues concerning the general public, thus forming what Cohen (1998) and Mahoney (2007) called "advocacy coalitions". Subsequently, contacts between MEPs and interest groups and stakeholders in general have even more intensified, and today most MEPs agree that contact with companies, associations, consultants and civil society groups can provide a great amount of relevant and updated information without which work in legislative committees and plenary

would be much more difficult. In terms of possibility of access to the single MEP, accessibility and openness of parliamentarians may be influenced by personal acquaintance, nationality or political affiliation. When a rapporteur is appointed, contact with the staff close to the rapporteur and the secretary of the relevant committee is usually preferred. However, also face-to-face contacts with MEPs remain the norm. In this context, it is still common for MEPs to receive requests for help and support by letter or e-mail, as well as surprise visits in their personal offices. However, Rule 2 of the Parliament's Rules of Procedure specifies that MEPs must exercise their mandate freely and independently, shall not be bound by any instructions and shall not receive a binding mandate. Therefore, agreeing to vote in a certain way in exchange for whatever advantage a lobbyst may offer would be equal to accept a binding mandate. Moreover, some techniques to enter into contact with MEPs may even be disturbing, like bombardment of letters and phone calls to demand urgent meetings, or directly go into the office of a MEP without an appointment.

### 4.5 Access to the Council of the European Union and the European Council

The Council of the European Union and the European Council have been defined by the literature as the least accessible EU institutions in terms of access for interest groups, lobbyists and dialogue with stakeholders (Coen and Richardson, 2009).

As regards the Council, five main reasons have contributed to the perception that it is a difficult body to approach: lack of transparency, its fragmented nature and multiple players, fewer permanent personnel, the presence of informal decision-making norms, and different access goods. In terms of lack of transparency, both Council and European Council have been described as closed (Sherrington, 2000), elusive and inscrutable (Christiansen, 2001) and intractable (Eising, 2007), but instead of trying to shake off this image, they even embraced it, by insisting on holding their meetings behind closed doors and refusing to release publicly-accessible documents on their decisions. However, following calls for greater transparency in its proceedings, the Council developed and began to implement its transparency policy at the end of the 1990s. It now allows television camers into the meeting rooms to film certain parts of the sessions, publishes press releases on the outcome of the meetings on its official website, as well as the agenda of such meetings. Nevertheless, the Council still continues to meet mostly behind closed doors, and this is evident also from the fact that the working session is not entirely filmed, differently from the European Parliament's plenary and committees, which are recorded live in their entirety and available online. This makes it difficult for organized interests to

determine what goes on in Council meetings. Moreover, it is generally agreed that the real negotiations may take place also elsewhere before the formal meetings begin, be it in the corridors or over lunch. Another problem is posed by the fragmented nature of the Council as an institution. Despite the fact that the Council is legally a single institution, the reality is much more complex. As a matter of fact, as the Council meets in nine different configurations depending on the subject matter in question, and each meeting is attend by the relevant minister from the Member States, keeping track of the positions of every single minister becomes a difficult task. Moreover, as each Council meeting is prepared by the specialized working parties composed by official representatives from the Member States, according to Hayes-Renshaw (2009), the lobbyists and organized interests need to operate also here if they want to be effective in influencing Council's deliberations. Normally, the working groups are composed of national attachés that work daily in the Permanent Representations to the EU of their respective Member States. However, the resources needed to follow the detailed work of hundreds of actors are indeed very costly. With respect to Parliament and Commission, the Council has also a less permanent personnel. With the exception of the permanent staff of the Council Secretariat, the personnel of the Council is temporary, while members of the Commission and the European Parliament are in their posts for a set period of five years. In particular, the personnel of the Council is in a constant change because the ministers presiding over the various Council configurations can change periodically because of national elections or cabinet reshuffles. Also the members of the European Council change, being the respective Heads of State or Government of the Member States, but with less frequency than the Council's members. The temporary status of the Council and European Council's members is also linked to them not being based in Brussels, but in their national capitals. When they come to Brussels, they usually stay for the time of the meeting, leaving little time to speak to anyone except those directly involved. Moreover, as the Presidency of the Council rotates every six months, lobbyists and organized interests have to identify and build relationships with a new group of key players everytime the Presidency changes. Lobbyists and organized interest groups need also to be aware of the informal decision-making norms that the Council has adopted over the years and that are used in conjunction with the formal rules laid down in the Treaties. Among these norms, there is the A and B points procedure. Because of the relative infrequency of Council meetings with respect to the large number of issues to be discussed and adopted within them, the items on the Council agenda have been divided into A and B points, where only the B points are discussed by the Ministers. A points are instead adopted by the Ministers without discussion, as agreement has already been reached at a lower level of the Council's hierarchy. Therefore, one of the tasks for an effective lobbyist (Hayes-Renshaw, 2009) is to monitor the

likelihood of a dossier coming on the Council's agenda but just needing to be voted upon in order to become law. This may help lobbyists and the interest groups in question to try and affect the shape of the act before it reaches the Council's agenda. Finally, the Council also differs from Commission and Parliament in terms of the type of information it requires to fulfil its decision-making and the type of actors that can easily supply it. As a matter of fact, the Ministers sitting in the Council operate as indirect representatives of their national citizens and they are expected to defend their interests. For this reason, according to Bouwen (2002), their focus is on the national or "domestic encompassing interest", which is opposed to the European interest represented by the supranational Commission. Before a legislative proposal arrives on the table of the Council, each member needs to know in advance whether the proposal is acceptable to those groups within its Member State who will be affected by its adoption and what amendments would improve it. Therefore, each member of the Council engages in consultation with those domestic groups that can provide information about the national interest in question.

In summary, with respect to the Commission and the European Parliament, lobbysts encounter greater difficulties in gaining access to the Council, as the number of players to be monitored is higher, it is more difficult to determine how decision-making is achieved, both formally and informally among the several decision-making layers, and the nature of the information needed to gain access is very specific. However, despite such difficulties, the Council is still approached as an institution, and lobbyists and organized interest groups may try and gain access to the several layers of the Council. For instance, the Council has attempted to become more available to selected groups: it has become common practice that on the eve of the Environment Council meetings, representatives of environmental NGOs are invited by the Council Presidency to a dinner during which they can talk with ministers on the items on the agenda for the meeting (Hayes-Renshaw, 2009). On the other hand, interest groups may also decide to organize public demonstrations outside the building where the ministers meet, as a way to draw attention to the issues debated on the agenda. However, such demonstrations have a limited impact, considering that when the meetings take place, the stage of the negotiations on a given dossier is already advanced. This is the reason why it is advisable to start lobbying the Council at the earliest possible stage in the decision-making process. To do so, there are other ways to access the Council. As Council members are representatives of the national interest of their Member States, lobbysts and organized interests at the domestic level may try to exert pressure on national governments. They may seek access to officials in the relevant national ministry to share their point of view and convince them to take it into account when determining the national position on an issue being discussed at the level of the Council.

According to Hayes-Renshaw (2009), also the Presidency of the Council is another route to pursue. Although the presidency lasts for a period of six months, the preparations for the presidency begin at least two years before the actual start date. Therefore, those who wish to influence the Council outcomes via the presidency shoud start making contact two years before the official start date. Because of its agenda-setting powers, the Member State holding the presidency identifies the priority issues to be addressed by the Council, and for this reason an interest group may take this opportunity to promote a particular issue. Finally, it must be beared in mind that the real work of the Council takes place at the level of the specialized working parties. They are about 250 and are composed of officials from each of the Member States, with the chair of the party being a representative of the Member State holding the Council Presidency. The officials are often based in the national permanent representations of the Member States in Brussels, where, as a consequence, they are contacted by interest groups and lobbysts to organize meetings, so as to request to take specific interests into account when negotiating with their colleagues from other Member States. They can be useful contacts for lobbyists because of their knowledge of the dossiers under discussion and of the positions of their colleagues from the other member states. The choice of which representations to focus on may depend on factors like common language, personal contacts, or the importance of the dossier in question for the particular Member State (Greenwood, 2017).
In conclusion, while less accessible than the other institutions, the Council can be approached by organized interests and lobbysts from a number of entry points, both directly and indirectly, but the success of their approach will be higher if it starts at an early stage of the decision-making process and from the lower levels of Council activity, namely the working parties.

### 4.6 The EU Transparency Register

The explosion of lobbying and interest group activity in Brussels by businesses and other organized interests in the 1990s has raised concerns on the openness and transparency of EU policy-making, thus creating the need for rules and regulation on interest representation at the level of the EU. Currently, the access of interest group representatives to the Commission and the European Parliament is regulated by a Transparency Register. However, several steps have led to the adoption of this common register in 2011. In 1996, the European Parliament launched its first incentive-based regulatory scheme, by making reference to the standards already adopted by the organization of Public Affairs Practictioners (PAP) with its code of practice (Greenwood, 2017). The incentive for registration to the scheme was that those who wanted

ease access to the European Parliament buildings would have to sign up to the code of conduct in exchange for a one-year permit, rather than relying on the invitation from a MEP. The Commission launched its own register in 2008, the "Register of Interest Representatives". Subsequently, discussions started to integrate the two registers, and led to Commission and Parliament's adoption in 2011 of the Interinstitutional Agreement on the establishment of a common Transparency Register. A common system was deemed to make more sense because the general public saw the institutions as one and also because merging the two registers would provide more clarity and prove that both institutions were working together in the interest of transparency (OECD, 2014). The Council of the European Union, through the Hungarian Presidency at the time, obtained observer status, and declared that it would keep track of the Register and follow the review process foreseen every two years, in order to assess whether to join.

Thanks to the Transparency Register, it is easier for the general public to obtain information on the individuals and organizations in contact with European Parliament and Commission. This is because the scope of the Register is very wide, as registrations apply to any organisation engaged in representing interests at the level of the EU institutions, such as trade associations, consultants, NGOs and think tanks (OECD, 2014). According to Greenwood (2017), although registration is voluntary, there are a series of incentives for lobbysts and other interest representatives to join the register. In the first place, registration is a precondition to request accreditation to access the European Parliament's buildings. Second, registration is required for lobby organizations to hold a speaking position at a public hearing. In order to become members of a Commission's expert group, subscription to the register is a pre-requisite. Commission officials may also refuse to meet with non-registered organizations. Also for online consultation procedures, the Commission's webpages indirectly require organizations to make an entry into the Transparency Register. In the reports summarizing the responses by organizations to consultations, the Commission lists separately the responses from organizations which are, and are not, on the register, and warns that the contents submitted by non-registered organizations will be given the same weight as those by private individuals. The register requires to disclose elements surrounding organizational contacts and other details, interest categorization, details about who is represented, mission and interest areas, and the key recent legislative files worked on. NGOs and think tanks are also required to disclose their budget and sources of funding. Although the register is of a voluntary nature, it has become *de facto* mandatory for any organization wishing to influence EU decision-making. However, negotiations are ongoing to render the register officially mandatory. In 2016 the Commission issued a new proposal for an Interinstitutional Agreement, calling for the introduction of a

mandatory register that should also involve the Council as an institution. The proposal also invites Member States on a voluntary basis to include their permanent representations in the scope of the Transparency Register. Some developments in this view are already present: for instance, the Croatian Presidency of the Council, in its January-June 2020 mandate, declared that it would publish all the meetings held by the Permanent Representative and/or the Deputy Permanent Representative with interest groups. However, making the registration to the Transparency Register officially mandatory seems quite difficult and controversial, as also highlighted by a study conducted by the European Parliament itself, in particular by the Policy Department on Citizens' Rights and Constitutional Affiars of the Directorate-General for Internal Policies (Nettesheim, 2014). As a matter of fact, the study points out that if individuals, companies and organisations are obliged to register, this may constitute an intervention in fundamental rights. It would affect freedom of expression and information, according to Article 11 of the EU Charter of Fundamental Rights[33], which also incorporates the freedom to approach MEPs and officials to present positions and interests to them. If interest representation forms part of the operations and purpose of a business, mandatory registration will also affect the freedom to conduct business, according to Article 15(1) of the Charter. Finally, according to Nettesheim (2014), compulsory registration may also affect the right to privacy covered by Article 7 of the Charter.

[33] The EU Charter of Fundamental Rights was proclaimed on 7 December 2000 by the European Parliament, the Council and the European Commission. However, its then legal status was uncertain and it did not have full legal effect. Following the entry into force of the Lisbon Treaty in 2009 the Charter has the same legal value as the European Union treaties. It thus enshrines political, social, and economic rights for EU citizens and residents into EU law.

# V. Case study: the EU Single-Use Plastics Directive

## 5.1 An overview of the EU Plastics Strategy

Europe is the second largest producer of plastic, with a 18.5% share of world production, and six European countries cover almost 70.0% of the European demand: Germany (24.6%), Italy (14.0%), France (9.6%), Spain (7.7%), United Kingdom (7.3%) and Poland (6.5%) (Baran, 2020). However, despite plastic being a valuable material covering a wide range of uses and applications, with also the potential to be recycled several times, in the EU a large share of this material is wasted, with serious consequences on the environment, maily as a result of leakage – especially in the oceans. Estimates show that more than 150 million tonnes of plastic waste have been accumulated in world oceans since 1980, of which between 1.4 and 3.7 million tonnes in EU seas (Baran, 2020). The world oceans receive between 8 and 13 million tonnes of plastic waste per year, which amount to between 1.5 and 4.0% of plastics world production (Jambeck et al., 2015). Confronted with such environmental problems, scientists began to undermine the linear model of growth, based on continuous growth in production, consumption and the unlimited use of resources, but leaving behind waste disregarding the sustainability of the whole process (Meadows et al., 1972; Millennium Ecosystem Assessment, 2005; Rockström et al., 2009). Such linear model should be replaced by the new circular model of growth, where the necessary goods and services for maintaining and improving the living standards of the growing population would be provided, without at the same time increasing the consumption of raw materials and the quantity of waste. One of the most widely recognized definitions of circular economy is the one by the Ellen MacArthur Foundation[34], according to which "a circular economy is an industrial system that is restorative or regenerative by intention and design" (Ellen MacArthur Foundation, 2013). It is based on three main principles. First, preserving and boosting natural capital through the regulated use of available resources. Second, optimising resource yields, meaning that remanufacturing and maintenance are well-planned in order to make materials a part of economic processes for as long as possible. Third, promoting system effectiveness to minimise negative externalities and eliminate toxic substances by replacing or reducing them. Circular economy has also become a strategic goal of the EU, when the European Commission adopted on 2 December 2015 a Circular Economy

[34] The Ellen MacArthur Foundation is a UK registered charity that works to inspire a generation to re-think, re-design and build a positive future circular economy. Launched in 2010 to accelerate the transition to a circular economy, the charity has emerged as a global thought leader, establishing circular economy on the agenda of decision makers across business, government and academia.

Action Plan to promote the transition to a circular economy in five priority sectors, among which plastics, food waste, critical raw materials, construction and demolition, and biomass and bio-based materials. An essential part of the Circular Economy Action Plan is a Strategy for Plastic.

On 16 January 2018, the European Commission presented its first-ever European Strategy for Plastics in a Circular Economy in the form of a Communication, also more informally known as the EU Plastics Strategy. As mentioned above, the Strategy was adopted as part of the 2015 Action Plan for a Circular Economy, where the Commission identified plastics as a key priority and committed itself to prepare a strategy to address the challenges posed by plastics across the whole value chain.

According to the Commission's Communication (2018), global production of plastics has increased twentyfold since the 1960s, and it is expected to double again in the next twenty years. If, on the one hand, the plastics sector is a vital component of the EU economy, generating a turnover of 340 billion euros in 2015 and employing 1.5 million people, on the other hand it is also leading to serious negative consequences to Europe's and the global environment in general. As a matter of fact, the Commission has found that around 25.8 million tonnes of plastc waste are generated in Europe every year, and only 30% of this waste is collected and recycled. Another serious concern is the amount of plastic waste entering the oceans: 150.000 to 500.000 tonnes every year (Sherrington, Darrah et al., 2016). This phenomenon is worsened by the increase of plastic generated each other and by the growing consumption of "single-use" plastics, which are "packaging or other consumer products that are thrown away after one brief use, are rarely recycled and prone to being littered" (Commission, 2018). These may include small packaging bags, disposable cups, lids, straws and cutlery.

The Strategy provides a vision for Europe's new plastics economy, based on the recognized needs to: improve the economics and quality of plastics recycling; reduce plastic waste and littering; drive innovation and investment towards circular solutions; and harness global action. As regards the improvement of the economics and quality of plastics recycling, the Commission proposed a series of measures to improve product design and increase recycled content, including starting the preparatory work for the revision of the Packaging and Packaging Waste Directive[35], with the aim to ensure that by 2030 all plastics packaging placed on the EU market

[35] European Parliament and Council Directive 94/62/EC of 20 December 1994 on packaging and packaging waste. Since 1994, this Directive has been revised several times, with the last revision dating May 2018. It aims to harmonize Member States's measures related to the management of packaging and packaging waste, laying down measures aimed at preventing the production of packaging waste, and at increasing reuse of packaging, recycling and other forms of recovering packaging waste.

can be reused or recycled in a cost-efficient way. The Commission proposed also measures to drive innovation and investments for circular solutions, because it acknowledged that meeting ambitious goals on plastics recycling would require an additional investment of between 8.4 and 16.6 billion euros. Among such measures, the allocation of direct financial support for infrastructure and innovation through the European Fund for Strategic Investment[36] and other EU funding struments like Horizon 2020[37]. In terms of harnessing global actions, the Commission renewed its commitment to engage on plastics and marine litter in fora like the UN, G7 and G20, and promote a circular plastics economy in non-EU countries through policy dialogues on trade, industry and environment. Finally, the Commission recognized the need to reduce plastic waste and littering because of its growing impact on the environment and the EU economy in general, causing damage to activities like tourism, fishing and shipping, as well as to human health through the food chain. In particular, one of the Commissions's main concern were single-use plastics item, as they are are one of the items most frequently found on beaches and represent 50% of marine litter (Addamo, Laroche, et al., 2017). The problem is also expected to grow, because of the increasing on-the-go consumption of food and drinks. Moreover, another item often abandoned at sea is fishing gear, that can have harmful impacts by entangling marine animals. Precisely these considerations led the European Commission to launch a public consultation to determine the scope of a legislative initiative on single-use plastics, which in about a a year and a half led to the adoption of the Directive on the reduction of the impact of certain plastic products on the environment, also more informally known as the Single-Use Plastics (SUP) Directive.

Considering the relevance of the Directive and the impact it has on companies, I decided to address it as my case study. By analyzing the decision-making process that led to the adoption of the Directive and the Directive itself, as well as by conducting interviews with EU institutions's representatives and companies, my aim has been to demonstrate that the SUP Directive will have an impact on the sustainability and CSR strategies of companies, and that for this reason impacted stakeholders engaged in consultations and dialogues with the EU institutions. In particular, I interviewed Werner Bosmans, Team Leader on plastics in Commission's DG Environment; Anna Bobo Remijn, Policy Officer on Single Use Plastics in Commission's DG Environment; Eleonora Evi, a non-attached MEP member of the European

[36] The European Fund for Strategic Investment is an initiative launched by the European Investment Bank and the European Comission to help overcome the investment gap in the EU. It is one of the three pillars of the Investment Plan for Europe, which aims to revive investment in strategic projects around the European continent, with a focus on strategic infrastructure, education, renewable energy and efficiency, and support for small and medium businesses.

[37] Horizon 2020 is the EU funding programme for research and innovation, running from 2014 to 2020 with a €80 billion budget. The next EU funding programme for research and innovation will be called Horizon Europe and will run from 2021 to 2017.

Parliament's Environment Committee; and the persons responsible for the European Public Affairs and Sustainability of a multinational beverage company.
The next section will deal with an analysis of the decision-making process for the adoption of the Directive, following the publication of the Commission's legislative proposal, as well as with an analysis of the content of the Directive. Then, I will analyze in more depth the role that stakeholder dialogues and consultations had both before the publication of the proposal at the level of the Commission, and afterwards, during the ordinary legislative procedure. Finally, I will report the views of the interviewed company.

## 5.2 Decision-making process and analysis of Directive (EU) 2019/904 of the European Parliament and of the Council of 5 June 2019 on the reduction of the impact of certain plastic products on the environment

On 28 May 2018, following wide stakeholder consultations and a detailed impact assessment, the European Commission published the Proposal for a Directive of the European Parliament and of the Council on the reduction of the impact of certain plastic products on the environment. The impact assessment revealed that the amount of plastic marine litter in oceans is increasing, and that in particular plastic makes up 80-85% of the total number of marine litter items measured through beach counts. Specifically, SUP items represent half of all marine litter items found on European beaches. The ten most found SUP items represent 86% of all SUP items and thus constitute 43% of all marine litter items found on European beaches. Also fishing gear containing plastics represents 27% of marine litter items found on European beaches. Therefore, the main aim of the proposal is to prevent and reduce plastic marine litter from SUP items and fishing gear. This is achieved by defining specific waste prevention and waste management measures and objectives in relation to the SUP items most found on European beaches and to fishing gear containing plastic. As a result, as the proposal contributes also to the smooth functioning of the EU internal market, it is legally based on article 192(1) TFEU, which, as seen in the third chapter, is the legal basis for environmental measures.
As regards SUP items, three categories have been identified: for the items for which there are available sustainable alternatives, the objective is to promote less detrimental alternatives; for the items for which alternatives do not exist, the aim is to try and limit the damages by informing the consumers and making producers financially responsible for their impact on the environment; for items that are already well captured, the objective is to ensure they are enter effectively into the separate collection and recycling circuit. Article 3(2) of the proposal defines

single-use plastic product as "a product that is made wholly or partly from plastic and that is not conceived, designed or placed on the market to accomplish, within its life span, multiple trips or rotations by being returned to the producer for refill or re-used for the same purpose for which it was conceived".

The Commission's proposal has been transmitted to the European Parliament and assigned to the Environment committee. Belgian MEP Frédérique Ries from Renew Europe Group[38] was named Rapporteur for the file, while Italian MEP Piernicola Pedicini from the Progressive Alliance of Socialists and Democrats (S&D)[39] was named Shadow Rapporteur. My interview with Italian MEP Eleonora Evi – who at the time was part of S&D Group while in the new 2019-2024 legislative term is a non-attached member of the Parliament – revealed that the work in the European Parliament and the ordinary legislative procedure as a whole to reach the final adoption of the Directive was very swift. This was probably due to the fact that the proposal arrived towards the end of the legislature and the aim was to avoid the reshuffling of the European Parliament with the new elections and also postponing the legislative procedure to the new legislative term, under a new Parliament and new Commission. As also acknowledged by Evi, the European Parliament has for the most part supported the Commission's proposal, and its proposed measures were even more ambitious than then original Commission's proposal. As a matter of fact, thanks to pressures by S&D Group, the Greens/EFA Group[40] and the European United Left/Nordic Green Left (GUE/NGL) Group[41], the Parliament proposed to widen the ban on single-use plastics to include polystyrene food and drink containers used to contain food that is intended for immediate consumption, as it emerges from its position adopted on 24 October 2018, on the basis of the draft report produced by the Environment Committee. The Council adopted instead its general approach on 31 October 2018, and in November 2018 trilogues – or interinstitutional negotiations – were launched. A provisional agreement on the text of the Directive was reached on 19 December 2018. The Environment Committee approved the text agreed during the interinstitutional negotiations on 22 January 2019, while the Parliament in plenary approved it on 27 March 2019. The Council adopted the

[38] Renew Europe is a liberal, pro-european political group of the European Parliament, successor to the Alliance of Liberals and Democrats for Europe (ALDE) and founded for the 9th parliamentary term starting in 2019.
[39] The Progressive Alliance of Socialists and Democrats (S&D) is the political group in the European Parliament of the Party of European Socialists (PES). It was founded on 29 June 1953 and it mostly comprises social-democratic parties.
[40] The Greens/European Free Alliance (Greens/EFA) is the political group of the European Parliament composed mainly of green and regionalist political parties. Formed following the 1999 European elections for the 5th European Parliament, the Greens/EFA group now consists of three distinct European political parties: the larger European Green Party (EGP), the European Free Alliance (EFA) and the smaller European Pirate Party.
[41] The European United Left/Nordic Green Left (GUE/NGL) is a political group of the European Parliament founded in 1995 and composed of left-wing and far-left members.

Directive on 21 May 2019. The act was signed on 5 June 2019, and published in the Official Journal of the EU on 12 June 2019.

The final text adopted follows the logic of the Commission's proposal and complements it, by subdividing categories of single-use plastics items according to the relevant action to be undertaken by the Member States once implementing the Directive. According to Article 4, Member States shall adopt consumption reduction targets for single-use plastic products contained in Part A of the Annex: cups for beverages including their cover and lids and food containers intended for immediate consumption. Such measures must be adopted by 3 July 2021 and notified to the Commission, and must ensure that there has been a measurable quantitative reduction in the consumption these products by 2026 compared to 2022. According to Belviso (2019), such reduction and consumption targets required from the Member States will have to be ambitious, and will impact mainly all the packaging that is used for fast food or for food that does not require further preparation, like fruit, vegetables or sweets. Article 5 concerns instead direct bans on products, which have been deemed to be replaceable by existing alternatives. Therefore, from 3 July 2021, Member States will have to prohibit the placing on the market of the products listed in Part B of the Annex: cotton bud sticks – except those used for medical purposes – , cutlery, plates, straws, sticks to be attached to balloons, food containers made of expanded polystyrene used to contain food intended for immediate consumption, beverage containers made of expanded polystyrene including their caps and lids, and cups for beverages made of expanded polystyrene including their covers and lids. This more drastic measure is justifiable on the basis of the need to have recourse to more environmentally-friendly alternatives, with a view to incentivize more sustainable entrepreneurial models (Belviso, 2019). Article 6 establishes product requirements for those single-use plastics products listed in Part C of the Annex that have caps and lids made of plastic, that are beverage containers with a capacity of up to three litres. In particular, they will be able to be placed on the market only if the caps and lids remain attached to the containers during the use stage. This measure will certainly be among the most visible ones, once implemented, as we will observe an impactful change on many plastic bottles we are used to see in bars and supermarkets. It highlights the need to take into account the whole life-cycle of plastics, with a view to resuce the employment of single-use plastics in the production stage, and incentivize instead the use of recycled plastics (Belviso, 2019). According to Article 7, Member States will need to ensure that the single-use plastics products listed in Part D of the Annex have clearly readable marking informing consumers of the presence of plastics in the product and the resulting harmful impact of littering on the environment, and of the appropriate waste management options for the product. The

products in question are: sanitary towels and tampons, wet wipes, tobacco products with filters and filters sold for use in combination with tobacco products, and cups for beverages.

The Directive also assigns to the Commission the task to develop a series of guidelines and implementing acts. In particular by 3 January 2021, it will have to adopt an implementing act regarding the methodology to calculate and verify the consumption reduction targets foreseen by Article 4. Then, the Commission also had to respect two important deadlines in terms of implementing acts and guidelines. By 3 July 2020, it was supposed to adopt an implementing act establishing harmonized rules for the marking requirements under Article 7, and also to publish guidelines developed in consultation with Member States, to provide concrete examples of what must be considered a single-use plastic product under the scope of the Directive. As a matter of fact, several stakeholders from a wide range of industries – mainly packaging, plastic, beverage and food – need further specifications on what is to be considered a single-use plastic item, in order to understand whether they will need to change their business operations, especially considering that the items specified in the Annex to the Directive remain very vague in nature. However, the Commission is delaying the delivery of these two official documents, due to the Covid-19 crisis. In my interviews with Werner Bosmans, Team Leader on plastics in Commission's DG Environment, and Anna Bobo Remijn, Policy Officer on Single Use Plastics in Commission's DG Environment, which were held in April 2019, they both confirmed that their teams were very busy on working on the implementing acts, and that despite the difficulties generated by the crisis and the ensuing telework, the Commission would still be able to respect the deadline of 3 July 2020. However, this has proven very difficult to happen and for now the documents are still pending.

The measures foreseen by the Directive are numerous and heterogenous, but they all revolve around one main pathway: that of sustainability, which must govern the production, consumption and disposal of plastic (Belviso, 2019). Sustainability imposes to produce this material by taking into account its entire life-cycle, avoiding single-use products and incentivizing its recycling. However, this requires time, both juridical – in terms of the timing foreseen by the SUP Directive for its transposition into national law – and material, because producers need to adapt their production lines. Moreover, a joint commitment between public and private sector is needed at both national and international levels to incentivize change also beyond the European borders, as the problem tackled by the Directive has global dimensions.

### 5.3 The role of stakeholder consultation and dialogue for the Single-Use Plastics Directive

As mentioned in the first section of the chapter, in January 2018 the Plastics Strategy was adopted by the Commission and it already foresaw the need to develop a legislative initiative to tackle single-use plastic items. In particular, work in this sense had already started before the publication of the Plastic Strategy. I will thus first report the series of consultation initiatives undertaken by the Commission before the publication of its proposal for a Directive, as indicated by the interviews with Mr Bosmans and Ms Remjin and by the document "Synopsis Report Stakeholder Consultation" (Commission, 2018), which was published accompanying the proposal for the SUP Directive. I will also address the current state of play of consultations ongoing in terms of the implementing acts required by the Directive. Finally, I will deal with the engagement with stakeholders held at the level of the European Parliament, as reported by my interview with MEP Eleonora Evi.

Mr Bosmans confirmed that before the publication of the proposal, the Commission engaged in a series of consultation processes, ranging from stakeholder workshops and conferences, interviews and bilateral meetings with stakeholders. In particular, two stakeholder workshops on SUP were held on 16 June and 14 September 2017. The participants at the stakeholder workshops generally agreed that items classified as SUP should fulfil criteria that eventually were included in the Commission's proposal: prevalence in marine environment,short use phase, consumed predominantly away from home and, existance of reusable or non-plastic alternatives. The causes of the leakage of SUP in the marine environment were identified in low levels of re-use and low levels of recycling, in the design of products, and in the materials and consumer behaviour. Moreover, a conference entitled "Rethinking Plastics" was held in Brussels on 26 September 2016. There, stakeholders agreed on the need of an ambitious EU-wide strategy to reduce marine litter, with specific measures for SUP.
More than 30 interviews with interested stakeholders helped develop the problem and analyze the potential impact of a regulatory framework on SUP. Stakeholders across groups stressed the potential cost to manufacturers to switch materials and the importance of the availability of multi-use alternatives.
The Online Public Consultation on 'Reducing marine litter: action on single-use plastics and fishing gear' was launched from 15 December 2017 to 12 February 2018. It received 1,807 responses. 95% of respondents agreed that action on SUP was both necessary and urgent. The need to reduce SUP in the environment was supported strongly, and caps, lids and drinking bottles were identified as the priority items to be tackled. Most respondents appeared in favour

to reduce their use of plastic bottles. 93% of them resulted in favour of policies to phase out disposable plastic tableware in favour of biodegradable or reusable alternatives, even with a small price increase. On the contrary, and not surprisingly, industry and trade association representatives were split in their willingness to pay while still in favour of phasing out SUP. Business representatives did not express support for minimum design requirements, as it would be expected, considering the economic impact that such requirements would have on business. Ms Remijn stressed that all the consultation work, be it through the online public consultation or through conferences and one-to-one meetings, has fed the impact assessment that the Commission made, and that has been published accompanying the SUP Proposal. At my question on whether DG Environment, in charge of the whole consultation process, also consulted DG Internal Market, Industry, Entrepreneurship and SMEs (DG Grow) considering the impact that the directive would have on interested companies and their CSR strategies, Mr Bosmans answered that, in the first place, legislative proposals never come from a single DG, but from the Commission as a collegial body. As a matter of fact, it is the College of Commissioners that endorses and presents the legislative proposal. However, during the internal procedure to assess and draft the proposal, several DGs are consulted, and in the case of the SUP Proposal, DG Grow was involved since the beginning, especially because the proposal suggested to ban certain products from the EU market.

Regarding the current state of play of consultations ongoing in terms of the implementing acts required by the Directive, Mr Bosmans confirmed that the Commission was working on the implementing acts. At the time of the interview, April 2020, he was sure the Commission would be able to deliver the implementing acts and guidelines due for 3 July 2020 notwithstanding the Covid-19 crisis and the difficulties imposed by teleworking. This hasn't happened, but he confirmed that the Commission was still able to conduct stakeholder consultations in this period regarding the implementing acts, and to do so, online meetings have been organized. Ms Remijn highlighted that since the Directive was adopted very quickly, many issues were left open for further discussion, starting from the definition of what amounts to single-use plastic, which will be specified by guidelines the Commission is working on. For the work on the implementing acts, like the one foreseen on marking and labelling for single-use plastic products, the Commission has hired an external consultant, Ramboll[42], to support the preparation of the documents. In this process, stakeholders have been consulted through workshops at first, and then through webinars when the Covid-19 crisis started. Member States are instead consulted

[42] Ramboll is an engineering, architecture and consultancy company founded in Denmark in 1945. Its European Policy & Governance department is a center of expertise for European public performance and management, providing policy research and analysis, evaluations and impact assessments, and stakeholder dialogue and policy implementation services in several policy areas.

through the Expert Group on Waste, a Commission Expert Group grouping all EU Member States to provide advice on the development and implementation of waste legislation, and, in particular, with the task to provide expertise to the Commission when preparing implementing measures. Also for the implementing acts and the guidelines, DG Grow continues to be consulted, in what is called "interservice consultation"

MEP Eleonora Evi, as part of the Enviroment Committee to which the SUP Proposal was assigned during the ordinary legislative procedure, stated that at the level of the European Parliament, there was a lot of political pressure from civil society regarding the proposal, because of its positive impact on the environment. However, on the other hand, MEPs received pressure also from industry representatives coming from the most impacted sectors – in the first place the producers of plastic cutlery, and more generally the SUP items identified by the Directive. She also highlighted that Southern Europe, and in particular Italy and Spain, has the highest production and consumption of SUP products. For this reason, many Italian SMEs producing plastic cutlery and balloons, and from the packaging industry in general, complained about the Commission's proposal and brought their stances to Italian MEPs. Ms Evi also reported that some trade associations representing the plastic industry – like European Plastics Converters[43] – have asked the Commission to delay the implementation of the SUP Directive using the Covid-19 crisis as an excuse, and claiming that it did not take into account the hygienic consequences of banning or reducing Single-Use Plastics. However, Evi stressed that the SUP Directive foresees a derogation for medical devices made of single-use plastics, and it is for this reason that the Commission reiterated the impossibility of delaying the transposition of the Directive into the national law of the Member States.

### 5.4 Impact of the Directive on the CSR strategy of corporations: the answer of a company from the beverage industry

I had the pleasure and the opportunity to interview the Sustainability Director and the Public Affairs Director of the European branch of a beverage multinational company that is globally

[43] European Plastics Converters is the EU-level trade association of European plastics converters. Founded in 1989, its four divisions Packaging, Building & Construction, Automotive & Transport and Technical Parts represent the different markets of the plastic converting industry. The association currently represents 28 national associations and 18 sectoral organisations.

reknown. Thanks to their contribution, I was able to grasp their approach to CSR and how they respond to EU laws that impact their business, with a particular focus on the SUP Directive.

For this company, it has always been paramount to be a responsible company and a responsible business partner to both their consumers and the communities in which it operates. What is interesting to notice is that for the Sustainability Director, the notion of CSR is outdated. She used to employ it from 8 to 10 years ago, but now the company prefers to refer to "sustainable business strategy". This is due to the fact that the company sees itself as part of the wider community in which it operates and wants to take responsibility for the actions it undertakes within this context. However, such responsibility is not intended as just a "corporate" responsibility aimed at drafting annual reports on non-financial statements. For them, the concept of sustainability is extremely broad, and it refers to a way of doing business which cares about the impact that the company has on society as a whole. This concept is integrated in their way of doing business, it drives forward business decisions and also the day-to-day choices. Although integrating sustainability concerns into business operations is not necessarily the easiest, cheapest or fastest way to do business, this company has definitely an ambition to be at the forefront of sustainable business strategies.
Regarding the SUP Directive, both the Public Affairs Director and the Sustainability Director mentioned that the company had always already thought about the potential negative impacts of the packaging of their products on the environment. They want to avoid that packaging ends up in streets, forests, or the oceans' water, and this is the reason why when they design a bottle or a packaging, they try to ensure that these have the lowest level of impact on the environment. Naturally, the SUP Directive has created additional efforts for them. However, it must also be noted that the company had anticipated the EU work on plastics by launching a global strategy called "World Without Waste". Realizing that the world has a packaging problem, and that plastic bottles, cans and other containers end up in oceans or litter the communities where we live, in January 2018 – and thus before the presentation of the SUP Proposal in May 2018 - the CEO of the company announced specific industry goals to reduce packaging and plastic waste. In particular, it aims to collect and recycle the equivalent of 100% of its packaging by 2030, make all packaging 100% recyclable by 2025, and make bottles with 50% recycled content by 2030. This commitment shows that sinergy and partnerships between governments, public administration and companies are needed, because they cannot reach objectives just by working on their own. The Sustainability Director also pointed out that being a big player on the market, the company feels a higher responsability towards its consumers and the communities in which it operates, and therefore it is not surprising that that the company adopted very ambitous

commitment and goals at the same time the EU Plastics Strategy was published and months before the Commission presented the SUP Proposal.

When asked about a possible existing relationship between the company's environmental commitments and EU environmental legislation, the Public Affairs Director answered that, in the first place, it's a relationship based on compliance. When the EU adopts directives and regulations, they become part of the national legislation. And since the company operates locally, it will need to comply with the national legislation in place. In the second place, the relationship between business and EU environmental legislation comes in the form of a cooperative relationship between the company and the Member States, meaning that Member States – represented in the Council directly by national ministers, or in terms of citizens by the European Parliament – will need to cooperate with businesses to understand how to position themselves when deciding on specific provisions.

In terms of the measures foreseen by the SUP Directive, some measures have been welcomed by the company also because commitments had already been undertaken previously. In particular, Article 6(5) of the Directive requires PET[44] bottles with a capacity of up to three litres to contain at least 25% of recycled plastic from 2025 and from 2030 it requires that all bottles contain at least 30% of recycled plastic. Thanks to the strategy launched in 2018, the company had already set the objective of having bottles with 50% of recycled content by 2030, with an ambition higher than the one established by the SUP Directive. On the other hand, Article 6(1) requires that beverage bottles have their caps and lids made of plastic attached to the bottle, in order to be placed on the market. The company doesn't support this measure, as they don't believe in its effectiveness. However, they will need to comply with it when the Directive will be transposed into national law.

The company has been involved in consultation processes since the publication of the Commission's Proposal for the SUP Directive. In particular, it has chosen to engage through business associations – namely FoodDrinkEurope[45] and UNESDA Soft Drinks Europe[46]. As a matter of fact, according to the Public Affairs Director, when you have to speak to policy-

[44] PET stands for polyethylene terephthalate, a form of polyester. It is extruded or molded into plastic bottles and containers for packaging foods and beverages, personal care products, and many other consumer products. It is a highly valued packaging material because it is strong but light and economical. Its safety for food, beverage, personal care, pharmaceutical and medical applications is recognized by health authorities internationally.

[45] FoodDrinkEurope represents Europe's food and drink industry, aiming to promote the industry's interests to European and international institutions and contributing to a framework addressing food safety and science, nutrition and health, environmental sustainability and competitiveness. Its membership is composed of 26 national federations (including 2 observers), 27 European sector associations and 21 food and drink companies, among which Coca Cola, Nestlè and Danone.

[46] UNESDA represents the European soft drinks industry which comprises: still drinks, dilutables, carbonates, fruit drinks, energy drinks, iced teas and coffees and sports drinks. Established in 1958, UNESDA members include both companies and national associations from across the EU, among which Coca Cola, Danone, Nestlè and Pepsico.

makers it makes more sense to speak as an industry, because the institutions are more interested in understanding the landscape for the whole industry rather than for a single company. On the other hand, acting through business associations also has its downsides. For instance, the association cannot represent the precise vision of every single member company, but a compromise position must be achieved in order to then be conveyed to the institutions. Also the response to the Online Public Consultation launched in December 2018 was given under the umbrella of Food Drink Europe. The Public Affairs Director also noted that some bilateral meetings with the institutions took place, but that they were very limited with respect to the engagement undertaken at the level of the business associations. Such engagement is continuing also at the level of the implementing acts foreseen by the Directive and on which the Commission is working.

Both the Public Affairs Director and the Sustainability Director of the company think that in the medium and long term the regulatory framework on SUP ensuing from the Directive will have an impact on the sustainable business strategy of the company – as they prefer to call the traditional, and for them older, notion of CSR. On the one hand, because of compliance reasons, also linked to the fact that other Directives related to packaging are currently being revised by the Commission, like the Packaging and Packaging Waste Directive, and therefore other changes will have to be implemented. On the other hand, the impact will be linked to the fact that company will try to anticipate, as it did back in 2018, further regulatory changes, by commiting to new targets and ambitions.

Also my interviews with representatives from the institutions provided a view on how, according to them, the SUP Directive will impact the CSR strategies of companies in the medium and long term.

According to Mr Bosmans, Team Leader on Plastics within Commission's DG Environment, the companies concerned by the Directive will have no choice, and will have to comply with it, as they will be obliged. On the other hand, he also recognises that there may be new initiatives undertaken by companies in terms of their CSR strategies and their commitments as a result of this new regulatory framework. This is due to the great agenda setting power that the Commission has, starting from the EU Plastics Strategy and now with the EU Green Deal. Companies expect that new legislation will be discussed, and they may prefer to anticipate it. The Commission is also working directly with companies on a number of initiatives related to plastics, the main of which is the Circular Plastics Alliance. The Alliance was launched by the European Commission in December 2018, and is a open to all public and private actors from the European plastics value chain that are ready to deliver on the goals of the declaration of the

alliance, among which "take action to boost the EU market for recycled plastics up to 10 million tonnes by 2025" (European Commission, 2018). Stakeholders can make voluntary pledges to reach this goal, and up to now, big multinationals like Coca Cola, P&G and Tetra Pak have submitted their pledges. Such voluntary pledges enter the CSR strategy of committed companies, and are the result of a direct engagement with an institution like the European Commission. Mr Bosmans also sees a different attitude of companies towards plastic that is not strictly linked to EU legislation. For instance, in his view, it is currently more common to see in supermarkets multi-use paper packaging rather than single-use plastic packaging. However, the SUP Directive does not impose this shift, and neither does other EU legislation on packaging like the above-mentioned Packaging and Packaging Waste Directive. For Mr Bosmans, this positive change can be attributed to a willingness of companies to, on the one hand, have a more positive impact on the environment, and, on the other, also make publicity for themselves by showing that they are environmentally responsible.

Also according to Ms Remijn, companies will have to comply with the SUP Directive because of its legal status, once it will be transposed into Member States' national law by July 2021. In terms of the impact on the CSR strategy of companies, she thinks that their commitments will depend on the outcome of the implementing acts and guidelines, which will better specify the scope of the Directive by defining what is single-use plastic and what is not, with a view to understand how to adjust their production lines accordingly.

A more pessimistic view has been provided by MEP Evi. For her, the SUP Directive and its impact on companies are not sufficient to tackle alone single-use plastics and marine litter. What would be needed, in addition to this, is a change in consumer behaviour. Moreover, she is disappointed by the fact that her and other MEPs' proposal to require that the single-use plastic products that haven't been banned by the Directive be at least compostable and biodegradable was not accepted.

### 5.5. Conclusion

The purpose of this chapter was to empirically test my hypothesis, according to which EU environmental policies positively influence the CSR strategies of companies operating in the EU and an important role in this is also played by the continuous dialogue between the interested stakeholders and the EU institutions. As a case study, I decided to analyze what is commonly referred to as the Single-Use Plastics Directive, a very recent piece of legislation adopted by the Council and the European Parliament in June 2019. The aim of this Directive is

to tackle what the European Commission had already identified as a problem in its 2018 EU Plastics Strategy: that of single-use plastic products littering the marine environment. The measures foreseen by the Directive range from a complete ban on specific single-use plastic items to product requirements and mandatory labelling. However, it is clear that all these measures, regardless of their level of strictness, require a change on the part of impacted stakeholders. In particular, such stakeholders belong to the packaging value chain, ranging from the producers of single-use plastic products, to the companies in the food and beverage industry that until now have employed these items for wrapping their products, with for instance plastic bottles. My interviews with representatives from the EU institutions allowed to me shed a clear light on the level of stakeholder engagement and its processes during the proposal stage of the Directive, during the discussion in Parliament and Council and, finally, during the implementation stage. On the other hand, the interview with the multinational belonging to the beverage industry allowed me to understand their CSR strategies and how the EU environmental policies – and particularly in this case the SUP Directive – impact such strategies.

In terms of stakeholder dialogue, business interests, associations and companies are able to voice their opinions since the first stage of the ordinary legislative procedure, that is the proposal stage. The Commission, before proposing a piece of legislation, consults with relevant stakeholders through a series of tools, like online public consultations, workshops, conferences and one-to-one meetings. This occurs also during the implementation stage, when the Commission is due to adopt guidelines and implementing acts as foreseen by the Directive, and still consults with stakeholders. It is worth to note that meetings and workshops in the form of online webinars continued to happen virtually during the Covid-19 crisis, as the Commission was working on the guidelines and implementing acts that were due for July 2020. The interviewed company from the beverage industry reported that they preferred to be involved in the consultation process mostly through their business associations – Food Drink Europe and UNESDA – but that, even, if in minor part, one-to-one meetings were held. During the readings in Parliament and Council, stakeholders still have the opportunity to engage in order to try and influence the decision-making process. In particular, MEPs received a lot of pressure from civil society regarding the SUP Directive, because it was felt as an important step to tackle marine litter and solve an overarching environmental problem. However, the interviewed MEP Elenora Evi also highlighted how some business associations and companies tried to exploit the Covid-19 crisis to convince the Commission to delay the implementation of the Directive. The attempt wasn't successful, but it shows how much companies are impacted by the Directive, if on the first occasion they tried to exploit an emergency for their own interest.

In terms of the CSR strategies of companies, the interview with the Public Affairs Director and the Sustainability Director of the multinational company from the beverage industry allowed me to understand their approach to EU environmental policies and how they can influence their CSR strategy. Specifically, this company does no longer employ the notion of CSR, but prefers to refer to "sustainable business strategy", which is a wider notion according to which the company feels responsible for its impact on the communities in which it operates, and wants to avoid as much as possible negative consequences. For both the Public Affairs and the Sustainability Director, in the medium and long-term the company will adjust its sustainable business strategy because of the regulatory framework on SUP ensuing from the EU Directive for two main reasons. First, because of compliance, as the Directive will be transposed into national law by July 2020 and therefore the company will be obliged to follow its measures. Second, because it's in the interest of the company to try and anticipate other possible future developments and regulatory changes by committing to new targets and ambitions. A practical example of this is reflected by the fact that already before the publication of the SUP Directive Proposal by the Commission, the company had launched a global strategy aimed at reducing packaging and plastic waste, committing to make all packaging 100% recyclable by 2025, and make bottles with 50% recycled content by 2030.

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## VI. Conclusions

The purpose of this research project was to answer two main questions: whether the EU environmental policy affects the CSR strategies of companies operating in the EU and how, and what is the role played by the dialogue between the EU institutions and the affected stakeholders in building such strategy.

As the EU environmental policy is binding on EU Member States – both in the form of directives and regulations –, it definitely affects the environmental dimension of the CSR strategies of companies operating in the EU, as they are obliged to comply with it, leading to an increase in their environmental concern. However, from the interviews I conducted, it also emerged that companies sometimes try to anticipate EU law-making by committing to ambitious goals before the EU sets them, as part of their CSR strategy. As far as the dialogue between EU institutions and stakeholders is concerned, it plays a relevant role in all the stages of the EU decision-making process, from before the publication of a proposal by the European Commission, to the implementation stage of the new law.

The analysis began with an overview of the concept of CSR and how it is addressed as a policy in the EU. As there is no single definition for the concept of CSR, it is generally agreed that it is a debated concept. However, its general meaning is that companies take responsibility for their environmental, social and economic impacts. There is also a debate on the voluntariness – or not – of CSR. According to some scholars, CSR is voluntary in the sense that companies act beyond what is required by the immediate compliance with the law, while according to others, compliance with law is part of CSR. This second interpretation was the most suitable one for the purpose of the research, as the EU environmental policy is binding and therefore companies need to comply with it, but this doesn't prevent them from taking action by themselves. At the level of the EU, a CSR policy exists since the 1990s, when CSR officially entered the EU agenda. As a policy, it is not binding amd voluntary in nature, and it is currently dealt with by the DG for Internal Market, Industry, Entrepreneurship and SMEs. It is a transversal policy, as it touches some of the main EU policies, like the environment, competitiveness, consumer and employment policies. It also builds upon previously established international instruments, which are also non-binding in nature, like those set by the UN, the OECD, the ILO and the ISO. However, it was relevant to note that a binding piece of legislation exists within the context of the EU CSR policy: the Non-Financial Reporting Directive, which requires companies to disclose in a transparent way a non-financial statement on their activity related to, at least, environmental, social, human rights and anti-corruption matters.

An analysis of the EU environmental policy was necessary to understand how it can fill in the gap represented by the voluntary approach of the EU CSR policy, by imposing binding obligations through directives and regulations. After an overview of how the environment entered the EU agenda and of how the environmental competence stands in the Treaties today, for the purpose of the research the work of Kingston (2019) was crucial in understanding how the EU environment policy itself relies on both hard-law and soft-law instruments, among which also CSR figures. In analyzing the actors actively involved in the EU environmental policy, the inquiry was not limited to only the European Commission, the Council and the European Parliament, but also covered the role played by organized interests from the private sector and civil society, who have the opportunity to influence the EU environmental policy-making process. In the wider discussion on EU environmental policy, a reference to its current state of play couldn't be missing, and in particular to what the European Green Deal, as the new growth strategy of the EU, has set in terms of objectives, the main of which being the transformation of the EU economy into a climate-neutral economy by 2050. Further research on this may be prompted by the impact that the Covid-19 crisis has had and will certainly have on the initial plans of the European Commission.

In order to analyze the dialogue between the EU institutions and stakeholders, it was first necessary to provide an overview of the EU decision-making procedure for environmental policy, which is the ordinary legislative procedure, to then address how stakeholders can gain access to the EU institutions during the procedure itself. The main reason by which the EU institutions grant access to external stakeholders like representatives of the private sector is because they need technical and expert information that only stakeholders can provide. On the other hand, stakeholders ask for access to the EU institutions in order to try and influence the outcome of a certain policy-making process, through lobbying activities. From the analysis, it emerged that the European Commission is the most easily accessible institution, while the Council and the European Council are the least accessible. In addition, the EU Transparency Register can be considered an initiative oriented towards creating higher transparency in terms of the contacts occurring between the EU institutions – for the moment just European Parliament and European Commission – and stakeholders. However, in terms of the dialogue intercurring with stakeholders on policy proposals and even later on legislation's implementation, the most extensively used instrument is that of consultation,

As a case study for my research, I focused on the recently adopted Single-Use Plastics Directive, as it provides a good example of a piece of legislation that was object of a wide consultation process to which interested stakeholders participated, and because of its impact on companies. As a matter of fact, the SUP Directive aims to reduce the impact of single-use

plastic items on the environment, as they represent half of all marine litter found on European beaches. In particular, on the one hand the Directive imposes the ban on certain SUP items, like cutlery, straws and cotton bud sticks which won't be placed on the market anymore starting from July 2021, while on the other, it provides for measures aimed at reducing the consumption of items like cups for beverages. It also foresees a new design for beverage containers, that will need to have their caps and lids attached during the use stage. Thanks to the interviews I conducted with representatives from the European Commission, the European Parliament and a multinational company operating in the beverage industry, I obtained confirmation that an extensive dialogue between the EU institutions and the stakeholders impacted by the Directive was held during the decision-making process and is currently being held for the implementation of the Directive. Such dialogue was mainly held in the form of online consultations, workshops and conferences, and one-to-one meetings with stakeholders. In terms of the impact that the Directive will have on companies, the views from the Public Affairs Director and the Sustainability Director of the multinational beverage company were helpful to understand that the Directive will have an impact on the business operations of the company because of compliance reasons, and also on its CSR strategy. But it is also relevant to note that this company had anticipated the work of the EU on plastics by launching a global strategy aimed at reducing plastic and packaging production and waste, even before the presentation of the SUP Directive Proposal. This shows how companies may have an interest in anticipating EU policy-making in order to be better prepared to comply with future measures.

The research, conducted in empirical terms thanks to the interviews and also through an analysis of EU decision-making procedures for the environmental policy, led to the conclusion that although the CSR of companies is often considered as voluntary in nature, it can – and will - be positively influenced by the laws adopted in the environmental field by the EU, because of their binding nature. But on the other hand, companies have an interest in adopting sustainable business strategies that reflect the work of the institutions, because it is less costly to adapt to future possible measures. Finally, an important role is played by the dialogue of companies – and stakeholders in general – with the EU institutions during the decision-making procedure for a specific policy. Thanks to consultation processes and other tools, organized interests from the private sector and also from other fields can make their voices be heard, and influence the EU policy-making process in a way that is favourable to their business, so as to also anticipate what is going to be required from them and whether their CSR strategy may be impacted.

Further research on the topic could be prompted by the European Green Deal and its overlapping with the recovery from the Covid-19 crisis. It would be interesting to investigate how companies contributed to the national Recovery and Resilience Plans presented by each

Member States to the EU institutions, and analyze what role their CSR strategies played in the development of their project proposals, considering that they necessarily need to respect sustainability standards and contribute to the green transition.

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## Appendix

### Interview with Mr Werner Bosmans - Team Leader on plastics in Commission's DG Environment

*Could you provide me with an overview of EU plastics strategy in general and how it relates to the Green Deal?*
In the circular economy action plan of the previous Commission we ve said that you were going to tackle plastics as we saw the issue was that plastic was not circular and there was a lot of plastic pollution. we re prepared for a plastic strategy which has two major objectives: one making plastic circular in the more narrow sense of the word (if you look at plastics as a material is mostly about recycling but of course plastic ambient product as well, and then reuse and repair of product policies are still applicable), and the other of tackling pollution. we have to help these objectives: one is investment and innovation to go to a more circular economy, and the other one is taking it up at the global front. The plastics strategy comes together with 30-40 actions which we are now implementing. The main action that came directly after that was the proposal on SUP. How does it relate to the Green Deal? It recognises these efforts and builds upon them, gives some general directions around that. And also foresees the new CEAP which came out in March, so just two months ago which basically says we going to further implement what we have said in the plastics strategy (looking at micro plastics, implementing single use plastics, looking at biobased and biodegradable plastics, looking on how to recycle complicated products)

*Since you mentioned the role of the single use plastic in EU plastics strategy, could you elaborate a bit more on the role played on the proposal for a single use plastics directive within the EU plastics strategy? Why is it important and what are the main reasons that pushed the Commission to draft such a proposal?*
When we look at plastic pollution or the impact of plastics on the environment we always look at life-cycle impacts. The first impact that starts is when you take plastic, take the feedstock mostly out of nature and in case of plastics is almost completely fossil fuel. So you want to reduce that. The main action there is collection and recycling and uptake of recycled content. When you look at plastics over the life cycle the main impact was plastics that ends up in the environment. We have two major categories: micro plastics and macroplastics. If you look at microplastics, we saw that the main impact is on the seas, oceans, rivers. When we looked at which of the plastics you found most there, we did an analysis and it came up that ~~about 85%~~ let me take one step back: of all plastics found on beaches (because that's the indicator we took) half of it is single use plastics. 27 percent is fishing gear. On that 50% of single use plastics we looked at a very long list and when we only took the 10 most found items we came to 85% of those single use plastics which we consider to be a proportionate approach, only taking 10 out of a list of hundreds of items.
We tried to find policies to tackle, to take measures that would tackle the pollution coming from those 10 most found items, and we also developed measures on fishing gear.
Both together now come in the directive. We had the objective of reducing pollution coming from them by half.

*Regarding the process that led to the publication of the proposal of a directive, could you provide an overview of the consultation process that was undertaken before the proposal was published?*
Already when we were launching the plastics strategy we had a lot of consultations ongoing and even before the plastic strategy we had already a green paper on plastic waste a couple of years ago. When going towards the plastic strategy we had a lot of workshops and big

conferences. So we had already a relatively good idea of what the issue was and how we could tackle it. And then once we had more precise ideas, we also launched a public consultation.

*Except the consultation process launched with the public consultation on the proposal for a directive on the single use plastics, are there any other ways in which you entered into dialogue with relevant stakeholders before and also after the publication of the proposal?*

We had lots of workshops and conferences. On Internet there's a long document but there's a sort of summary. Aside that, we have seen I don't know how many actors, stakeholders bilaterally in the process. Then once that the proposal was published, we saw again quite a lot of stakeholders in the process of the negotiation with both parliament and the council.

*So, stakeholders came back to you also while the dossier was negotiated during the ordinary legislative procedure.*
We saw many stakeholders, especially those that had a problem with the proposal. Of course it's controversial for many companies that will need to adjust their targets in order to be compliant with what the directive requires.

*Could you tell me a bit more about the current state of play of the single use plastic directive in terms of implementing acts?*
There are about 10 implementing acts. We should issue the first ones this summer. I hope we will manage because due to the Corona crisis, it not only puts a strain on how we can work inside the Commission, but it also puts a strain on how we can work with stakeholders. Because on a lot of these implementing decisions stakeholders need to be consulted. Already last year previous commissioner Vella went public saying that the deadlines that the co-legislators imposed on the Commission are extremely challenging.
we have launched a couple of studies to help us in particular with orienting stakeholder processes linked to that. What implementing decisions will do is not put anything new in the directive. It's only to explain further.

*Regarding the consultation process that you mentioned that is in any case ongoing with regard to the implementing acts, you mentioned the fact that you have launched a couple of studies and the fact that the consultation process is ongoing but of course the situation currently is a bit strained because of the virus crisis. Apart from these are you still able to get in touch with stakeholders bilaterally? Are they contacting you or other consultation processes is just ongoing with the studies that you have launched?*
The only thing that's changed is that they are not physical meetings. This may be an issue for certain consultation processes, is in particular when you need to discuss, when you need to have a common intelligence coming out of a group. But for bilateral meetings and informal stakeholder processes, we organise that completely through to internet and that works relatively well, not perfect but it's feasible.

*Currently the work is on the first implementing act that should be published this summer right?*
Yes. I mean the thing that we need to do later we have to put them in motion because otherwise we will not be ready. So we have to we have a lot of work conversations it should be ready now soon but if we wait for those forms to be published work on the other ones we will come too late with the other ones there was a reason why some of the other one more time more time so all that work needs to be done in parallel
we have for instance launched a study on recycled content, it's about to start now.

*Considering the impact that the directive will have on companies in terms of packaging, do you believe that these companies will also adjust their corporate social responsibility strategies*

*accordingly in the medium and long term? Do you think that the result a direct relationship between this directive and what companies will do in terms of their CSR strategies?*

I think they have no choice. This is a regulatory approach, they are obliged to. Something will have to change. Some other things they will not have to change as the packaging is not taken up in the directive. Because this is about packaging that is litter, so it's not about packaging in general. For those who are concerned by the directive, they will have no choice than to take it up.

*Since the aim of the research is to prove that in some kind of way environmental policies at the level of the EU have an impact not only in terms of the fact that they are binding on the member states that have to implement the policy at the national level and then the policies have an impact on the companies touched by the policy. But actually companies also have CSR strategies that are voluntary but at the same time such strategies even though voluntary can be at the same time impacted by a binding policy issued by the EU. So that's my question: there may be new initiatives taken in terms of CSR strategy after the entry into force of the Directive*?
The answer is very clearly yes. The Commission has incredible power in agenda setting and the agenda is set first in the CEAP, then in the plastic strategy, then in the Green Deal and the new CEAP. So we are continuing to do that and companies are reacting on that because they expect that legislation will come up on these things and we have said that legislation will come up. On certain things we are working with them directly, like the Circular Plastics Alliance, where you're looking mainly at recycled content and related actions.
Yes, companies are more looking at diminishing the role impact of plastics and mainly on single use. So, companies are taking that and companies are also trying to make publicity as well. they put it on their bottles "this is recycled content". That was not happening two years ago, this is completely new. So yes, clearly companies are looking at alternatives, both single use and multiuse. For single use, alternatives are not so evident because all materials have issues.

*Regarding a also the CSR policy of companies and also the fact that the European Union has worked in previous years on CSR policy particularly at the level of DG Grow, I was wondering whether DG environment during the proposal stage of the single use plastic directive has also consulted with DG Grow on this, considering the impact that the directive will have on companies. Or if not if it's planning to consult DG Grow also during the implementation stage.*
I would like to take it the question from a different angle: there is never a DG that presents something, it is always Commission. So there's no proposal coming from one DG or single entity. for that there are internal procedures that all relevant persons within the Commission or consultants, and it can be consulted very early in the process or very late in the process or both. But it's always happening and there's nothing that gets outs without formal approval of the college. For reaching SUP some products are banned. So obviously DG Grow was involved from the first start. the impact assessment is looking at impacts on all businesses and we have not only looked at that during the the formal impact assessment. With this kind of proposals we want a shift in production, so we want to go to a cleaner production. It is not necessary to have a negative impact on business as a whole. it will have a negative impact on certain businesses and positive impact on other businesses.

*But overall the deep positive impact will be in terms of protection of the environment on the balance.*
That's what an impact assessment does. the overall impact of this directive was clearly very positive and as you know there have been very few directives that had such an overarching support. And how policymakers, Council, European Parliament and public opinion in newspapers and so on. I think in this proposal that was. Companies especially the ones that will have to change their production will need to adjust. We see already some differences today.

When you go to a supermarket or shop, you see they are shifting plastic packaging to others, like multiuse, paper packaging. Even though today there is no legislation in place concerning this shift. SUP will come into force in January 2021.

*So probably companies have preferred to act in advance in order to be ready for when the directive will enter into force.*
It is not only that. Because the directive doesn't say anything on that. But if you go to Delhaize, you see you cannot buy apples in plastic but just in paper. This is written in no legislation, not even in SUP, and even beyond what we will do in the revision of PPWD.

**Interview with Anna Bobo Remijn - Policy Officer on Single Use Plastics in Commission's DG Environment**

*If you could provide me with an overview of EU plastic strategy and how does it relate to the Green Deal and also the role played by the proposal for a single use plastic directive within the EU plastic strategy.*
I only took up this particular post here in June last year, so I came in after the directive was adopted. I was not part of the negotiations and the impact assessment. It got close to this topic because I was working on waste shipping, which is also part of the plastics strategy. The plastic strategy was adopted in January 2018 and it was an important part of the Circular Economy Action Plan, which came out at the same time. The Single Use Plastics issue is mentioned in the Plastics Strategy, in the chapter on curbing littering. The commission was called upon to develop a proposal for measures to tackle the unsustainable use of plastics. Indeed we have the Green Deal which was adopted in December 2019, which gives the direction of the new environmental policy of the new Eu commission. The text mentions the implementation of the SUP Directive as a priority. As part of the green deal, we have the new CEAP adopted in March 2020, which refers to a number of actions in the plastic context and also to the implementation of the SUP directive. The plastic strategy of 2018 laid the basis for the commission to come forward with the SUP proposal.

*Even though you weren't there when the negotiation process was ongoing for the directive and so I imagine also for the consultation process, could you provide me with an overview of the consultation process that has been undertaken before the proposal was published, in terms of online consultations or even meetings with relevant stakeholders before or after the publication of the proposal?*
Of course the SUP directive followed a number of actions already taken by the Commission in this field. A green paper that came out in 2017, preparing the ground in the context of the marine strategy framework directive. a number of conferences were organized and of course once the Commission was called upon to come forward with the proposal, the commission was obliged to make an impact assessment before putting this proposal on the table. The impact assessment included a targeted stakeholder consultation. A study was launched in December 2017 to start assessing the potential impact of potential policy measures, a study undertaken by Eunomia. It all happened in a very short period of time. Normally we take 2 years to come out with an impact assessment. But here it was a couple of months, a very quick process. The commission launched the stakeholder consultation, and then the proposal was published together with the impact assessment. The stakeholder consultation was a very important part of the impact assessment and is summarized in the impact assessment report from the Commission, so if you want to find all the details in terms of feedback of the stakeholders, which stakeholders were consulted, you can find them in the impact assessment report. The consultation is summarized in in annex 2 and then you find it in a specific report on the consultation.

*Apart from this formal process of stakeholder consultation that has been undertaken for the impact assessment, do you know if there have been other ways to consult stakeholders like in terms of recent meetings with representatives from companies directly affected by the proposal?*
*F*or sure they have been contacting the Commission heavily. I cannot give you details because I was not part at the time. But there have been one-to-one meetings with stakeholders as we are doing now for the implementing acts. There have also been big conferences, like in 2017 the one on the green paper.

*What is the current state of play of the single use plastic directive in terms of the implementing acts, so the focus on which you're working on now?*
I would like to mention one other thing when you talk about the stakeholder consultations. There was also a big connecting campaign that the Commission organized in 2018, with companies making voluntary pledges to reduce their plastic use or to increase recycling and this is an important initiative which now has been institutionalized in what is called the Circular Plastic Alliance. It is led by DG Grow, but it's companies coming together to deliver on their pledges that they made in 2018. This is also another important vehicle for stakeholder contribution.

*Is there a way to access the precise list of the companies that has adhered to the initial initiatives on the single use plastics directive? Because it was initially linked to single use plastics directive right and then it became an institutionalized alliance if I understood correctly?*
I'm sorry can you repeat?

*I was just wondering if um the initiative that now is called Circular Plastics Alliance was born as a direct consequence of these voluntary pledges by companies in collaboration with the Commission on the single use plastics or it was not directly related to single use plastics.*
It was launched in the context of the plastic strategy. the Commission was promoting this campaign and the pledges from industry. Stakeholders were going forward with goals on recycled plastics. That has led to the formal alliance.

*This is very interesting from my side because since in my final dissertation I'm trying to answer to this research question regarding the fact that companies are actually implementing their CSR strategies not just because of their voluntary pledges, but also because there are EU laws in practice that lead them to pledge certain commitments in terms of environmental commitments, like the ones on plastic. So knowing that there's been this campaign launched by the Commission with the companies that have adhered to it actually makes a strong point for my research. What about the current state of play of the single use plastic directive in terms of the implementing acts?*
We are pretty into this process. Because the directive was quite quickly adopted, it left a lot of things open for further decision, either on implementing acts or through guidelines. So we had to work on 2 sets of guidelines, one on the directive itself and the definition of SUP, and one on EPR, for the litter clean up cost. There are a number of implementing acts which in principle should be ready by July. this includes the one on marking and label of SUP, that informs the consumer. One on separate collection. One on the reporting of fishing gear, led by DG MARE. With covid we had some delays on this and this was something already noted by the Commission, that these timings would be very challenging to deliver everything on time. We contracted an external company, Rumboldt, to make studies. They are starting to deliver their documents, on which stakeholders have been consulted also through workshops, and with Covid through webinars. Expert group on waste – monthly meetings with MS.

*So actually you answered to my next question which would have been on the consultation process actually ongoing on the implementing acts. So normally it's about the expert group on waste meeting monthly as regards the position of the member states. The document drafted by the external contractor Rumboldt that has been sent to stakeholders to provide a response. Webinars have been organized.*
We have had so far 5-6 webinars on the marking, with another one following in July. We will not be able to deliver it for July and we have another workshop In July

*And did you also have the chance to meet in this situation also virtually stakeholders from companies in one to one meetings?*
We have been doing so intensively from June last year, both industry and NGOs and other interested organizations. So we try to really keep an inclusive approach for those willing to come to Brussels and meet up. we also need time to do the actual work with the contractors who are working on the material and of course from March onwards we are not directly meeting with stakeholders anymore.

*The last two questions are actually more personal opinions from your side. Considering the impact that the directive will have on companies in terms of their approach, for instance, to packaging, do you believe that they will adjust their CSR strategies accordingly in the medium and long term?*
I think that they will have to. There is still discussion on the scope of the directive and the definition of SUP. have another discussion from the scope of the corrections to what extent do their publics fall under the definition of simile plastic and we are having discussions on certain natural polymers which may or may not have been chemically modified, I will save the details but it is a very technical discussion.

*Considering also the impact that the directive will have on companies I was also wondering if during the proposal stage or also during actually this stage regarding the implementing acts, DG environment has also consulted DG grow considering that DG grow is also in charge among other things of the CSR policy at the EU level.*
Yes of course we had several meetings with other DGs that commented on the SUP proposal. And now we continue to consult with them through "interservice consultation".

**Interview with Marida Di Girolamo, Assistant of MEP Eleonora Evi - non-attached MEP member of the Environment Committee**

*Se mi puoi dare una panoramica di quella che è stata la procedura legislativa che ha portato all' adozione della direttiva sulla plastica monouso nel Parlamento, quindi gli stage dalla Commissione Ambiente alla plenaria.*
Il processo è stato quello di procedura ordinaria, il processo legislativo più comune che viene utilizzato a livello europeo nell'adozione di direttive e regolamenti. La particolarità di questa direttiva è che è arrivata in un momento in cui si era al limite per finire il processo legislativo entro la fine della legislazione, perché poi a maggio ci sono state le elezioni. Si è cercato di fare il più in fretta possibile per far adottare la direttiva. I tempi sono stati anche piuttosto veloci per una procedura ordinaria. Diciamo che è stata molto sentita a livello di società civile. Ci sono state anche pressioni positive da parte dei cittadini che si rendono conto che abbiamo plastica ovunque, le spiagge sono piene, quindi c'è stata tanta pressione anche a livello politico sui deputati. Si è cercato di fare il più in fretta possibile per adottarla prima della fine della legislatura, perché se non fossimo arrivati a quel punto, bisognava aspettare l'insediamento del nuovo parlamento europeo, la nuova commissione e i tempi si sarebbero ridotti di parecchio.

*C'è stato poi anche a livello della commissione ambiente un rapporto tra la dottoressa Evi e la Rapporteur Frederic Ries, ci sono stati dei contatti? E quale è stata la posizione della dottoressa Evi rispetto al draft report della Ries?*
Come Shadow Rapporteur c'era Pedicini per il gruppo S&D, dove eravamo all'epoca. Ma anche Eleonora ha seguito da vicino la direttiva. Ci sono stati dei rapporti, la relatrice ha sempre cercato di coinvolgere il piu possibile tutti gli altri relatori ombra e di avere un consenso unanime con l'idea di trovare un accordo il piu velocemente possibile. Pedicini è stato molto disponibile ad accogliere le nostre istanze, sì c'è stata una collaborazione.

*Quindi come descriveresti il ruolo che la dottoressa Evi ha avuto nell'ambito della procedura legislativa sia a livello della commissione che in plenaria? Qual è stata la posizione?*
La posizione che abbiamo tenuto è stata di supporto alla proposta della commissione. Anzi abbiamo cercato di andare oltre. quando è arrivata questa proposta ci sono state anche tante opposizioni. Tante forze politiche hanno accolto la proposta positivamente, ma altre sono state critiche, dicendo che la commissione insomma così facendo andava a distruggere alcune industrie, piccole e medie imprese nello specifico i produttori di piatti, posate di plastica. Quindi ci sono state critiche anche in questa direzione. Noi siamo sempre stati in appoggio alla proposta della commissione. Anche la relatrice ha avuto una posizione sempre aperta e ambiziosa. Quindi abbiamo cercato di andare oltre. Di bandire ad esempio dei materiali e dei prodotti aggiuntivi rispetto a quelli messi nella lista della commissione: ad esempio i contenitori in polistirolo monouso sono stati aggiunti nella lista grazie alle pressioni anche di Eleonora e di altre forze politiche come i Verdi e i GUE.

*A livello di pressioni esercitate mi stavi citando anche prima il fatto che c'è stato anche un coinvolgimento della società civile che ha fatto pressione. Io ero più che altro interessata a capire a livello anche di altri stakeholder se ci sono stati dei dialoghi intrattenuti durante appunto la procedura in commissione a livello proprio di aziende che sarebbero state impattate dalla direttiva una volta adottata. Se quindi c'è stato un dialogo, e se sì in che modo è stato intrattenuto. E se in realtà questo dialogo è andato anche poi oltre la fine della procedura legislativa, cioè se anche adesso entrate in contatto con stakeholders che vogliono ancora lavorare su questo processo considerando che adesso la commissione sta comunque lavorando su degli atti esecutivi.*
Sì, allora diciamo che le imprese maggiormente impattate sono state alcuni produttori dei piatti e posate in plastica e dei prodotti in generale in plastica monouso. L'Italia ha una posizione particolare in questo, nel senso che il consuma e produzione di prodotti in plastica monouso è soprattutto al sud dell'Europa, Italia e Spagna al primo posto. Quindi si è parlato all'epoca anche di un certo clash tra paesi del nord e paesi del Sud. Per cui a livello italiano tante piccole medie imprese si sono lamentati di questa proposta, c'è stata tanta pressione sui deputati italiani. Eleonora ha sempre mantenuto la posizione che essendo dei prodotti che inquinano e non essendoci prodotti alternativi meno inquinanti, bisogna andare oltre, bisogna fare in modo che ogni impresa cerchi di adeguarsi alle esigenze e quindi che si diventi più verdi e si investa in prodotti più verdi. Quindi tante pressioni anche da parte dei produttori di palloncini, che non sono banditi ma entrano tra quei prodotti che devono indicare nell'etichettatura che devono essere gestiti in un certo modo e non devono essere abbandonati. c'è stata tanta mobilitazione da parte di questa industria dei palloncini.

*Mi chiedevo ad esempio se eravate stati contattati anche da aziende magari non direttamente coinvolte nell'industria di produzione di piatti e posate in plastica, ma anche da aziende che di per sé non producono ma che comunque impiegano plastica che potrebbe essere risultata monouso. Ad esempio mi viene in mente la Ferrero anche se adesso magari hanno headquarters in Lussemburgo sono comunque italiani diciamo che hanno bisogno di imballaggi per i propri*

*prodotti e ci sarebbe tutto diverso non rischio che la il confezionamento dei prodotti ma già risultasse tra la lista della plastica monouso e prevista dalla direttiva.*
Sinceramente non abbiamo ricevuto nessuno. Tetrapack, e poi produttori di imballaggi in generale, Europen.

*Attualmente siete coinvolti in qualche modo dalla Commissione riguardo il lavoro attuale sugli implementing acts?*
Non ci stiamo lavorando direttamente, ma in genere funziona che la Commissione arriva con la proposta e poi il Parlamento e il consiglio hanno due mesi di tempo per poter obiettare.
In realtà durante questo periodo del coronavirus, le aziende che sono state impattate maggiormente dalla direttiva, inclusi i produttori di plastica, hanno chiesto alla Commissione di ritardare l'implementazione di questa direttiva. la commissione ha risposto naturalmente che non c'era alcuna connessione. Tra l'altro i dispositivi medici non sono inclusi nell'obiettivo della direttiva. l'unica cosa sono le cannucce che possono essere utilizzati negli ospedali, ma per motivi medici sono esclusi dalla proibizione, possono essere ancora utilizzate. È stato un tentativo un po' stupido che non ha trovato nessuna nessun riscontro poi, perché la commissione ha risposto che non c'è alcuna connessione.

*Dato che appunto questa è una tesi che si concentra sul dimostrare come la strategia di CSR delle aziende non è solo una cosa volontaria ma è anche influenzata da quelle che sono le decisioni prese a livello Ue in ambito in primis ambientale, secondo te e la Dottoressa Evi, quale sarà l'impatto che la direttiva avrà soprattutto su quelle aziende che appunto si occupano di imballaggi o che indirettamente utilizzano imballaggi e quindi sono toccate in termini di quella che è la rimodulazione della loro strategia di CSR? Si adatteranno nel medio lungo termine oppure faranno dei commitments ancora più alti? Si attesteranno a quello che è richiesto dalla direttiva semplicemente perché devono farlo, oppure andranno anche oltre?*
Speriamo che si adattino. Ma in questa direttiva specifica, dato che parliamo di plastica monouso, secondo me ci vorrebbe proprio un cambio di mentalità del consumatore, quindi non solo dell'azienda produttrice. Bisognerebbe cercare di non utilizzare più imballaggi in plastica monouso, ma magari imballaggi in qualsiasi altro materiale, anche nella stessa plastica ma che non sia monouso, ad esempio biodegradabile. L'ideale sarebbe cercare di implementare un sistema un sistema di ritorno del prodotto, vuoto a rendere. Quindi se compri un imballaggio monouso, dovresti essere in grado di riportarlo indietro, quindi che sia un prodotto in plastica che non si deteriora ma che puoi riportare indietro. Questo ovviamente si applica ai casi di imballaggio per cibo e bevande, per cui la direttiva prevede una riduzione, non il divieto come per le posate ei piatti in plastica. ovviamente posate e piatti in plastica, come ha dimostrato la commissione nel suo impact assessment, è possibilissimo rimpiazzarli con dei materiali riutilizzabili.
Quindi speriamo che le aziende vadano in questa direzione, sicuramente c'è la pressione. Però non so quanto sia sufficiente questa direttiva. Sicuramente il lavoro della commissione sull'economia circolare, (è stato pubblicato un nuovo piano di azione sull'economia circolare) il piano si focalizza sui prodotti, su come renderli più riutilizzabili, più duraturi. Cosa invece più immediata sarà la revisione dei requisiti minimi degli imballaggi (PPWD). Quello avrà un impatto importante sulle aziende produttrici di imballaggi. quello che noi avevamo cercato anche di dire che entrasse nella direttiva ma poi non siamo riusciti è: laddove il monouso deve essere utilizzato, bisognerebbe preferire un monouso che sia compostabile e biodegradabile.
Uno spera sempre che si raggiungano livelli e target più ambiziosi però già mi sembra tanto aver raggiunto questo obiettivo, speriamo poi insomma anche con gli implementing act della commissione ci sia più chiarezza e che le aziende si adeguino. il discorso è che in qualche modo credo che dovranno adeguarsi, un po' perché l'implementazione a livello degli Stati membri è comunque obbligatoria nell'arco dei due anni dall'entrata in vigore della direttiva.

**Interview with the Public Affairs Director and the Sustainability Director of a beverage multinational company**

*If you could provide me with an overview of the company's approach to CSR and also within this context if you consider that sustainable development contributes to your company's strategy.*

Sustainability Director: for us it's very important and it has been for a long time to be a responsible and a responsible business partner both to customers and consumers we serve, but also to the communities in which we operate. You calling it CSR is actually interesting because in my vocabulary I used CSR maybe 8-10 years ago, and at the moment I'm not really using it anymore and I will tell you why. It is because we see we are part of the community and we want to take our responsibility so the arm from responsibility still sticks, but it's not a corporate thing, it's not something that you just do to put in your annual report or that a little group of peaks somewhere in the company only cares about and talk to stakeholders. As I explained, for us sustainability is super broad, it comes for us as a way of doing business and being a good business that takes the environment and the impact we have on the environment very seriously. So, it's not a nice thing for an annual report or somewhere as a nice thing to do, it is really integrated into our way of doing business, for driving forward business. CSR doesn't really exist anymore, for us sustainability is part of doing business and doing business the right way, which is not necessarily always the easy way, not necessarily the cheapest way, not necessarily the fastest way to do business, but it is definitely an ambition to do this.

Having said that, if you can zoom into single use plastics, for us thinking about packaging and what the potential negative impacts of packaging can be are a very natural thing and so of course for us they are a very relevant topic because we don't want any of our packaging end up on the streets in the forest, in the water, in the ocean. It needs to come back to us because actually it is very valuable material. For every package that we make and we take into consideration whenever we design a bottle or or a pack all the requirements, we ensure they do not have a negative impact on the environment or the least negative impacts on the environment, and littering is one part of that, but also carbon emissions or the use of water and the use of other additional materials. The Single-Use Plastic Directive has a clear littering element to it and I know there are other elements into it when it comes to collection and using more recycled content etc, but the real trigger to develop this in the specific directive was the littering element. It means for us it's a very serious topic and it has been for a long time, and with the SUP directive it has put a lot of additional energy and efforts together.

Public Affairs Director: CSR is not like a charity or a nice to have, I think it's part of the business plan and it also helps the business to move forward. In terms of your question, because you mentioned how legislation or the objectives impact with the companies or it's the other way around. so here one side of that is: we work in partnership. If we are the only ones who want to do something but then we don't have the cooperation of the public administration and the government, then how are we going to achieve it? So, it takes you to know other people and society as well if we work well together. The business cannot do it alone, but the government cannot do it alone either. The second side is that we share some of the EU objectives and especially on SUPs. If you remember, the single use plastics came out beginning of 2018, but we had already launched a strategy globally called "World without Waste", a packaging strategy which was exactly saying that the world had a packaging waste problem and we want to help solving it and that had collection at its core, so with 100% collection with targets on recycled material, with partnerships with innovators in science. We also want to be relevant and be part of the solution of current problems. So the European Commission came out with a single use plastic and we also came up with our own global packaging strategy. An MEP asked me why don't you do something about women's reproductive rights? What's the authenticity and the right our company has to do something like that? But it makes perfect sense if we're

doing something on packaging or doing something on water because you cannot have our drinks without water or any delivery to consumers around the world. So that's what I mean, it needs to be authentic and be relevant, and then we can also be part of the solution instead of saying "I'll look at the problem and ideally that would have happened but then we don't have any part there".

Sustainability Director: I think it comes from the belief in our vision that if you want change to happen in the world you need to be part of that change. So if you want and our vision is for example worl without waste, you need to become part of that change and make a world without waste happen and in our case that means collecting 100% of our material, making sure that everything is recyclable, making sure that we put back recycled content, at leastthe 50%. So all those kind of things. If we advocated for just less coal industry, I mean we we weren't able to be part of that change directly so it doesn't make sense. It's about the authenticity and also I think if you want the world to be saved you'd better not bet on CSR, you'd better bet on companies that have a future in a more sustainable business. We count ourselves amon the most big guys, that have a clear need and desire to be around for again 135 years. So I think it's a real opportunity for companies to start to embrace the real Business Link into fixing societal and sustainability elements and not as an add-on through corporate social responsibility

*So let's say the reframed the vision on CSR is more focused on so called business sustainability which is wider than the notion of corporate social responsibility.*
Sustainability Director: business sustainability is in thriving communities if you like. So for us it doesn't make sense that we are only thriving but then the communities in which we operate do not live well right? So we companies and the private sector work better when the environment in our sector, when people in their communities are doing well too. The interesting element in there is that I think a company like ours, which is a business to consumers, needs to be more up front, while if you want to ask to a business company what their involvement into SUP is, they might not have any involvement because they make products for their clients using plastics, but their actual actions and so-felt responsibility in interaction with the public is different. We're often seen as one of the red monsters when it comes to packaging and littering and so people feel that when it comes to single use plastics we might feel that it's it's overcoming us. But we don't actually feel that, we already had a very strong world without waste vision before the single use plastic directive came into place because we already felt we had a responsibility there to take, because we're so close to our communities that already said to us: listen it's your packaging littering my streets or my ocean or my forests. But you wouldn't get that kind of input or kick up if you're a business to business organization you understand? So it's interesting with specifically these kinds of topics that have such a big societal consumer kind of spark, that I I would argue it is the business to consumer organizations that are very much close to this and not because they are being dragged into it most of the time. They were already working on this because they they were so rooted into the communities and the consumers they served, because we have to understand what the consumer wants from us.

*Thanks because now the picture is very much clearer on your approach to CSR, or rather, business sustainability. Now passing more to the legislation side. I understand of course that the answer to the question if EU environmental legislation affects your company's commitments I guess is yes, but could you provide more details on these? What's the relationship existing between EU environmental legislation and what your company in practice does?*
Public Affairs Director: first of all its compliance. When it's legislation we comply with legislation. EU legislation becomes national legislation and then we operate nationally and of course we will comply with the legislation that is in place. The second element is that there are many provisions in environmental legislation that require the cooperation of the Member States and the business because it usually says that Member States will have to provide a framework

that business will need to comply with, so there we need to cooperate to make this happen. So you want examples of what we do, how we interact or how do we talk about it when it comes to decision-making process.

*Well this side of the decision making process yes, and also there is the compliance side, but always relating this to the sustainable business. If then there is also an influence in going beyond what is required by the legislation. As you were saying, the company had approached the topic of packaging even before, because you kind of anticipated a need that was pre-existing. Then the legislation came with SUP directive and is impacting your business. But then this influences just compliance or you decide to go beyond because you feel that, as you were feeling also two years ago, there's going to be more development and so you try to anticipate again what the EU is going to require not now but maybe in two years, which also may be stricter requirements?*

Public Affairs Director: it's a mix of trying to future-proof the business and make sure we anticipate the challenges and of course business realities, because we sometimes want to do things and we're trying to match the industry to move towards that direction, but it's not always easy when it comes to business and the everyday economic realities. So you need to find the right spot. I can give you an example. In the SUP directive it says that beverage bottles need to have 25% recycled PET until 2025 and then 30% by 2030 applicable to all bottles that are made of plastic. We already had the objective of 50% by 2030, so this is something where we can say yes, we can do it beyond and irrespective of what EU legislation said about the percentage. Now if you are going to talk about other measures that the SUP brought, like the attached cap and lid provision, there it is strict compliance, also because it's something we don't believe that will help. Another point where we are trying to be sometimes to go beyond, to do the right thing I would say, can be water, on the Water Framework Directive. You may have seen now that we came out publicly along with other 23 companies in support of the Water Framework Directive not to be reopened in order not to have the standards to be watered down because that's the danger if it reopens. There we ask for the Commission also to help the Member States to implement this legislation in their markets better because then we're going to have better quality of waters, and others do it, others not, so it's going to raise the quality of the work of all the actors involved. And don't forget that legislation usually covers everyone from the smallest player to the biggest player and it can be many times that the big players are running anyway ahead, but the litigation tries to put everything everyone on the same page, at the same pace rather that a small player wouldn't have the incentive. Our company is at the front desk, people would react immediately if we did something wrong or lower or well below the expectations and a small player won't have the same impact. So of course we want to be in the market and because we also are exposed we try to be in a good spot and a good place, and our sustainability on the whole expresses an ability through our products or our production and facilities. But a smaller player doesn't necessarily have the incentive to do that.

*Regarding the decision making process on the SUP directive, you've been involved, I imagine, in the stakeholder consultation on the proposal and you decided to get involved under the umbrella of FooDrink Europe as an organization, or did you decide to go by yourselves? And could you provide me with more details on the stakeholder consultation and how was your approach to it, and also if the company was engaged in a dialogue also with other EU institutions apart from the European Commission during the process for the adoption of the Directive.*

Public Affairs Director: it was a mix, but definitely the biggest part was via our business associations, because it makes more sense when you speak to politicians and policymakers in the Commission or the Parliament to be there as an industry. The policymakers don't want to just see that what the landscape looks like for our company or for another company, they want to see what the impact on that industry will be, and this is how the associations can help and I

think the associations are the best place to express that. Of course in the associations usually you have a compromise position, which is the result of everyone's position, so you cannot necessarily be the one who asks for more. But you can be an example of member association that is going beyond. We engaged with our business associations either by going to the meetings together or just with the associations having the meetings on their with the policy makers. We tried to engage with all the people who were involved because these measures were directly impacting our packaging, but the response of the policymakers varied widely. So you had from the ones who of course wanted to listen. You could agree, they could agree with you, disagree but of course it was part of the discussion. We had others who said that they were too busy to meet, but you know, these people had never been in a factory before.

*Also regarding the current state of implementation of the SUP directive, there is an ongoing work in terms of implementing acts. Are you currently being involved in approaching the institutions?*
Public Affairs Director: mostly through the associations.

*Since the the transposition of the Directive is going to be from beginning of next year, do you see in the medium and long term another impact in terms of your approach to a responsible sustainable business given precisely by this directive? I know that you already anticipated the work thanks to the strategy that you mentioned that you had launched before the proposal, but do you see in the medium and long term other impacts that this directive could have in the future, also looking at possible implementing acts that are going to be adopted in the next years?*
Public Affairs Director: I think it's a mix. One part is the single use, which is goint to come into implementation together with the Waste Framework Directive and the Packaging and Packaging Waste Directive that were agreed in 2018 but the Packaging and Packaging Waste Directive is right now being revised again. Yesterday the Commission published the inception impact assessment. In fact that, targets can be changing in the legislation every year and so we expect that some of the Member States may want to take stricter measures on their own because now it's a bit of a fashion.
I think what we saw with the single use plastics is that unfortunately it was done in such a short period of time that it had to go. Now you see the implementation is now through these acts. All this work should have happened before. We are having a SUP Directive without the definition of a single use plastic, we don't know whether plastic is single use and that's the result of a very quick process, not thought through because the elections were coming. So we learned that this process doesn't lead to quality implementation necessarily across the EU and then in a few years they will say there is a fragmented landscape in Europe, let's try to do another directive tool to fix it.

*From my side everything is clear and I took notes and it's going to be super useful for the content of the last chapter of my final dissertation. I don't know if you would like to add additional comments to conclude the on the topic more in general terms. But from my side it's very clear and I want to thank you again for enlightening me with your approach to - let's not call it CSR - but business sustainability.*
Sustainability Director: what I would like to to say is that doing business the right way is not necessarily the easy, and the fastest way, actually sometimes it is the costly way, and other businesses are doing investments towards this direction. But sometimes the goals change and also the mentality that needs to be more involved across EU is that business and state need to be partners if we're going to do that, because we come from opposite, very different fields, but we are not in opposite positions.

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