The joys and frustrations of an environmental law-maker

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Abstract
For many years, environmental politics was seen as a relatively light policy area. In many European countries environmental issues were usually delegated to the Greens. As a result, until recently, climate and environmental policy has been dominated by the political approach and emphasis of the green movement. Today, however, political leaders across Europe are finally seeing how political environmental politics actually is. There is also a growing understanding that the green approach may not be the only possible way forward. Due to its top-down, bureaucratic and inflexible approach to the policy area, the green agenda may in fact sometimes even be dangerous. Thus, this article argues that the time has come to shift the paradigms of environmental politics and climate politics from the politics of limitation to the politics of possibilities. The European People’s Party family could offer a real alternative to the green agenda and show the merits of environmental subsidiarity.

Keywords
Environmentalism, Climate politics, Legal certainty, Overregulation, Subsidiarity

Introduction
When I was elected as an MEP for Finland 20 years ago with climate and energy legislation as my motivation, my portfolio appeared to be, at least to most of my Finnish colleagues, somewhat unfashionable. They considered it to be all too technical, with no real political or ideological dimension—not the sort of thing an ambitious politician could make a career of. Thankfully, despite these opinions, I was able to persuade enough people to vote for me and was elected to the European Parliament in 1999. At that time the Kyoto Protocol, which called for the global reduction of harmful emissions, had only...
recently been adopted. However, not all nations were signatories to the Protocol, and it was not set to come into force until seven years after its adoption.

I was a firm supporter of the Kyoto Protocol at the beginning of the last decade. For me, and for many others too, supporting Kyoto was equivalent to combating climate change. If you supported Kyoto, you wanted to save the planet. If you criticised Kyoto or you did not ratify it, you were a villain who did not care about the environment at all. However, in my role as a legislator I began to understand and anticipate the weaknesses of this agreement. Therefore, in February 2005, on the very same day that the Kyoto Protocol finally entered into force, I stated in a television interview and a press release that when it came to the climate, this treaty could turn out to be counterproductive:

The agreement is valuable as an expression of political will but, as a matter of fact, there is a risk that the Kyoto Protocol will increase greenhouse gas emissions if, as a result of the agreement, industrial production is transferred to countries where less-strict emissions norms apply. The rise of the global economy has meant that the world has slipped away from the ranges of the Kyoto Protocol. The threat of carbon leakage should now be taken seriously. (Korhola 2005)

At that time, Kyoto was the only game in town, and my assessment was considered by most to be scandalous.

During my early years in the European Parliament, many politicians saw environmental law-making more as a technical management process than as a part of politics. Environmental non-governmental organisations (NGOs), claiming to be the earth’s friends, just told the people how things were and politicians simply implemented their advice—very often without proper research or adequate understanding. Therefore, it was not surprising to me that environmental politics globally was, for many years, considered something quite easy, ‘light’ and almost ‘flat’, without a political dimension. In governments across the world and within the EU institutions, the importance of this portfolio was considered similar to those of cultural or gender-related issues—to put it frankly, as a worthy but ‘soft’ issue. In my country, Finland, environmental issues were almost always externalised to the Greens. The big parties felt that, as this was their cause anyway, it was fine to let them handle it—it was a harmless subject area for them, many of them former Communists who had lost their kingdom after the collapse of the Soviet Union. It was thought that the Greens could concentrate on this rather minor nit-picking subject: after all, they could do no damage to such a harmless issue, and it would keep them out of mainstream politics and issues. How wrong this thinking has proved to be.

**Importance of all environmental concerns**

Climate change is a good example of one aspect of the present-day multidimensional environmental problem. It is an ever-present cross-cutting theme in food supply, health, manufacturing, the economy, history, the environment and social life. It is always present in the news and is often a key factor in governmental decision-making as well as in
electing our political representatives. It affects international relations, and a massive administrative machinery of experts and bureaucrats has been created around it. In addition to this, it has absorbed the complexity of all other environmental problems. Of course, the threat of climate change is a top priority in our daily lives but, in many ways, it has diverted attention from other environmental concerns such as toxic waste, avoidable human health impacts, clean air and other factors that also affect the very future of life on our planet. We can no longer speak of climate change as a mere physical, standalone phenomenon. It is a combination of culture, politics, the law and human lifestyles, and our personal hopes, ambitions and fears are reflected by this natural phenomenon and exacerbated or relieved by our everyday actions and, more particularly, by the policies and laws made by our political leaders.

How has climate change become this kind of all-encompassing hybrid? Or as the British climate professor Mike Hulme (2009) asks: how has it happened that climate change in lower case has become Climate Change in upper case? It is ‘a morality play with good guys and bad guys, with virtue and reason on one side and evil and corruption on the other’ (Pielke 2010, xi).

The issue is important, because climate change has been a dominant environmental issue for almost 25 years. The economic cost of climate policies to the EU has been hundreds of billions of euros—more than all other environmental protection programmes combined from 1995 to 2019. But has that been money well spent?

**Staying engaged**

My passion for environmental issues has not waned. In the last few years I have attended Conference of the Parties meetings in my role as a steering committee member for the Innovation for Cool Earth Forum (ICEF). The ICEF is a Japanese initiative, and every year the government of Japan hosts the forum, gathering leading international figures who are tackling climate change through technological innovation. It seeks pragmatic solutions and stresses the importance of technological innovation. In my doctoral thesis (Korhola 2014), I evaluated the Kyoto Protocol and the efficiency of our climate measures.

I have come to the conclusion that, despite good intentions, our climate policy is a step in the wrong direction. I suggest that the past 25 years have somehow been wasted, as despite unprecedented hype about the climate, the situation has worsened with regard to emissions: not just absolutely but also relatively. The selected strategy is not working in terms of its results. As long as production- and not consumption-based emissions are the basis of any climate agreement, there is a great chance of self-deception: manifest emissions reductions can be explained by an increase in imports from places where no serious climate actions are taken.

The EU’s situation offers an inconvenient example. We love to say that the EU demonstrates ‘leadership’, that we are the ‘front-runners’ and so on. And indeed, the EU is on the right path with regard to the agreed emissions-reduction targets. The
image of the EU’s success is altered, however, if we take into account not only production- but also consumption-based emissions; that is, increased imports from outside the EU. When analysing international trade volumes, we have to conclude that the EU’s total responsibility for emissions has increased (Peters et al. 2011). The imported emissions outweigh the achievements in domestic reductions. In practice, we have outsourced our emissions.

In these circumstances, the EU’s unilateral and expensive climate measures cannot be considered ‘climate’ politics. They can be called the decarbonising of production or the outsourcing of jobs or emissions but, in spite of the best intentions, the EU strategy has so far not tackled the global problem on a global scale.

Another conclusion of mine is as scathing as my previous reference to the 25-year delusion. It concerns the environmental movement. I suggest that the movement has, above all, failed in its strategy to combat climate change, but also quite often in its other environmental policies. Again, good intentions do not guarantee a wise strategy. The environmental movement regards economic growth as an enemy of the environment although practice has proven that in precisely those quarters of the world where economic well-being prevails and basic needs are satisfied, people are more interested in taking care of their environment. Poverty, in its turn, is the biggest environmental threat, even though it has been romanticised in environmentalist rhetoric.

**It is all about energy**

Today, climate change is just one aspect of the present-day multidimensional environmental problem. It can overshadow other aspects to the detriment of us all.

When speaking about climate, energy should be centre stage. Energy is not just another economic input. Energy is elementary, the missing factor of production for which there is no substitute, because, without exception, everything that humanity creates or does results from energy conversion. I would even argue that climate policy is a subset of energy policy: to address climate change you must address energy first. It is our biggest challenge. The ultimate energy innovation must be (1) available, (2) reliable, (3) safe, (4) adjustable, (5) clean and low carbon, as well as (6) affordable. The combination of these criteria is called an ‘energy miracle’ by Bill Gates (2014). We need to work towards an energy miracle. We have not had one yet, but producing one is a necessity. Failure is not an option, and even when we talk about a low-carbon world, a low-energy world is not an option.

The International Energy Agency forecasts that by 2040 more than half a billion people, increasingly concentrated in rural areas of sub-Saharan Africa, will still be without access to electricity (IEA 2016). Should we accept such poverty? Should we accept it in the name of saving the environment? I do not think so. We should not promote a low-energy civilisation, because it means that the poor pay the price. A high-energy, low-carbon world is required to fulfil the 17 UN Global Goals of 2015, which we take as best expressing the general public good.
At present, we have no globally available energy solution that is sustainable—either economically or environmentally. Around the world it appears that a transition to renewable energy is under way. But rising emissions in renewables-heavy countries such as Germany have led many to start asking: are there physical limits to scaling up solar and wind? I believe there might be—the fact that wind and solar contribute less than 2% of global energy is no coincidence (IEA 2018). As mentioned, Germany has made the largest investment in solar and wind, but it has not managed to reduce energy-related emissions since 2009 (Graichen et al. 2017). We should not pretend that today’s wind-power or solar technologies can satisfy the world’s hunger for energy.

We have to realise just how different the current move to renewables is from past energy transitions. Almost every time a society has replaced one source of energy with another, it has shifted to a more reliable and energy-dense fuel. This time, however, simply replacing fossil fuels with renewables would mean moving to fuels that are less reliable and more diffuse—the whole benefit of using renewables will not be realised until we solve the problem of energy storage in a sustainable way.

There is no silver bullet that can solve these problems worldwide in a short space of time. Changes in energy investment do not take place overnight. ‘One size fits all’ would be a misguided approach. Instead of being picky and selecting one clean technology over another, we should try to keep all such doors open—we need multiple solutions. However, public money should be used for energy research, not for energy subsidies which distort the market.

Dilemma of legal certainty

During my 15 years of engagement in forming EU legislation, I have witnessed many reversals in our climate-protection measures, from one extreme to the other. Environmental NGOs have changed their views by 180 degrees on many key matters, including biofuels, waste policy, the use of wood energy and biomass, and emissions trading. I am pleased to say that I can even see, amongst some Greens, a recognition that nuclear energy may be essential to reducing emissions from energy production. Too often the European Commission and the European Parliament have followed the Greens’ ever-changing advice without questioning it. Consequently, this has created a very challenging environment for investors. Environmental legislation has swung wildly, from one extreme to the other. Predictability and legal certainty have been lacking. Investors are like the rest of us—they look for certainty and long-term gain. Thus, I believe, there remains a lot to do and many changes to be made.

Sometimes the problem with EU environmental policy and law-making is the abundance of overlapping mechanisms. As individual cures they may work, but when used in parallel they interfere with one another, causing confusion, errors and limited progress in each declared aim—like two brilliant musicians playing different melodies simultaneously. The various correctional measures implemented to fix these overlaps have created an unpredictable, confusing and insecure investing environment for European industry.
This has been the problem with the 2020 goals, renewables targets and the Emissions Trading Scheme. The subsidies for renewables have disturbed the formation of carbon markets and harmed investment in other clean technologies.

With regard to the Emissions Trading Scheme, I was an active participant with significant responsibilities throughout the legislative process—albeit as a somewhat critical voice. I tried to figure out why such a theoretically ingenious system was not able to show its strength and offer results in practice. The legislative overlaps and severe lack of coordination can be considered key reasons. In principle it was a good, market-driven tool; why not let it do the job in a technology-neutral way? I asked this question many times. Emissions trading, as such, already rewards those who invest in low-emitting energy sources and, therefore, favours renewables alongside all near-zero-emission technologies. Why distort that by offering various and differing subsidies at the national level?

How good environmental initiatives go wrong

As mentioned before, climate change is now, at last, being accepted as a political priority. However, it may overshadow many other serious aspects of environmental damage that need attention and legislation. I have deliberately chosen one such overlooked subject that has environmental dimensions and relates to energy issues. Moreover, and perhaps most importantly, it contributes to human suffering and thus must be addressed urgently—we cannot let this become 20 years of delay, disbelief, dishonesty and dogma.

The example is the Restriction of Hazardous Substances (RoHS) directive. This directive had all the aspects of good environmental law: an end to pollution from highly toxic substances without unilaterally damaging European interests as it also covered affected imported goods. This initiative from the European Commission was excellent and, with support and improvements from the European Parliament and the European Council, it was adopted in 2002, with RoHS 2 being passed in 2011. Eight years later, despite it including many urgent elements that aim to restrict pollution from highly toxic chemicals including lead, mercury and cadmium, it has not been fully implemented.

The RoHS directive was designed to restrict the use of six hazardous materials in the manufacture of various types of electronic and electrical equipment. One of those substances is mercury, which is listed by the World Health Organization as one of the 10 most hazardous elements for human health (WHO 2010).

Why mercury? There are several reasons, not least of which is the connection with Alzheimer’s disease (AD). It is likely that we all know someone who is suffering from AD now or has ended their life in the misery that this disease causes. Very little is known about AD, and almost no advance in treatment has been made in the last 20 years. A recent study by Xu et al. (2018) found that ‘... the results of our meta-analyses indicate that the circulatory aluminium, mercury, and cadmium levels are significantly increased in AD patients as compared to controls. Given the great patient, family, and socio-economic burden of
AD, in the future, steps should be taken to minimize human exposure to these environmental toxic metals to reduce the risk of developing AD.’

Mercury has been used in various lightbulbs and fluorescent tubes over many years, and the RoHS directive was intended to stop this practice. Because it is a liquid and a heavy metal, mercury waste is known to seep into the ground, watercourses and the sea. Consequently, it has been detected in a number of food-chain species, including seafood and bees. That is why it had to be banned.

Each year most of the mercury from more than 200 million burned-out fluorescent tubes ends up as waste in Europe. Under the 2011 RoHS directive continuation of this practice could only be allowed if no suitable mercury-free replacement was available. I have discovered that the European Commission, under pressure from certain major lighting companies represented by the trade association Lighting Europe, allowed a derogation to the 2011 RoHS Directive on the basis that no alternative existed. However, this is not the case anymore. There are multiple non-hazardous alternatives in existence.

Once again, legal certainty is lacking. I can only imagine how frustrating it must be for a start-up company that has taken the legislation seriously and has produced a non-toxic innovation but has not been rewarded because the traditional oligopoly has successfully lobbied for postponements and derogations. I hope that today’s law-makers ensure that those who invest in a clean environment are not deceived.

**Conclusion**

Climate and environmental policy has, until recently, been dominated by the political approach and priorities of the green movement. And we are to blame for that because we simply had not seen the political aspect of the issue. But now that we finally know how political this subject area is, we can begin to see that the green approach may not be the only way forward. Perhaps the earth is beginning to choose its own friends. Now we have started to see that the green agenda can sometimes even be dangerous because it offers a top-down approach, is bureaucratic and inflexible, and is based on scarcity and limitation. The time has come to shift the paradigms of environmental politics, and climate politics especially, from the politics of limitation to the politics of possibilities. As the European People’s Party family, we can offer a real alternative and show the merits of subsidiarity in environmentalism.

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