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EFFECT OF ENVIRONMENTAL MONITORING ON THE ENVIRONMENTAL LEGISLATIVE PROCESS

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Abstract

Specialists from both the environmental protection and environmental law areas have different perceptions on the environmental legislation, due to the particularities of the regulatory and legislative acts, on one hand, and the particularities of the technical approach to the environmental quality evaluation, on the other. This study is presenting the flow of the environmental legislative process and the relationship between the environmental norms, standards and monitoring with the national, European Union (EU) and international environmental legislation. The environmental legislative flow is further completed by the contribution of legislative monitoring and legislative assessment processes, also integrating the environmental monitoring mechanisms and their particular results, turning the flow into an environmental legislative cycle. It was concluded that the environmental monitoring mechanism, used for the development of environmental legislation, is necessary to verify both its legislative effects and its intervention on further regulations.

Key words: environmental legislation; environmental monitoring; environmental norms

Received: July, 2018; *Revised final:* May, 2019; *Accepted:* July, 2019; *Published in final edited form:* August, 2019

1. Introduction

For specialists coming from various technical fields of environmental protection, understanding the specific environmental legislation can be a challenge, because a correlation is needed between the national regulatory and legislative acts, and the ones issued by the European Union (EU) institutions and other legislative bodies. On the other hand, for environmental law specialists, understanding the environmental legislation (environmental law) entails more than just a juridical interpretation, due to the particular technical character of the legal norms.

For the environmental protection domain, where the superior interest of the state and of the supranational bodies comes into play, a more accurate surveillance of the effects of the environmental legislation is required. We started from the hypothesis

that even if the environmental legislation is applied and respected, sometimes this is not enough, the final goal (environmental protection) being left unattended (Ghinea et al., 2017; Marinescu, 2007). Not being in violation of the law, this unattained legislative goal is only observed by using the environmental monitoring (EM), as a control and improvement tool for the environmental legislation. The environmental monitoring mechanisms is used for evaluating and establishing the necessary corrections to the legislation. EM mechanisms generally exceed the legislative force, being regulated by international standardization organisations, as standards, mostly because they need to be more flexible.

This study will emphasize that the legislative development and its required correlations, responding to a coherent and precise interpretation, should not necessarily be approached from a common juridical

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sciences perspective, as much as from a technical sciences perspective. However, such an approach will not ignore the specificity of the juridical sciences and their core elements.

Thus, we started from a generally applicable legislative flow, emphasizing the connections between different types of normative documents and acts, used at national, EU and international level. They are cumulatively presented, being adequate to any areas of law and to any field of interest. Further, we observed that environmental monitoring, together with the requirements for a final recognition through inclusion into the legislation in force, using the EM mechanisms, will complete the legislative flow, turning it into a cycle of the environmental legislative process development (Arama et al., 2018; Dutu, 2007).

The aim of this study is to introduce a possible mechanism to improve the environmental legislation, with its special applicability for EU member state. We present how a general legislative flow can be completed into a legislative cycle, especially for the environmental legislation, by emphasizing only the role that environmental monitoring plays in the environmental law improvement, due to the technical character of the environmental norms. This innovative approach will be useful as a source of information for the specialists coming from both legal and non-legal fields, for a better understanding of the interactions between the environmental monitoring and the environmental legislation. This will allow, as an ultimate goal, for the achievement of environmental protection on one hand and environmental legislation compliance on the other.

2. Environmental legislative flow

Our new approach is based on the complexity and intermingling of the classical legal norms and the technical ones in the field of environmental law (Westerman, 2007). In order to understand the complexity of the environmental law development and the transformation of the initial flow into a cycle, it is necessary to present all the intermediate steps that led to this set-up. In a step-by-step development of the environmental legislative process, we have to take into account the following:

a. provisions with a general character (blue section in Fig. 1):

- the provisions of the national law (constitutional regulations) which establishes the legislative powers and which are the normative documents recognized at national level;
- the provisions that regulate the effect of the international treaties, conventions and agreements on the EU and national legislations;
- the provisions of the constitutive EU treaties and mandatory regulations, directives and decisions, and their influence on the national legal system.

b. provisions with, specific character, determined by (green section in Fig. 1):

- atypical elements of environmental legislation;
- technicization of the legal norms of environmental law, both in and of itself and in reference to the technical norms;
- the high importance of the standards of environmental monitoring (EM), imposed by institutions with no legislative regulatory competence (international organizations), standards that have a plan-do-check-act flow system (PDCA).

2.1. National, European and international legislation

Any national legislation can be functionally and hierarchically structured. The basic structure of any law is the legal norm, which is a rule of behavior, established by the public power or recognized by it, whose observance is ensured by the coercive force of the state (Cheterchi and Craiovan, 1999; Clegg et al, 2016). The legal norms having the same regulatory object, form together a normative act, bearing a specific name, according to the issuer and its legal power, as follows:

- the legislative power (the Parliament), issues the normative acts with the highest legal power, namely the laws; they regulate the most important social relations and have a legal force superior to other national normative acts;
- the executive power (the Government) issues different types of normative acts, depending on the specific assigned powers.

For any areas of interest of the national law, there are differently applicable regulations:

- with superior legal force, establishing rights and basic obligations in the field;
- with inferior legal force, establishing details on how to apply and execute the first ones.

Moreover, normative acts with the same object of regulation are grouped into domains that form branches of law or domains, or sub-domains that form sub-branches of the law (Sida and Berlingher, 2006). One example is the branch of environmental law, whose object of regulation is the protection of the environment, objective of major public interest. Due to the complexity of the environment (air, water, soil, subsoil, living organisms, and others), the set of legal regulations on environmental protection can be grouped into sub-branches, such as water law, maritime law, forestry law, atmospheric law, and others.

Of particular importance in any legislative field are the EU and international regulations. As a result of the accession of each country to the European Union, the provisions of the constitutive treaties, as well as the other community regulations, shall take precedence over the contrary provisions of national law, in compliance with the provisions of the Act of Accession. The mechanism of intervention of EU legislation on the national legal order is provided in the Treaty on the Functioning of the European Union (TFEU), whose mechanism is not the subject of

interest of this study. Compulsory EU regulations for each EU member state are the following: the regulations, the directives and the decisions (Borchardt, 2017). Of these, the directives are transposed into the national law, while the regulations and the decisions are directly applied.

In order to be applicable in any country, the international regulations (treaties, conventions and agreements) must be ratified by each national Parliament and from that moment, they are part of the national legislation (blue section in Fig. 1).

2.2. Technical norms, standards and monitoring as part of the environmental legislative flow

Environmental law, no matter if it is applicable at national, European Union or international level, is designed to encompass the specificity given by both the classical norms, and the technical norms, related to the environmental protection (Horváth, 2015, Ahmed and Mustafa, 2016). The specificity of the technical norms makes possible their classification in: process norms, product norms, emission norms and quality norms (Duțu, 2007).

The close interdependence of the environmental law with the natural sciences and technology is generally recognized, which opened the domain of technological public policy. The technical norms are rules of law with a special content (Duțu, 2010) and they highlight the technical character of the legal norms of environmental law (Dușcă, 2014).

The environmental legislation is, in general, full of atypia, starting with its distinct beginnings as a specific branch of law, continuing with the specificity of the norms and ending with the use of non-legislative elements in the environmental protection mechanism.

From the latest, the standards for environmental monitoring, imposed by the European Union and international bodies without legislative attributes, are of particular importance, thus the need to integrate them into the environmental legislative flow (Fig. 1). The technical norms are proposed by organizations involved in environmental protection, which activity is fully recognised, but insufficiently fast and timely for the environmental legislation improvement:

- standardization organizations – International Organization for Standardization (ISO), European Committee for Standardization (CEN), European Environmental Citizens’ Organization for Standardization (ECOS);
- monitoring organizations – European Environment Agency (EEA), Sustaining Arctic Observing Networks (SAON);
- other organizations – European Environment Information and Observation Network (EIONET), European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL).

The technical norms which are specific to the environment law, are process norms, product norms, emission norms and quality norms (including those for immissions evaluation). All these norms, either have a technical character incorporated into their classical structure, or they become technical by referring to a standard issued by an organization (green section in Fig. 1). In other words, experts in the field of environmental protection can easily ascertain if the technical elements of the norms are either directly parts of the legal norms, or are presented as a reference to a standard, in which case its external source should be highlighted (Cutaia et al., 2016).

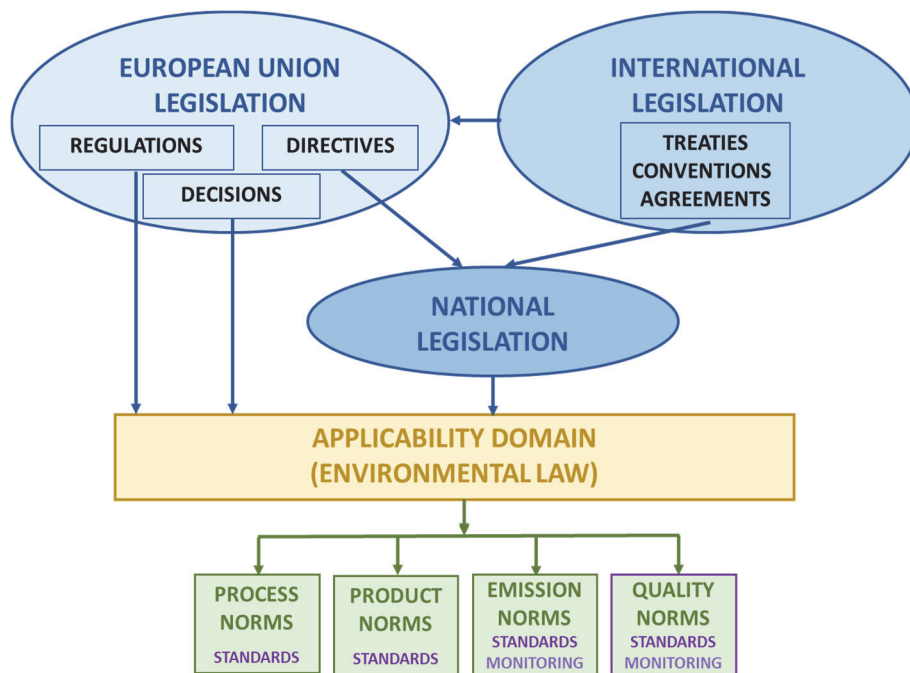


Fig. 1. Environmental legislative flow – connections between national, EU and international environmental legislation, with the specific environmental norms, standards and monitoring

3. Environmental legislative cycle

In any legislative domain, checking the compliance with the normative acts is carried out, non-compliance imposing civil, contravention or criminal legal sanctions. This verification does not require a feedback mechanism, only the application of the constraints or of the sanctions to the person who violated the rule. Even if the normative act has been respected, the legislation does not provide feedback for evaluation, which is also applicable for environmental protection law.

Due to the importance of environmental protection, environmental monitoring should be done taking into account both technical and legislative aspects, using a mechanism that exceeds the legislative force. To be applicable, this mechanism should not only be flexible, but also recognized by law and by those applying and verifying law enforcement. From the environmental specialist point of view, it is necessary to add to the legislative flow those specific elements of environmental monitoring systems (the feedback), which also should consider the final recognition requirements imposed by the law-making mechanism. The feedback mechanism can be created by collecting environmental data and information, from all the environmental components (air, water, soil and biota), using environmental monitoring standards.

Verifying the implementation of the normative acts, the correct application and the real effect (not the expected one) can be part of the mechanism stipulated by standards (Román-Sánchez and Belmonte-Ureña, 2013). More than in other legislative domains, for the environmental protection

it is necessary to intensively verify the compliance with the legal norms, using legislative monitoring and assessing mechanisms, as well as establishing the necessary corrections to the regulations and their implementation.

The effects of the environmental monitoring on the environmental legislative process can be easily followed using three different channels, thus closing the legislative cycle (Fig. 2):

1. channel 1 – the standardization and EM impose the technical requirements (specificity) on the environmental law norms (violet section in Fig. 2); strictly, from the legislative point of view, if these norms are respected, no other legal intervention is needed; this does not mean that, from the point of view of the environmental protection, the aim of the normative act has been achieved;

2. channel 2 – the only mechanism that can intervene at this point is the environmental monitoring, which provides monitoring information and results, transmitted directly to the adequate organisms; if the aim of the normative act was not achieved, legislative monitoring and evaluation procedures are imposed (brown section in Fig. 2); from this point on two ways of interfering in the legislation improvement are possible: (i) standardization and EM bodies modify their own regulation (following channel 1), (ii) the process detailed in channel 3;

3. channel 3 – the standardization and EM bodies may propose changes in the legislation to hierarchically higher legislative bodies (at national, EU and international level), which are able to impose new requirements, as a result of environmental monitoring.

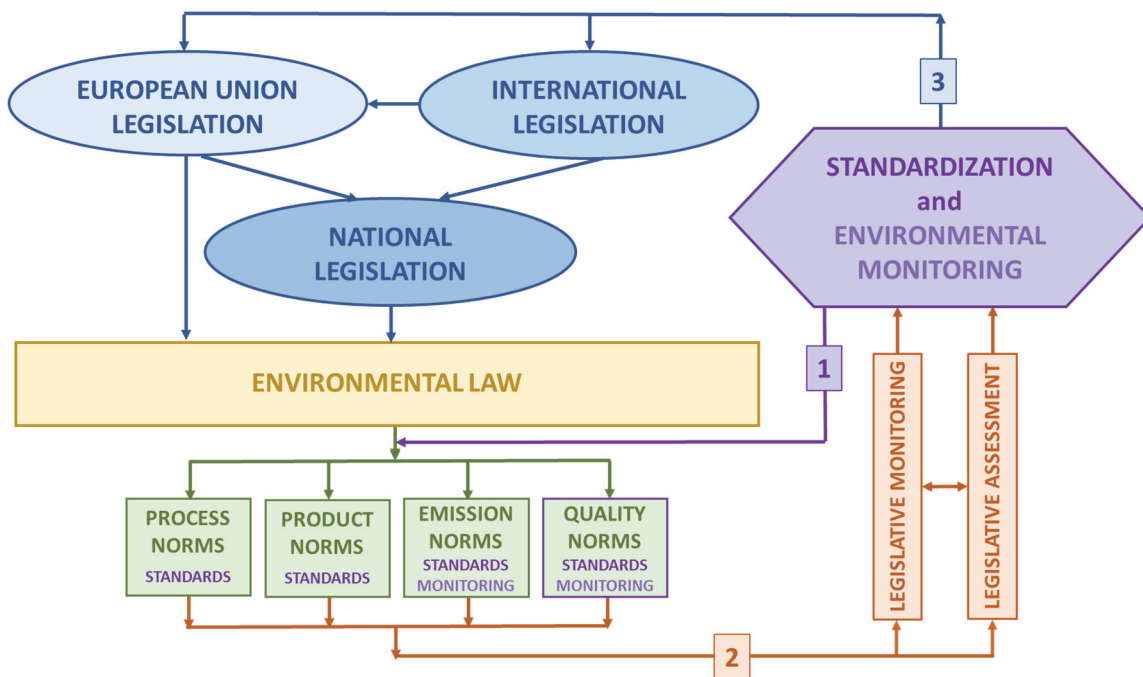


Fig. 2. Environmental legislative cycle – contribution of the environmental monitoring, legislative monitoring and assessment processes to the environmental legislative improvement

4. Conclusions

Sometimes, applying the specific legislation is not enough for the environmental protection, so that the environmental monitoring mechanisms are able to streamline the legislation process. The use of the EM mechanism for the environmental legislation development, is not only welcome, but also needed to verify both its real effect and its efficient intervention on the regulations. This occurs without obstructing the legislative process.

The actual study described an environmental legislative flow and finally completed it into a legislative cycle, needed for continuous environmental legislative process improvements. This original approach emphasizes the role of the environmental monitoring mechanism in the development of the environmental law. We pointed out that no other field of regulation has such a dynamic and complex mechanism, determined by the “technical” interpretation of the law.

Acknowledgements

Project Learning Toxicology through Open Educational Resources (TOX-OER), with financial support from the European Erasmus+ Programme, key action KA2, Strategic Partnership, project code 2015-1-ES01-KA203-015957.

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