



EU climate law and its impact on national climate legislation

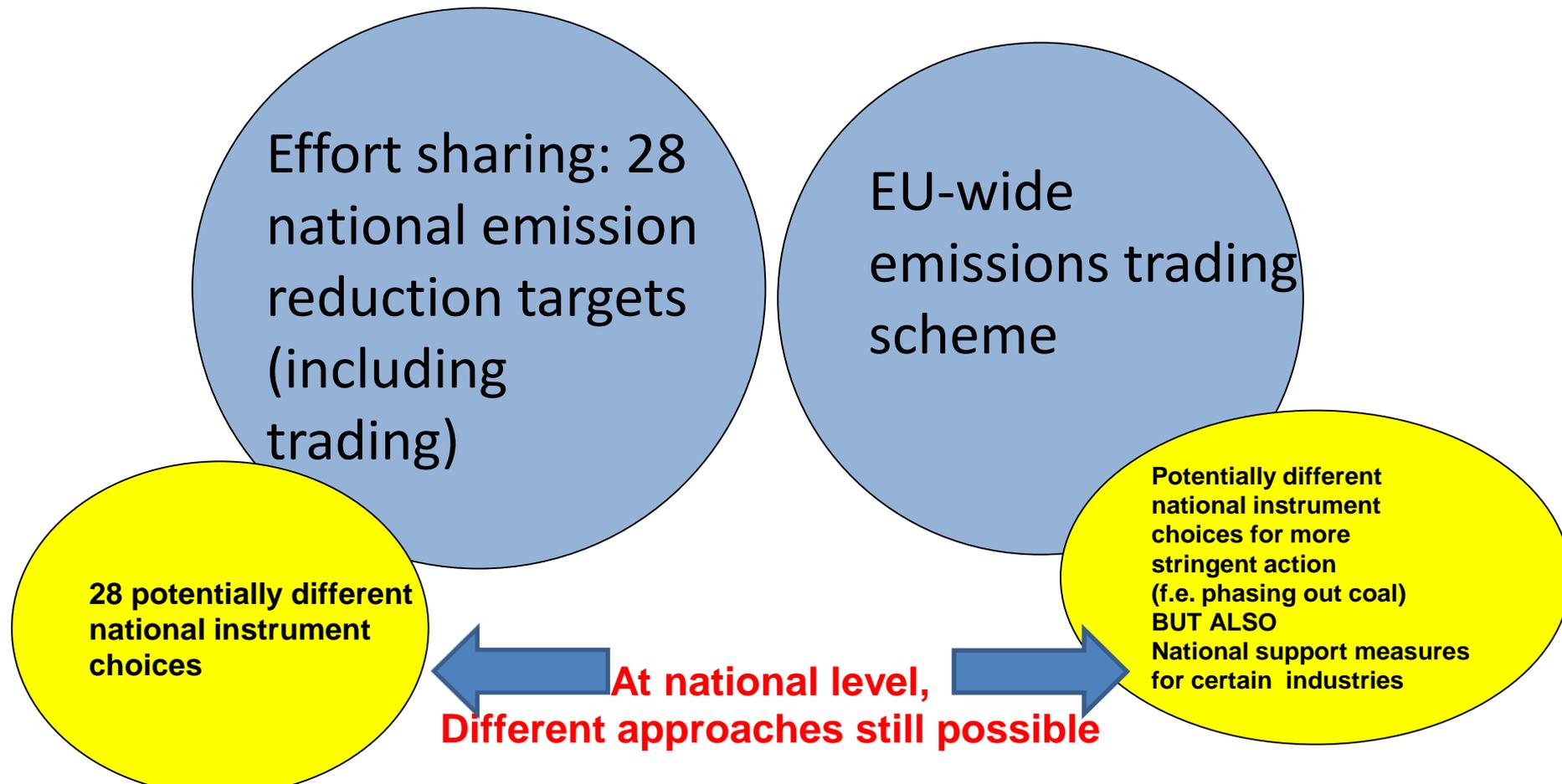
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Regulatory instruments for greenhouse gas emission reduction in the EU:

a rather inclusive package with some room for national choices



What do we know about these national choices under EU law?

- **Some initiatives for overview of laws**

example: <http://www.lse.ac.uk/GranthamInstitute/climate-change-laws-of-the-world/>

- **Information from other regions in the world**

for example California: <http://www.climatepolicysolutions.org/>

-> **Ongoing research challenge -> What we need is a database and analysis of (28) national policies and legislation, including case law, for exploring optimal choices (in specific national circumstances)**

EU -> 2030

At least 40% domestic reduction in 2030 compared to 1990 (INDC -> the EU INDC is registered as the first NDC at the UNFCCC website, also on behalf of the Member States who ratified)

European Council 24 October 2014 on instrument choice:

> the target will be delivered collectively by the EU in the most cost-effective manner possible, by means of the EU ETS and the Effort Sharing Decision

> no national renewable energy targets anymore

Main legislative proposals for the package for 2030:

Proposal for a directive amending the EU ETS directive to enhance cost-effective emission reduction and low carbon investments from 15.7.2015 COM(2015)337

Proposal for a Regulation of the European Parliament and of the Council on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 from 20.07.2016 COM(2016)482

Proposal for a Regulation of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework from 20.7.2016 COM(2016)0479 final

Proposal for a Regulation of the European Parliament and of the Council on the Governance of the Energy Union, amending several other laws, COM/2016/0759.



new

Proposal for a Regulation: Governance of the Energy Union

COM(2016)759 from 30.11.2016

Five dimensions / aims:

- energy security,
- energy market,
- energy efficiency,
- decarbonisation, and
- research innovation and competitiveness

Procedure on-going (trilogue)

Governance of the Energy Union

EU Targets for 2030 (article 1(a) jo 2(9)):

- Union wide binding target of at least 40% domestic reduction in economy-wide greenhouse gas emissions,
- Union wide binding target of at least 27% consumption of renewable energy
- Union level target of at least 27% for improving energy efficiency (not mentioning “binding”)
- 15 % electricity interconnection target for 2030

Integrated national energy and climate plans

- covering ten years
- by January 1 2019, updates in 2023, and every 10 years thereafter.
- Draft plans already by January 1 2018, with consultation of stakeholders
- with description of national objectives (etc) for each of the five dimensions of the Energy Union (article 1(2))
- Plan links to ESD and LULUCF; it seems that MS may introduce some specific targets in the area of the ETS sector (my interpretation) -> see article 4

National reporting (progress reports, every two years)

Review by Commission, may (or shall) issue recommendations (art 28 – for “shall” see art 27(2))

Commission shall take measures at Union level to ensure the collective achievement (art 27)

Governance Regulation is complementary to and consistent **with the European Semester**

-> *the Country Specific Recommendations in the European Semester can address climate and energy issues*

<https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-netherlands-en.pdf>

What would be the additional value of a “national climate act” to the required national plans?



<http://arno.unimaas.nl/show.cgi?fid=20847>

A regulation is binding upon member states, so they need to follow this structure and comply with it, and have to avoid duplication of these provisions in their national law

The regulation has to be implemented in light of the environmental principles as codified in EU law (and has to be implemented of course in the light of other EU legal principles, such as proportionality).

Exploration of specific national provisions :

- Of course, national regulations are needed to implement EU climate law, such as the EU ETS and the Effort sharing decision
- National climate legislation can/should stipulate **the competences and procedures** for developing and adopting the plan, including the set-up and role of **scientific and/or societal advice** and **public participation**
- National climate legislation could make the plans “**more**” **binding** (this could be an article 193 TFEU measure)
- And could introduce **long-term targets** (but also binding?) (also an article 193 TFEU provision?)
- **Access to court provisions** (procedural – substantive)

Stringency of the reduction: legal disputes?

EU wide ambition is at least 40% reduction in 2030 compared to 1990, to be achieved domestically

However, this goal was submitted *before* the Paris Agreement, which turned out unexpectedly ambitious
-> reconsideration necessary?

Contestation of the (too low?) EU ambition, or, in this vein, of specific provisions such as using (Kyoto) offsets, has not yet occurred before the courts

Can member states pursue more ambitious targets under EU law – **or can they be enforced to do so?**
- Urgenda case (The Netherlands -> appeal)

Art. 193 TFEU:
ample room for Member State action ?

Article 193 (ex Article 176 TEC)

The protective measures adopted pursuant to Article 192 shall not prevent any Member State from maintaining or introducing more stringent protective measures. Such measures must be compatible with the Treaties. They shall be notified to the Commission.

Art. 193 TFEU: limited use and case law thus far

Additional environmental measures are not (yet) often preferred by Member States -
> this may be different in the field of climate change

Case C-2/10 (Ban on windmills in Puglia, so this is more stringent action for the sake of nature conservation and not promoting more mitigation action)

No (CJEU) case law yet on further going mitigation (reduction) measures in EU member states (for instance regarding measures in the UK)

National tax with regard to freely received allowances in Czech Republic was unlawful (in breach with EU ETS, and *not considered as a more stringent protection measure* -> C-43/14, 26 February 2015, Ško- Energo s.r.o.v Odvolací finanční ředitelství)

Moreover, the waterbedeffect:

The EU wide cap on emissions means that it doesn't matter where in the EU emissions reductions take place

Which makes unilateral action not attractive (an emission reduction at one place most likely entails an equal emission increase at another place in case trading occurs)

Conclusion

EU climate legislation is “under construction”, aiming at an inclusive approach (covering all greenhouse gases)

-> the regulatory discretion for member states is limited by such EU climate legislation

The Governance of the Energy Union introduces obligatory national plans -> this new process has yet to be examined / experienced in view of its effectiveness (rather soft approach)

Points of discussion:

- > What regulatory choices can and will be made within the discretion of the member states?
- > What useful additional provisions to EU climate legislation can or shall a national climate act provide?
- > Which ambition will Member States pursue, will they move beyond EU law, and will courts play a role in this respect?

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MOTIEVEN EN MOGELIJKHEDEN VOOR
EEN NATIONALE KLIMAATWET

EEN RECHTSVERGELIJKENDE VERKENNING

STRUCTURELE EVALUATIE MILIEUWETGEVING (STEM)

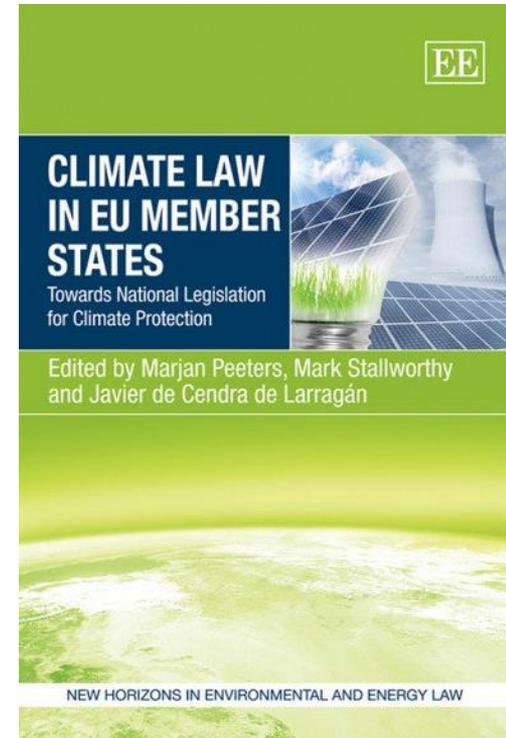
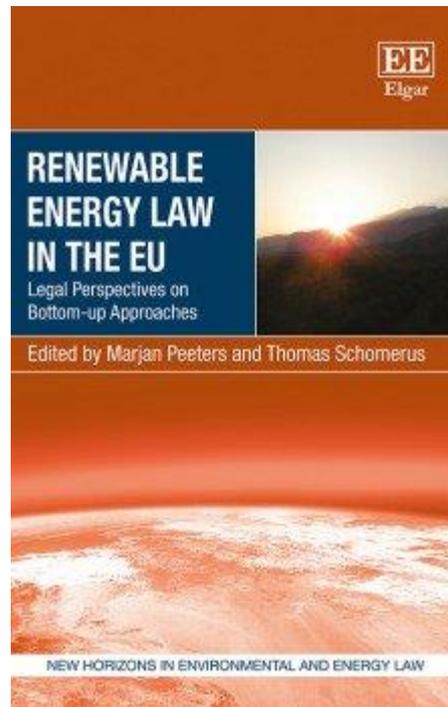
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