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978-0-521-88398-6 - Implementing EU Pollution Control: Law and Integration

Bettina Lange

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## **Implementing EU Pollution Control**

This book examines the role of law in European Union integration processes through a detailed analysis of the implementation of the EU Directive on Integrated Pollution Prevention and Control at European level and in the UK and Germany. It questions traditional conceptions which perceive law as the 'formal law in the books', as instrumental and as relatively autonomous in relation to its social contexts. The book also discusses in depth how the key legal obligation of the Directive, to employ 'the best available techniques', is actually implemented.

This research locates the analysis of the implementation of the IPPC Directive in the wider context of current political science and sociology of law debates about the role of law in EU integration processes, the nature of EU law, new modes of governance and the significance of 'law in action' for understanding legal process.

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To Susan

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## Series editors' preface

*Implementing EU Pollution Control* is an important book contributing to the sociology of (EU) law. It combines a radical reconceptualisation of the relationship of law and integration in the context of EU integration studies, drawing upon the sociological and critical theories, with an extended case study looking at the 'law in action' in the environmental field. Eschewing 'grand theories' of European integration or of the role of law in European integration, it takes as its central question the role of law in European integration. However, it proceeds not by treating law as a static unchanging concept (the 'law in the books') but by focusing on the micro specifics of 'law in action', specifically the implementation of EU pollution control in the hands of national officials in Germany and the UK. The claim is not so much that law 'integrates' (or indeed that it does not), but rather that the issue of the role of law in the context of the social, economic and political processes occurring in relation to the EU is above all an empirical one, and not resolvable either by application of legal reasoning techniques or by grand theorising.

The book is therefore an important step forward in analysis, combining both a rigorous theoretical framework with detailed and careful empirical work, based on extensive interviews with pollution control officials in the UK and Germany. It challenges traditional theories regarding the relationship between law and integration, which treat law as a static independent variable and fail to account for the broader image of law which has emerged through socio-legal studies and critical legal studies over a number of decades. It uses instead a law in action analysis, which is novel in the field of EU legal studies, where there has thus far been very little work which has brought the insights and methods of socio-legal studies to bear upon the empirical detail of the implementation of EU law. What is important about the empirical work



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is that it reveals EU law in action to be a work in progress, not a static state of affairs. For example, the implementation of aspects of the EU Directive on Integrated Pollution Prevention and Control (IPPC) involves constant debate and contestation between the interested parties including both national officials and other social actors around best practices and the determination of the all important 'best available techniques' for limiting pollution from installations. Specifically, however, the analysis draws upon Foucauldian notions of power in relation to discourse and language in order to identify the specific ways in which norms are formed and transformed in the context of implementation.

We are delighted to be publishing *Implementing EU Pollution Control* in the *Cambridge Series on European Law and Policy* not only as a contribution to EU legal studies, but also as a contribution to understanding law in relation to EU integration more generally, and, indeed, as an important contribution to socio-legal studies.

Laurence Gormley  
Jo Shaw

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I would also like to acknowledge helpful feedback and comments from participants at the annual UK Socio-Legal Studies Association conferences at which sections of this book were presented as papers, from colleagues at Keele during law school staff seminars and participants in the Hart Legal Workshops 2006 and 2007 at the Institute of Advanced Legal Studies, University of London.

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Special thanks go to the UK and German permitting officers, as well as the BREF writers who participated in the study and who gave generously of their time while being busy at work. For confidentiality reasons they have to remain anonymous. The views expressed in this book are my own and do not necessarily reflect the perspectives of the individuals and organisations who participated in the research on the implementation of the IPPC Directive.

Bettina Lange  
Keele, April 2007

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## Update on the IPPC Directive

Since delivery of the typescript of this book to Cambridge University Press in April 2007 there have been further developments in relation to the IPPC Directive. The EU Commission's Communication from 2003 'On the Road to Sustainable Production: Progress in Implementing Council Directive 96/61/EC concerning integrated pollution prevention and control' started a consultation process on the further development of the IPPC Directive (referred to in chapter 1). By the end of 2005 the Commission had also commissioned various consultants' projects for more detailed information input into the reform process. The EU Commission is currently examining the results of this consultation. This will be concluded at the end of 2007 and a revision of the IPPC Directive may be proposed.

The review is not intended to change the underlying principles of the IPPC Directive. Some smaller technical amendments have been discussed such as the clarification of terms currently used in the text of the Directive as well as questions of scope, such as whether particular waste treatment plants should also be covered by the IPPC Directive. There is also a proposal to tighten up the exchange of information about the best available techniques among member states and industry which is organised by the Commission under Art. 16 (2) of the IPPC Directive. Member states may be required to submit to the Commission information on pollution abatement techniques used in plants within two months of the request. But the reform of the IPPC Directive also addresses wider associated issues, such as the impact of its implementation on the competitiveness of industry in the EU. A new consultants' study has been commissioned which will examine whether implementation of the IPPC Directive distorts competition between those plants in an industrial sector which are covered by the Directive and those that

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are not because their activities fall below the threshold specified in Annex I to the Directive. The study will also consider impacts of the IPPC Directive on the competitiveness of small- and medium-sized businesses and whether different national approaches to its implementation distort competition between member states. The review is also exploring how operators of industrial facilities can be encouraged – for instance through economic incentives – to go beyond regulatory compliance with the minimum requirements of the best available techniques standard and to strive for continuous improvement in their pollution control procedures.

Finally, the current review process is also considering various options for streamlining and clarifying interactions between the IPPC Directive and other EU industrial emissions control legislation. Legal obligations imposed by the IPPC Directive overlap with other EU emissions control legislation, such as the Large Combustion Plant Directive 2001/80/EC, the Waste Incineration Directive 2000/76/EC, the Solvent Emissions Directive 1999/13/EC, the Landfill Directive 1999/31/EC and the Seveso II Directive 1996/82. Moreover, nitrogen oxides and sulphur dioxide emissions are controlled both under the IPPC Directive and possible EU and national, such as the Dutch and Slovakian trading schemes for these emissions. Streamlining, which also promotes the wider EU programme of ‘simplifying legislation’, addresses whether authorisation requirements imposed upon operators are compatible under these various legal regimes. Streamlining could take a number of forms, such as the implementation of related EU emissions control legislation through the BAT standard in IPPC permits. Another option involves the integration of various pieces of EU emissions control legislation into the IPPC Directive, and hence to create a new single Framework Directive on industrial emissions with a broad scope.

The current IPPC reform process has implications for the research findings discussed in this book. The closer integration of the IPPC Directive with other EU industrial emissions control legislation will render the best available techniques (BAT) technology standard probably even more central to EU emissions control. Further empirical analysis will be needed in order to understand how streamlining may affect the way BAT standards are determined in practice. The book argues that BAT standards sometimes simply remain open. It remains to be seen whether a more direct and explicit link between the legal obligations of the IPPC Directive and those of other EU emissions control legislation will help to bring about closure in definitions of the BAT

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standard. The current reform of the IPPC Directive also further highlights key themes discussed in this book. The reform process seeks to enhance the effectiveness of the IPPC Directive. The book is sceptical about the potential of law to regulate in an instrumental fashion and hence it will be interesting to see whether a revised IPPC Directive will really deliver the intended specific regulatory outcomes. Moreover the IPPC Directive reform process sheds further light on issues that are central to this book's account of the Directive. The Commission will compile further, more recent information about potential variation in the ways in which member states implement the IPPC Directive. The book suggests that there are some differences in the way in which the UK and Germany implement the Directive. Finally reform of the IPPC Directive through provisions which will encourage operators to go beyond regulatory compliance with a minimum BAT standard further strengthens a key characteristic of BAT also discussed in this book, i.e. that BAT is a dynamic, not a static fixed technology standard and hence can be plant specific.

Bettina Lange  
Oxford, October 2007

## Abbreviations

ALARA	As Low as Reasonably Achievable, an alternative technology standard to ‘the best available techniques’
BAT	Best Available Techniques
BATNEEC	Best Available Techniques Not Entailing Excessive Cost, as referred to in section 7 of EPA 1990
BimSchG	<i>Bundesimmissionsschutzgesetz</i> , German federal air immissions control law
4. BimSchV	<i>Vierte Bundesimmissionsschutzverordnung</i> , fourth German federal air immissions control regulation. This lists the plants which require a licence under the <i>Bundesimmissionsschutzgesetz</i> and includes the plants listed in Annex I of the IPPC Directive
BMU	Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit, German federal environmental ministry
BREF	Best Available Techniques Reference Document
CDQ	Coke Dry Quenching, a technique for cooling coke through dry inert gases
CEFIC	European Chemical Industry Council, a trade association which represents the interests of the chemical industry in the EU
CSQ	Coke Stabilisation Quenching, a technique for cooling coke through wet quenching, i.e. spraying of the hot coke with water
DEFRA	Department for the Environment, Food and Rural Affairs
DG	Directorate General of the EU Commission

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EA	Environment Agency for England and Wales
ECSC	European Coal and Steel Community
EEB	European Environmental Bureau
EEC	European Economic Community
EIPPC Bureau	European IPPC Bureau, Seville, Spain
ELV	Emission Limit Value
EMAS	Eco-Management and Audit Scheme
EPA	Environmental Protection Act 1990
EOPRA	Environmental Protection Operator and Pollution Risk Appraisal
EU	European Union
EURATOM	European Atomic Energy Community
EUROFER	European Confederation of Iron and Steel Industries, trade association which represents the interests of the EU iron and steel industry
IEF	Information Exchange Forum
IEG	IPPC Experts Group
IPC	Integrated Pollution Control under Part I of the UK Environmental Protection Act 1990
IPPC	Integrated Pollution Prevention and Control under the EU IPPC Directive
IPTS	Institute for Prospective Technological Studies, Seville, Spain. It hosts the EIPPC Bureau and is one of the seven scientific institutes of the European Commission's Joint Research Centre
KrW-/AbfG	<i>Kreislaufwirtschafts- und Abfallgesetz</i> , German federal waste management Act
LUA	<i>Landesumweltamt</i> (Land environmental protection agency)
NFU	National Farmers Union, UK
NGO	Non-Governmental Organisation
OMC	Open Method of Coordination, a new governance tool employed by the EU in order to coordinate activities between Member States in areas deemed politically sensitive and/or where the EU has limited legal competencies
OSPAR	1992 OSPAR Convention on the protection of the marine environment of the North-east Atlantic
PM	Particulate matter, i.e. dust

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PPC Regs	Pollution Prevention and Control (England and Wales) Regulations 2000, SI 2000 No. 1973
SEA	Single European Act
SEPA	Scottish Environment Protection Agency
SPG	Strategic Permitting Group, group set up by the UK Environment Agency for the centralised licensing of IPPC plants
TA	<i>Technische Anleitung</i> , technical instruction, tertiary rules defining the BAT standard in Germany
TWG	Technical Working Group
UBA	Umweltbundesamt, German Federal Environmental Authority
UNICE	Union of Industrial and Employers' Confederations of Europe, now called 'Business Europe, Confederation of European Business'. It represents EU industry and employers' interests
VDI	Verein Deutscher Ingenieure, Association of German Engineers
WHG	<i>Wasserhaushaltsgesetz</i> , German federal water law