

ENVIRONMENTAL POLICY MIGRATION THE CONSEQUENCES OF REGULATORY GLOBALISATION

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We all know that today's business environment operates on a global level - this is nothing new! Even more striking is the fact that basic internet research using the word 'globalisation' will give you a bulk of hits. This shows at least one thing: the discussion on globalisation is a popular one and is influencing both the political and economic debate. On the other hand, this debate often directly involves companies that aim to benefit from the low-cost production of goods in certain countries.

However, globalisation has also another side which is being put more and more in the spotlight - although it is not a new phenomenon. This other aspect touches upon the consequences legislation can have outside the geographical borders for which it is originally intended. This is often referred to as policy migration. European environmental legislation is a good example of this.

Two spheres of influence have to be identified to explain the full extent of policy migration. The first one relates to the impact of European legislation on multinational companies such as those of Japanese or American parentage. The Directive on the Restriction of Hazardous Substances (RoHS) is a clear example showing this. The basic principle of this Directive is to restrict the use of six hazardous substances in the manufacturing of electrical and electronic equipment which is sold in the European Union. It is important to understand that this Directive focuses on the products that are placed on the European market and NOT on European companies. Any company, regardless of its nationality, that wants to continue to sell its electrical and electronic products on the European market will have to comply with the European legislation. As a result the production process of multinational companies, will have to be adapted to be in compliance with the European RoHS requirements.

Every company will have to decide for itself how to tackle the different regulatory requirements in Europe, Asia, the US and wherever the company is active. Many companies, however, have decided for their global compliance strategy to base their production process on the most stringent legislation which, for environmental issues, is often EU legislation.

The high level of corporate and country representation in Brussels clearly shows the impact the EU decision makers have on the global business environment. Both companies and countries actively participate in Brussels lobby activities and try to safeguard their interests. The recently adopted and highly controversial Chemicals Regulation (REACH)* is a casebook example for this. Besides heavy and often aggressive lobbying from the corporate and NGO side, countries have voiced loudly and openly their concerns on the direction the chemicals legislation would take often using the argument that the EU would impose Technical Barriers to Trade** by hampering the trade import of products originating from outside the EU. Without going in the detail of REACH, everybody involved will acknowledge that it has an impact on global level including on the manufacturing processes outside the EU.

The second sphere of regulatory globalisation occurs when countries base their legisla-

tion on the policy of another country or group of countries. This takes place outside the supranational arena of the United Nations or other international bodies because policy migration has, in particular, a phased approach where individual countries tend to look to what other countries are successfully doing and by which they get inspired to do the same.

Policy migration should not be seen as a way to harmonise legislation across the world. On the contrary, it can add to the complexity of companies' global production and compliance schemes. China prepared legislation based on the European RoHS Directive, but with several important China-specific requirements included. Although the spirit of the European legislation has been taken over, companies will still have to adapt their production process to take into account the different requirements in the EU and China.

To conclude, policy migration is not something new. Governments have always looked over the border for inspiration. Due to the strict European environmental standards it has become more visible to Europeans when other countries base their legislation on these European policies. Many countries outside the EU are looking into implementing legislation based on the WEEE (Waste of Electrical and Electronic Products) and RoHS Directives. REACH will also be a source of inspiration beyond the EU, resulting already in some ongoing discussions in the US. The essential consequence of policy migration is that as a mid-to long-term result, we can expect an overall increase in stricter environmental legislation.

* The REACH Regulation was formally adopted on 18 December 2006 by European Parliament on 13 December 2006. REACH will enter into force on 1 June 2007. The Regulation gives greater responsibility to industry to manage the risks from chemicals and to provide safety information on the substances.

** The Agreement on Technical Barriers to Trade tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles.