

Contents

<i>List of Figures</i>	page xv
<i>List of Tables</i>	xvii
<i>Foreword</i>	xix
<i>Series Editors' Preface</i>	xxi
<i>Abbreviations</i>	xxiii
<i>Table of Cases</i>	xxv
<i>Table of Legislation</i>	xxix

Introduction: Minimum Harmonisation in European

Environmental Law	1
I.1 Introductory Remarks	1
I.2 (Minimum) Harmonisation in European Environmental Law	4
I.3 Environmental Protection: A Member States' Responsibility	8
I.4 Focus and Structure of the Book	9
1 Gold-Plating: A Misleading Overarching Concept	13
1.1 Introductory Remarks	13
1.2 Gold-Plating: Development and Definition of a Concept	14
1.2.1 The United Kingdom and Gold-Plating	15
1.2.2 The Netherlands and Gold-Plating	19
1.2.3 The European Union and Gold-Plating: The Union Better Regulation Policy	27
1.2.4 Cross-Fertilization of Gold-Plating Policies and Definitions	30
1.2.5 Refinement and Further Developments of the Concept of 'Gold-Plating'	33

1.3	More Stringent Protective Measures: A Definition	36
1.3.1	Falling within the Field of Application of a Measure Based on Article 192 TFEU	42
1.3.2	Staying within the Boundaries of the EU Balance between Environmental and Non-Environmental Objectives	46
1.3.3	Establishing a Higher Goal or Stricter Means	51
1.3.4	'More Stringent Protective Measures' or 'More Stringent Measures'?	52
1.4	Gold-Plating: A Misleading Overarching Concept	54
1.4.1	Gold-Plating as an Overarching Concept	54
1.4.2	Revealing the Misleading: Gold-Plating and the Functioning of the System of Environmental Protection Envisaged by the Treaties	64
1.5	Conclusions: From Gold-Plating to 'Green-Plating and Gold-Plating'	69
2	Green-Plating and Environmental Protection	72
2.1	Introductory Remarks	72
2.2	Green-Plating as Real-Life Phenomenon	74
2.2.1	Establishing Higher Goals than Required by the EU Legislator	76
2.2.2	Establishing Stricter Means than Required by the EU Legislator	84
2.2.3	Reasons for Green-Plating	92
2.3	National No-Gold-Plating Policies' Influence on Green-Plating	101
2.4	Green-Plating and the Development of EU Environmental Law	106
2.4.1	Green and Non-Green Actors and the Upload of Green National Standards	106
2.4.2	The Recast Process as Means for Green-Plating to Shape the Development of EU Environmental Law	110
2.5	Conclusions: Environmental Protection in the European Union as a Chain Made of Union and National Standards, Including Green-Plating	113
3	Green-Plating and Legal Certainty	116
3.1	Introductory Remarks	116
3.2	The Court of Justice's Legality Review of Green-Plating	118
3.2.1	The Review of Legality of Green-Plating: Theory Overview	119

3.2.2	How the Proportionality Test Is Applied in Practice as Regards Green-Plating	125
3.2.3	Fuzzy Proportionality as a Barrier to Green-Plating	148
3.2.4	Notification as a Tool for the Review of the Legality of Gold-Plating?	151
3.3	Clauses Indicating the Room for Green-Plating	153
3.3.1	Legislative Techniques to Show the Room for Green-Plating	154
3.3.2	Information Carried by Minimum Clauses and Options	158
3.4	Lighting the Path: A Model to Spur Legal Certainty as Regards the Legality Review of Green-Plating	162
3.5	Conclusions: From Unclarity to Clarity as Regards Green-Plating	164
4	Green-Plating and Economic Development	167
4.1	Introductory Remarks	167
4.2	Economic Considerations Justifying the Absence or Presence of Green-Plating	168
4.2.1	Economic Considerations Justifying the Absence of Green-Plating	168
4.2.2	Economic Considerations Justifying the Presence of Green-Plating	176
4.3	Economic Benefits of Environmental Regulation: The Porter Hypothesis	180
4.3.1	Green-Plating in Dutch Waste Management	182
4.3.2	Green-Plating in Dutch Waste Management and the Development of the Dutch Waste Industry	188
4.3.3	Green-Plating in Dutch Waste Management and the Development of the Dutch Waste Industry: A Verification of the Porter Hypothesis?	190
4.4	Green-Plating in Regulatory Impact Assessments	191
4.5	Conclusions: Green-Plating as a Motor for Economic Development	201
	Conclusions: Proceduralising Member States' Choice Regarding Green-Plating	204
	Conclusions	204
	<i>Bibliography</i>	211
	<i>Index</i>	255