

50 Veröffentlichungen des Instituts für Energie- und Regulierungsrecht Berlin

Herausgegeben von Franz Jürgen Säcker

Franz Jürgen Säcker
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(eds.)

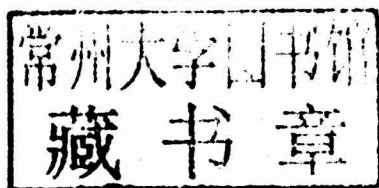
Renewable Energy Law in Europe

Challenges and Perspectives

Franz Jürgen Säcker/Lydia Scholz/Thea Sveen (eds.)

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**Bibliographic Information published by the Deutsche
Nationalbibliothek**

The Deutsche Nationalbibliothek lists this publication in
the Deutsche Nationalbibliografie; detailed bibliographic
data is available in the internet at <http://dnb.d-nb.de>.

Library of Congress Cataloging-in-Publication Data

Renewable energy law in Europe : challenges and perspectives / Franz Jürgen Sä-
cker, Lydia Scholz, Thea Sveen (eds.).

pages cm. – (Veröffentlichungen des Instituts für Energie- und Regulierungs-
recht Berlin ; Band 50)

ISBN 978-3-631-66343-1

1. Renewable energy sources—Law and legislation—European Union countries.—
Congresses. I. Säcker, Franz-Jürgen, 1941- editor. II. Scholz, Lydia, editor. III.
Sveen, Thea, 1987- editor.

KJE6859.R46R46 2015

343.2409'2—dc23

2015028821

ISSN 2363-684X

ISBN 978-3-631-66343-1 (Print)

E-ISBN 978-3-653-05668-6 (E-Book)

DOI 10.3726/978-3-653-05668-6

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Internationaler Verlag der Wissenschaften

Frankfurt am Main 2015

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Peter Lang – Frankfurt am Main · Bern · Bruxelles · New York ·

Oxford · Warszawa · Wien

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This publication has been peer reviewed.

www.peterlang.com

Preface

It is the European Union's goal to establish a secure, sustainable and competitive supply of electricity. This is one of the fundamental objectives of its energy policy, and since the coming into force of the Lisbon Treaty firmly established in Article 194(1) TFEU. The goal has repeatedly been utilised by the European Commission, e.g. in the "Energy 2020" strategy and in the "Energy Roadmap 2050".

Since 1 January 2013, the objective of a common European market for energy is mandatory for EU Member States as well as for the states of the European Economic Area. An inherent part of such a common market and of European energy policy in general is the "triangle of objectives", namely environmental protection, security of supply and competitiveness, within which the EU's energy policy operates. It is binding for the legislative bodies of both, the EU and the Member States.

Pursuing all three objectives at the same time, each with maximum intensity, must lead to inconsistencies. As such, renewable energy renders the European energy supply more environmentally friendly, however, it still requires some form of promotion, which is in conflict with the market goal. According to the Renewables Directive, Member States are obliged to implement some kind of promotion scheme. There is, however, no permission to draft these schemes freely. Instead, promotion schemes have to be structured in such a way that they do not infringe upon provisions of the TFEU. In particular, a conflict with the principle of free movement of goods can arise when Member States limit their schemes' scope of application to plants on their own sovereign territory, thereby excluding electricity produced in other Member States. Furthermore, a conflict with the EU's State aid law may arise, especially given the financial advantages to the respective beneficiaries.

The law of renewable energies has always been subject to change. Having provided a certain degree of legal certainty with its *PreussenElektra* ruling in 2001, the ECJ specified the limits on national support schemes with a new wave of judgments, namely those in the cases of *Vent de Colère*, *Essent* and *Ålands Vindkraft*, in 2013 and 2014. At the same time, the European Commission issued its Guidelines on State aid for environmental protection and energy. These and other important developments regarding renewable energies in the EU and the European Economic Area have motivated the Berlin Institute for Energy and Regulatory Law and the Scandinavian Institute for Maritime Law of the University of Oslo to bring together energy law experts from Great Britain, Norway, Finland and Germany in order to exchange their ideas and perspectives. The workshop took place on

12 September 2014 in Berlin, one day after the ECJ had confirmed its decision in *Ålands Vindkraft* with its *Essent* judgment. The result was an inspiring event that covered diverse topics ranging from the relationship between Article 192 and 194 TFEU to the efficient development of an Offshore-infrastructure in the North Sea.

The editors very much thank Professor *Matthias Schmidt-Preuß* from the University of Bonn for having moderated the workshop with such exceptional dedication. Questions concerning his in-depth analysis of the competence of the EU in the field of energy (Articles 192, 194 TFEU) can be addressed to sekretariat.schmidt-preuss@jura.uni-bonn.de.

This volume contains a selection of the contributions to the workshop and is supposed to inform about the conducted debates and to encourage further research. The publication is made with consent of the University of Oslo's own publication series MARIUS – Scandinavian Institute of Maritime Law where the papers are co-published.

Berlin, June 2015

Franz Jürgen Säcker

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Abbreviations

AG	Advocate General
BGBL	Bundesgesetzblatt (Federal Law Gazette)
BerlKommEnR	Säcker (ed.), Berliner Kommentar zum Energierecht
CJEU	Court of Justice of the European Union
ch., chs.	chapter, chapters
CHP	combined heat and power production
CMLRev	Common Market Law Review (journal)
CO ₂	Carbon Dioxide
COM	Communication of the European Commission
EC	European Community
EC Treaty	Treaty establishing the European Community
ECB	European Central Bank
ECJ	European Court of Justice
ECLR	European Competition Law Review (journal)
ECR	European Court Reports
ed., eds.	editor/edition, editors
EEA	European Economic Area
EEAG	European Commission, Guidelines on State aid for environmental protection and energy 2014–2020, 28.6.2014, OJ C 200/01
EEC	European Economic Community
EEC Treaty	Treaty establishing the European Economic Community
EEG	Erneuerbare-Energien-Gesetz vom 21. Juli 2014 (BGBL. I S. 1066), das zuletzt durch Artikel 1 des Gesetzes vom 29. Juni 2015 (BGBL. I S. 1010) geändert worden ist (German Renewables Act)
e.g.	exempli grātiā (for example)
Electricity Market Directive	Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC, OJ L 211/55
ELRev	European Law Review (journal)
esp.	especially

ESTAL	European State Aid Law Quarterly (journal)
et al.	et alii
etc.	et cetera
EU	European Union
EuZW	Europäische Zeitschrift für Wirtschaftsrecht (journal)
f., ff.	folio, foliis (and following)
FIT	Feed-in Tariff
fn.	footnote
Gas Market Directive	Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ L 211/94
ibid.	ibidem (in the same place)
ICSID	International Centre for Settlement of Investment Dispute
i.e.	id est (that is to say)
LNG	non-liquified gas
no.	number
MW	Megawatt
NWV Neuer Wiss. Verl.	Neuer Wissenschaftlicher Verlag
NZKart	Neue Zeitschrift für Kartellrecht
OGEL	Oil, Gas & Energy Law
OJ	Official Journal
OUP	Oxford University Press
p.	page, pages
P. Lang	Peter Lang (publisher)
para., paras.	paragraph, paragraphs
RdE	Recht der Energiewirtschaft (journal)
Regulation on Cross-Border Trade for Electricity	Regulation 2009/714 of the European Parliament and of the Council of 13 July 2009 on the conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, OJ L 211/15
RES	Renewable Energy Sources

RES Directive	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
revsd.	revised
StrEG	Gesetz über die Einspeisung von Strom aus erneuerbaren Energien in das öffentliche Netz (Stromeinspeisungsgesetz) vom 7. Dezember 1990 in der Fassung vom 1. August 1994 (German Act on the promotion of renewable energies, now replaced by the EEG)
SWD	Staff Working Document
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
TSO	Transmission System Operator
UK	United Kingdom
Utilities LRev	Utilities Law Review (journal)
WTO	World Trade Organisation
ZWeR	Zeitschrift für Wettbewerbsrecht (journal)