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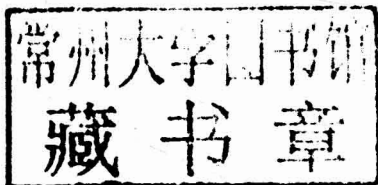
Studies in European Law and Policy

The Allocation of Regulatory Competence in the EU Emissions Trading Scheme

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Series editors' preface

Given that climate change is probably the most important challenge facing mankind, the mechanisms that are developed to respond to that challenge need to be appropriate, effective, and implemented correctly. In this light, the EU Emissions Trading Scheme is of enormous practical importance, and its functioning is rightly the focus of legal, economic, environmental and policy analysis.¹ In this context the allocation of competence across various levels of governance plays a vital role in contributing to the effectiveness of the regime.

Josephine van Zeben examines the economic and legal scholarship on competence allocation, before turning to examine climate change as a regulatory problem, and the substantive elements of regulatory competences as they relate to the EU Emissions Trading Scheme, looking at the role of public actors in the regulatory process. She then turns to benchmarking in order to assess the functioning of that scheme. She looks at the chronological development of the phases of the scheme, analysing the pitfalls and under-performance experienced in the first trading period. She notes that in the second trading period clashes between allocation preferences at European and national level became more apparent, while in both periods the allocation of enforcement competences at national level also gave rise to problems. She also discusses the new approaches which entered into force in 2013. The focus then changes to look at the problems she has identified through a political economy lens, which brings into sharp relief the differences between the optimal competence allocation model and the real-life experiences with the EU Emissions Trading Scheme. The competence allocation perspective enables van Zeben to proffer various suggestions for institutional improvements in this new third trading phase.

Van Zeben's work is an important interdisciplinary contribution to European law and policy, promoting the dialogue between lawyers and political economists. Her discussion is refreshing, stimulating, and grounded in meticulous research; it offers solutions, not merely an analysis of problems; it should be of interest to all those involved in Emissions Trading, as well as to lawmakers, policymakers, and economists concerned to know about the effectiveness or otherwise of the EU Emissions Trading Scheme and its institutional and governance arrangements. Accordingly, it gives us great pleasure to welcome the publication of this book in the *Cambridge Studies in European Law and Policy* series.

Laurence Gormley

Jo Shaw

Acknowledgements

The success of this book should be measured by the quality of its ideas and the extent to which they speak for themselves. These acknowledgements will therefore not include a list of disclaimers – anyone who has ever attempted to complete a manuscript is aware of the inherent incompleteness of the final result and the continuous desire to build on, and improve, one's work. Rather, these acknowledgements, themselves hopelessly incompletely, mean to highlight some of the people and institutions that have enabled me to join the world of ideas that is academia and put some of my ideas on paper.

The book was initially written as a Ph.D. thesis at the Amsterdam Center for Law and Economics (ACLE) and the Amsterdam Center for Environmental Law and Sustainability (ACELS) at the University of Amsterdam, which I defended in May 2012. The members of my reading committee – Daniel Cole, Deirdre Curtin, Jan Jans, Ans Kolk, Sandrine Maljean-Dubois, Benjamin van Rooij and Rosa Uylenburg – generously took the time to read and assess my work. Their comments have greatly improved the quality of my work and are reflected in the revisions that turned the manuscript into a book. The encyclopedic knowledge of all things European and environmental of my co-supervisor Marc Pallemmaerts (ACELS) has provided crucial guidance through the jungle of climate change regulation. My colleagues at the ACLE and ACELS, and the University of Amsterdam more generally, have been a source of inspiration and support for which I am deeply grateful.

I had the privilege of spending the academic year 2010–11 at New York University School of Law as a Hauser Global Research Scholar. My time there has helped shape the ideas in my dissertation in important ways, not least due to the supervision and advice of Richard Stewart. The collegiality of the other Hauser fellows made this one of the

most stimulating years of my (academic) life. The advice of Jennifer Arlen, before, during and after my visit at NYU has armed me with an understanding of American academia that has proven invaluable. The colleagues and friends whom I have met through the Society for Environmental Law and Economics (SELE) and the Ius Commune Research School make academia a great place. After completing my Ph.D., I joined the Amsterdam Center for European Law and Governance (ACELG), first as a lecturer in European Union law and later as a postdoctoral researcher and assistant research director. Under Deirdre Curtin's leadership, the ACELG is one of the most exciting places for European Union research in Europe.

Although this book closely reflects the ideas of the original doctoral dissertation, some revisions have been included, reflecting valuable comments from my reading committee and anonymous reviewers at Cambridge University Press, and incorporating legal developments that have taken place between May 2012 and July 2013. These revisions were mostly made during my visiting postdoctoral research position at the Vincent and Elinor Ostrom Workshop in Political Theory and Policy Analysis at Indiana University, Bloomington, which has been generously supported by the Niels Stensen Fellowship. The Ostrom Workshop has been a unique place to pursue my postdoctoral research: aside from the warm atmosphere created by the vibrant and welcoming Workshop community, Vincent and Elinor Ostrom's intellectual heritage provides an incredibly rich basis for my ongoing interdisciplinary work. Dan Cole's mentorship has been a continuing source of support and inspiration throughout my Ph.D. and my postdoctoral work, and I will sorely miss our daily conversations as I prepare to move to Harvard Law School in September 2013. My American adventures would not have been possible, nor quite as exciting, without the advice and friendship of Burney Fischer, Shi-Ling Hsu, Mike McGinnis, Jonathan Nash, Arden Rowell, Keith Taylor, Tom Ulen and the Law and Economics lunch group at IU.

Being able to develop my doctoral dissertation into a book under the guidance of Cambridge University Press has been a privilege, and I am very grateful for the efforts of the entire editorial team. A special debt is owed to the editors of the Cambridge Studies in European Law and Policy, Laurence Gormley and Jo Shaw, for their faith in the original manuscript and their decision to add it to this great Cambridge series.

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Abbreviations

AAU	Assigned Amount Unit
CDM	Clean Development Mechanism
CJEU	Court of Justice of the European Union
CMP	COP serving as the Meeting of the Parties to the Kyoto Protocol
COP	Conference of the Parties
DG	Directorate General
ECCP	European Climate Change Programme
EEA	European Economic Area
EPA	Environmental Protection Agency (United States)
ESA	Effort Sharing Agreement
EU	European Union
EU12	EU candidate countries before the enlargement on 1 January 1995
EU15	EU Member States before the enlargement on 1 May 2004
EU27	EU Member States after the enlargement on 1 January 2007
EU28	EU Member States after the enlargement on 1 July 2013
EUA	EU Emission Allowance
EUAA	EU Aviation Emission Allowance
EU ETS	European Union Emissions Trading Scheme
IPCC	Intergovernmental Panel on Climate Change
JI	Joint Implementation
MiFID	Markets in Financial Instruments Directive
MS	Member State
NAP	National Allocation Plan
OECD	Organization for Economic Co-operation and Development
QELRO	Quantified Emission Limitation or Reduction Objective