Workable Environmental Law and the International Dimension:

Puzzling to Coherency


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1. Legal adaptation, and legal transplants

The sovereign states

The legal entity called “the state” is still crucial for having an effective international environmental law. States are the connection between the need for an international protection of the global commons and the real practical effects of international environmental policy. One the one hand, nations must be willing to agree on international environmental agreements, and, on the other hand, must be prepared to implement these effectively.¹

When new environmental problems (like the climate change problem) and new type of regulations (like emissions trading) find a place in international environmental agreements, those new developments “meet” the existing national legal frameworks, which have their own, historically designed structures, principles, instruments and procedures. As the world is confronted with global problems, the question arises to what extent states must or shall show

flexibility in adjusting or altering their national law systems in order to implement and enforce international environmental agreements.

In cases where national states would be ready to give some of their sovereignty to international institutions, it will most likely be the case that the execution of the rules, which will be adopted by the international organisation, has to be done by the Member States. Consequently, also in this respect states will remain a crucial connection between the international environmental standards and their real effect in practice.

An emerging “ius commune”

In order to get an insight in the effectiveness of international environmental law, it is necessary to identify which national cultural legal barriers can be found for implementing these provisions, and how these barriers can be overcome. In the process of the conclusion of international legal binding agreements, the national representatives cannot adhere fully to their own specific national environmental legislative framework. International legal binding agreements protecting the (global) environment can therefore result in the fact that parts of the national legal framework must be reconsidered or renewed. In this context, the phenomenon of “legal adaptation” gets attention, meaning that national legal systems need to be adjusted to the content of international law. National legal cultural elements can hinder the process of adaptation, which must be avoided. It is obvious that superior, international binding rules must be obeyed, but the questions are how successful this can be done within reasonable time, and what influence international environmental law shall have on the national legal systems. Legal adaptation can concern several elements of the legal system, like institutions (the ordering and content of competences), principles, regulatory instruments, procedures, enforcement provisions, and private law provisions.

In the process of adaptation, so-called legal transplants can take place. A legal transplant is a legal provision that is borrowed from another legal sphere (on a voluntary or obligatory base). Legal transplants can occur as the result of comparative research in which two or more legal systems are examined, aimed at finding attractable improvements of the legal system, for instance an improvement of the regulatory structures. Legal transplants can happen horizontally, between states, or vertically, between nations and international agreements or institutions, in a bottom-up direction or vice versa.²

Of course, transplants cannot be done without comparing the specific legal cultures of the legal systems. It has to be considered carefully whether it makes sense to transpose a legal instrument into a system with other characteristics or mechanisms.

After the process of adaptation, possibly including legal transplants, fewer differences will remain between the several national frameworks. In other words, international environmental agreements (and comparative legal research) lead in a certain extent to harmonisation of national legal environmental frameworks. A sort of an “ius commune” of environmental law seems to be the result of this process.

2. Regulatory cultures, and the emergence of emissions trading

Regulatory instruments, and regulatory cultures
In the ongoing process of internationalisation of environmental policy, a lot of attention is and will be paid towards the use of legislative instruments. Among other policy strategies, nations still use regulatory tools as a basic strategy for reaching (international) environmental policy goals. On the basis of legislation, prohibitions and sanctions can be imposed on citizens and firms. Financial duties, like environmental taxes, also need a legislative base. Furthermore, without the prohibition that without an emission right no pollution will be caused, emissions trading could not work. The choice between different regulatory instruments, and the typical design of it, seems to be closely related to the specific culture and political atmosphere of a country.

From a legal point of view, the choice of the specific policy goal (the amount of pollution allowed, or use of natural resources) is mainly a political one. However, it is not excluded that from certain legal guarantees - like environmental principles, or tort law - some substantive protection can be derived. In addition, some human rights serve as a base for enforcing governments to take environmental protection measures.

It is obvious that the international protection of the global commons by national translations of international binding rules has to be based on sufficiently qualified national legislation, which has to be executed and – if necessary – enforced satisfactorily. For having a workable environmental law, especially the feasibility, or “executability” of the instruments has to be considered carefully. Those criteria, among others, can be seen as general criteria for legislation (§3). In addition, specific criteria for environmental legislation can be trading by the European Union (and, for regulating NOx, by the Netherlands) from the international sphere, or from the USA.
distinguished. The way these criteria are formulated and applied differs between the legal spheres around the world. The question what general criteria for legislation and particular criteria for environmental legislation exist in various nations, and how they are applied (and with what results) would fit well in the agenda for legal comparative research.

In addition, similar comparative research should be done on the evolving concept of “good governance.” In the EU for example, this concept is increasingly receiving attention. Governance relates according to the European Commission to: “rules, processes and behaviour that affect the way in which powers are exercised at (the) European level, particularly as regards openness, participation, accountability, effectiveness and coherence”. In this respect, it is of particular interest to see how the concepts of European governance, and moreover the way it will be worked out in future European legislation, fit into the traditions of the Member States. Member States themselves play a key role in the EU-decision-making process as they are represented in the Council and in numerous decision-making committees. In the field of environmental policy, a lot of so-called directives have already been adopted in the EU. Those directives are only binding as to the prescribed goals, so that there is a certain amount of freedom left to the Member States in choosing how to implement those goals at best in their systems. But with respect to the enormous amount of environmental directives, and their often detailed character, the Europeanisation of environmental law has already taken place to a large extent. Following the unique legal-community system, it is not surprising that within the European Union, the concept of adaptation, and the phenomenon of legal transplants, are well-known and have already lead to similarities within the several legal spheres, also with respect to regulatory styles. The Europeanisation of administrative and private law are now increasingly debated. Nevertheless, with respect to the principle of subsidiarity the need or strive for creating an ius commune can be criticised.

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The need for coherency and integration of environmental rules

“Coherency” is being pointed out as one of the conditions for European governance. Moreover, it can be argued that environmental regulatory measures must be part of a coherent legal network, aiming at an integrated approach of polluting behaviour. Coherency and where possible - integration could be seen as particular criteria for environmental legislation.⁶

There is no blueprint for the concept of integration, nor for the method of reaching it. In this respect it is interesting to examine which tendencies already have taken place towards integration in several legal spheres, in order to find out what approach seems the best. In addition, new ideas about creating integration or coherency through legal provisions can be developed (§ 3 concerns a more elaborated view on integration).

In the Netherlands, as a result of the wish to have an integrated environmental law, there is a strong strive for getting an integrated environmental code. This is one of the main (cultural) topics in the Dutch debate on environmental legislation, which already started, with a discussion on harmonisation, in the seventies. The creation of a fully integrated environmental legislative framework (or: an Environmental Code) still seems to be a rather difficult task. Besides a central act, the Environmental Management Act, a great deal of sectional laws still exist, regulating specific compartments of the environment (like water and soil), or particular environmental problems (like dangerous substances).

Within the European Union, numerous sectional rules are enacted, mainly directives. On the European level we can see a tendency towards so-called framework directives, which are aimed to integrate the several rules concerning one particular environmental element, like waste, water, air, or chemical substances. In addition, some provisions that are relevant for the whole environmental policy area are enacted, like the environmental impact assessment, and access to environmental information. Despite the marginal extent of integration within the European environmental rules, the strive for enhanced integration of environmental legislation remains in the centre of the political and also academic debate in the Netherlands.

At the international level, there is a rather fragmentary collection of environmental agreements between varying parties. At this level, a coherent systematic approach based on common premises is absent. Meanwhile, the international dimension seems to hinder to some extent the strive for integrated national environmental legislation.

⁶ See for a plea for an integrative approach in the environmental law of the USA: Lakshman Guruswamy, The Case for Integrated Pollution Control, Law and Contemporary Problems, vol. 54: No. 4, p. 41-56.
A case study: integrating emissions trading into Dutch environmental law

Climate change and emissions trading are connected to each other. Literature and experiences in the USA indicate that the emissions trading concept can be a useful instrument for non-local environmental problems, such as some greenhouse gases. The emissions trading instrument can be seen as a “legal transplant”: it originates in the environmental law of the Clean Air Act of the USA, and was already internationally adopted in the agreements for protecting the ozone layer. The Kyoto Protocol includes international, interstate emissions trading, and two project based mechanisms derived from the theoretical emissions trading concept. Meanwhile, it is striking how fast the emissions trading concept has been accepted as one of the instruments for climate change policy within the EU. In fact, the emissions trading concept will be used for the “national” obligation of the EU and its Member States in order to reach the emissions reduction goals as agreed on in the Kyoto Protocol. The emissions trading directive for greenhouse gases is ready, and has to be implemented in “no time” by the Member States, including the designation and implementation of an National Allocation Plan for assigning the tradable rights to the industry concerned. In fact we can see that an amazingly quick transplantation of emissions trading will take place.

Emissions trading as a new concept, with new legal questions

It is fascinating to examine how the European legal system - and the unique legal system of each Member State - including the ten new Member States that will enter the European Union in May 2004 - is going to adopt the emissions trading instrument. Most of the lawyers - and they can be seen as the personification of the legal systems - are not familiar with the instrument. In fact, a great number of conferences and research projects are organised in order to investigate the meaning of the instrument, and to scan what new legal questions will arise with introducing and using the instrument. In addition it has to be considered how the new instrument can be fitted at best into the existing legal systems and which adjustments of the existing rules, or even principles, have to be made.

Emissions trading in the context of climate change can serve as a case study for determining how capable a nation - and for this case we look at the Netherlands - will be in adapting their legal system to a new policy instrument. More specifically, it must be identified

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which starting points of the legal framework of the Netherlands are most likely to be affected. As we know that the debate on “integration”, or having an integrated environmental code, is very alive in the Netherlands, this paper will elaborate on this criterion.

§3 The integration issue as a central goal in the Netherlands, next to harmonisation

General criteria
First, it should be pointed out which general criteria for legislation have been formulated in the Netherlands. Those criteria form the frame for new legislation. Already since 1991 the following criteria are ought to be applied in the legislative process:

- Subsidiarity and proportionality;
- Lawfulness and realization of principles of justice;
- Effectiveness and efficiency;
- Feasible execution and enforcement;
- Coherency;
- Simplicity, clarity and accessibility.

Those criteria have an abstract character, and have to be interpreted and to be applied in each specific legislative case. They have been further developed, and most of the criteria have been worked out in the ‘Legislative Drafting Rules’. Nevertheless, applying those criteria is not a trifle, as we have concluded in an empirical research. In addition to efforts for making these criteria even more operational, there should be a proper participative process (also in the pre-formal phase) for legislation in order to reach as much quality as possible. The (formal and informal) criteria for legislation, and the particular (formal and informal) process for designing legislation can be seen as important aspects of a legal culture.

Specific criteria for environmental legislation: integration
In addition to the general criteria for legislation, specific criteria for environmental legislation can also be formulated. The strive for integration is one of them. The motive for integration is not primarily a legal one: an integrative approach is ought to be suitable to the ecological unity of the environment. A sectional or fragmented approach would deny the ecological

9 This research has been done by some researchers of the Department of Public Law of Maastricht University, by order of the Department of Justice: Luc Verhey, Saskia Klosse, Marjan Peeters, Stefan Ubachs: Op zoek naar kwaliteit, een onderzoek naar de operationalisering van wetgevingskwaliteitseisen, SDU Den Haag, 2003.
10 It is to be noted that from environmental principles, like the precautionary principle, and the polluter pays principle, specific environmental criteria for legislation can be derived.
concept of connection, and could result in transpositions of pollution from one compartment (like water) to another (like air or soil).\textsuperscript{11} With a fragmented approach, undesirable synergetic effects between substances could occur.\textsuperscript{12}

Also from an economical point of view can be argued for an integrative approach: the environmental costs would be fully internalised.\textsuperscript{13} Additionally, the administrative costs are supposed to be lower with an integrated approach, both for government as for industry. For example, instead of one permit for every compartment (soil, water, air, etc.), just one integrated permit is needed. Guruswamy has argued that an integrated approach should be based on the assimilative capacity of the environment, which seems to be an immissions-based approach: "A more efficient and cost-effective way to control pollution would be to distribute the wastes among water, air, and land in a manner that optimizes the total environment and any special or particular assimilative capacity each medium might possess.".\textsuperscript{14} However, a full application of this idea in practice seems to be too complicated.

The strive for integration can include a desire for more freedom of decision for industry, in order to let them examine - with a complete assessment of their activities - what measures fit at best and lead to the most efficient way of preventing environmental damage. For a real integrative approach, this integrative assessment should also concern the efficient use of raw materials, or even the environmental effects of collecting the raw materials.\textsuperscript{15} A very broad integrative assessment would include a discussion of the environmental effects of the product itself.\textsuperscript{16}

It can be assumed that there are pragmatic limits to the ideal of integration.\textsuperscript{17} It could be overly complex - or maybe even inadequate - to integrate every environmental aspect into one governmental decision. In addition, applying integrative assessments can probably lead to undesirable lengthy procedures for administrative decisions. It should be considered carefully.

\textsuperscript{11} Guruswamy gives several examples of unwanted effects of an incoherent approach: L. Guruswamy, o.c., p. 42. The Dutch HDP-commission equally encourages an integrated approach of environmental problems. For instance, it points out the case of sustainable use of land and water at the need to leave isolated discussions of problems within specific institutional contexts, with which coherency cannot be reached. HDP-Commissie, Nederlandse IGBP/WCRP Commissie, Notitie over toekomstig Global Change onderzoek in Nederland, 2001, p. 14, and p. 19: the necessary integrated assessment needs to be developed further.
\textsuperscript{12} L. Guruswamy, o.c. p. 51. A certain degree of complication results from the fact that there can be uncertainty about these synergetic affects. Therefore, the legal meaning of the precautionary principle in this respect is questionable.
\textsuperscript{14} L. Guruswamy, o.c., p. 45.
\textsuperscript{15} L. Guruswamy, o.c., p. 47.
\textsuperscript{16} L Guruswamy, o.c., p. 50. Guruswamy indicates several ranges of integration, from narrow to broad.
\textsuperscript{17} Th.G. Drupsteen, Twintig jaar milieuwetgeving: tijd voor bezinning, in: Tijdschrift voor Milieu en Recht, Themanummer: De toekomst van de milieuwetgeving, 1990, p.199.
at what governmental level the administrative authorities will be capable of executing integrated administrative powers (will the strive for integration lead to a centralized approach or does decentralization fit better into the concept of integration?).

The possibilities (and limits) of integration are still not fully clear, and more research has to be done. In addition, where a full integration would not be suitable, the possibility of co-ordination and harmonisation can be examined. The coherency in environmental law thus might be increased by harmonisation, co-ordination and integration.\(^{18}\) \(^{19}\)

**Ultimate goal: one Environmental Code**

The strive for integration results in the Netherlands in discussions about the structure of the environmental legislation, whereby one integrated Environmental Code is seen as the ultimate goal. However, a recent survey towards the strive for integration in six EU Member States has shown how different the development in the several national systems has been towards integrated environmental legislation, and towards one Environmental Code. In fact, every country that was examined has had its own, specific development in environmental legislation, with sometimes very specific culture-related aspects. In several countries, hardly a discussion on a further integration of the national environmental legislation takes place (Denmark, United Kingdom). In another country, Sweden, a development towards an Environmental Code has taken place, but when the extent of real substantive integration is examined, it must be concluded that no impressive result can be found. In Germany, an impressive proposal for an impressive Environmental Code (Umweltgesetzbuch) exists, but due to political reasons and reasons of public law, this Code has not been adopted.

The research shows that the strive towards integration should not only be implemented by a strive towards having just one Environmental Act, but that also integrating administrative functions - as has been done in the United Kingdom - could be considered. In addition to the strive for integration, the necessity of having a suitable instrument mix must also be looked after. But the idea of having an environmental policy toolbox does not always fit well in the strive for integration, in the meaning of having one governmental decision on the whole regulating behaviour of an activity.


A scheme

The German “Umweltgesetzbuch” seems to be an attractive example. It consists of one part with general provisions for environmental law, followed by a part with specific, or sectoral provisions.

The following scheme, originating from legislative developments in Belgium, could also be considered:

<table>
<thead>
<tr>
<th>principles, duty of care</th>
<th>environmental quality standards</th>
<th>environmental planning</th>
<th>environmental impact assessment</th>
<th>procedures</th>
<th>enforcement</th>
</tr>
</thead>
<tbody>
<tr>
<td>air</td>
<td>soil</td>
<td>water</td>
<td>nature</td>
<td>waste</td>
<td>etc.</td>
</tr>
</tbody>
</table>

In the horizontal layers, the common provisions relevant for the whole environmental policy field could be regulated, like environmental quality standards, environmental planning, and environmental impact assessment. In the vertical columns the necessary sector-specific regulations could be placed, like soil-sanitation obligations.

Although such a schematic approach seems to be attractive as it is clear and structured, the filling-in of the scheme could be very difficult. Some main questions are:

- how far will the competences given by the act reach: will it also include spatial planning decisions, waterflow- or waterdrought measures, or transport decisions?

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20 This scheme is based on an idea from Kurt Deketelaere, Catholic University of Leuven, Belgium. In literature, Gustaf Biezenveld has presented another model for an Environmental Code. Another author has considered to enact a law for integrating aspects of the surrounding (like spatial planning law, water management law, environmental law, and nature conservation law), but he also thinks that with co-ordination coherency can be reached: F.C.M.A. Michiels, *De toekomst van de Omgevingswet*, in: *De grootste gemene deler*, M. Lurks, W. Den Ouden, J.E.M. Polak en A.E. Schilder (ed.), Kluwer 2002.
- to what extent will a variety of regulatory instruments be used, or should one integrated permit, also for example for greenhouse gas emissions, be preferred?
- can or will inconsistencies between the rules in the vertical columns be prevented?

In addition to the awareness that it is rather difficult to find a clear and flexible format for one Environmental Code, another conclusion of the research is that the debate on environmental legislation is highly influenced by the political debate on deregulation. Not so much the dogmatic idea that there must be integration, but more the pragmatic sense that we must have fewer rules, seems a strong force for having integrated environmental law (like a concentration of rules in one central Act).

**Existing instruments for integration**

Nevertheless, important steps have already been taken towards integration, also on the European level. The use of the environmental impact assessment - a legal transplant from the USA - is already an important procedural tool. Another example is the Integrated Permit from the IPPC Directive that came into force in 1996 (borrowing this idea from the United Kingdom and Sweden). This Directive - which already has to be implemented by the Member States - “introduces” an integrated permit with wide environmental protection. Only the more significant installations within the European Union fall under this permit duty.

§ 4 Implementing emissions trading in the integrated environmental legislation of the Netherlands

**An old discussion and new policy announcements**

In the Netherlands, the Environmental Management Act (EMA) came into force in 1993. It includes an integrated permit, with is supposed to give a very broad protection to the environment. Before the EMA came into force, we already had a general environmental act (“Wet algemene bepalingen milieuhygiëne”) with harmonised procedures for permit-procedures. We have a discussion about harmonisation and integration already for more than 25 years, but this does not mean that these strives were followed consequently: as previously stated there still are several sectional acts in force.

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21 Guruswamy stresses the need for e.i.a’s for regulatory decisions; the Environmental Protection Agency of the USA has built some experience with that: o.c. p. 52 and 54. The European Union has adopted a directive that prescribes e.i.a. for strategic administrative decisions.
The strive for integration is still an important policy goal, as can be read in a policy document from 3 April 2001 on the future of the environmental legislation in the Netherlands. The lack of connection in the existing environmental legislation is stressed, which is supposed to lead to less effective and efficient environmental legislation. It is announced that the Environmental Management Act should create an integrated system, serving a procedural and substantive framework for the protection of the environment. The term “environment” should be interpreted broad. In addition, the connection with other relevant policy areas also affecting the environment should be strengthened. In addition to this reconfirmation of the strive towards integration (in particular, an integrated environmental code), other intentions are also announced, like: taking international environmental law as a starting point. The challenging question arises in what way a connection can be made between on the one hand the (national) strive towards integration, and on the other hand, adapting to or adopting international environmental law.

The ambition of integrated legislation, and a one permit-system

Recently, the new government has announced the radical reduction of the spatial planning, housing, and environmental rules. Hundred from four hundred rules will be cancelled, and again hundred rules will be united. As a next step, the spatial planning law, the Environmental Management Act and the building law will be integrated in a far-reaching way. In addition, just one integrated permit will be introduced, in which not only environmental issues, but also spatial planning issues and building issues will be included. The government expects that with this new legal instrument the costs for citizens and firms will be reduced by “hundreds of millions of euros per year”. Already at the end of 2003, a first programme will be presented to parliament for adjusting the legislation to this new strive for integration.

A basic question is whether the ambition of integration of this new government can be seen as realistic. Are the administrative authorities equipped to deliver an integrated permit; are they ready to approach activities with effects on space and environment in an integrated way? And, isn’t there a need to apply a mix of instruments instead of the - in fact - classical way of regulation through permits?

23 Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer, Persbericht ministerraad, 10 oktober 2003 (Rijksvoorlichtingdienst).
24 “Eén milieu en natuurwet”, workshop VNO-NCW en Stichting Natuur en Milieu, Utrecht 9 april 2003. The idea of concentrated decision-making has been presented at the workshop by Ch.W. Backes en G.A.Biezeveld.
Meanwhile, new procedural ways for coherent administrative decision-making are presented, in particular the possibility of “concentrated decision-making” through which several decision-making powers assigned to several administrative authorities will be co-ordinated “inside” the government, resulting in one (integrated) decision. Both industry and environmental organisations seem to be in favour of this option, which has to be examined more in detail. The idea of concentrated decision-making seems inevitable for reaching the new policy goal of having just one environmental permit.

*The sectional approach by emissions trading*

Meanwhile, the European Union adopted a directive for greenhouse gas emissions trading. The Member States are obliged to implement this instrument in their national legislation by 31 December 2003 (!). In the first phase, only one (indeed, one !) substance will be regulated by this directive: CO$_2$. The instrument of emissions trading is a radical change to the regulatory styles that have been used thus far. A lot of new questions arise and have to be answered as good as possible before the emissions trading scheme shall start. One of the adjustments will be the modification of the IPPC-directive. At the one hand, it will be regulated that the IPPC-permit conditions may not concern the emissions of CO$_2$ (unless significant environmental effects are expected, which can sooner be the case with some other greenhouse gases which are ought to fall under the emissions trading scheme in future). On the other hand, a fully integrated procedure must be followed in issuing the IPPC-permit and the so-called new greenhouse gas permit (the greenhouse gas permit is not the tradable allowance, but a legal base for the installations that constitutes the right to (only) emit with having enough tradable allowances). Instead of integration of the climate change problem into an administrative decision concerning all the environmental aspects of an activity, there has been provided for co-ordination between the existing instrument (the integrated permit) and emissions trading.

Remarkably, the Dutch government is meanwhile preparing another emissions trading scheme, for a different substance: NOx. Despite the strive for integration or even deregulation, this emissions trading scheme will be based on other starting points than the CO2 emissions trading scheme.

The draft legislative proposal introducing the two emissions trading schemes can be compared with an elephant walking through a china cabinet: from a viewpoint of (procedural and substantive) integration it would have been logical to include the greenhouse gas
emissions in the existing, integrated permit. The choice for emissions trading for greenhouse gases has been made on the European level (in which the Netherlands, as they are presented in the Council of the European Union, also have a vote. This vote was used in favour of the measure). For the Netherlands, the case of emissions trading shows that the strive for integration originates from the need (or wish) to implement an (radical new) instrument for which high expectations exist as far as concerns effectiveness and efficiency. For the NOx case, it is stated by the government that with the existing integrated permit not enough environmental effectiveness could be reached. The emissions trading instrument is expected to score better on both effectiveness and efficiency.

§ 5 Conclusion: puzzling to coherency with some help from legal adaptation and legal transplants

Which approach is effective and efficient?
As a legal transplant, emissions trading will be used in the European legal order, and, as a consequence, also in the Netherlands. Especially for the Netherlands, with an approach continuously followed by subsequent legislators aimed at harmonisation and integration (combined with goals of deregulation), this means a radical new dimension. The sectional approach by “emissions trading” does not fit into the foreseen development of environmental legislation in the Netherlands. Integration of environmental legislation is seen as a way to reach adequate and efficient rules. Nevertheless, the idea that emissions trading leads to an effective and efficient approach wins from the idea that an integrative approach would be preferable from an ecological and economic point of view.

Does the doctor really know how he cures the patient?
The fact that the instrument of emissions trading is rather unknown and that a lot of legal questions still have to be answered (which will probably lead to rather high transaction costs) has not upheld the decision-making process on the European level in introducing the instrument. Politicians seem to expect that the new instrument can be adopted in a very short

25 Jonathan B. Wiener states that the UN Framework Convention on Climate Change and the Kyoto Protocol have a comprehensive approach towards climate change, addressing all major greenhouse gases and their sources and sinks. Wiener, o.c. p. 1311. This comprehensive approach originated from the USA. And: “As of the year 2000, the United States government continues to be a staunch advocate of the comprehensive approach.” (p. 1312-1313). Unfortunately, and contradictory, CO$_2$ does not yet qualify as a pollutant under the Federal Clean Air Act of the USA. Wiener states that there was a learning experience from national environmental law experience, which consisted “more of piecemeal failures than of holistic successes. In that sense, it borrowed from learning about national law rather than from a specific national law blueprint or enacted statute.” (p. 1317).
time into the legal system of the EU and its Member States. The timetable is fascinatingly short, and does not allow enough room for identifying the legal barriers for implementing and executing the system. The strive towards a quick approach to the climate change problem has been given a greater weight by politics than the knowledge that some legal problems or conflicts will occur. With emissions trading, a legal instrument will be introduced without probably providing enough time for the legal systems to adapt to it.

What sort of coherency is preferable?
For the national law system of the Netherlands, we must conclude that the strive for integration cannot be strongly upheld for the greenhouse gases. We can see then that - although at this moment - the market-based attractiveness of the instrument - which has been accepted internationally - wins from the more holistic concept of integration that has been striven for on the national level. However, with the introduction of emissions trading another dimension will occur: emissions trading will function as a new common regulatory instrument of the EU Member States. For this specific legal transplant, a sort of ius commune will arise within the EU. So, finally, we have some coherency at the European level, although it follows another direction than was included dogmatically in the national legal system of the Netherlands.

Coherency and multi-level governance: a puzzling challenge
On the international level, it will still be a challenge to strive for international environmental standards and procedures that are as coherent as possible, although it seems clear that when a mix of instruments is preferred, the ambition of integration must be lowered. Whether an intensive comparative debate on the methods for an integrative regulatory approach to the environment at any time will lead to an evolving ius commune, or in other words, to a globalisation of environmental law, will strongly depend on discussions based on subsidiarity.

Maybe we should try to learn bottom-up: empirical research to both sectional and integrated national environmental law-systems can show us how workable they are, and what the costs of regulation are.\(^{26}\) Coherency must not be reached at any price, but must make really sense, and integration must be balanced against the wish to use for every type of problem the most suitable regulatory instrument.

\(^{26}\) Jonathan B. Wiener, o.c. p. 1366.