

# **EU Environmental Law and Climate Change**

## **Course outline (2012)**

Prof. Dr. Marjan Peeters (guest professor)

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## ***Introduction***

This course discusses the actual legislative framework that has been adopted by the EU legislature in order to combat climate change. The course starts with an introduction to the international legal framework as provided by the United Nations Framework Convention on Climate Change (1992) and the Kyoto Protocol (1997). Next to that, the EU position towards the international negotiations in order to proceed with more effective agreements will be discussed. Then, the EU climate legislation package will be thoroughly examined. We will review the main regulatory instruments for reducing emissions, like the emissions trading instrument and the so-called burden and effort sharing decision, together with other European climate change legislation. Furthermore, we will discuss how to protect society against the possible negative effects of climate change and what kind of legislation is needed for that, and whether that should be adopted by the EU or on the level of the Member States. The course concludes with the question what Member States can do in the field of climate protection. We focus *inter alia* on the United Kingdom where in 2008 a Climate Change Act has been adopted and will examine whether that is a good example for other EU Member States.

In sum, the course offers three perspectives:

- the inter-relationship between international and EU climate change law developments;
- EU climate law, with a focus on secondary legislation and case law
- the role of Member States in the field of EU climate law.

## ***Teacher***

The course will be given by a guest professor, her name is Marjan Peeters. Prof. dr. Marjan Peeters is professor of environmental policy and law at Maastricht University and is a specialist in climate law. For personal questions she can be easily contacted just before or after the lectures. Questions that are in the interest of the whole group should be submitted during the lecture: the teacher will give the opportunity to do so.

## ***Student presentations***

Student can choose to do a student presentation instead of writing a note (see the exam instruction). The presentations may be given during lectures 1, 2, 3, 4, and 5.

Students can subscribe by sending an email to the teacher before the first lecture. The rule *first come, first served* will apply. Also at the end of the first lecture there will be an opportunity to subscribe. Please note that there are only limited opportunities for doing student presentations, students who did not or could not register have to deliver a written note.

## ***Instructions for the presentations***

Each presentation takes 10 minutes. Students may use electronic slides or a written outline. Obviously, the presentation shall be in the English language.

The presentations have to provide a good basic insight to the colleague students into the allocated topic and to invoke a discussion. The topics for presentation are given in the course outline.

## **Schedule**

**lecture time: 13.30-16.00 hours**

LECTURE 1 6 March	Introduction to the course  The challenge of environmental law  International rule making: the case of climate change  Carbon trading on the international level
LECTURE 2 20 March	The EU position towards international climate negotiations  Introduction to EU Environmental Law (principles and competences)
LECTURE 3 27 March	European environmental law and climate change legislation : (1) burden (and effort) sharing among member states (2) greenhouse gas emissions trading
LECTURE 4 17 april	European environmental law and climate change legislation: greenhouse gas emissions trading including discussion of case law,  Other EU approaches: - renewable energy, - carbon capture and storage.
LECTURE 5 24 April	What can member states do? Harmonisation of European climate law and additional national climate legislation  Adaptation

## **Lecture 1**

LECTURE 1	Introduction to the course; The challenge of environmental law;  International rule making: the case of climate change Carbon trading on the international level
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The first lecture starts with an overview of the main areas of environmental law, and will discuss the challenges that environmental lawyers face. Law is a crucial instrument to address polluting behaviour. It is necessary to develop and apply regulatory instruments in order to prevent polluting behaviour. The ultimate aim of environmental legislation is to protect the human right on a healthy environment, including a sound climate.

Secondly, an introduction to the problem of climate change will be provided. It will be explained what basically needs to be done to reduce the risk of climate change. Also the problem of “uncertainties” and the role of scientific advice as provided by the IPCC, the intergovernmental panel on climate change, will be addressed.

Thirdly, the lecture will discuss environmental rulemaking on the international level, as this is very relevant for a global problem like climate change. European climate policy cannot be understood without knowledge of the climate “law” development on the international level. The lecture identifies the main characteristics and shortcomings of international environmental conventions. Next to that, the state of affairs of the international negotiations and the current results will be discussed. We will start with debating the specific instrument of carbon trading (also called greenhouse gas emissions trading).

## **Assignment: The challenge of environmental law**

Watch: the interview with Professor Jody Freeman from Harvard Law School. Freeman currently serves as Counselor for Energy and Climate Change in the White House, USA (the interview is posted at <http://av.law.ucla.edu/uclaw/Scully-World-large.wmv>.) In this interview she discusses the development of environmental law, and the challenges and opportunities, especially with regard to climate change.

<b>Student discussion: What are the complexities of environmental law?</b>
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(Background reading: Elizabeth Fisher et alius, Maturity and Methodology: Starting a Debate about Environmental Law Scholarship, *Journal of Environmental Law* 21:2, p. 228 – 243.).

## **Assignment International rule-making for climate protection**

Read the [www.unfccc.int](http://www.unfccc.int) webpage. Pay special attention to: “Essential background, feeling the heat”.

Read: Lavanya Rajamani, Addressing the ‘Post-Kyoto’ Stress Disorder: Reflections on the merging Legal Architecture of the Climate Regime, *International and Comparative Law Quarterly*, vol. 58, October 2009, p. 803 – 811 and 824 – 830.

### **Student presentation 1:**

What happened in Durban in 2011?

Read: UNEP Training Manual on International Environmental Law, [http://www.unep.org/law/PDF/law\\_training\\_Manual.pdf](http://www.unep.org/law/PDF/law_training_Manual.pdf) p. 113-118 (UNFCCC< Kyoto Protocol and flexible mechanisms). Read as well the information about the mechanisms as described under “Kyoto Protocol” on the UNFCCC website.

### **Student presentation 2:**

Explain the CDM mechanism

### **Student presentation 3:**

Explain international emissions trading among states

## **Lecture 2**

	LECTURE 2	The EU position towards international climate negotiations  Introduction to EU Environmental Law (principles and competences)
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This lecture will first discuss how the EU has acted in the international negotiations process. The EU claimed leadership at the time the Kyoto Protocol still had to be ratified, but could obviously not fulfill a strong role in Copenhagen.

Then, the course turns to EU law. The lecture will give an overview of the core content and current developments of European environmental law. It will explain the main competences for European environmental law making, including the relevant amendments following from the Lisbon Treaty. It will discuss the concept of shared competences between Member States and the European institutions, and the – resulting – harmonization but also fragmentation of environmental law.

After having done so, the competences of the EU with regard to climate policy will be discussed, and we will turn to the core European climate legislation (to be continued the next class).

## **Assignment**

- read first: Regional Profile: European Union (Michael Mehling), CCLR 3 2010.
- Marjan Peeters, The EU position towards Copenhagen and the search for emission distribution principles, SSRN working paper 2 November 2009, p. 1-26 (until section 3.3) [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1498510](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1498510)
- J.H. Jans, H.B. Vedder, pp. European Environmental Law, 4d edition 2011, p. 3-79.
- Kyrstin Inglis, Anticipating new Union Competences in Energy, 15 Maastricht Journal 1 (2008) pp. 125-129 till section 3.

### **Student presentations:**

1. the meaning of article 191 TFEU for climate protection
2. the meaning of article 192 TFEU for climate protection
3. the meaning of article 194 TFEU for climate protection



### **Lecture 3**

	LECTURE 3	European environmental law and climate change legislation : (1) burden (effort) sharing among member states (2) greenhouse gas emissions trading
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In this third lecture we turn to secondary climate protection legislation as adopted by the EU.

First, we focus on the adoption of binding emission reduction targets for the 27 EU Member States. For the period 2008-2012, this is done in the so-called burden sharing decision, while for the period 2013-2020 another decision has been adopted, the so-called effort sharing decision. We will focus on the latter.

Secondly, we focus on the “EU ETS”, which stands for the EU emissions trading scheme. This is a regulatory instrument through which industries are obliged to cover their emissions with tradable emission rights. It is a complicated instrument, and we will focus on the main characteristics, not on the details.

## **Assignment**

- J.H. Jans, H.B. Vedder, pp. European Environmental Law, 4d edition 2011, p. 431-445
- Marjan Peeters, Mark Stallworthy, working paper on the Effort Sharing Decision (will be provided).
- European Parliament press release 13.12.2008: “MEPs and Council Presidency reach deal on final details of climate package”, posted at:  
[http://www.europarl.europa.eu/pdfs/news/expert/infopress/20081213IPR44460/20081213IPR44460\\_en.pdf](http://www.europarl.europa.eu/pdfs/news/expert/infopress/20081213IPR44460/20081213IPR44460_en.pdf)

*Re the emission reduction obligations of member states:*

- Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community’s greenhouse gas emission reduction commitments up to 2020, OJ L 140/136, 5.6.2009. This document is not in the reader, find it on the internet, and focus on the explanation given by the European Commission. De dato 28 december 2010 the website link was:  
[http://europa.eu/legislation\\_summaries/environment/tackling\\_climate\\_change/en0008\\_en.htm](http://europa.eu/legislation_summaries/environment/tackling_climate_change/en0008_en.htm)

### **Student presentations:**

1. An explanation of the effort sharing decision, with an eye on the emission reduction obligations of the Member States
2. An explanation of the effort sharing decision, with an eye on how the Commission wants to control the Member States

*Re the EU ETS:*

- Read on the website of the European Commission the materials with respect to greenhouse gas emissions trading
- Use the consolidated version of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L/32 275, 25.10.2003, and focus on the explanation given by the Commission. The website link to the consolidated version is:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2003L0087:20090625:EN:PDF>

Marjan Peeters, Emissions trading as a new dimension to European Environmental Law: The political agreement of the European Council on greenhouse gas allowance trading, in: European Environmental Law Review, march 2003, volume 12, number 3, pages 82-92.

Marjan Peeters, Legislative Choices and Legal Values: Considerations on the further design of the European Greenhouse Gas Emissions Trading Scheme from a viewpoint of democratic accountability, in: M.G. Faure, M. Peeters (ed.), Climate Change and European Emissions Trading: Lessons for Theory and Practice, Edward Elgar 2008 FOCUS ON SECTIONS 1.1, 1.3, 1.4, 2.1, 3.1, 3.2. The rest is background reading.

**Student presentations:**

3. An explanation of the difference between a greenhouse gas permit and an allowance
4. An explanation of the enforcement prescribed by the EU ETS directive

## **Lecture 4**

	LECTURE 4	<p>European environmental law and climate change legislation: continuation of greenhouse gas emissions trading, including discussion of case law,</p> <p>Other EU approaches: renewable energy, carbon capture and storage.</p>
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This lecture will continue with the topics mentioned during the former lecture. We will focus on some case law with regard to the EU ETS. In addition, other measures will be discussed like the promotion of use of renewable energy sources, and the geological sequestration and storage of carbon dioxide.

## Assignment

Marjan Peeters, Inspection and market-based regulation through emissions trading: the striking reliance on self-monitoring, self-reporting and verification, *Utrecht Law Review*, Volume 2, Issue 1, June 2006, <http://ssrn.com/abstract=991293>

(also at:

<http://www.uu.nl/uupublish/homerechtsgeleer/onderzoek/utrechtlawreview/38361main.html>)

Marjan Peeters, The EU ETS and the role of the courts: Emerging contours in the case of Arcelor, *Climate Law* 2 (2011) 19-36.

### *Case law re EU ETS*

ECJ, C-127/07 [16 December 2008], *Société Arcelor Atlantique et Lorraine e.a. v. Premier Ministre, Ministre de l'Écologie et du Développement durable* (inclusion of sectors under the EU ETS, equality), and *for background reading*: - [T-16/04](#) (2 March 2010) *Arcelor SA v European Parliament and Council of the European Union* : focus on the principle of equal treatment.

ECJ, C-524/09 [22 December 2010] *Ville de Lyon v. Caisse des dépôts et consignations* (access to information).

CJEU, CJEU, C-366/10 [21 December 2011] (EU ETS aviation, appeal of American air companies).

### *Other legislation relevant for climate protection*

Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC OJ L 140/16, 5.6.2009. Read the explanations as being given by the European Commission.

### **Student presentations**

1. An explanation of the obligation for Member States to pursue a certain share of renewable energy in 2020 (art. 3 of directive 2009/28/EC)
2. An explanation of article 4 of directive 2009/28/EC, which is about the national renewable energy plans.

Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006, OJ L 140/114, 5.6.2009.  
Read the explanations as being given by the European Commission.

**Student presentations:**

1. An explanation of the permit requirement as prescribed by the directive on carbon sequestration and storage (directive 2009/31/EC)
2. An explanation of the liability of the operator or a storage site as prescribed by the EU directive on carbon sequestration and storage (directive 2009/31/EC)

<b>Student discussion:</b> is the EU climate package just good, too weak, or too elaborated?
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## **Lecture 5**

	LECTURE 5	What can member states do? Harmonisation of European climate law and additional national climate legislation  Adaptation
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After having discussed European environmental law, in particular some concrete examples of European environmental legislation, this class will investigate the possibility for Member States to adopt national environmental legislation that moves beyond the European environmental standards. Furthermore, we will investigate a concrete example of national climate legislation, in particular the Climate Change Act that has been adopted in the UK, and which contains a further going target compared to the European climate change laws. We will explore what national choices have been made, and to what extent these instruments and approaches can contribute to an effective climate protection.

Secondly, we will conclude this course with a discussion on adaptation. Adaptation refers to the protection against possible negative climate change effects, like flooding and heatwaves.

**Assignment:***Re national unilateral measures*

J.H. Jans, H.B. Vedder p. 97-138

ECJ C-201/08, [10 september 2009] Plantanol GmbH & Co. KG – Hauptzollamt Darmstadt, (legal certainty, discretion for Member States to amend national legislation)

Marjan Peeters, Nicolien van der Grijp, Emerging national climate legislation in EU Member States: in search of proper legislative approaches, with Nicolien van der Grijp, Maastricht Faculty of Law Working Paper No. 2011-6; [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1830194](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1830194).

Mark Stallworthy, Legislating Against Climate Change: A UK Perspective on a Sisyphean Challenge, the Modern Law Review, (2009) 72(3) 412-462.

UK Climate Change Act (website : [http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga\\_20080027\\_en.pdf](http://www.opsi.gov.uk/acts/acts2008/pdf/ukpga_20080027_en.pdf))

**Student presentations:**

1. the main mitigation measures as provided by the UK Climate Change Act 2008
2. the main adaptation measures as provided by the UK Climate Change Act 2008

**Student discussion:** would you recommend the UK model for a Climate Change Act to your national government?

*Re Adaptation*

European Commission, white paper: Adapting to climate change: Towards a European framework for action, COM (2009)147

Véronique Bruggeman, Marjan Peeters, Exploring governmental and victim responsibilities in view of abrupt climate change in North-Western Europe, met Véronique Bruggeman, in: J.C.M. Van den Bergh, A.J. Dietz, C.J., Jepma, F. Langeweg (ed., programme committee on Vulnerability, Adaptation and Mitigation), *What if... abrupt and extreme climate change?*, Netherlands Organisation for Scientific Research, The Hague, October 2008, only sections 1 and 2. <http://ssrn.com/abstract=1334652>

**Student presentations:**



3. An explanation whether Member States should or should not adopt further going mitigation targets as prescribed by EU law
4. An explanation whether Member States should give priority to mitigation or to adaptation.