

Prospects for sustainable companies and effective enforcement of environmental laws: rethinking legal concepts, powers and strategies

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The prospect for sustainable companies and effective enforcement of environmental laws not only depends on the content of a narrowly defined area of “environmental law”, but also on concepts and principles of constitutional, administrative, procedural, taxation and international law, as well as on basic notions and structures of law. Indeed, a meaningful conception of environmental law should embrace also these legal issues.

Corporations are organised in increasingly complex structures (with clusters of more or less distinct legal entities, firms, subunits, suppliers, and subcontractors), and they are increasingly transboundary in character. In addition, harm to human health and the environment often takes long time to manifest and/or results from multiple activities, thus making it difficult to allocate liability for the harm. These features complicate effective control of corporate activities, and they challenge basic notions, structures and principles of law, relating to, e.g. legal personality, private property and national jurisdiction, of relevance for the prospect of sustainable companies.

Moreover, the corporate sector has been increasingly mandated to control itself in environmental matters by transfers of power from the public administration (e.g. by means of eco-auditing and reporting). The private sector has also been given a more prominent role in the implementation of international environmental policies (e.g. through public-private partnerships and CDM projects). While in parallel, some regions have endorsed policies for public participation in environmental decision-making (cf. the Aarhus Convention), most corporate activities nevertheless remain outside effective control or influence from members of the public. Increasing the powers of civil society and members of the public, to have environmental laws enforced on companies and to make companies liable for the harm, would shift the power constellation between the public administration, the corporate sector and civil society – and it could contribute to more sustainable corporate activities.