The Harmonization, Codification and Integration of Environmental Law: A Search for Definitions

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Summary: Background – the need to define and distinguish the concepts of harmonization, codification and integration and the benefits of doing so. Various notions of harmonization: of the substantive law and of procedures; coordination; codification; internal and external integration distinguished. Recent examples of harmonization: the Dutch Environmental Management Act; the Flemish Draft Decree on Environmental Policy; harmonization as a policy goal at the European level, and the Integrated Pollution Prevention and Control Directive. Suggested definitions of integration, harmonization, codification and coordination.

I. Introduction

The harmonization of environmental law is an important and topical issue. Many European countries have witnessed an evolution in their environmental law, in that, originally, environmental law emanated from provisions in various pieces of sectoral legislation protecting, e.g., water, soil, or air, in different ways. This led to differences, following not only from the fact that the pieces of legislation in which the protective measures could be found were very different, but also from the fact that, e.g., licensing and standard-setting procedures varied. A negative side effect of this sectoral and segregated origin of environmental law was that decisions with respect to the scope of protection of the environment were also taken in a non-integrated manner. As a result one authority could issue licences allowing, for instance, discharges of waste water into surface water, while another authority could allow noxious gas to be emitted into the air, without any coordination between the decisions. Therefore, from an environmental scientific point of view at least the need was felt to integrate the decision-making with respect to all environmental issues related to one particular installation or entity. In addition it was felt that the whole body of detailed sectoral environmental legislation had become so complex that the citizen who had to follow the legal rules could hardly recognise the contents of his legal duties. This brought about a demand for the “harmonization” of environmental law in many European countries, which resulted in various more or less all-encompassing environmental protection acts in many countries, or at least to legislative proposals in that direction. This notion of “harmonization” is, however, a wide umbrella which has often been used to cover a large variety of different environmental goals and instruments.

There are many recent examples of environmental acts in Western Europe which now deal with environmental protection in an integrated manner. Most of these pieces of legislation claimed to aim at a “harmonization” of environmental law. Nevertheless, it is not easy to come up with something like a definition of “harmonization” since the word is used in different ways and to cover legislative actions of different kinds. Usually it refers to a legislative process whereby various pieces of environmental legislation are either brought together in one new document, or are at least coordinated. One of the questions that will have to be addressed is whether the process which is broadly referred to in this article as “harmonization” of environmental law should be considered a substantive goal in itself, or whether it is merely an instrument concerning the form of environmental legislation, which maybe serves another goal. The latter goal could probably be described as integration of environmental policies and decision-making. In addition to the notions of “harmonization” and “integration” there are also references in the literature to other related concepts, such as “coordination” and “codification.” These concepts may, as will be shown in many examples discussed below, cover a variety of different instruments.

In this paper it is sought to shed some light on the way in which the concept of “harmonization” is used by various scholars and policy makers interested in environmental law, attempting an analysis of how this notion is distinct from other notions, or perhaps partially overlaps with concepts such as “integration” or “coordination”. In addition, a few working definitions concerning these notions are offered. The notion of “harmonization” is, moreover, particularly confusing since it refers both to the “harmonization” of various legislative acts within one legal system, as well as to the approximation of laws between different legal systems. It is obviously in the latter sense that the term is often used in the European legal context.

1 I am grateful to Robert Hardy for useful research assistance and to David Grimeaud, Jürgen Leefere and Nicole Niessen for useful comments on an earlier draft.


Defining Harmonization, Codification and Integration

There are various reasons to focus on this concept of harmonization more closely. First, it seems to be in the interest of scholars who engage in comparative legal research to agree on certain definitions. In addition, it may be useful to define harmonization and distinguish it from other notions in order to apply all of these concepts to a particular legislative framework. This may allow a legal scholar to find out whether, for instance, legislative changes in a particular legal system can be characterised as leading to “harmonization”, “integration”, or “coordination”. Finally, devoting some attention to definitions always has more importance than merely the semantics. It will also force a scholar to seek to identify the key issues in environmental law and policy. In other words: what are the substantive goals of environmental policies and in what way does the form of the legislation matter? The latter seems to be a crucial distinction which may be important from a substantive point of view. Indeed, when judging the effectiveness of a particular system, focusing solely on the way in which environmental law is presented on paper is to be avoided. An environmental legal system where all legislation is brought together in one code and is in that sense “harmonised” may appear attractive at first sight, but it may be that in fact the decision-making takes place in a totally disintegrated and uncoordinated manner. From an environmental point of view, that may well be worse than the situation where several sectoral environmental acts continue to exist (and there is, in the formal sense, no “harmonization”), but where, on the other hand, a perfect coordination and integration of decision-making and standard-setting procedures has been organised. It is, in other words, substance, not form, that should count when the blessings of “harmonization” are judged at the normative level. Although “harmonization” and “integration” of environmental laws has been a very popular topic recently in many legal systems and there are hence many “blessings” to be counted, the issue of terminology has not received that much attention yet. There is therefore no one particular legal system which contains precise definitions which could easily be presented as ideal solutions here. Instead, the legal doctrine under various legal systems must be examined in the search for definitions.

The remainder of this paper is structured as follows: after this introduction, there is a brief overview of the various notions of “harmonization” and a few recent examples (II). The Dutch, Flemish and European examples of “harmonization” are then reviewed to ascertain the purpose of these attempts to harmonise (III). In (IV) some preliminary conclusions are set out, based on the few practical examples that have been discussed. To conclude (V), an attempt is made to formulate working definitions of the various notions used, based on the analysis of the literature and legal practice. More particularly, a working definition of the notion of “harmonization” is sought, which can then be related to other notions such as “integration” and “coordination”. Finally, an indication of the kind of legal phenomena and instruments which fit into which particular concepts is attempted.

II. Harmonization: Various Notions

For an analysis of the notion of “harmonization” it is necessary to take a closer look at a few recent examples of legislative changes in environmental laws which are said to aim at “harmonization” – more particularly, the Environmental Management Act in the Netherlands and the Draft Decree on Environmental Policy which was prepared by an Interuniversity Commission for the Reform of Environmental law in the Flemish region (Belgium). A discussion of European environmental law is also necessary. Harmonization of laws has been put forward as one of the main instruments of the European Commission to achieve the objective of the single European market. The “old” Article 100 of the EC Treaty gave the Commission the power to propose directives which would aim at an approximation of legislation.

As mentioned above, there exist various notions of harmonization and often different terms are used for the same concepts. This paper is confined to addressing the harmonization of substantive environmental law, and not the organisation of the “administration” of the environment. This is obviously an interesting topic as well, and deals with, for instance, the question whether a single administrative authority (like the American Environmental Protection Agency) would be able to enforce environmental legislation more efficiently than various sectoral authorities. While focusing merely on the harmonization of environmental law it is nevertheless appreciated that this is merely “one view of the cathedral”. The reason for looking at the notion of “harmonization” in the Netherlands, Flanders and at the European level is to show that this is a very topical debate in more than one European country. The European perspective, which by nature focuses on “harmonization”, can contribute in a particularly fruitful way.

What are, at first blush, the various possible notions of “harmonization”? A first notion (this is probably the way in which harmonization of environmental law is most commonly used) is the harmonization of substantive environmental law. Referring to harmonization in this way usually refers to the form, being that all separate sectoral environmental laws

9 An aspect which is, however, sought to be addressed is the possible harmonization/integration/coordination of licensing and standard-setting procedures.
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The general notions are then brought together in one legislative document, for instance an environmental protection act. In as far as sectoral legislation remains in existence, the general environmental protection act usually provides general rules with respect to, for instance, the licensing and standard-setting procedures, and enforcement. Thus a generalised act guarantees that environmental law is “harmonised” in the sense that similar rules apply for all environmental sectors. Rehbinder argues that it could overcome the traditional, but – at least partly – dysfunctional, sectoral approach by adopting a new transsectoral concept of environmental regulation.

As discussed below, this type of harmonization of environmental law has, obviously, a variety of degrees. A first (probably weakest) notion would be the mere harmonization of procedures. In that case the general act would provide only for similar procedures, appeals and enforcement mechanisms, but the various sectoral acts would remain in existence. That was typically the first step taken in the Netherlands with the act on general provisions concerning environmental health (Wet algemene bepalingen milieuhygiene). Under this scheme, in principle every separate sectoral legislation could still require a separate licence. The only contribution of the general act was that the procedures by which the licences would be granted and the standards set are equal for every sector. But in principle various licences for the various types of environmental pollution could still exist alongside each other. In that sense only the procedures are harmonised in one “umbrella act”, but given that the separate sectoral acts and licences remain, this is a rather weak model of harmonization.

B. Coordination
Before turning to a third “form” of harmonization of environmental law, the notion of “coordination” should be considered. This notion becomes important when the legislature decides, for instance, either to let the sectoral environmental legislation remain largely in existence (the old model of almost all Western environmental legal systems), or to introduce separate licensing systems (the Dutch system before the entry into force of the Environmental Management Act). In those cases it may become important to have coordination between the different procedures. Coordination is therefore something clearly distinct from harmonization. Harmonization indeed assumes that various laws, procedures or licences are in some way brought together. Coordination is precisely the reaction to the fact that different sectoral acts, licences or procedures remain in existence, whereby the legislature feels that regulation must be introduced to force administrative agencies to take into account its decisions. This coordination can take different forms but can already be distinguished from the notion of “harmonization”, covering the issues discussed so far. In that sense Gilhuys describes coordination as a good “middle way” between totally segregated sectoral environmental laws on the one hand, and totally integrated harmonized law on the other.

C. Codification
Harmonization of environmental law could, finally, go as far as the legislature’s deciding to bring together all existing environmental legislation in one legislative document. This is then usually referred to as “codification”. This would typically be the difference between the situation in the Netherlands today and in the Flemish proposal. In the Netherlands today environmental law is harmonised in the Environmental Management Act, but (some) sectoral environmental laws still remain in existence. The Flemish Draft Decree on Environmental Policy is a code in the traditional sense, meaning that it contains, in principle, all environmental legislation in one legislative document. The distinction between form and contents is once again important in this context. Codification is probably the ultimate form of harmonization of environmental law, but does not necessarily lead to an improvement of environmental policy if the licensing, standard-setting and enforcement procedures have already been harmonised and even integrated. When the latter is the case the additional benefit of codification is merely that existing acts are brought together into one document which may reduce the search costs for citizens and enforcing bodies. Codification probably brings largely aesthetic benefits instead of profit as far as the contents of environmental law are concerned. Codification is therefore often seen as a “restatement” of existing laws.

Some scholars, such as Rehbinder, nevertheless also see substantial ecological benefits from codification. He argues: “A codification is not only a legal technical process, but rather the expression of a political will towards better environmental protection. Codification, through its rationalisation effect, would, or at least could, improve voluntary compliance, public access to environmental law, environmental awareness as well as public enforcement.”

10 See, for extra information on this topic: Otto, J.M., op. cit., 32.
11 A novelty of the 1993 Dutch Environmental Management Act is harmonised enforcement.
12 Rehbinder applies this argument to the notion of “codification”, but it applies to “harmonization” as well.
14 In 1993, this Act was followed up by the EMA.
15 Otto gives the following definition of coordination: “Coordination … refers to a process in which efforts are made to utilize different elements in such a way that they do not run counter to one another, while the incongruities between those elements continue to exist” (Otto, J.M., op. cit., 33).
16 Pâques notes in this respect the necessity for coordination of authorisations which remain distinct “either by the fact that they come under the jurisdiction of a single authority or by a degree of integration of applicable procedures” (Pâques, M., “The Codification of Environmental Law in Wallonia” in Bocken and Ryckbost, D. (eds.), op. cit., 55).
17 This is also referred to in the literature as a “consolidation” of procedures (Pâques, M., op. cit., 56).
19 Lokin and Zwalve give a general definition of codification. They describe three typical features of codification. These characteristics are authority (government), written law and exclusivity of that law. (Lokin, J. H. A. and Zwalve, W. J., Hoofdstukken uit de Europese codificatieschiedenis, Groningen, Wolters Noordhoff, 1992, 2).
20 Rehbinder, E., op. cit., 159.
Kloepfer indicates four aims of codification,\textsuperscript{21} which in fact are in line with the goals of harmonization. This is not surprising since codification is, as has been noted, probably the ultimate form of harmonization. According to Kloepfer these goals are:

1. ecological progress;
2. harmonization and clarification;
3. improvement of implementation;
4. more consistency in environmental legislation.

Also Rehbinder attributes important benefits to “codification”, but most of these refer to the notion of “harmonization” and even to the ecological concept of “integration”.

“Codification could to a certain degree also overcome the traditional, but – at least partly – dysfunctional, sectoral approach by adopting a new transsectoral concept of environmental regulation. Most environmental laws do not apply to the environment as a whole but rather to specific environmental sectors, specific sources of pollution of specific substances; in particular, they do not normally adequately consider a transfer of pollution from one sector to another, nor do they consider total pollution burdens. An ecological development of environmental law through codification using stronger holistic elements could improve the steering capacity of environmental law. Although it does not appear to be possible to entirely renounce sectoral regulation, codification could at least overcome the traditional fragmentation of environmental law and reconcile transsectoral and sectoral approaches to environmental regulation.”\textsuperscript{22}

D. Internal Integration

Finally harmonization of environmental law could be seen as the “integration” of environmental law. This is highly important since the reason policy makers became interested in harmonization in the first place was precisely their wish to achieve integration of environmental policy.\textsuperscript{23} As already mentioned, the complaint was indeed that through the various sectoral acts, various procedures and enforcement systems every administrative authority ruled its licensing system as “Napoleon on Elba”. Harmonization was proposed as the ideal remedy for this disintegrated way of handling environmental policy. If procedures were to be harmonised in a general environmental protection act (the first step) and administrative authorities were forced to coordinate licensing procedures, at least these inefficiencies could be remedied.

A stronger form of this type of harmonization includes the harmonisation of licences themselves. This type of harmonization, where a particular entity is required to hold only one licence, which covers all the externalities, is typically considered as “integration”.\textsuperscript{24} It consists in internal integration in the sense that the licensing authority (and standard-setter) takes into account all effects of a particular activity or installation on the surrounding environment in its decision-making process. The decisions on the licence and the standards are thus taken in an integrated manner. Here, obviously, is a difference between contents and form. Integrated decision-making, obviously, is also possible when various types of licence continue to exist, but operates more simply when the legislature requires an entity to have a single integrated licence only. It is the latter, further, step that the Netherlands has taken in the act which was the follow-up to the Environmental Management Act. This act basically does away with most of the sectoral environmental legislation (with a few exceptions) and with most of the other licences (again with a few exceptions). If harmonization of environmental legislation also leads the legislature to require a single licence from a polluting entity this is clearly a much stronger form of “harmonisation”, although it might be questioned whether that word is appropriate to describe this step. This is indeed more an issue of integration. But optimal integration can of course be reached when one authority issues one general licence embracing all externalities emanating from one polluting entity.\textsuperscript{25} That is precisely what the Environmental Management Act in the Netherlands achieved. This type of integration, which is usually referred to as “internal integration”, is therefore, from a substantive point of view, probably the goal of environmental policy and the harmonization of sectoral acts, procedures and licences is probably merely the form.

This seems to become clear from the Directive on Integrated Pollution Prevention and Control of 24 September 1996 (IPPC Directive)\textsuperscript{26} which states that the goal of the IPPC directive is to prevent emissions into air, water or soil wherever this is practicable. Article 7 of the directive prescribes a coordination of the procedures for the grant of a permit “to guarantee an effective integrated approach” where more than one competent authority is involved. Behind this notion of integration is of course the knowledge that integrated decision-making is necessary to take into account the total pollution costs of a firm, and to prevent the shifting of emissions. Only when the total amount of emissions from one entity into water, air and soil is taken into account, can the standard-setting authority set emission limit values in an efficient manner. This notion of integration is therefore highly important from a substantive point of view since integration guarantees an optimal reduction of the emissions emanating from one entity. A way to achieve this optimal integration is probably harmonization of procedures or licences or, as the IPPC directive calls it literally, “coordination” of procedures.

This integration, allowing the total effects of all emissions from one source on all environmental components to be taken into account, is obviously important from the perspective of both the firm and the decision-making.

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\textsuperscript{21} Kloepfer, M., op. cit., 91.
\textsuperscript{22} Rehbinder, op. cit., 159–160.
\textsuperscript{25} See also Pâques, M., op. cit., 55.
\textsuperscript{26} Official Journal, 257/26 of 10 October 1996.
authority. If one decision-making authority has control over the total amount of pollution, a firm will know from the outset that it cannot avoid, e.g., standards or taxes, by shifting pollution. Thus an integrated decision-making procedure will also lead to integrated decision-making by the polluting firm.

The same argument is made by Kloepfer to defend what he refers to as “codification”. One of the goals of codification is, according to him, “ecological progress”. This is argued as follows:

“A further ecological development of environmental law should be attained by devising a holistic concept overcoming the present situation of specific policies for the various parts of the environment. The codification of environmental law corresponds to a greater extent to the holistic concept of modern environmental policy, which also considers the synergetic effects of pollution, etc. of the environment.”

This reasoning is in line with the notion of “integration” since it refers to the ecological necessity for an integrated environmental policy.

A first tentative conclusion appears to have been reached: from a substantive (environmental policy) point of view, it is probably the notion of (internal) integration which is the starting point and therefore of greatest importance. The other issues (harmonization of laws or licences) are probably mainly instruments to achieve this goal of integration.

E. External Integration

Before taking a closer look at the notion of harmonization in some recent attempts and addressing how this fits into the previous framework it should be mentioned that in the literature reference is often made to the notion of external integration. It is, once more, rather confusing that some refer to “integration” and then to this external integration instead of to “internal integration”, discussed above. This notion of external integration can also be found in, for instance, the Rio Declaration on Environment and Development.

When discussing the notion of sustainable development it is mentioned that integration means that environmental concerns have to be taken into account (and thus “integrated”) into economic development. This important notion means that environmental policy should no longer be a concern of the environmental ministries alone, but should become an integral part of economic policy as well.

This notion of external integration could also be found in Article 130R (2) of the EC Treaty which states that “environmental protection requirements must be integrated into the definition and implementation of the Community’s other policies”. Article 130R has now become Article 174 EC Treaty after the coming into force of the Amsterdam Treaty. The integration principle is now laid down in a new Article 6. The goal of this notion of external integration is that environmental protection should not only be of concern to environmental decision-makers, but should be an important consideration when other policies are shaped and implemented. As far as the European community is concerned, this integration principle, as laid down in the new Article 6 of the Treaty, therefore aims at a total “greening” of other Community policies. Jans considers this perhaps the most important of all the principles mentioned in (the old) Article 130R (2), but at the same time rightly mentioned that many questions still arise with respect to the precise meaning of this integration principle. At least this leads to a general obligation on the European community to reach an integrated and balanced assessment of all the relevant environmental aspects when adopting other policy measures. At the last summit meeting in Helsinki it was decided to give this principle of external integration even more weight by deciding, inter alia, that environmental and sustainable developments have to be integrated into EU development cooperation policies.

This notion of integration of environmental concerns into other policy areas is also known in international environmental law. Sands considers the commitment to integrating environmental considerations into economic and other development as an element of “sustainable development.” He rightly points out that the principle has an important legal consequence: that environmental information has to be collected, e.g. through the conduct of environmental impact assessments, when economic policy or economic projects are developed. At the international level this issue is closely related to the “right to development” discussion, initiated by developing countries. Therefore developing countries have often been careful to introduce language into treaties to safeguard their future development possibilities, limiting the extent to which international environmental regulation might restrict such development.

The notion of “external integration” is, however, less...
related to the central notion of “harmonization” and will therefore not be discussed in this paper in further detail.

III. Harmonization: A Closer Look at Some Recent Examples

A. The Netherlands

As already mentioned, the Netherlands has quite some experience with harmonization of environmental law. First, harmonization of procedures was achieved (although separate licences remained in existence) in the Act on General Provisions Concerning Environmental Health. The new Environmental Management Act goes a step further in the harmonization process by requiring, in principle, that a polluting entity hold a single licence. The Dutch example, however progressive it may be, shows once more how difficult it is to find precise definitions. In fact it shows that since some notions refer to the form (harmonization), and others to the contents (integration), they can sometimes overlap. It can certainly be argued that the Environmental Management Act in the Netherlands achieved harmonization of environmental law.39 It is now the main instrument of environmental policy, and replaced most of the sectoral legislation. Not only is there just one legislative document, there is in addition the requirement for just one licence. Hence, the form (harmonization) in this case also allows for integrated decision-making, since the citizen who wishes to apply for a licence has, in principle, to address himself to one counter only. This shows that the form (harmonization in one Environmental Management Act) also serves the substance (integrated decision-making).

The Environmental Management Act is not, however, perfect, since it has not integrated all possible licences. In addition to a licence under the Environmental Management Act, in an appropriate case, a citizen also needs a building permit. This can, however, be understood. The margin of appreciation and control is in fact totally different when a building permit is issued than when an environmental licence is granted. Other criteria apply. That is not the case for the separate licence for waste water emissions, which also still exists in the Netherlands. The reason is historic; waste water emissions fell within the competence of the water boards (waterschappen) which did not want to relinquish their competences. Thus, although the Netherlands is one of the most progressive Western European countries as far as harmonization and integration of environmental law are concerned, separate building permits still exist, and waste water emissions are not incorporated into the Environmental Management Act. To achieve optimal integration, coordination between the Environmental Management Act and the other permits is necessary, and is provided for in the so-called afstemmingsregelingen.40 Gilhuis also states that the Environmental Management Act is not necessarily the best framework for integration in every environmental area. He argues that when engaging in codification of environmental law, it is necessary to consider the context in which a particular subject can best be regulated. He therefore claims that the best place for regulating environmental liability is the Civil Code, which regulates tort liability in general.41

B. The Flemish Region

The Flemish example is interesting in that it provides an encompassing Draft Decree on Environmental Policy.42 The major difference compared with the situation in the Netherlands is obviously that this is merely a draft, prepared by an academic commission of professors and not yet accepted at the policy level.43 It contains general principles, which are applicable to all environmental sectors. One of its goals is to ensure legal certainty, but also to promote integration through integrated decision-making. It is in a sense comparable with the old Netherlands Act on general environmental provision, but goes much further since it provides more detail and repeals important pieces of existing environmental legislation. On the other hand, it does not go as far as the Netherlands Environmental Management Act since separate licences would apparently remain in existence. Thus in Flanders also, coordination remains necessary. This is, by the way, also provided for in Article 5 of the current Flemish decree on environmental permits, which provides that a building permit is suspended as long as an environmental permit has not been granted and vice versa.

C. Europe

1. Harmonization as a Policy Goal

Europe is important in several ways. One “classic” concern of the European Community was to create a single market. Differences between legal systems had to be removed since these were considered trade barriers. “Harmonization” was therefore an important tool of the European Commission to achieve market integration. Europe has first of all promulgated many directives with the precise goal of harmonising the legislation of the Member States. The competence for these actions was provided for in Article 10044 of the EC Treaty, which stated:

“The Council shall, acting unanimously on a proposal

41 Gilhuis, P., op. cit., 110.
44 As mentioned above, Article 94 EC Treaty after the coming into force of the Amsterdam Treaty.
from the Commission and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the common market”.

The reason for these harmonization actions was usually the fact that a difference in legislation would lead to differing market conditions and could thus hamper competition. This led the Commission to propose various directives which led to a harmonization of environmental law in those domains. This notion of harmonization, however, is different from that discussed above. Indeed, harmonization in Europe is more an approximation of administrative regulations to reduce differences as far as possible. But, in the absence of regulation, differences will remain. The essence of a directive is indeed that the Member States may themselves choose the methods of implementing the duties placed upon them by a directive. Moreover, many directives still allow for deviations by the Member States. Harmonisation through European directives certainly leads to approximation, but not to total harmonization in the sense that a European super-structure would replace national laws. Thus the European notion of harmonization should be distinguished from the notion of harmonization of environmental law discussed earlier in this article.

2. IPPC
In addition, Europe is interesting precisely because the Directive on Integrated Pollution Prevention and Control (IPPC) of 24 September 1996 (mentioned above) has as its main goal the promotion of integrated pollution prevention and control. The instrument chosen in the IPPC Directive is the coordination of the procedures for the grant of a permit. This is necessary, according to the directive, to guarantee an effective integrated approach where more than one competent authority is involved. Thus the directive does not necessarily call for a single licence or even for a single counter (where more licences would remain in existence), but merely for the coordination of the procedures for the grant of the permit. Although the step taken in the IPPC Directive to lower administrative costs is still relatively weak, it is considered an important step forward.

Preventing the shifting of emissions has been advanced as one of the central goals of the IPPC Directive. The original proposal explicitly mentioned, under the specific objectives of operation, that the directive would aim at preventing pollution emissions from larger installations “so that pollution problems are solved rather than transferred from one part of the environment to another”. The recitals to the directive mention that “separate approaches to controlling emissions into the air, the water or the land alone may encourage the shifting of pollution across environmental media rather than protecting the environment as a whole”.

The advantage of an integrated approach therefore is that all possible emissions, whether in the air, liquid or solid, can be integrated into one decision-making procedure, as a result of which emission limit values are set in such a way that the industry has no incentives to shift its emissions from one compartment of the environment to the other. Whether the end result of this procedure will also be efficient, obviously largely depends on the procedure, and the authorities concerned and their ability and willingness to take into account the various possible emissions, and set standards in such a way that shifting is indeed prevented.

The concept of integrating pollution control systems can also be defended by reference to the reduction of administrative costs which will probably result. A separate licensing procedure for every possible emission from a large plant obviously leads to high costs, for both the industry and the bureaucracies involved. It is therefore to be expected that industry would welcome an integrated approach. This has the advantage that industry has to address itself to a single authority, instead of having to apply for three or more licences, before it can start up its activities. The original proposal for the directive also aimed at a streamlined decision-making process: in principle decisions with respect to a permit had to be taken within 6 months. This deadline was unfortunately dropped in the final text of the Directive.

In general there can be little criticism of the concept of integrated pollution control itself. Also the notion, which is stressed many times in the explanatory memorandum, that the aim of integrated pollution control is to prevent emissions and to minimize emissions to the environment as a whole, fits into the economic approach. It is also stressed that legal instruments should be used to induce a potential polluter to prevent emissions in the first place.

The reason this coordination of procedures is considered important has already been mentioned. Integrated decision-making by the polluting firm will guarantee optimal internalisation of the externality and avoid a shifting of emissions.

47 The purpose of the IPPC Directive is in accordance with that of the Dutch EMA, which states that permits are issued, containing certain basic obligations, in order to prevent harm to the environment (Van den Broek, J., “IPPC in werking getreden”, Milieu en Recht, January 1997, p. 25).
48 Recital 7 of the Preamble to the Directive.
49 The IPPC Directive replaced to a certain extent the sectoral regimes laid down in Directives 76/464/EEC (water) and 84/360/EEC (air) (Long, A. and Merue, C., op. cit., 7).
51 This was at least the case in Article 7(2) of the September 1993 version of the proposed Directive, but has unfortunately been deleted in the June 1995 common position.
52 The explanatory memorandum stated with respect to the proposal: “It is founded upon a preventive approach to pollution control” (Com (93) 423 final, p. 14.)
IV. Integration, Harmonization and Coordination

A. Form and Substance

So far, the notions of “harmonization”, “integration” and “coordination” have been addressed, and although it has been seen that many notions are used for the same legal instruments there is probably less confusion than might first have been thought. The crucial notion from an environmental policy point of view is integration, meaning not external integration (integrated environmental policy into other policy areas), but the integration of decision-making. This is referred to as “internal integration”. It is crucial, to guarantee optimal reduction of environmental harm, that the administrative authorities can examine the total effects of the overall pollution caused by an entity. When this integration is the goal of environmental policy, there are various ways to achieve it.

Integration is obviously easier if a procedure is organised in such a way that the citizen may deal with a single authority (or preferably have to obtain just one licence). This process towards one procedure (or one licence) can be the result of “harmonization” of environmental law. Even if separate licences and procedures remain, the goal of integration can be achieved only if, at least, the different procedures and licences are coordinated. “Harmonization” would thus refer to an legislative process whereby various laws or licences are brought together or are amended to contain similar principles. If separate procedures and licences remain, the goal of integration can be achieved only if there is “coordination”.

Thus one can argue that the goal of integration can be achieved even with separate environmental acts, procedures and licences, but this might be more difficult. Thus the form of harmonization of environmental law, meaning the bringing together of various acts into one legislative document, can obviously facilitate the substantial goal of integration. Thus the form of harmonization (of course depending on the various degrees) can be an important legislative instrument for achieving the substantive environmental policy goal of integration.

From this it follows that it is not very surprising that sometimes the notions overlap. For instance, the Environmental Management Act in the Netherlands leads to integration, but is an instrument of harmonization. But since the harmonization is not complete there needs to be coordination as well. Once more it seems important to distinguish between form and contents. Thus an environmental scholar should not immediately worry if several separate environmental acts still exist. Provided that there is a high degree of coordination between the various procedures which allows for integrated decision-making the fact that there are several sectoral acts should not necessarily be negative. When looking at an environmental legal system it seems therefore to be important to question whether integrated decision-making takes place, in the sense that various authorities take into account the decisions of the others when analysing the polluting effects emanating from a particular entity. Obviously it is likewise important to see whether procedures, licences or acts are or will be harmonised and whether this has important effects on environmental policy. Finally, the road towards harmonization may be a long one. The end result is usually not achieved through revolutionary changes, but through smaller legislative moves ahead, which take place step by step. 54

B. Definitions

From the above it seems clear that many authors tend to use the words “harmonization”, “codification”, “coordination” and “integration” almost as if they were synonyms, and there seems to be little consensus on the precise meanings of these words. This is largely understandable, since, as indicated above, the streamlining of legislation, procedures and licences usually aims at the same goal. It is not therefore surprising that scholars have not worried about exactly how these concepts should be characterized. A few definitions of these various notions, are, however, suggested, as matters of convention and not of principle. Inevitably, some phenomena can be characterized under more than one heading. Taking these limitations into account, the following definitions are proposed:

Integration: when using the term integration it is proposed to refer to the internal integration of environmental law, meaning the ecological goal that, in the decision-making and balancing of interests with respect to the permitted amounts and quality of pollutants, the total effects of pollution emanating from the licensed activity on the various components of the environment are taken into account. The influence of environmental policy on other policy areas could then explicitly be called external integration. Thus it would be clear that when the general notion of integration is used it refers to internal integration.

As indicated above, this notion of integration is central, since this is the environmental policy goal to be achieved. Environmental legal instruments should thus be shaped in such a way that integrated decision-making is possible. This can be done through:

Harmonization: it is proposed to use this term for the legal situation where either various separate procedures are approximated (harmonization of procedures) and separate legal acts remain in existence; or various substantive environmental laws are approximated; or the number of licences is reduced. Referring to the second category, the harmonization of various substantive environmental laws but separate legal documents remain in existence; approximation has nevertheless taken place. If the approximation goes further and the separate (sectoral) environmental legal acts are repealed (in part or totally) and their contents shifted to a new legal document this phenomenon is referred to as:

Codification: this term is usually reserved for the legislative process whereby separate existing legal acts are brought together in one legal document.

Coordination: this term is reserved for the situation where separate environmental legal acts remain in existence with separate licensing requirements (and hence no harmonization of licences took place), but where the legislature has provided for legal rules which force the various authorities to take into account the separate procedures or licences. Although separate procedures or licences thus remain in

54 See also the plea of M. Paques in favour of gradual coordination rather than abrupt changes (Paques, M., op. cit., 66.)
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existence (and are in that sense not harmonised) the legislature can force the administrative authorities responsible for the various procedures or licences to take each others’ decision into account. In that sense the various procedures or licences are coordinated. Obviously these definitions do not cover all problems and are still rather vague. Moreover, as shown above, many instruments seem to achieve a whole set of goals. Nevertheless, it seems useful to agree that there are different goals to be achieved, and that these goals can be given different names. The key issue seems to be integration, as described above. Many legal and policy instruments may serve this goal.

V. The Test

That the definitions presented above are nevertheless somehow useful can be illustrated by referring to the examples discussed above (see III). The notion of integration is probably most prominent in the European Directive on Integrated Pollution Prevention and Control which explicitly states that environmental law should lead to integration. However, the IPPC Directive is very flexible about the road to be chosen towards integration. Member States are in fact called on only to coordinate the various procedures and licences, and in that sense the Directive aims at coordination only. The IPPC Directive does not require that sectoral environmental laws should be approximated (harmonization) or brought into one legal document (codification).

The Flemish draft decree on environmental policy is probably most ambitious in that respect. It presents a whole new legal document to replace all the previous sectoral legislation, which would be the ultimate document governing environmental protection from a legal perspective. Thus, the Flemish draft decree is aimed not only at harmonization, but also at codification.

The Dutch Environmental Management Act undoubtedly uses harmonization to progress towards integration of environmental law. Indeed, many of the licences and sectoral laws previously in force were repealed or greatly reduced in number. General rules are brought together into one document and, in principle, a licensee is required to have only one permit under the Environmental Management Act. However, many other substantive environmental norms and standards can still be found in legal documents outside the Environmental Management Act. Thus, the Act probably does not aim at total codification. This obviously does not matter that much from an ecological point of view. The key issue is, once more, whether the legal rules chosen are shaped so as to facilitate integrated decision-making concerning the emissions emanating from one entity and preferably at the lowest administrative and information costs. But of course, many instruments can serve that goal. For that reason, even in the Netherlands, where a high degree of harmonization of environmental law has taken place, it is still necessary to coordinate those permits which have not been integrated into the Dutch Environmental Management Act.

Hungarian Environmental Law

Hungarian Environmental Law and Biodiversity Protection

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Summary: A review of the state of the law on biodiversity protection in Hungary. Current ecological conditions. Early measures, going back to 1961, embracing a number of surprisingly modern principles. The recent legislation, on general environmental protection rules; nature conservation; the protection of forests; the regulation of hunting and the protection of wild fauna, and on genetic technology. The principles underlying the Hungarian legislation. Relationship with EU biodiversity strategy and the process of harmonisation.

Introduction

Biodiversity in Central and Eastern European (CEE) countries is richer than in Western Europe. In fact, the past practices of central planning in CEE countries, ironically, served traditional biodiversity conservation well,¹ and even today, most of the old and almost untouched forests are to be found in CEE countries. Following the change of regime, CEE countries are currently involved in a difficult and expensive process of social, political, economic and cultural transition. The growing trend toward decentralisation, land privatisation, and Western-style agricultural policies in Central and Eastern Europe creates formidable challenges for biodiversity protection, especially considering the intense economic pressure to exploit natural resources beyond carrying capacity when neither law nor public money can offer much protection. Thus, adequate measures for biodiversity protection have to be built into the Environmental

¹ See European Centre for Nature Conservation, Pan-european Biological and Landscape Diversity Strategy, 1997 (WWW.ecnc.nl); OECD, Environmental Action Programme for Central and Eastern Europe, abridged version of the document endorsed by the Ministerial Conference in Lucerne, Switzerland, 28–30 April, 1993.