EELF
European Environmental Law Forum

First EELF Conference

Environmental Law and Energy and Climate Law as instruments to achieve Sustainable Energy

4, 5 and 6 September 2013

Het Kasteel, Groningen
The Netherlands

Call for presentations

university of groningen
faculty of law
groningen centre of energy law

HELMHOLTZ CENTRE FOR ENVIRONMENTAL RESEARCH – UFZ

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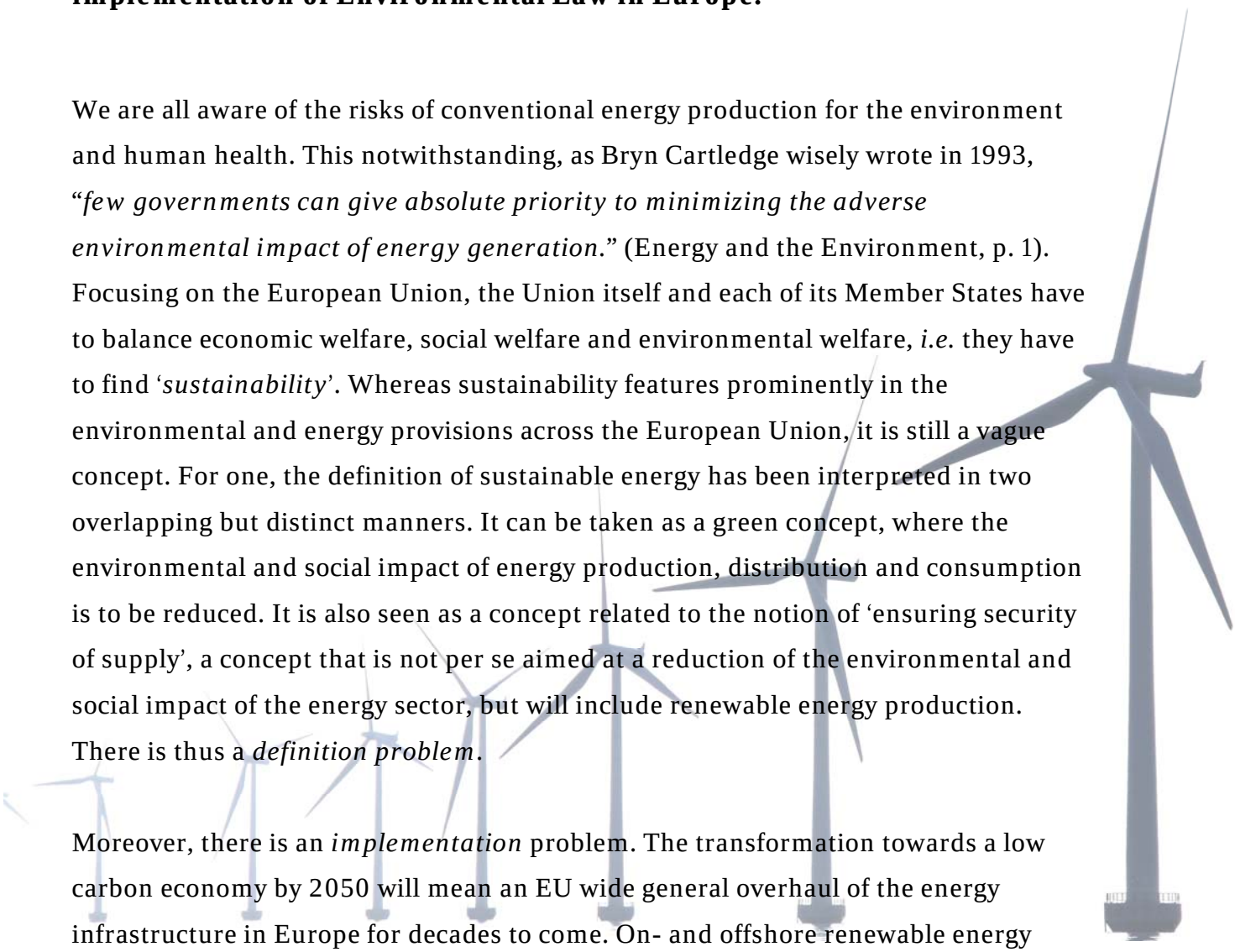
KNOWLEDGE IN ACTION

Building upon the experience gained in Leipzig (Germany) in 2011, the *Groningen Centre of Energy Law*, in cooperation with the *University of Hasselt* and the *Helmholtz Centre for Environmental Research*, organises a conference to bring together the disciplines of environmental law and energy law in order to explore and develop a workable legal concept of sustainable energy within the European Union. This conference represents the second step in the road for the establishment and functioning of the European Environmental Law Forum, which aims at supporting the intellectual exchange, the development and the implementation of Environmental Law in Europe.



We are all aware of the risks of conventional energy production for the environment and human health. This notwithstanding, as Bryn Cartledge wisely wrote in 1993, "*few governments can give absolute priority to minimizing the adverse environmental impact of energy generation*." (Energy and the Environment, p. 1). Focusing on the European Union, the Union itself and each of its Member States have to balance economic welfare, social welfare and environmental welfare, *i.e.* they have to find '*sustainability*'. Whereas sustainability features prominently in the environmental and energy provisions across the European Union, it is still a vague concept. For one, the definition of sustainable energy has been interpreted in two overlapping but distinct manners. It can be taken as a green concept, where the environmental and social impact of energy production, distribution and consumption is to be reduced. It is also seen as a concept related to the notion of 'ensuring security of supply', a concept that is not per se aimed at a reduction of the environmental and social impact of the energy sector, but will include renewable energy production. There is thus a *definition problem*.

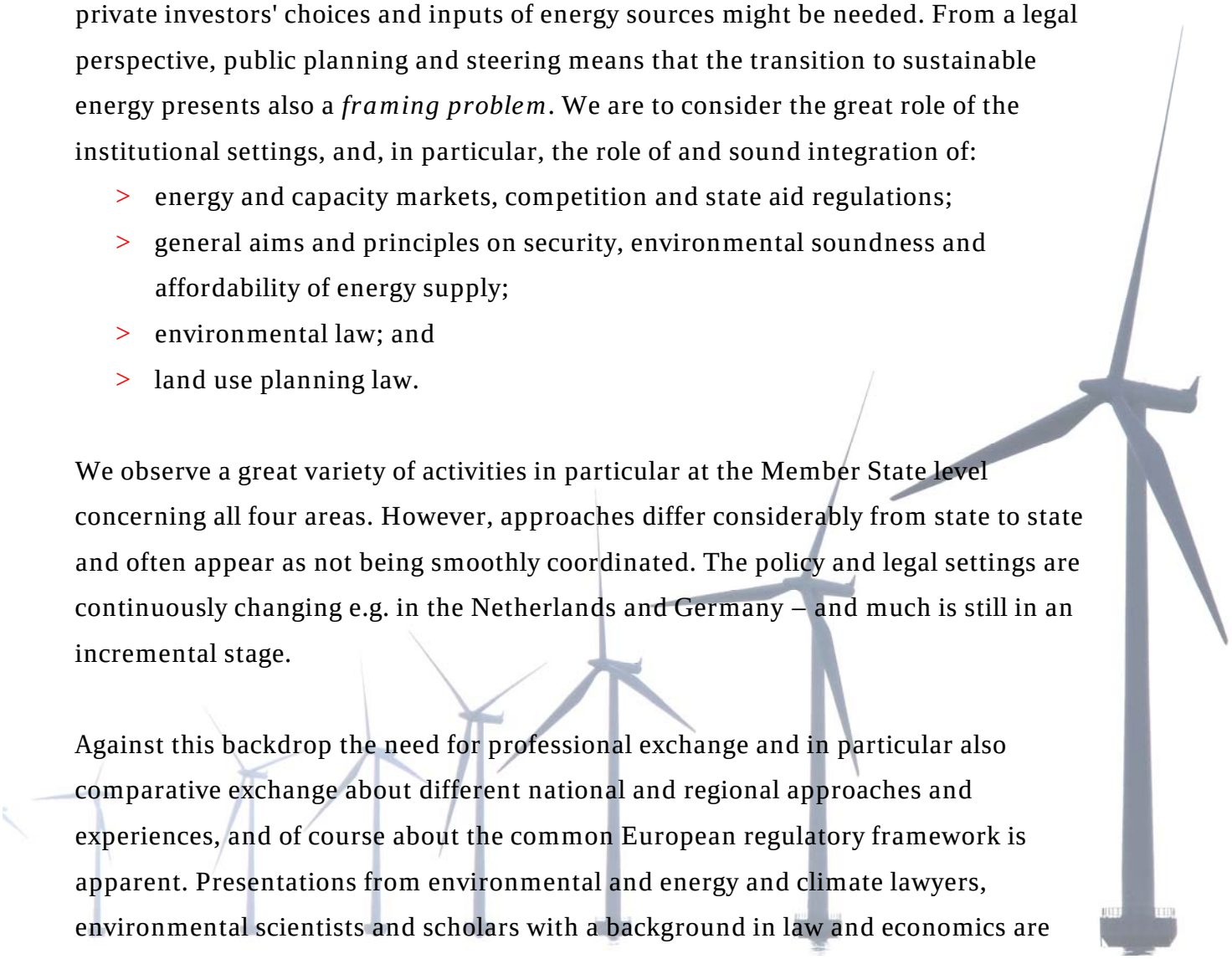
Moreover, there is an *implementation* problem. The transformation towards a low carbon economy by 2050 will mean an EU wide general overhaul of the energy infrastructure in Europe for decades to come. On- and offshore renewable energy installations and saving facilities, as well as EU-wide interconnecting grids and smart grids, need to be planned, coordinated and erected, which may cause severe environmental impacts. Moreover, biofuels and biomass have come under severe critique when competing with agricultural food production as well as for their adverse

environmental effects. Finally, there is an urgent need for reform to enhance the effectiveness of the EU ETS as the central instrument in EU climate policy which is currently experiencing a too low price signal for driving the technology transition in the energy sector. The political debate has already started with the discussion on options for reforming the EU ETS. Legal issues arising from this context will need to be examined closely.

Sustainable energy as the central concept

In order to make sustainable energy systems work, public planning and steering of private investors' choices and inputs of energy sources might be needed. From a legal perspective, public planning and steering means that the transition to sustainable energy presents also a *framing problem*. We are to consider the great role of the institutional settings, and, in particular, the role of and sound integration of:

- energy and capacity markets, competition and state aid regulations;
- general aims and principles on security, environmental soundness and affordability of energy supply;
- environmental law; and
- land use planning law.



We observe a great variety of activities in particular at the Member State level concerning all four areas. However, approaches differ considerably from state to state and often appear as not being smoothly coordinated. The policy and legal settings are continuously changing e.g. in the Netherlands and Germany – and much is still in an incremental stage.

Against this backdrop the need for professional exchange and in particular also comparative exchange about different national and regional approaches and experiences, and of course about the common European regulatory framework is apparent. Presentations from environmental and energy and climate lawyers, environmental scientists and scholars with a background in law and economics are welcome. Within the overarching theme presented above the following 3 subthemes have been identified

A. Defining sustainability: General aims and principles of sustainable energy

Above, we indicated the presence of a definition problem with regard to sustainable development in general and sustainable energy in particular. In this conference, we welcome presentations discussing how to reach a workable definition of sustainable energy. How can we integrate the fields of environmental and energy law? Can such an integration be used to achieve policy integration between the Member States and undertakings that also concerns the environmental and social impact of energy production, transport and consumption? What role can environmental principles play in defining sustainable energy? What is the role of public participation under the Aarhus Convention, and under the Community and national measures based thereupon, to define sustainable energy? Do we need to rethink rules on public participation when it comes to planning major renewable energy infrastructure projects?

An energy lifecycle approach provides a useful tool for assessing the environmental effects of reliance on energy sources. The information it provides could significantly assist with decision-making on how sustainable energy supplies should be constituted. However, it is very difficult to regulate, particularly at an international level. This leads to questions on how to regulate methodology and monitoring of lifecycle-analysis and of other techniques to define sustainable energy. Finally, papers are invited on how law can be used in distinguishing between sustainable and unsustainable energy sources.

B. Enabling 'sustainable' energy transition: Managing conflicts of competence and environmental effects

In order to ensure security of energy supply, renewable sources are increasingly being developed. Above we mentioned the existence of an implementation problem with regard to both the production of sustainable energy and the building of infrastructures for the transport of energy. At European and national level environmental law, especially nature conservation law, is sometimes seen as a factor constraining the energy transformation. This is further complicated by the fact that competences in both the energy and the environmental policy sectors are shared

between the EU and its Member States, and we see a desire on the part of the Member States to restrict EU competences.

At the same time, the diversity of the energy structure in the 27 Member States and the differing environmental circumstances in those Member States result in a reduced level of harmonisation. Without putting into question the importance of the security of energy supply, to speak of sustainable energy transition, environmental and social concerns must be taken into consideration by the various legal developments in the fields of development law, planning law and access to justice with the aim of enabling energy transition. How can environmental protection be ensured by integrating it into a process of further deregulating planning and development law that is currently on-going in the EU? How can we make sure that the (EU-wide) coordination of decisions relating to sites in the internal energy market leads to energy transition? And, how can we balance the need of a lean "one stop" planning project enabling the energy transition with the need to protect the environment while at the same time increase the social acceptance in the context of the legislative process, decision-making and judicial review?

It is evident that an energy transition in the EU cannot be seen in isolation, but rather needs to form part of the EU's external policy whilst that external component needs to be firmly embedded in the EU's energy transition regime. Therefore, we welcome presentations clarifying the interrelations between EU external policy and EU energy transition policy.

C. Incentivising 'sustainable' energy transition: Promoting the development and, management of sustainable energy sources and related infrastructures between state control and open markets

The EU currently sets all kinds of climate, energy and sustainability targets (e.g. the so-called '20-20-20 goals'). In this conference we welcome presentations discussing the respective instruments designed to achieve those targets. What is the role of the EU ETS as it is currently under revision, the RES Directive and the new Directive on energy efficiency in the energy transition? What are its shortcomings in particular in relation to its interaction and in the face of a highly diversified energy mix in the

different Member States (e.g. Germany, France, UK and Poland). What would need to be changed for a new EU Energy and Climate Package with a view to 2030 also taking into account capacity markets for electricity? What would be the challenges when linking the EU ETS to similar schemes in other jurisdictions, including California, Australia or China? What would be the challenges when expanding the EU ETS to other sectors in the economy, e.g. households and transport? Besides the EU ETS what other instruments can be used to incentivise sustainable energy transition including payments for ecosystem services, cross-border cooperation and incentivising schemes?
The aim of this session is to determine how these instruments work and whether they are effective in driving an energy transition and if not what are the new instruments that may be able to take over.

Energy transition can also be incentivised by focusing on the demand side, i.e. on consumers, what is the present and future role of consumer participation (demand side response) in the energy sector through consumer law as an instrument to incentivise sustainable energy transition?

Applications, further information and contacts

Environmental, energy and climate lawyers, environmental scientists and scholars with a background in law and economics interested in participating to the conference can submit an abstract of no-more than 600 words to Lorenzo Squintani (l.squintani@rug.nl) within the **15 of May 2013**.

Further information on the conference (e.g. conference venue, hotel accommodation, registration form, conference dinner) can be found on the webpage of the Groningen Centre of Energy Law (www.gcel.nl) and on the EELF website, available from April 2013.

Any question concerning the conference can be addressed to Prof. Dr Hans H.B. Vedder (H.H.B.Vedder@rug.nl) or, preferably, Lorenzo Squintani, LLM (L.Squintani@rug.nl).