Harmonising for the Wrong Reasons?

Harmonisation of Environmental Law and Market Integration: Harmonising for the Wrong Reasons?

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Summary: An economic approach to the question whether harmonisation of the conditions of competition, in particular environmental standards, is necessary to achieve market integration; the impact of the subsidiarity principle on answering the question; the rationales for European environmental measures; criteria for centralisation of environmental issues – transboundary considerations, the “race for the bottom” and whether lower environmental standards in fact attract industrial investment or encourage relocation, the reduction of transaction costs, and the concept of “European heritage”; consequences for environmental standard-setting: harmonised target standards but differentiated emission limit values according to local circumstances. Conclusion that there is no support for the view that conditions of competition should be harmonised to achieve market integration, but that a balanced answer in respect of which subjects should be regulated centrally and which locally, but nevertheless recognising the continuing value of standardisation of procedures in environmental law, is desirable.

I. Introduction: Note on Previous Research

This paper addresses a topic which, from a legal perspective, closely concerns the subsidiarity principle.¹ In this presentation, however, the subsidiarity principle is approached from an economic perspective. A central question concerning European environmental law from an economic perspective is whether we need harmonisation of the conditions of competition, in other words, harmonisation of environmental standards, to achieve market integration. This being essentially an economic question, economic methodology will be used to answer it.

The question certainly merits further research since the traditional approach of European environmental law seems to a large extent to have been based on the idea that full harmonisation of rules and standards is necessary in order to harmonise market conditions. Introduced by the Single European Act for environmental matters, and enlarged to a general principle of community policy, the subsidiarity principle now allows scope for a new and probably more critical approach than has traditionally been taken. The subsidiarity principle at least calls on policy-makers to think more critically about whether full harmonisation of rules and standards is indeed necessary to reach the policy goal of market integration. To answer this question, attention will be paid to the literature on the optimal level of regulation within federal systems.

This paper is largely based on earlier research by a research group interested in the question of how the subsidiarity principle can be interpreted in an economic context.² Faure/Lefevere addressed the problem of environmental standards-setting in Europe, arguing that optimal specificity in the European Community can be achieved, taking the principle of subsidiarity seriously, by allowing differentiated emission standards.³ They also addressed the question of how the theory of optimal specificity could be applied to the problems of contamination of drinking water through pesticides.⁴ A next step was taken by Roger van den Bergh, who, in his Utrecht inauguration address with the provocative title “Adieu Bruxelles?”, shed light on the economic analysis of the subsidiarity principle.⁵ Van den Bergh advances several criteria for centralisation which can complement the subsidiarity principle.⁶ In a subsequent paper, Van den Bergh/Faure/Lefevere applied the economic test of the subsidiarity principle provided in Van den Bergh’s inauguration address to environmental problems.⁷ These insights have been applied to the recent directive on integrated pollution prevention and control by Faure/Lefevere.⁸ This paper draws on this previous research by focusing on the validity of the argument that the conditions of competition (and thus environmental rules and standards) should be harmonised in order to reach full market integration.

2. This question has been addressed by Michael Faure and Jürgen Lefevere (Maastricht University) and by Roger van den Bergh.
6. Some of these criteria will be discussed in IV.
Harmonising for the Wrong Reasons?

The paper is arranged as follows: after this introduction (I) a brief insight into the traditional argument of European environmental policy, that conditions of competition should be harmonised, is given (II). Then, criteria for (de)centralisation are discussed in general (III) and applied to environmental issues (IV). The consequences of these findings for environmental standard-setting are discussed (V) and a few concluding remarks are formulated (VI).

II. European Environmental Policy: Harmonisation of Conditions of Competition

So far, Europe has been extremely active as far as environmental law is concerned, issuing directives aiming at the harmonisation of emission standards, ambient quality standards (also referred to as target standards) and procedural rules. A good example of an approach in which these objectives are drawn together is the directive on the integration of pollution prevention and control of 24 September 1996 (also referred to as the IPPC directive). A (limited) procedural harmonisation is established by prescribing the permit as the central instrument to control emissions. Rules are prescribed in order to harmonise emission limit values, as well as target standards.

So far, a variety of reasons for legislative action at the European level with respect to environmental law have been given by the European Commission. Although most directives tend to have different reasons for their adoption, the most important for our topic, are:

- The transboundary nature of the environmental problem to be dealt with. Several directives refer to the transboundary character of pollution to argue for regulation at the European level. This is the case with, for instance, the directive dealing with the discharge of dangerous substances into the aquatic environment.
- A second justification for the adoption of EC environmental legislation is precisely the creation of equal conditions of competition. It is argued that harmonising conditions of competition is necessary for the functioning of the common market. This argument, which is often referred to as the need to create a “level playing field” for industry in Europe, is used not only in environmental law, but is advanced to harmonise any kind of legislation within Europe. The directive on discharges of dangerous substances into the aquatic environment, mentioned above, was based on this “harmonisation of conditions of competition” argument. It was argued that disparity between the provisions on discharge may create unequal conditions of competition and thus directly affect the functioning of the common market.
- A third reason advanced for European action with respect to environmental matters can be called a purely “ecological” one. A number of environmental directives are aimed at the protection of the “European environmental and cultural heritage and human health”. An example is the habitats directive.

We shall attempt to address the possible meaning of these reasons for legislative action at the European level from an economic point of view. First, however, it should be stressed that we can expect to learn more about the specific reasons for legislative action at the European level now that the subsidiarity principle has been introduced explicitly in the EEC Treaty. According to this principle:

“the community shall take action if and only in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the community.”

We now turn to the economic approach by posing the question: what does economics generally teach about the necessity for harmonisation?

III. Criteria for (De)centralisation in General

The question whether (environmental) regulation should be promulgated at central (European or federal) level or at a more decentralised level (or, to put it in a more balanced way, what kind of environmental regulations should be set at which level) has been addressed in the economics of federalism. The starting point for the analysis is usually the theory of Tiebout about the optimal provision of local public goods. Tiebout argued that when people with the same preferences cluster together in communities, competition between local authorities will, under certain restrictive conditions, lead to “allocative efficiency”. If there are, e.g., in one community citizens with a high preference for sporting facilities, and in another a majority of citizens with a preference for opera, the first community will probably construct sporting facilities, whereas the second will probably provide an opera house. If someone living in the second community would prefer sporting facilities instead of the opera house, he could then move to the first...
community, which apparently provides services which better suit his preferences. The idea is that well-informed citizens will move to the community that provides the local services that are best adapted to their personal preferences. Through this so-called "voting with the feet" competition between local authorities will lead citizens to cluster together according to their preferences.

This basic idea applies not only to community services, but also, e.g., to fiscal decisions and environmental choices. In addition, this idea of citizens moving to the community that provides services which best correspond with their preferences can also be applied with respect to legal rules. Thus, it has been argued by Van den Bergh that competition between legislators will likewise lead to legal systems standing in competition with each other, to provide legislation that corresponds best to the preferences of citizens. The idea, therefore, is that in an optimal world, citizens will cluster together in states that provide legal rules that correspond to their preferences. Well-informed citizens who may be dissatisfied with the legislation provided, could move (voting with the feet) to the community that provides legislation that corresponds best to their preferences. Obviously, this system, assuming that competition between legal orders leads to allocative efficiency in the provision of legal rules, works only if certain conditions are met. One condition obviously is that citizens have adequate information on the contents of the legal rules provided by the various legislators, in order to be able to make an informed choice.

In his inauguration address, Van den Bergh used this Tiebout model to argue that, from an economic point of view, decentralisation should be the starting point, since competition between legislators will lead to allocative efficiency. Van den Bergh also uses this theory to provide criteria for centralisation/decentralisation within the European Union. Taking Tiebout as a starting point and assuming that competition between decentralised legislators will lead to an optimal provision of legal rules, the central question is: why centralise? Van den Bergh therefore criticises a part of the current discussion in the literal literature which seems to focus on the question why there should be decentralisation. According to economic theory, that is the wrong question. Starting from Tiebout's model, there is reason to believe in what Van den Bergh calls a "bottom up federalisation", assuming that in principle the local level is optimal, since the local level has the best information on local problems and on the preferences of citizens. Only when there is a good reason should decision-making be moved to a higher level. Van den Bergh also argues that there may indeed be a variety of reasons why the local level is not best suited to taking decisions and where central decision-making can lead to more efficient results.

We shall now apply the criteria for centralisation, advanced by Van den Bergh, to environmental problems.

IV. Criteria for Centralisation of Environmental Issues

A. Transboundary Character of the Externality
The Tiebout argument in favour of competition between local communities obviously works only if the problem to be regulated is indeed merely local. Once it is established that the problem to be regulated has a transboundary character, there may be an "economy of scale" argument to shift powers to a higher legal order that has competence to deal with the externality over a larger territory. This corresponds with the basic insight that if the problem to be regulated crosses the borders of competence of the regulatory authority, the decision-making power should be shifted to a higher regulatory level, preferably to an authority which has jurisdiction over a territory large enough to deal adequately with the problem.

This argument in favour of centralisation could play a role with respect to environmental problems. It can be argued that these are certainly often transboundary. The transboundary character of an externality is, in the European context, obviously an important argument for decision-making at the European level. Indeed, many environmental problems cross national borders. A great many of the environmental directives fit into this economic criterion for community action. These include the Regulation on the transboundary shipment of waste, as well as many other directives which regulate pollution of a transboundary character.

From this it follows that the most important reason for community action with respect to the environment is probably not the often-stated argument for harmonisation of conditions of competition, but simply the transboundary character of the pollution problem to be regulated. Many of the environmental directives indeed deal with pollution problems which cross the borders of one or more Member States. They can therefore be justified under this first economic criterion. However, a great number of environmental directives also deal with relatively "local" problems that do not cross national borders. The question therefore arises whether an economic rationale can be found for European jurisdiction in those cases where the effects of pollutants are confined within the borders of the relevant Member States.

B. "Race for the Bottom"
There may be an economic argument for regulating local pollution problems, in that there is a risk that a "race for the bottom" would emerge to attract foreign investments into different countries. As a result, "prisoners' dilemmas" could arise, whereby countries would fail to enact or enforce efficient legislation. Van den Bergh points out that

20 See equally Oates, W.E. and Schwab, R., who also argue that as long as the effects of pollutants are confined within the borders of the relevant jurisdictions, local authorities will make socially optimal decisions on environmental quality.
22 This is certainly also the case for Directive 76/464 on the Discharge of Dangerous Substances into the Aquatic Environment. For other examples, see Van den Bergh, R., Faure, M. and Lefevere, J., in Law and Economics of the Environment, 131-132.
centralisation can be advanced as a remedy for these prisoners' dilemmas. This "race for the bottom" argument could in theory play a role in environmental cases as well. It would mean that local governments would compete, by means of lenient environmental legislation, to attract industry. The result would be an overall reduction of environmental quality below efficient levels. This corresponds with the traditional theoretical result that prisoners' dilemmas create inefficiencies.

This race for the bottom argument, that competition among jurisdictions for economic activity will be "destructive", corresponds with the European legal argument mentioned above that the creation of harmonised conditions of competition is necessary to avoid distortions. As indicated above, this argument was traditionally used to harmonise legislation of the Member States in a variety of areas. Simply stated, the argument is that complying with legislation imposes costs on industry. If legislation is different, these costs would therefore differ as well and conditions of competition within the common market would not be equal. The argument apparently assumes that total equality of conditions of competition is therefore necessary for the functioning of the common market. "Leveling the playing field" for European industry remains the central message.

There are, however, several flaws in this argument. From an economic point of view, the mere fact that conditions of competition differ, in no way endangers the creation of a common market. There can be differences in market conditions for a variety of reasons, and if the conditions of competition were indeed totally equal, as the argument assumes, there would also be no trade. Differences in the conditions of competition pose a problem only if it is clear that environmental costs would be considerably different between the Member States and that these differences would lead to relocation of firms to the Member State with the lowest standards. In that case, the so-called race for the bottom argument, in environmental cases referred to as the "pollution haven" hypothesis, would be an argument in favour of centralisation. The question therefore arises whether there is empirical evidence that states can indeed attract industry by lenient environmental standards.

Empirical evidence to uphold this "race for the bottom" rationale is rather weak. Repetto argues that pollution control costs are only a minor fraction of the total sales of manufacturing industries. Moreover, recently Jaffe/Peterson/Portney/Stavins argued that empirical evidence shows that the effects of environmental regulations are "either small, statistically insignificant or not robust to tests of model specification". They argue that the stringency of environmental regulations might have some effect on new firms in their decision to locate for the first time, but that this will not induce existing firms to relocate. They equally argue that other criteria such as tax levels, public services and the unionisation of the labour force have a much more significant impact on the location decision than environmental regulation. Recently this empirical evidence has been somewhat contradicted by Xing/Kolstad, who argue that the laxity of environmental regulations in a host country is a significant determinant of foreign direct investment by the US chemical industry. The more lax the regulations, the more likely the country is to attract foreign investment, so Xing/Kolstad argue. Although this somewhat weakens the evidence presented by Jaffe/Peterson/Portney/Stavins as far as the location of new firms outside the US is concerned, it does not contradict their finding that existing firms will not relocate because of the stringency of environmental regulations.

This material, therefore, substantially weakens the prisoner's dilemma argument. Moreover, it has also been argued that as far as environmental standards are concerned, it is not at all clear that there will be a race for the bottom. There is also some evidence that Member States indeed strive for high environmental standards, even if this puts extra costs or burdens on industry. Some countries may therefore be more involved in a "race for the top" than in a "race for the bottom".

Moreover, it should be stressed that the argument that markets will be distorted without harmonisation of conditions of competition, is not only constantly repeated in a stereotypical way, but its validity is hardly ever questioned. The argument is, as stated above, false, since it suggests that removing any difference in legal systems would be necessary to reach market integration, which is not supported by economic theory, or by empirical evidence.

There is, in addition, a strong counter-argument, in that there are many examples showing that economic market integration is possible (without the distortions predicted by the race for the bottom argument) with differentiated legal orders. Public choice scholars have often advanced the Swiss federal model as an example of a situation where economic market integration goes hand in hand with differentiated legal systems. A similar argument against the race for the bottom rationale for central environmental regulation can also be found in the American example. Many scholars, among them Revesz in particular, have argued that this race for the bottom argument finds no support in existing models of interjurisdictional competition. In addition, Revesz stresses that central standard-setting would not be an effective response to the race for the bottom problem.

25 Xing, Y. and Kolstad, Ch., "Do Lax Environmental Regulations attract Foreign Investment?", Working Paper in Economics, University of California, Santa Barbara, Department of Economics, 1995, 16-95.
26 See footnote 24.
since the local communities concerned would have other means to attract industry if they so wish (relaxation of regulatory controls in other areas). These arguments therefore substantially weaken the prisoner's dilemma argument both for the European community and for U.S. federal legislation in the field of environmental law. Even if differences in the stringency of environmental law exist between Member States, this will generally not lead companies to relocate to "pollution havens".

C. Reduction of Transaction Costs?
There may, however, be one final economic argument in favour of harmonisation, based on transaction costs reduction. This argument is often advanced by European legal scholars pleading for harmonisation of private law in Europe, and is based on the argument that differences in legal systems are very complex and only serve Brussels law firms. This argument cannot be examined in detail here. It is obviously too simple to state that a harmonised legal system is always more efficient than differentiated legal rules because of the transaction costs savings inherent in harmonised rules. This argument neglects the fact that there are substantial benefits from differentiation whereby legislation can be adapted to the preferences of individuals. The crucial question therefore is whether the possible transaction costs savings of harmonisation outweigh the benefits of differentiated legal rules. There is little empirical evidence to support the statement that transaction costs savings could justify European harmonisation of all kinds of legal rules.

The conclusion therefore is that the economic argument for harmonising environmental rules with respect to problems which are not transboundary is relatively weak. Nevertheless, many European directives deal with problems which are not typically transboundary (e.g., drinking water or bathing water), and for which the European competence is therefore difficult to fit into the economic framework. The question, however, arises whether a non-economic argument can be advanced for regulation at the European level.

D. "European Heritage"
Can an argument be found to protect the environment at the European level as such? The protection of habitats and entire eco-systems come to mind. A traditional example is the question whether there should be any European jurisdiction to protect an imaginary turtle which has, say, only one habitat, which is in Greece. The traditional economic argument in such a case would be that since the problem is merely local, the Greek population should decide whether or not to protect the turtle. An attempt in the direction of an economic argument for European competence has been made by Wils, who classifies the protection of endangered species as justified by the fact that this endangerment causes "psychic spillovers". The argument then goes that the endangerment of the Greek turtle would also harm the interests of, e.g., a Dutch citizen living in Maastricht who would suffer a psychic spillover from the fact that the Greek turtle would be endangered. According to this view, the externality would be considered trans-boundary (although the turtle lives only in Greece) and there would, again, be an economic rationale for centralisation. This reasoning, however, seems contrary to basic economic logic. From an economic point of view, the environmental quality to be provided could differ according to differing preferences of citizens. Again from an economic point of view, there is no reason for centralisation if the externalities are local and so prisoners' dilemmas exist. This economic argument in favour of differentiation according to the preferences of citizens is valid not only for the question whether or not the Greek turtle should be protected at the European level. It is also valid for the whole body of environmental law, and especially for environmental quality standards. This corresponds with the Tiebout framework of competition between legal orders where citizens are free to choose the environmental quality that best corresponds with their preferences. The consequence of this economic approach is that it should be for Greece to decide, e.g., to prefer economic development rather than environmental quality. A consequence of this economic argument whereby citizens choose a level of environmental protection according to their preferences, should obviously be that environmental quality would vary according to the individual preferences of citizens. This argument is also used at the normative level in the U.S., where there are increasing pleas in favour of standard-setting by the states rather than by the federal environmental agency. This economic argument therefore leads to an environmental federalism in which environmental quality between Member States could differ as long as there are no transboundary effects.

There is, however, an important legal or policy argument which could lead to centralisation. This has to do with the idea of guaranteeing all European citizens a similar environmental quality. This is sometimes referred to as the protection of the "European environmental and cultural heritage and human health". If this argument is accepted at the policy level, it could be used to harmonise environmental

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30 This is one of the arguments made by the Danish scholar Lando in favour of harmonised private law. Lindo, O., "Die Regeln des Europäischen Vertragsrechts", in Müller-Graff, P. (ed.), Gemeinsames Privatrecht in der Europäischen Gemeinschaft, Baden-Baden, Nomos, 1993, 473-474.


34 To be very specific, this paper is not concerned with the normative question whether or not the Greek turtle deserves protection; it is concerned only with the question whether such a decision should be taken in Greece or at the European Community level.

35 Again, this is not to say that Greece should not protect the environment, but only to argue that from an economic point of view, this is not a question that Brussels should be concerned about.

Harmonising for the Wrong Reasons?

quality. It is, however, important to note that the reason for centralisation in such a case would then not be the economic need for market integration, but the ecological desire to guarantee all citizens within the Union a similar, or at least basic, environmental quality. The consequence would then be that, contrary to economic logic, it would not be the preferences of citizens that would prevail, but the policy desire to provide one basic environmental quality. Again, I am not arguing at the normative level that this would not be a valid argument for centralisation, but it is important to stress that if this argument for centralisation is used, it is only for ecological (or policy) reasons, not for economic reasons, that one would strive for harmonisation of environmental quality.

If this “European heritage” reason for centralisation to guarantee all European citizens a basic environmental quality is accepted, there are several consequences. If externalities are merely local and no “race for the bottom” risks exist, it is hard to find an economic rationale for centralisation. At the policy level, truly ecological reasons can be advanced for centralisation to guarantee a similar environmental quality throughout the union. But then this ecological argument, not the “harmonisation of conditions of competition” argument, has to be advanced to justify, e.g., the guarantee of a minimum environmental quality in Greece. In addition, if the idea is accepted that it is for ecological reasons (harmonising environmental quality in the Union) that centralisation is needed, this has consequences for environmental standard-setting.

V. Consequences for Environmental Standard-Setting

A. Environmental (Ambient) Quality Standards
If it is a policy decision to guarantee a basic environmental quality to all European citizens, irrespective of individual preferences, quality standards should be harmonised. This clearly illustrates the difference between the economic and the legal approaches. From an economic perspective, quality standards could be differentiated, taking into account individual preferences. The idea of guaranteeing a basic environmental quality can be realised only through harmonised quality standards, to which the environmental components in the Union should, in principle, correspond. These quality standards, also referred to as target standards, should then of course be the standards of an ideal environmental quality to be achieved, and not merely standards that function as a “red flag”, as has sometimes been the case.

B. Emission Limit Values
If it is accepted that a basic environmental quality should be guaranteed through harmonised quality (target) standards, the next step is to ask how these standards can be achieved. The quality standards will be influenced by the specific emissions coming from various sources. However, according to the theory of optimal specificity of legal rules, the costs of meeting a certain level of environmental protection (in other words, the target) may well vary according to location-specific circumstances. Indeed, the local conditions in, e.g., Belgium or Germany on the one hand, may be totally different from those in, e.g., Portugal or Greece. Hence, the emission limit values which are needed to reach a similar environmental quality within the Union will have to take these differences into account. The inevitable conclusion is that where the environmental quality (target) to be reached is uniform, the emission limit values have to vary according to location-specific circumstances and will therefore be differentiated.

This approach of harmonised target standards, but differentiated emission limit values, has not been the European policy so far. Indeed, the often-mentioned Directive 464/76 attempts to harmonise emission limit values, and even the recent IPPC Directive still explicitly refers to the setting of emission limit values at Community level. This idea of harmonising emission limit values runs counter to the idea of achieving uniform environmental quality. Harmonised emission limit values will obviously lead to differentiated environmental quality.

C. Consequences
Several conclusions can be drawn from this analysis.

First, if Europe is concerned with ecological goals, it should set harmonised target standards. Europe should, in other words, be interested in the end product, being the environmental quality to be reached.

Second, in order to reach this uniform environmental quality, emission limit values can be differentiated.

Third, the conclusion that differentiated emission limit values, taking into account location-specific circumstances, are necessary to achieve uniform environmental quality, does not necessarily imply that the emission limit values should be set by the Member States. The Member States may have the advantage of better information on location-specific circumstances; on the other hand it is also conceivable that differentiated emission limit values could be set at the European level.

Fourth, some emission limit values could still be Europe-wide, for instance a prohibition on emitting carcinogenic...
substances, which will always have a strong negative impact on environmental quality.

Fifth, a consequence of accepting the idea that emission limit values can be differentiated is obviously that emission limit values in less polluted Member States might be more lenient than in states which are more polluted. The conclusion therefore is that if the policy goal is uniform environmental quality, harmonisation of conditions of competition should not be the goal. That would lead to precisely the opposite result that environmental quality would be differentiated.

Sixth, from this it follows that the idea of harmonisation of conditions of competition is wrong for several reasons. It is wrong for economic reasons, since full harmonisation of conditions of competition is not needed to achieve economic market integration; it is equally wrong for ecological reasons, since it does not allow for the goal of uniform environmental quality.

D. Why, Nevertheless, Harmonisation of Emission Limit Values?

An obvious crucial question is why this model of differentiated emission limit values is not always followed in European legal practice, where there is still a strong tendency to harmonise emission limit values at the European level. The reason can be found in public choice theory, which pays a lot of attention to the role of interest groups in legislation. As soon as inefficiencies in legislation are discovered, public choice scholars will analyze whether the legislation might be the result of a demand from interest groups. Lobbying activities at the European level are extremely strong. Also, with respect to environmental standard-setting, intensive rent-seeking behaviour by interest groups can be identified.41

In particular cases, special interest groups, representing industry, might, understandably, lobby in favour of harmonisation of European limit values. Interest groups in areas which are already heavily regulated may have incentives to extend their strict (national) regulations to the European level, forcing foreign competitors to follow the same strict regulation with which they already comply. The result is that industry will lobby to erect artificial barriers to entry. Indeed, industry in heavily regulated (and probably polluted) areas will force their very stringent emission limit values upon their (southern) competitors, although these Member States probably would not need these stringent environmental limit values if the policy goal were one of uniform environmental quality.

This is precisely what happened in respect of the IPPC directive. A strong lobbying exercise in favour of emission limit values at the Community level was undertaken by, inter alia, German industry.42 Thus it becomes clear that the "harmonisation of conditions of competition" argument is used only to serve the interests of industries in heavily regulated areas to erect barriers to entry. Their (southern) competitors from Member States with more lenient environmental standards may indeed be unable to comply with these more stringent environmental standards. Hence, environmental law can be used to limit market entry and environmental law is abused to serve private interest goals.

This leads to the conclusion that the "harmonisation of conditions of competition" argument is wrong, from both the economic and ecological points of view, and in fact only serves the interests of industrial groups in heavily regulated areas. It can be in their interests alone that "conditions of competition" are actually harmonised.

VI. Concluding Remarks

In this paper, it has been sought to provide an economic analysis of the traditional argument that conditions of competition should be harmonised to facilitate achieving the economic goal of market integration. The economic literature does not provide support for that statement. This literature provides for a balanced answer with respect to the types of subject matter which should be regulated at the centralised or at the decentralised level. This shows that questions concerning centralisation/harmonisation cannot be answered in black or white statements. The argument of equalisation of market conditions is apparently put forward on an erroneous basis. If European environmental policy is to promote uniform environmental quality within the Union, this can be achieved by fixing a harmonised environmental quality, to be enforced by the Commission, but with differentiated emission standards.

To reiterate, this paper does not deal with the basic normative question concerning the need for environmental regulation. That is undisputed. This paper is concerned only with the question of the level at which, within a European Union, environmental rules and standards should be set, given different policy goals. It was shown that economic literature can provide important guidance in that respect and that harmonisation in fact sometimes serves industry alone, not ecological interests.

However, standardisation of procedures within environmental law still remains useful because of the transboundary character of pollution and industrial operations. This can indeed increase transparency, as was intended to be achieved by the IPPC Directive, and can reduce transaction costs. However, such harmonisation should not necessarily be achieved through formal directives, but can also be achieved through a search for common principles through comparative research, looking for a ius commune.