

Course Syllabus

Global Energy Law & Policy: Europe in Transition

The Trilemma of Liberalization, Decarbonization and Energy Security

(2 credits)

Course instructor: Dr. Anna Marhold

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Class meeting dates and times: June 17 – 20 and 24 – 27, 9am – 12 pm

Method of grading: In class participation and presentation/group assignment (20%) + final paper (80%)

Prerequisite courses: None; Some prior knowledge of public international law/EU law recommended

Course description:

Europe is facing a significant challenge to realize the transition to a low carbon economy while at the same time guaranteeing its energy security. It walks on a tight rope between ensuring a secure, competitive and sustainable energy supply for its citizens, while meeting its own climate commitments as well as those under the Paris Agreement. As set out in its 2020 Strategy, the EU has set ambitious 20/20/20 targets: at least a 20 per cent cut in emissions from 1990 levels, at minimum a 20 per cent share of renewables as a binding target in the overall final energy consumption, and, an increase of 20 per cent in energy efficiency, by 2020. By 2030, the EU aims to almost double these numbers.

The transition to a low carbon economy in the EU is accompanied by many obstacles (regulatory, geo-political and technical). Our course aims to give a comprehensive insight into global and EU (renewable) energy law and policy and the challenges ahead. It will start out by situating the EU in the larger context of international law and policy, understanding its geo-political situation pertaining to energy. Subsequently, the course will delve into the intricacies of EU energy law and policy and the European Internal Energy Market, including the various phases of liberalization and integration. We will study the legal and economic rationales of EU energy and environmental policy and how these play out on Member State and EU level.

Apart from understanding the European Internal Energy Market for gas and electricity, the course will particularly study the mechanisms for introducing clean and renewable energy onto the European market. We intend study the legal nature of various renewable energy support schemes across Europe and pay attention to aspects of state aid and subsidies regulation. How do Europe's energy and environmental policies, such as the Emission Trading Scheme, interact with international agreements? The course will

additionally draw comparisons between EU and US energy policy: where do the two systems converge and where do they differ? What can they learn from each other?

At the same time, the course will always link the developments in the EU to wider global energy law and policy issues. In each class, the external dimension, global reach and interaction with international agreements will be studied. We will study how EU energy policies affect its immediate neighborhood (e.g. through the Energy Community Treaty and the Energy Charter Treaty) as well as further away (e.g. energy relations with the Gulf and the US).

Course reading:

The course will use two textbooks, K Talus, *Introduction to EU Energy Law* (Oxford University Press, 2016, paperback, around \$ 40,-) and TM Rusche, *EU Renewable Electricity Law and Policy* (Cambridge University Press 2018, paperback, around \$ 30,-), both available through Barrister's Book Store.

Additionally, materials and references will be uploaded on the **TWEN** site of the course (materials highlighted in yellow will be offered via TWEN or in hardcopy in class). Furthermore, the course will use many openly accessible materials, the links to which are taken up in this syllabus.

A consolidated version of the Treaty on the European Union and the Treaty on the Functioning of the European Union is available through the following [link](#).

Students are expected to have read the material before the class session for which it is assigned, as listed in the course calendar. Please note that there are required readings before the **first class (posted below)**.

Method of grading:

The grade will be calculated on the basis of in class participation and an in-class presentation (20%), as well as a take home final paper of max 5.000 words, including footnotes (80%) (due to be uploaded in TWEN by July 14th).

Thematic overview of the classes:

1. The policy development process in the region (25%) (2 classes)
2. The current energy law and policy statutory and regulatory framework with a focus on clean energy policies (35%) (3 classes)
3. Energy policies and initiatives addressing global and regional climate commitments (25%) (2 classes)
4. Emerging issues in EU energy law and policy (15%) (1 class)

Class 1 (June 17) – Introduction to Global Energy Law & Policy and EU Law: Sources and Foundations

Class 2 (June 18) – EU Energy Law and Policy – The Internal Dimension: The Fundamentals

Class 3 (June 19) – The External Dimension of EU Energy Policy

Class 4 (June 20) – The European Gas Market & Geopolitics

Class 5 (June 24) – The European Electricity Market & EURATOM

Class 6 (June 25) – EU Clean and Renewable Energy Law and Policy I

Class 7 (June 26) – EU Clean and Renewable Energy Law and Policy II

Class 8 (June 27) – The EU and International Climate Commitments: The Emissions Trading Scheme (ETS) and the Paris Agreement

A note about the instructor:

Anna Marhold is Assistant Professor at the Grotius Centre for International Legal Studies at Leiden Law School in the Netherlands, where she researches and teaches on topics of international and European law. Her main research interests lie at the intersection of international economic law and energy/environmental regulation. Anna's work has been published in various academic outlets and she regularly presents at international conferences. Her monograph on *Energy in International Trade Law and Changing Markets* is forthcoming with Cambridge University Press. She is also a fellow at the Cambridge University-based C-EENRG Platform on Global Energy Governance and regularly provides policy advice for international and European think tanks.

Anna obtained her PhD in Law at the European University Institute (EUI) in Florence. During her PhD, she was an EU-US Fulbright Schuman Grantee and Visiting Scholar at NYU School of Law. She was also a Marie Curie Early Research Fellow in the Framework of DISSETTLE, Dispute Settlement in Trade: Training in Law and Economics at the Graduate Institute in Geneva. Anna holds parallel degrees in Law (LLB, LLM) and Russian (BA, MA) from the University of Amsterdam.

Detailed Overview per Class: Readings and Assignments

Class 1 (June 17) – Introduction to Global Energy Law & Policy and EU Law: Sources and Foundations

This introductory class will cover two dimensions:

- 1) the sources and foundations of international energy law, including its institutions, actors and legal instruments, and,
- 2) an introduction to the EU and its legal order, including its institutions, legislation and competences

Readings:

S Bruce, *International Energy Law*, Max Planck Encyclopedia of Public International Law (MPEPIL), Oxford Public International Law (online source – only if available at Vermont Law School)

S de Jong and J Wouters, 'Institutional actors in International Energy Law' in: K Talus (ed), *Research Handbook on International Energy Law* (Edward Elgar, 2015), 18 – 43

European Parliament: Fact Sheets on the European Union:

- [The Internal Market, General Principles](#)
- [Free Movement of Goods](#)
- [Free Movement of Capital](#)
- [Freedom of Establishment and Freedom to Provide Services](#)

EUR Lex:

- [Division of Competences in the European Union](#)
- [The Direct Effect of EU Law](#)
- [Precedence of European Law](#)
- [Court of Justice of the European Union \(CJEU\)](#)

Case law:

Case 26-62, Judgement of the Court of 5 February 1963, [Van Gend & Loos v. Netherlands](#) (direct effect)

Case 6-64, Judgement of the Court of 15 July 1964, [Costa v. ENEL](#)

EU legal supremacy)

Questions for consideration:

1. What are the relevant international actors and institutions in global energy law & policy?
2. What are the sources of international energy law, what type of legal instruments exist between what actors? What are the main challenges we face in global energy policy?
3. How is the European Union structured, what are its main competences and what is its relationship towards the Member States?
4. What are the main features of EU law and lawmaking?

Class 2 (June 18) – EU Energy Law and Policy – The Internal Dimension: The Fundamentals

This class will cover the fundamentals of EU Energy law and policy. It will focus on the internal aspects of EU energy law and policy, such as the economic rationale and the evolution of the EU Internal Energy Market and its relevant institutions. It will also discuss the delineation of competences in the field of energy between the Union and its Member States.

Readings:

European Parliament: Fact Sheets on the European Union:

- [Internal Energy Market](#)
- [European Commission: Clean Energy for all Europeans](#)

K Talus, *An Introduction to EU Energy Law*:

- Introduction
- Chapter 1, 'The Vertical Division of Competences'
- Chapter 2, 'Sector Specific Regulation of the Energy Market'
- Chapter 4, 'Treaty Freedoms and EU Energy Markets'

Website (look through):

[Agency for the Cooperation of Energy Regulators](#)

Case Law:

Case C-204/12, Judgement by the Court and Opinion of 11 September 2014, [Essent Belgium NV v. Vlaamse Reguleringsinstantie](#)
(vertical division of competences)

Questions for Consideration:

1. Describe the key pillars of the European Internal Energy Market
2. Describe delimitation of competences in the energy field between the Members States and the EU

Class 3 (June 19) – The External Dimension of EU Energy Policy

In this class, we will discuss the external aspects of EU energy law and policy, setting out the Union's strategies and legal ties with third countries and its participation in international treaties relevant for energy.

Readings:

K Talus, *An Introduction to EU Energy Law*:

- Chapter 7, 'External Elements of EU Energy Law'

B Van Vooren en R Wessel, *EU External Relations Law: Texts, Cases and Materials*

- Chapter 13, 'The External Dimension of the Internal Energy Market'

European Union, [Energy Union Package](#) (2015)

A Marhold, [The Nexus between the WTO and the Energy Charter Treaty in Sustainable Global Energy Governance](#) (ICTSD, Geneva, 2016)

A Marhold, Externalizing Europe's Energy Policy in EU Free Trade Agreements: A Cognitive Dissonance between Promoting Sustainable Development and Ensuring Security of Supply? (2019) *Europe and the World: A Law Review*

Websites (look through):

[EEAS – External Action and Energy Policy](#)
[Energy Community](#)
[Energy Charter Treaty](#)
[World Trade Organization](#)

Case Law:

Case C-264/09, Judgement of the Court (First Chamber) and Opinion of 15 September 2011, [European Commission v. Slovak Republic](#) (bilateral agreements prior to EU accession)
[Electrabel S.A. v the Republic of Hungary](#) (ICSID Case No ARB/07/19) Decision on Jurisdiction, Applicable Law and Liability

Questions for Consideration:

1. Describe delimitation of competences in the energy field between the Members States and the EU in external relations and in the context of international agreements (such as the Energy Charter Treaty)
2. How is the EU involved in energy diplomacy in its immediate neighborhood? Is there a coherent EU-wide strategy?

Class 4 (June 20) – The European Gas Market & Geopolitics

In this class, we will zoom in on the European gas market and its internal, regional and global dimensions. We will study the structure of the markets and its legislation, including competition and unbundling, transit and third-party access. The class additionally covers the geopolitical aspects of gas pipelines and the relevance of multilateral frameworks such as the Energy Charter Treaty and the World Trade Organization. Last but not least, we draw comparisons between regulation in the EU and the US.

Readings:

K Talus, *An Introduction to EU Energy Law*:

- Chapter 3, 'Applying EU Competition Law to the Energy Markets'

L Hancher and A Marhold, '[A Common EU Framework Regulating Import Pipelines for Gas? Exploring the Commission's Proposal to Amend the 2009 Gas Directive](#)' (2019) *Journal of Energy and Natural Resources Law* (open access)

K Talus, 'Long-term natural gas contracts and antitrust law in the European Union and United States' (2011) 4 *Journal of World Energy Law and Business* 260-315

Listen:

Florence School of Regulation, Energy Law and Policy Podcast Series:

Alan Riley, '[Pipelines between Economics, Law and Diplomacy](#)' (2016)

Websites to consider:

[ENTSOG](#)

[EU, DG Energy, Projects of Common Interest](#)

Legislation:

[2009 Gas Directive 2009/73/EC](#)

[Proposal Amending the 2009 Gas Directive](#)

[Security of Supply Directive](#)

[Oil Stocks Directive](#)

Case Law:

Case C-265/08, Judgement of the Court (Grand Chamber) and opinion of 20 April 2010, [Federutility and Others](#)

(State intervention in gas pricing)

Case C- 105/12, Judgement of the Court (Grand Chamber) and opinion of 22 October 2013, [Staat der Nederlanden v. Essent](#), Request for a preliminary ruling

World Trade Organization, WT/DS476/8, Russian Federation v. European Union, [European Union and Its Member States – Certain Measures Relating to the Energy Sector \(Report of the Panel\)](#), 10 August 2018

(international trade rules versus unbundling)

European Commission, Gas markets: '[Commission reinforces market conditions in revised exemption decision on OPAL pipeline](#)', 28 October 2016

Questions for consideration:

1. What are the main internal and external obstacles in fully liberalizing the European gas sector? What are the challenges with respect to third, non-EU countries? It is possible to circumvent geopolitical considerations in regulating gas markets internationally?
2. What different international legal regimes exist for regulating gas transit? Discuss the differences between the Energy Charter Treaty and WTO regimes.
3. Compare EU and US gas markets: What role do long-term gas contracts play?

Class 5 (June 24) The European Electricity Market & Euratom

In this class, we will zoom in on the key legal and policy issues concerning the EU electricity market and the European Atomic Energy Community (Euratom). We will consider its internal as well as external dimensions and challenges, including State Aid, Capacity Remuneration Mechanisms and Projects of Common Interest (PCIs).

Readings:

TM Rusche, *EU Renewable Electricity Law and Policy*:

- Chapter 1: 'Regulation of renewable electricity in the internal electricity market: (still) a preserve of the Member States'

S Wolf, ['Euratom, the European Court of Justice and the Limits of Nuclear Integration in Europe'](#) (2011) 12 German Law Journal 1637-1657

Read info on websites:

European Commission, [State Aid to Secure Electricity Supplies](#)

European Commission, [Nuclear Energy](#)

[Treaty Establishing the European Atomic Energy Community](#)

Listen:

Florence School of Regulation, Energy Law and Policy Podcast Series:

[Christoph Reichmann, 'An Electricity Market Design at Last?'](#) (2016)

Legislation (look through):

[2019 Electricity Directive \(formally adopted\)](#)

[2019 Electricity Regulation \(formally adopted\)](#)

[2009 Electricity Directive 2009/72/EC](#)

Websites (look through):

[ENSTOE-E](#)

[EU, DG Energy, Projects of Common Interest](#)

Case law:

Case C-17/03, Judgement of the Court (Grand Chamber) and opinion of 7 June 2005,

[VEMW and other v. Directeur](#)

(Preferential access)

Case C-206/06, Judgment of the Court (Third Chamber) and opinion of 17 July 2008,

[Essent Network Noord v. the Netherlands](#)

(internal taxation)

Case C-115/08, Judgement of the Court (Grand Chamber) and opinion of 27 October

2009, [Land Oberösterreich v. ČEZ](#)

(nuisance caused by nuclear power plant, Euratom Treaty)

Questions for consideration:

1. What are the rationales a) to unbundle, and b) to integrate the EU electricity market? How and at what levels is this realized?
2. What are the biggest challenges the EU is facing regarding unbundling and integrating European electricity markets?
3. What was role of the Euratom treaty in the past, what is it today? What are the limits of nuclear integration in Europe? Does nuclear energy have a future in Europe?

Class 6 (June 25) – EU Clean and Renewable Energy Law and Policy I

Now that we have studied the basics of the EU energy market, we will move on to explore European clean and renewable energy policy. We will discuss the EU's 20/20/20 and 2030 policy, EU State Aid and World Trade Organization subsidies rules and their relevance for diverse support schemes for renewables in the EU.

Readings:

K Talus, *An Introduction to EU Energy Law*:

- Chapter 5: 'State Aid in the Energy Sector'

TM Rusche, *EU Renewable Electricity Law and Policy*:

- Chapter 4: 'Union Law on State Aid'
- Chapter 5: 'Union Law on Free Movement on Goods'
- Chapter 6: 'Prohibition of Internal Customs Duties'

A Marhold, '[Subsidy Regulation in WTO Law: Some Implications for Fossil Fuels and Renewable Energy](#)' (2016) Tilec Discussion Paper DP 2016-022

Legislation:

European Commission, [Guidelines on State Aid for Environmental Protection and Energy 2014-2020](#)

[WTO Agreement on Subsidies and Countervailing Measures](#)

EU- Singapore FTA, Chapter 7: '[Non-tariff Barriers to Trade and Investment in Renewable Energy Generation](#)' (2013)

Case law:

Case C-379/98, Judgement of the Court and Opinion of 13 March 2001, [PreussenElektra](#) (State aid – compatibility with the free movement of goods)

Case T-47/15, Judgment of the General Court (Third Chamber) of 10 May 2016, [Federal Republic of Germany v. European Commission](#)

(State aid partially incompatible with the single market)

World Trade Organization, WT/DS412/AB/R WT/DS426/AB/R, [Certain Measures Affecting the Renewable Energy Generation Sector](#), 6 May 2013.

Questions for Consideration:

1. How are EU State Aid Disciplines relevant for the renewable energy sector?
2. Are EU rules on State Aid compatible with WTO rules on subsidies?
3. Can support schemes for renewable energy be at tension with international trade rules?

Class 7 (June 26) – EU Clean and Renewable Energy Law and Policy II

This class will cover the development of EU renewable energy legislation from national action plans towards a Union-wide approach. We will also study how various support schemes have played out in different EU Member States. It will then focus on the new 2018 Renewable Energy Directive, as well as on the new Energy Efficiency Directive.

Readings:

K Talus, *An Introduction to EU Energy Law*:

- Chapter 6: 'Sustainable Development and EU Energy Law' only 6.1 and 6.2

TM Rusche, *EU Renewable Electricity Law and Policy*:

- Chapter 2: 'The Regulatory Options from an Economic Point of View'
- Chapter 3: 'The Times They are A-Changing'
- Chapter 7: '2013-2015 – Year of Upheaval?'

Legislation:

EU, [the Revised Renewable Energy Directive 2018/2001](#)

EU, [2009 Renewable Energy Directive 2009/28/EC](#)

EU, [the Revised Renewable Energy Directive 2018/2002](#)

Case C-573/12, Judgment of the Court (Grand Chamber) and opinion of 1 July 2014, [Ålands Vindkraft AB](#)
(Green certificates, free movement of goods)

Explore Website:

Beyond 220, [Final Report on Approaches for a Harmonisation of RES-E Support in Europe](#)
Chapter 2

European Commission, [Renewable Energy](#)

Questions for Consideration:

1. Explain how EU Renewable Energy Policy evolved from voluntary schemes to binding targets. Are the targets really binding?
2. Research renewable schemes in the EU Member States. What are examples of successful schemes and what schemes proved to be problematic? Why?

Class 8 (June 27) - The EU and International Climate Commitments: The Emissions Trading Scheme (ETS) and the Paris Agreement

In this class we explore Europe's Climate Policy, especially the Emissions Trading Scheme (ETS), and assess its successes and failures. We will then investigate how the ETS interacts with international climate agreements, notably the 2015 UNFCCC Paris Agreement and the Kyoto Protocol. We will also draw comparisons between EU and US climate policy.

Readings:

K Talus, *An Introduction to EU Energy Law*:

- Chapter 6: 'Sustainable Development and EU Energy Law' only 6.4 and 6.5

European Commission, [EU ETS Handbook](#) (2015) 4 -19

European Parliamentary Research Service, ['Reform of the EU Carbon Market'](#) (2014)

European Parliamentary Research Service, ['Climate Policies in the EU and the USA – Different Approaches, Convergent Outcomes?'](#) (2015)

A Savaresi, ['The Paris Agreement: A New Beginning?'](#) (2016) University of Edinburgh School of Law Research Paper 2016/03, 1-12

Websites:

[EU Emissions Trading Scheme](#)

[EU Climate Action](#)

Legislation:

[UNFCCC Paris Agreement](#)

[Consolidated version of the EU ETS Directive 2003/87/EC](#)

Case law:

Case C-366/10, Judgement of the Court (Grand Chamber) and opinion of 21 December 2011, [Air Transport Association of America and Other v. Secretary of State for Energy and Climate Change](#)

(extraterritoriality of European Union law)

Case C-191/14, Judgement of the Court (Second Chamber) of 28 April 2016, [Borealis Polyolifine and Others](#)

(Method for allocating allowances)

Questions for consideration:

1. What are the main elements of the EU ETS? What are the failures of the ETS and how can these be best addressed?
2. How does EU climate policy interact with the Paris Agreement? What are the challenges with respect to implementing the commitments under the Paris Agreement in the EU and its Member States?
3. Explain the differences between EU and US climate policy. What causes these differences? What can the respective approaches learn from one another?