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# EU Climate Change Policy: The Challenge of New Regulatory Initiatives, by Marjan Peeters and Kurt Deketelaere

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The comparison of various discriminatory grounds results in the conclusion that their incorporation within the body of anti-discrimination law was inspired by divergent underpinning values, as reflected in different regulatory approaches to equality and anti-discrimination, depending on the ground at stake. Although Ms Gijzen supports equal protection against discrimination, she agrees with a need for tailored-made approaches and interpretations for different grounds of discrimination. The comparison of Dutch and English regulatory frameworks proves that even after the implementation of EC law, national approaches to discrimination are likely to differ from one another, resulting in unequal protection against discrimination across the EU member states.

To sum up, this is an excellent book that contributes extensively to the discussion on discrimination law at the European and national levels. For all those interested in this fascinating and rapidly developing legal field, it is obligatory reading.

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**Marjan Peeters and Kurt Deketelaere (eds.), *EU Climate Change Policy: The Challenge of New Regulatory Initiatives*, Edward Elgar Publishing 2006, viii + 334 pages, hardback, £75, ISBN 978-1-84542-605-7**

Climate change will likely be the most complex and expensive environmental problem humanity has ever had to address. According to the Stern Review commissioned by the UK government, the cost of business-as-usual, by not taking immediate action to mitigate climate change, will likely be equivalent to between five to ten percent of world GDP each year.<sup>1</sup> Although the transition to a low carbon economy is a responsibility of all countries, the Kyoto Protocol of 1997 expects rich nations to take primary responsibility. Acknowledging the states' 'common but differentiated responsibilities',<sup>2</sup> the Protocol obliges developed nations to take the lead role. So far, only the member states of the European Union (EU) have shown international leadership on climate policy.

Therefore, this excellent edited collection assembled by Peeters and Deketelaere on the achievements of EU climate change policy is a very timely publication. They have brought together nineteen distinguished, mostly European scholars, on climate law and policy to provide an informative account of the flurry of initiatives. Professor Marjan Peeters is a member of the Department of Law at the University of Maastricht, and Professor Kurt Deketelaere is the Director of the Institute of Environmental and Energy Law, University of Leuven. With the other contributors, they examine the relationships between EU climate law and international law (part 1), greenhouse gas (GHG) emissions

<sup>1</sup> N. Stern, *Stern Review on the Economics of Climate Change* (HM Treasury, 2007).

<sup>2</sup> Kyoto Protocol, UN Framework Convention on Climatic Change, 37 *I.L.M.* 22 (1998), Art. 10.

trading in the EU (part 2), energy regulation in relation to climate policy (part 3), and instrument policy mixes for better governance of climate policy (part 4).

Over at least the past decade, one can argue that the EU has generally led the world in environmental law reform.<sup>3</sup> In the area of climate policy, the EU is also widely recognised as a front-runner,<sup>4</sup> or a 'global green leader' (3) in the words of Deketelaere and Peeters. Not surprisingly, therefore, EU climate policy and law has already generated a significant body of literature.<sup>5</sup> The EU's achievements are all the most noteworthy given that the European Community Treaty does not explicitly refer to 'climate change' or similar notion.

Even the EU, however, faces formidable challenges to achieve a low carbon economy. The International Panel on Climate Change has called for cuts in GHG emissions by at least 60 percent by 2050 to avoid dangerous climate change, while for many scientists and activists such as George Monbiot, even steeper cuts of up to 90 percent are necessary.<sup>6</sup> These targets are well in excess of even the EU's relatively ambitious goals.

The significant feature of this book is its focus on legal instruments, with emissions trading as the principal policy tool, accompanied by directives on energy taxation, energy efficiency and renewable energy. They authors provide both a theoretical and practical legal perspective on the regulatory issues involved. A seminal observation that flows through the book is that 'the current approach like emissions trading and energy taxation is not yet meaningful enough because of the fact that they, thus far, do not lead to impressive reductions' (4).

This suggests that even with the right policy tools, the underlying fundamental goals must be sufficiently ambitious. Those goals, however, require a political consensus for determined action. For instance, it was not long before the EU carbon trade regime<sup>7</sup> launched in 2005 began to unravel, as an excess of emission allowances caused the price of allowances to crash and become virtually worthless. The first phase of this scheme – which covered around 40 percent of the EU's emissions – fell short of its promises because the carbon dioxide limits were not strict enough. Moreover, the large polluters were given credits free of charge.

But carbon trading is new ground for environmental law reform, and some trial and error can be expected. These limitations are acknowledged in this book, as the

<sup>3</sup> See M. Lee, *EU Environmental Law: Challenges, Change and Decision-making* (Hart Publishing, 2005).

<sup>4</sup> A.C. Christiansen and J. Wettestad, 'The EU as a Front-Runner on Greenhouse Gas Emissions Trading: How Did It Happen and Will the EU Succeed?', 3 *Climate Policy*, 3 (2003): 3–18.

<sup>5</sup> For example, A. Michaelowa and S. Butzengeiger and M. Grubbs (eds), *The EU Emissions Trading Scheme* (Earthscan, 2005); L. Jaggard, *Climate Change Politics in Europe: Germany and the International Relations of the Environment* (Tauris Academic Studies, 2007); J. Gupta and M.R. Grubb, *Climate Change and European Leadership: A Sustainable Role for Europe?* (Springer, 2000).

<sup>6</sup> George Monbiot, *Heat: How to Stop the Planet Burning* (Allen Lane, 2006).

<sup>7</sup> Directive 2003/87/EC.

contributors provide a balanced and fair review of the successes and limitations of climate policy and regulation in the EU.

Among the valuable individual chapters, Wybe Th. Douma's paper (chapter 3) provides fascinating insights into the special relationship between the EU and Russia regarding its ratification of the Kyoto Protocol, and the influence the EU was able to exert to facilitate Russia's ratification, which was crucial to keeping the Protocol alive. On emissions trading in the EU, Javier de Cendra de Larragán's chapter (6) addresses the complicated topic of the linkage between the Kyoto Protocol's project mechanisms (Clean Development Mechanism and Joint Implementation) and the EU emissions trading scheme. British lawyers Karen MacDonald and Zen Makuch (chapter 7) provide an incisive account of how the emissions trading scheme interacts with the participatory and transparency objectives of the Aarhus Convention.<sup>8</sup> They note, for instance, the potential contradictions here, given that the 'concept of emissions trading relies on the privatization of formerly publicly held rights' (127). Peeters herself examines problems of enforcing the emissions trading scheme (chapter 9), noting the challenges that have plagued the scheme such as a 'credible verification process' and 'monitoring requirements' (179). Also noteworthy is the chapter on EU energy policy, by Véronique Bruggeman and Bram Delvaux (chapter 12). They canvass the 'pressures' that Kyoto is placing on a host of EU directives to perform, including directives on promotion of renewable energy power,<sup>9</sup> use of biofuels,<sup>10</sup> combined heat and power generation,<sup>11</sup> among many other examples carefully reviewed. They observe that even with the plethora of directives, the EU appears unlikely to meet its own targets for greening its energy sector.

Not all aspects of climate policy are covered in these chapters, however. Climate ethics is largely ignored, although other commentators have suggested that we need a shift in ethics to address global warming.<sup>12</sup> In his polemic, *American Heat*, Donald Brown argues that we need to reflect on the ethical issues raised by climate change in order to reach an urgently needed international consensus for action.<sup>13</sup> Likewise, ethical issues have hardly featured in EU climate policy to date, so perhaps it is not surprising that the contributors to this book had little to say on this topic.

The final part of the book has some of the strongest analysis. Ludwig Krämer, a renowned EU environmental lawyer, reflects on the EU's constitutional and institutional barriers for acting on climate policy. Despite having no specific mandate in its Treaty on climate policy, Krämer describes the Community's achievements in this domain as 'very

<sup>8</sup> Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, 1998.

<sup>9</sup> Directive 2001/77/EC.

<sup>10</sup> Directive 2003/30/EC.

<sup>11</sup> Directive 2004/8/EC.

<sup>12</sup> See <http://www.climateethics.org>.

<sup>13</sup> D. Brown, *American Heat: Ethical Problems with the United States Responses to Global Warming* (Rowman and Littlefield, 2002).

considerable' (290). Krämer nonetheless conveys concern that further policy advances may be hindered without more explicit jurisdictional competencies in the climate and energy policy fields. Krämer also astutely considers the value of having the right combination of policy instruments to address global warming – no one single tool will suffice.

What is somewhat unclear from this book is whether the lessons of the EU experience can be transferred to other jurisdictions such as Australia, Canada or developing countries such as China. For instance, to what extent does the EU's experience with emissions trading and energy taxation hinge upon unique political and legal traditions within Europe? The authors of course did not set out to write a book about comparative environmental law, but it is a question that non-EU readers will ponder as they hope for their own countries to emulate the EU's successes and to avoid its mistakes.

Only two chapters explicitly address such comparative perspectives. George Pring's essay helpfully examines the US experience with acid rain allowance trading (chapter 10). He points out that regulating GHG emissions is vastly more complicated than regulating sulphur dioxide given the pervasive use of fossil fuels in the economy. In the final chapter, Joyeeta Gupta considers the thorny North-South dimension of international climate politics, and notes policy challenges here that are even greater than the current trans-Atlantic divide. Gupta astutely deciphers the enormous challenges, that, in her own words, 'unless the climate change regime is redefined in terms of liability, the South cannot force the North to take action. In the meantime, they can only hope for a series of technological breakthroughs' (299).

With preparations commencing for the negotiation of a post-Kyoto agreement after 2012, readers will find this collection of essays on the strengths and weaknesses of climate law in Europe very useful. Peeters and Deketelaere have assembled a good account of the policy achievements, limitations and future challenges for the EU on climate policy. This scholarship is not just for legal academics and practitioners. It should be read by policy-makers, students, environmental activists and indeed anyone interested in how climate governance can succeed. But as an exceptionally dynamic area of environmental law, it will not be long before the editors will need to write another book to keep abreast of the rapid legal changes on climate change.

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