

Beyond Minimum Harmonisation

This book explains the functioning of shared competences in environmental protection by focusing on Member States interaction with the EU framework. By studying this interaction, Squintani reveals the room for improving the level of environmental protection, legal certainty, and efficiency of the system for environmental protection envisaged under the EU Treaties. Accordingly, this book makes a contribution to EU environmental law and policy, but also should be of interest to constitutional lawyers more generally and to scholars working in any field of EU policy and law in which minimum harmonisation is used. Thanks to its focus and clear, accessible prose, this book is also valuable additional reading material for environmental law courses, and to those involved in decision-making in the EU.

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Beyond Minimum Harmonisation
Gold-Plating and Green-Plating of European
Environmental Law

Lorenzo Squintani
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To Laurence, for a career dedicated to developing academic talents

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Foreword

In February 2006, during my first class on European Environmental Law at the University of Amsterdam, I asked Professor Sevenster what Jan H. Jans meant in a passage in the second edition of *European Environmental Law*. In the section concerning the principles of subsidiarity and proportionality, Jans explains the problematic relationship between subsidiarity and environmental quality standards. At page 13 he states:

On the one hand it can be said that European standard setting tends to even out competitive differences and avoids ‘a race to the bottom’. On the other hand it deprives Member States of the opportunity of maintaining ‘healthy’ policy competition. A reasonable balance could be attained here if European environmental rules were mainly cast in the mould of minimum harmonization. This would allow the provision of a minimum level of protection throughout the Community, without depriving the Member States of the power to adopt more stringent standards for their own territory. Policy competition would then only be made impossible below the European standards.

The reference to a ‘healthy’ policy competition maintained by means of minimum harmonization and the possibility of adopting more stringent standards struck a chord in me. On the one hand, probably due to my Italian origin, I was sceptical about the idea that Member States would adopt stricter standards. Do Member States adopt stricter standards? Why should they, given that stricter standards will negatively affect the competitiveness of their national industries? On the other hand, I wondered about the linkages between more stringent protective measures and ‘healthy’ policy competition. What is the role that stricter standards play in the development of Union environmental law? When two years later, Professor Jans hired me to conduct a Ph.D. research project to establish whether Member States do set stricter standards after minimum harmonization of environmental law, I thought that

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I would finally get some answers to my own questions. I never asked Jan what he meant. I did not really need to. Writing my Ph.D. thesis has given me sufficient information to answer my questions myself. Yet, my Ph.D. was mainly aimed at gathering empirical data on the actual use of gold-plating. In this book, I expand upon such empirical data to discuss four theoretical aspects of this phenomenon. I would like to believe that, after reading this book, the reader will also be able to answer these questions.

Lorenzo Squintani
Groningen, 2019

Series Editors' Preface

In the first days of October 2018, as this book was sent to press and this editors' preface was composed, the issue of emissions standards for cars was in the news for two reasons. On the one hand, the newspapers reported on a battle within the Council of Ministers and between the Council and the European Parliament over tougher future emissions standards – whether to introduce reductions of 30%, 35% or 40% as wished by the European Parliament. At the same time, UK newspapers reported on a reduction in car sales in September 2018 in the United Kingdom, because car manufacturers and retailers had incentivised sales in August 2018, in order to complete sales in advance of a new test on emissions coming into force at the beginning of September. In the background, the UN Intergovernmental Panel on Climate Change (IPCC) highlighted the need for urgent changes to meet the challenge of climate change, in the endeavour to reduce anticipated global warming caused by human sources to a maximum (and hopefully tolerable) of 1.5°C.

The tensions between commercial pressures and environmental standards are plain for all to see. They are examined in detail in this book, which homes in on the very important question of minimum harmonisation and the issue of what happens when Member States choose to surpass the standards that have been set in EU regulations. To that end, the author develops an important distinction between gold plating, which is focused in particular on how commercial interests operate in relation to environmental standards, and green-plating, which brings the environmental angle sharply into focus. Against the background premise that environmental measures can have a positive relationship with economic development, the overall aim is to produce a framework that enables Member States to understand when they can go beyond EU environmental measures, and with what types of measures. To that

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end, it will be of interest not just to scholars and students, but also to policymakers and other stakeholders, such as those working in NGOs who are interested in, and perhaps in some circumstances will contest, those types of national measures. In sum, it is an important and welcome addition to *Cambridge Studies in European Law and Policy*.

Jo Shaw
Laurence Gormley

Abbreviations

ACTAL	Advisory Board on Administrative Burdens
ALARA	As Low As Reasonably Achievable
ASSIs	Areas of Special Scientific Interest
AQA	Air Quality Act
AQO-01	Air Quality Order 2001
AQO-05	Air Quality Order 2005
BA-12	Birds Act 1912
BA-37	Birds Act 1937
BAT	Best Available Techniques
BATNEEC	Best Available Techniques Not Entailing Excessive Costs
BREF	Best available techniques REference
BRIO	Binding Rules on Installations Order
DEG	Dutch Emissions Guidelines
EMA	Environmental Management Act
ENVI	Committee on the Environment, Public Health and Food Safety
EPO	Environmental Permits Order
EU SCM	European Standard Cost Model
FFA	Flora & Fauna Act
GALA	General Administrative Law Act
GAEP	General Act on Environmental Permits
GRIO	General Rules on Installations Order
HA-54	Hunting Act 1954
HLG	High Level Group of Independent Stakeholders on Administrative Burdens
IPPC	Integrated Pollution Prevention and Control
NGOs	Non-governmental organizations
MNRs	Marine Nature Reserves

xxiv ABBREVIATIONS

NCA-67	Nature Conservation Act 1967
NCA-98	Nature Conservation Act 1998
PM	Particular matt
SAC	Special areas of conservation
SCM	Standard Cost Model
SPA	Soil Pollution Act
SSSIs	Sites of special scientific interest
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
WA	Waste Act
ZLO	Zoning Law Order

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