

Course Syllabus

Global Energy Law & Policy: Europe in Transition

The Trilemma of Liberalization, Decarbonization and Energy Security

(2 credits)

Course instructor: Dr. Anna-Alexandra Marhold

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Class meeting dates and times: June 21 – 24 and June 28 – July 1, 9am – 12 pm (EST)
(via MS Teams, links will be provided on TWEN)

Method of grading: In-class participation, in-class 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. For that reason, Europe has set ambitious targets in its new EU Green Deal: it aims to become climate neutral and to have no net emissions of greenhouse gasses by 2025, in addition to decouple economic growth from resource use.

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 through case studies.

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 to 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? And how does recent EU Member State climate change litigation on the national level relate to this? 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 one textbook, K Talus, *Introduction to EU Energy Law* (Oxford University Press, 2016, paperback, around \$ 40,-), available through Barrister's Book Store.

Additionally, materials and references are linked directly in this syllabus or will be uploaded on the **TWEN** site of the course (materials **highlighted in yellow** will be offered via TWEN).

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, an in-class presentation (20%), as well as a take home final paper of max 3.000 words, including footnotes (80%) (due to be uploaded in TWEN by July 16th).

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)

WEEK 1 – FOUNDATIONS OF EU ENERGY LAW AND POLICY

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 European Gas Market and the External Dimension of EU Energy Policy

Class 4 (June 20) – The European Electricity Market & EURATOM

WEEK 2 – EU CLEAN AND RENEWABLE ENERGY LAW AND POLICY

Class 5 (June 24) – Climate Change Litigation with a Global Reach: Case Study of the Netherlands

Class 6 (June 25) – EU Clean and Renewable Energy Law and Policy I: State Aid and Subsidies

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

Class 8 (June 27) – The EU and International Climate Commitments: The EU Green Deal, 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: Concepts, Regulation and Changing Markets](#) was published with Cambridge University Press in 2021. She is also a fellow at the Cambridge University-based C-EENRG Platform on Global Energy Governance, regularly provides policy advice for international and European think tanks and teaches at the Netherlands Institute for International Relations.

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 21) – 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

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 22) – 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](#)

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 23) – The European Gas Market and the External Dimension of EU Energy Policy

In this class, we will first zoom in on the European gas market and its internal, regional and global dimensions. We will study the structure of the market and its legislation, including competition and unbundling, transit and third-party access.

The class additionally covers 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. It addresses the geopolitical aspects of gas pipelines and the relevance of multilateral frameworks such as the Energy Charter Treaty and the World Trade Organization.

Readings:

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

- Chapter 3, 'Applying EU Competition Law to the Energy Markets'
- Chapter 7, 'External Elements of EU Energy Law'

V Chorny and AA Marhold, ['In Uncharted Waters: The Contested Legal and Political Landscape of Nord Stream 2'](#) forthcoming in: *European Energy Law Report (EELR)*, Vol. XIV

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*

Legislation:

[2019/692 EU Gas Directive](#)

Websites (look through):

[ENTSOG](#)

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

[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. What are the main internal and external obstacles in fully liberalizing the European gas sector?
2. 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)
3. What are the challenges with respect to third, non-EU countries? It is possible circumvent geopolitical consideration in regulating gas markets internationally?

Class 4 (June 24) – The European Electricity Market and 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:

JM Glachant and S Ruester, [*The EU Internal Electricity Market: Done Forever?*](#) (2014) 31 Utilities Policy 221-228

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](#)

Legislation (look through):

[2019/944 Electricity Directive](#)

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 Others 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 5 (June 28) Climate Change Litigation with a Global Reach: Case Study of the Netherlands

This class will zoom in on EU Member State level, and focus on the groundbreaking climate change litigation cases from the Netherlands, i.e. the *Urgenda Climate Case* (2019) and *Milieudefensie v. Shell* (2021). We will assess the arguments and implications of these cases, and look at what parallels could be drawn with similar litigation elsewhere.

Readings:

International Energy Agency, [The Netherlands 2020 Energy Policy Review](#)

PT Muchlinski, *Corporations in International Law*, Max Planck Encyclopedia of Public International Law (MPEPIL), Oxford Public International Law

M Wewerinke-Singh and A McCoach, [‘The State of the Netherlands v Urgenda Foundation: Distilling best practice and lessons learnt for future rights-based climate litigation’](#) (2021) Review of European, Comparative & International Environmental Law

[‘Court orders Royal Dutch Shell to cut carbon emissions by 45 % by 2030’](#), The Guardian, Wednesday 26 May 2021

Dutch Case Law:

District Court of The Hague, [Milieudefensie v. Shell](#), 26 May 2021 (English translation)
Supreme Court of the Netherlands, [Urgenda Climate Case](#), 20 December 2019 (English translation)

Questions for Consideration:

1. In *Urgenda*, what was the legal basis for holding the Dutch State responsible for (not) meeting their international climate commitments?
2. In contrast, what was the legal basis the court of first instance used to hold a multinational corporation liable to international climate change commitments?
3. Could such a climate cases be successfully litigated in the US? If yes, how? What legal basis could you use on the State/Federal level?

Class 6 (June 29) – EU Clean and Renewable Energy Law and Policy I: State Aid and Subsidies

Now that we have studied the basics of the EU energy market and core climate change litigation, we will move on to explore European clean and renewable energy policy. We will discuss the EU 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'

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. (Subsidies in the Renewable Energy Sector)

→ In-class EU Member State Case Study: Solar Panel Subsidies in Spain

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 30) – EU Clean and Renewable Energy Law and Policy II: Renewable Energy Legislation

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

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

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 law:

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:

European Commission, [Renewable Energy](#)

→ In-class EU Member State Case Study: Feed-In Tariffs in Germany

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 (July 1) - The EU and International Climate Commitments: The EU Green Deal, Emissions Trading Scheme (ETS) and the Paris Agreement

In this class we explore Europe's Climate Policy, especially the new EU Green Deal, its links with the Emissions Trading Scheme (ETS). We will then investigate how these instruments interact 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, [The European Green Deal](#) (2019)

Politico.eu, ['What is the Green Deal?'](#) (October 2020)

A Krenek, ['How to Implement a WTO-Compatible Border Carbon Adjustment as An Important Part of the Green Deal?'](#) OGFÉ Policy Brief (2020)

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

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

Websites:

[EU Climate Action](#)

[EU Emissions Trading Scheme](#)

Legislation:

[UNFCCC Paris Agreement](#)

[Proposal for a European Climate Law](#)

[Proposal for an EU Carbon Border Adjustment Mechanism](#) and [Annex 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 Polyolfine and Others](#)

(Method for allocating allowances)

Questions for consideration:

1. What are the controversial elements of the EU Green Deal and its Carbon Border Adjustment Mechanism (CBAM)?
2. What are the main elements of the EU ETS? What are the failures of the ETS and how can these be best addressed?
3. 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?
4. Explain the differences between EU and US climate policy. What causes these differences? What can the respective approaches learn from one another?