Community Law Requirements for the Transposition, inkadering (Embedment), Application and Enforcement of EC Environmental Directives and Regulations by Provinces, Municipalities and waterschappen (Water Management Boards).

INTRODUCTION

This article which is based on my (Dutch) Ph.D. thesis De implementatie van het EG-milieurecht door Nederlandse decentrale overheden (Deventer, 1998) focuses on the role the decentralized authorities have in implementation of EC environmental law in the Netherlands. Decentralized authorities must observe EC law. After all, the principle of loyalty to the Community is not only addressed to the central government but to all bodies invested with public power. Consequently, the obligation of Article 10 (ex Article 5) EC Treaty applies also to decentralized authorities.

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In the Netherlands decentralized authorities play an important part in the implementation and application of environmental law. The importance of European environmental law has grown steadily in recent decades. In many cases, in the Netherlands, decentralized authorities are the competent authorities for implementing EC directives and regulations in the field of the protection of the environment. The central question to be discussed in this article is therefore which requirements Community law imposes on the implementation of Community environmental legislation by national decentralized authorities.

In this article the term ‘implementation’ is refined by distinguishing between the four following aspects: transposition, embedment, application and enforcement.

‘Transposition’, in this study, refers to the incorporation of the Community norm in national legislation. The term embedment is used to indicate the situation that the Member States create the legislative framework to ensure the operationalization of EC environmental directives and regulations. ‘Application’, quite obviously, is used where the competent authorities apply the Community norm in a concrete case, e.g. where they grant a licence in accordance with the applicable Community law requirements. The term ‘enforcement’, finally, covers action taken against the non-compliance with Community norms. Enforcement consists of two stages. In the first stage, the competent authorities supervise whether Community norms in the field of the environment have been complied with. This stage, in turn, can be subdivided into two parts: surveillance, as long as there is no concrete suspicion of a transgression, and detection where such a suspicion does exist. In the second stage, the various authorities have the power to impose sanctions in the case of breach of the Community environmental norms.

In this contribution the requirements which Community law imposes on the implementation of EC environmental law by decentralized authorities is sketched in broad outlines. This article focuses on secondary Community environmental law, in particular directives and regulations, in the field of environmental protection. Primary Community law (e.g. Treaty provisions on the free movement of goods) are not discussed in this paper.

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2 This approach to the implementation process is derived from Mortelmans and Van Rijn. See Mortelmans and Van Rijn, Europese regelgeving en Nederlandse implementatie, NEDERLANDS TIJDSSCHRIFT VOOR BESTUURSRECHT 1992, pp. 78 and 79. See, too, D. Curtin and K.J.M. Mortelmans, op. cit., pp. 427-429.