Foreword to Volume IV

Compliance and enforcement are probably the issues on which most attention has been paid in environmental policy, both in academic works and at the actual policy level in recent years.

The reason to attach increasing attention to compliance and enforcement may be obvious: it makes little sense to create a variety of fancy regulatory and other instruments if there is no guarantee that those legal and policy instruments will ever be complied with. The literature has therefore increasingly sought to determine which instruments are best able to promote operational compliance.

There have been important shifts both in the academic literature, but also at the policy level. Originally, attention was mainly focused on deterrence. Based on the assumption that polluters, or others who disregarded environmental requirements, were rational, calculating offenders who could benefit from violation, the basic idea was that by either raising the probability of detection or the magnitude of the sanction appropriate deterrence could be achieved. Increasingly it was realized that this approach, although well designed on paper, may not work out in practice. The assumption that perpetrators were always informed of the probability of detection and the applicable sanction did not always hold; raising the probability of the detection was also difficult, given the limited budgets of inspection authorities. Equally, there were limits in increasing the magnitude of the sanction. For these reasons, other approaches sometimes referred to as cooperative or compliance strategies were developed, taking a more balanced approach towards environmental enforcement and addressing in a more differentiated way the precise causes of non-compliance.

This shift could also be noticed in the type of instruments used to promote compliance. Whereas at the origin of environmental law, there was a strong focus on enforcement through the criminal law, increasingly both academics and policymakers realized the limits of criminal enforcement. Accordingly, alternatives such as private and administrative enforcement were developed in addition to other, non-coercive approaches such as environmental management systems.

All of those developments and many others are reflected in an excellent manner in this book. The volume editors were able to bring together top authors in this field addressing the state of the art of the research with respect to environmental compliance and enforcement. In their introduction they equally make clear that a number of important conditions need to be satisfied by the regulator to guarantee effective compliance. It does not suffice merely to introduce a number of enforcement instruments; sufficient attention also needs to be given to the quality of regulation. Enforceability of the regulation is, so Paddock, Markell and Glicksman rightly stress, a basic condition for effective enforcement.

In addition to a multi-faceted strategy, whereby the policymaker needs to search for an optimal mix of compliance promotion approaches, this book underscores that compliance must be verified. That verification may require a multidisciplinary approach.
involving quantitative methods enabling the policymaker to document the extent to which goals have been reached.

This book provides an excellent overview of all the fascinating new developments in the domain of environmental compliance and enforcement and is therefore a must-read for anyone interested in this domain.

Michael Faure
General Editor

Encyclopedia of Environmental Law