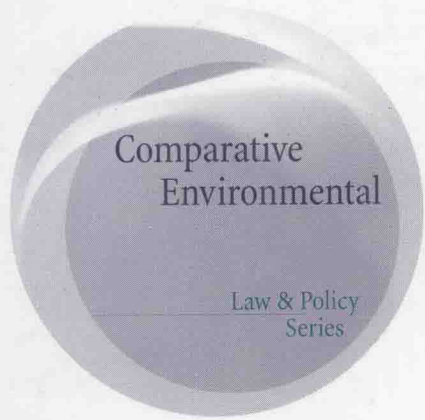




Public Environmental Law in the European Union and the United States

A Comparative Analysis

Editors

René J.G.H. Seerden, Michiel A. Heldeweg and Kurt R. Deketelaere

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A Comparative Analysis

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- to contribute to the improvement of the quality of environmental law and policy in general and environmental quality in particular;
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- to facilitate cooperation between academic and non-academic communities in the field of environmental law and policy throughout the world.

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FOREWORD

In June 1995 René Seerden and Michiel Heldeweg started working out the idea of writing a book about comparative public environmental law in Europe. One reason for this idea was the necessity of providing the students in environmental law courses at Maastricht University with some material about public environmental law, particularly in the Member States of the European Union. We believed a suitable comparative description was not yet available. In November 1996 we introduced a book *Comparative Environmental Law in Europe, An Introduction to Public Environmental Law in the EU Member States* (Maklu Antwerpen-Apeldoorn).

Now, June 2002 we, René Seerden, Michiel Heldeweg and Kurt Deketelaere, are happy to introduce another book in the field of comparative environmental law. It is called *Public Environmental Law in the European Union and the United States, A Comparative Analysis*. Apart from the fact that there is an additional editor and another publisher, the book is broadened with chapters on environmental law in the United States and at the level of the European Union. Furthermore some other EU Member States are addressed. All in all this book thus offers a different and broader scope.

Again it proved to be quite an undertaking to locate native writers who were willing to write a contribution, in English, on public environmental law in their own countries. Many telephone calls, letters, faxes and e-mails were needed to come up with a list of renowned authors suited to cover most of the EU Member States and the United States. We also found an expert on environmental law at the level of the European Union. All authors agreed to contribute, within a certain framework (allowing, of course, some discretion) and within a set period of time. Most of the authors have an academic background, though many of them have worked or are still working in government institutions or in private institutions. Last but not least, we are very pleased that there are a number of female authors, although a fifty-fifty balance has not been reached.

The text for this book was concluded on 1 March 2002. Unfortunately, through various reasons, there are no contributions for Greece, Portugal and Sweden. We regret the absence of these countries and we hope that this omission can be rectified in the future. We do however feel that the necessary 'critical mass' for presenting the book as covering *Environmental Law in the European Union and the United States of America* has been reached. We hope that the readers will feel so too.

In closing this foreword to the book, we thank all the authors for their participation. Of course, without them this book could not have been realised. We also want to express our gratitude to Kluwer Law International for the English editing of many of the contributions and especially to Marjo Mullers, for the production of the camera-ready copy for this book. Naturally, the final responsibility for its completion lies with the editors.

We hope that this book will provide the reader with a concise synopsis of the state of public environmental law at the level of the European Union, in the various EU Member States and the United States of America.

René Seerden, Michiel Heldeweg and Kurt Deketelaere
Maastricht, June 2002

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INTRODUCTION

René Seerden

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As we have pointed out in the foreword, this book is intended to contribute to insight into *public environmental law* within the EU Member States, at the level of the European Union and the United States of America. But what is 'public environmental law'? Environmental law can be described as the law concerned with the protection of the physical environment (water, soil, air, et cetera) against pollution. This does not include the protection of natural species or resources, or land-use planning. By adding the adjective 'public' we limit ourselves to those parts of environmental law that concern relations between governments and private individuals. Here regulation, planning, licensing, subsidizing, legal protection - to name a few - are the main themes. Within public law a distinction can be made between international, European, constitutional, administrative and penal law. This book focuses on constitutional and administrative law (in short 'public law'). This focus does not imply, however, the exclusion of international and European (environmental) law, and private and penal (environmental) law. These areas of law will be dealt with in this book but they will be discussed only insofar as they are relevant to the understanding of public environmental law.

Public environmental law in the European Union and the United States is presented in separate chapters for each EU Member State, the European Union itself and the United States. In order to encourage compatible contributions and a basis for some comparative notes, a framework of leading items and themes was given to each author as a structuring device for their contributions. Thus a certain uniformity in presentation has - hopefully - been attained, whilst at the same time the framework allows for the description of the unique features and merits of each system of public environmental law. We think that the reader will see that the various contributions show differences in style, the topics addressed, the depth of description, et cetera. As far as we are concerned, these differences contribute to more lively reading.

The seven main parts of the framework are:

1. An introduction to the constitutional system (legal powers within the state, powers of the judiciary, et cetera.) as far as this is functional to the description of (public) environmental law. An outline of legal and administrative competencies on the various authority levels in general and within the field of environmental law in particular;

2. An elaboration of the legal bases for government involvement in the protection of the environment (principles or *fait accompli*) with a short focus on the relation between prevention of pollution, land-use planning and nature protection;
3. A description of the legal instruments of environmental policy (legislation, permits, notications, planning, financial and fiscal instruments, environmental agreements et cetera and some reflections on the implementation of EU legislation);
4. An outline of the administrative procedures and judicial review, especially for environmental permits;
5. A description of the enforcement under administrative law (in relation to private and penal law) against environmental offences;
6. A focus on future developments in public environmental law;
7. Summary and conclusions.

Within this framework the contributions from each EU Member State will be presented in the following chapters in alphabetical order. After that public environmental law of the European Union and the United States will be addressed. In the last chapter of this book, the editors make a comparative analysis.

As we have already pointed out, the main purpose of this book is to give an introduction to the most important aspects of public environmental law in the European Union and the United States. Although it is mainly an introduction we think that it can be of great importance for education and research, and also for practice. It could play a major role in the development of (comparative) public environmental law in the various EU Member States and in that respect in the research of the *Ius Commune* of European Countries. In addition it is interesting to identify differences and similarities in public environmental law of the United States and the European Union.

We also hope that this book will lead to closer contacts between the various authors and other interested readers, and perhaps to later meetings in which for instance also European countries which are not EU Member States will take part. This was beyond the scope of the present book, but in the near future its authors plan to discuss ways of taking the work forward.

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