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ENVIRONMENT AND
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JOURNAL

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ON EU ENVIRONMENTAL LAW* (EDWARD ELGAR PUBLISHING LIMITED 2020)

Reviewed by: Virginie Rouas, Research Associate at SOAS, University of London

BOOK REVIEW



VOLUME
17/1

LEAD Journal (Law, Environment and Development Journal)
is a peer-reviewed academic publication based in New Delhi and London and jointly managed by the
Law, Environment and Development Centre of SOAS University of London
and the International Environmental Law Research Centre (IELRC).
LEAD is published at www.lead-journal.org
info@lead-journal.org
ISSN 1746-5893

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This document can be cited as
Book Review: Marjan Peeters and Mariolina Eliantonio eds., *Research Handbook on EU
Environmental Law* (Edward Elgar Publishing Limited 2020),
17/1 *Law, Environment and Development Journal* (2021), p. 92,
available at <http://www.lead-journal.org/content/b1701.pdf>

Marjan Peeters and Mariolina Eliantonio eds.,
Research Handbook on EU Environmental Law (Edward
Elgar 2020)

Without a doubt, the European Union (EU) has the most developed and advanced environmental legal framework among regional integration organisations. Therefore, it does not come as a surprise that EU environmental law is a regular subject of academic study. In this context, the *Research Handbook on EU Environmental Law*, edited by Marjan Peeters and Mariolina Eliantonio, is one of the newest additions to the academic scholarship on the EU institutional and legal machinery that protects the environment. According to the editors, this book ‘aims to draw insights into the use of different regulatory instruments by the EU’ and the role of the Court of Justice of the European Union (CJEU) ‘in putting them into practice in the field of EU environmental law’. One important contribution of this book is its emphasis on contemporary issues and practical aspects of EU legislation on environmental protection. In particular, it provides a critical overview of existing EU environmental law, highlighting successes, challenges, and opportunities for strengthening rules and improving implementation. With this in mind, this research handbook is divided into seven thematic parts and gathers concise contributions from academic authors covering a wide range of aspects of EU environmental law.

First, as a reminder that knowledge of the functioning of the EU institutions is essential to understand EU environmental law, Part I explores the institutional and horizontal issues related to EU environmental law. Helle Tegner Anker examines the EU’s competence to legislate on environmental matters, in particular legal bases under the Treaty on the Functioning of the European Union (TFEU). She also explores the principles of subsidiarity and proportionality and the limitations they impose on the EU’s exercise of its environmental competences. Leonie Reins then assesses the application of Article 193 TFEU, which enables Member States to go beyond EU rules and adopt more stringent environmental protection measures, paying special attention to case law of the CJEU. She argues that the environmental guarantee provided for in Article 193 has so far served to further institutionalise EU environmental law and policy. Moreover, Gyula Bándi discusses how the

environmental principles of EU law provide guidance for environmental regulation and the practice of administrative implementation and judicial adjudication. Annalisa Volpato and Ellen Vos explore the role of EU agencies in environmental law and policy, while Antonio Cardesa-Salzmann and Elisa Morgera examine the EU’s competence and participation in external environmental action and assess the EU’s track record as a global player in international environmental governance. The chapter written by Geert van Calster focuses on the impact of the EU’s internal market provisions and its case-law on the possibility to adopt national measures to protect the environment. Finally, Luca de Lucia and Maria Chiara Romano discuss the nature of transnational administrative acts and their impact on environmental protection.

As a result of the increasing influence of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) on EU legislation, Part II justifiably provides insights into procedural rights in EU environmental law. Uzuazo Etemire critically assesses the current status of EU law on access to environmental information, while Lorenzo Squintani and Goda Perlaviciute examine the EU legal framework governing public participation in environmental matters, looking in particular at the relationship between public participation and the acceptability of policies, plans, and projects that affect the environment. Matthijs van Wolferen and Mariolina Eliantonio describe the challenges of access to justice in environmental matters in the EU and, in particular, how the judicial organisation of the EU creates an additional challenge for public-interest litigants. Finally, Agustín García-Ureta explores the challenges arising from environmental impact assessments in the light of applicable EU directives and CJEU case-law.

Although the EU has adopted a large volume of environmental rules, low levels of compliance have compromised their effectiveness in achieving environmental protection. Therefore, Part III explores the pressing issue of compliance with EU environmental law through three chapters on specific enforcement mechanisms. Ludwig Krämer discusses the role of direct effect, a jurisprudential doctrine that allows individuals to rely on EU legal provisions where Member States have failed to transpose or implement

such provisions, has played in the context of EU environmental law. In particular, he explains how the recent CJEU case-law may be signalling the end of the application of this doctrine. Furthermore, Martin Hedemann-Robinson explores the thorny issue of the role of the EU in regulating environmental inspections by national authorities, and the need to strengthen the EU legal approach to such inspections. Lastly, using qualitative data, Melanie Smith examines the important role played by infringement and financial sanction procedures initiated by the European Commission in enforcing environmental law in the EU.

Liability is a key tool for deterring environmentally destructive behaviour. Therefore, it is only natural that liability for environmental damage under EU law should be discussed in this research handbook. In Part IV, Barbara Pozzo describes the background and content of the Environmental Liability Directive, as well as the challenges facing its implementation at national level and the harmonisation of liability across Member States. Moreover, Michael Faure discusses EU environmental criminal liability. He examines how the activist role played by the CJEU paved the way for the adoption of the Environmental Crime Directive, describes the limitations of this instrument, and presents potential options for how the EU can ensure better harmonisation of environmental criminal law at national level.

Part V of this book ‘delves into the fragmented substance of EU environmental law’ by discussing the complex and technical content of specific EU legal instruments, recent legal and jurisprudential developments, and current challenges in nine environmental sectors. First, An Cliquet focuses on EU nature conservation law. She outlines the core provisions of the Birds and Nature Directives and relevant case-law of the CJEU, and discusses the recent Fitness Check of those directives. Nathalie Hervé-Fournereau then undertakes a prospective analysis of the future of EU water law on the basis of the 2019 Fitness Check of the Water Framework Directive and the Flood Directive. EU legislation on air pollution is reviewed by Kendro Pedrosa and Bernard Vanheusden. They discuss the relationship between EU air legislation and the Convention on Long-Range Transboundary Air Pollution, as well as the increasing role of the CJEU in dealing with air pollution cases. Lolke Braaksma

and Hanna Tolsma review the evolution of the EU’s integrated approach towards pollution prevention and control. Their chapter analyses the extent to which the Industrial Emissions Directive has successfully implemented an integrated approach to pollution prevention and control. Moreover, Chris Backes provides an overview of the development of EU waste law and the CJEU’s important role in defining the legal concept of waste. He also explores the relationship between waste law and the increasingly prominent concept of circular economy. Martin Führ and Julian Schenten address the difficult issue of the regulation of industrial chemicals and review the content and implementation of the REACH Regulation and the Classification, Labelling and Packaging Regulation. They question the current EU governance model for risk management processes. Giulia Claudia Leonelli assesses the governance of genetically modified organisms (GMOs) in the EU through the prism of evidence-based and socially acceptable risk approaches towards the regulation of uncertain risks. She argues that the European Commission’s technocratic focus on sound science and trade in GMOs, and its failure to recognise EU citizens’ widespread aversion to GMOs, have undermined the political and democratic legitimacy of the GMO regulation in the EU. In addition, Nicolas de Sadeleer discusses how the scandal involving the use of defeat devices by the Volkswagen group to blur vehicle testing under artificial conditions has revealed flaws in compliance with EU rules on car emissions. In particular, he explores the regulatory issues that have arisen with regard to the control of pollution emissions from light-duty vehicles powered by gasoline and diesel. Finally, Andrew Johnston and Beate Sjøfjell consider the EU’s approach to environmentally sustainable business, focusing on various initiatives, including the Non-Financial Reporting Directive. They argue that the current regulatory framework is insufficient to ensure that businesses operate in a more sustainable manner and call for a fundamental shift towards a firmer and more coherent regulatory approach.

Part VI pays special attention to the EU regulatory action to address the pressing global issue of climate change. The four chapters of this part concentrate ‘on several important pillars of the EU climate law acquis’. First, Estelle Brosset and Sandrine Maljean-Dubois discuss the new approach of the Paris Agreement and

its implications for the EU, the EU's role of the as a global actor in the climate change debate, and the EU's internal climate policy. Furthermore, Seita Romppanen analyses the role of effort sharing and land use, land-use change and forestry (LULUCF) sectors in the context of the EU's 2030 climate and energy policy framework. Stefan Weishaar examines the evolution of the regulatory framework of the EU emissions trading system (EU ETS), in particular the governance shift within the EU ETS. His chapter also explores the role of climate litigation in shaping the development of the EU ETS. This analysis is timely at a time when an increasing number of States and companies are being sued for their failure to act. Lastly, Thomas Schomerus gives an up-to-date overview of EU legislation on energy efficiency and energy saving legislation, and critically assesses whether it fulfils its role in addressing climate change. While Part VI deals with important regulatory issues related to climate change, it neglects to explore the role and management of renewable energy whereas the EU has an important and always evolving legislative framework on this subject.

Finally, Part VII sets out the overall conclusions of the editors as to what can be derived from this collection of chapters.

This book shows that the EU has succeeded in building a broad regulatory framework aimed at protecting the environment. At the same time, the complex intertwined structure of EU laws and policies has challenged the effective understanding and implementation of EU environmental law. While the wide range of regulatory approaches used by the EU to address environmental issues may provide 'a fine-tuned regulation for a specific problem', streamlining and simplifying EU environmental legislation may be needed. Furthermore, if the body of EU legislation has improved over times, there is still room for improvement and legislative practice provides examples of measures aimed at watering down ambition. To sum up, an important challenge for the EU is the development of necessary and ambitious environmental legislation that does not further complicate and burden the legal landscape of environmental protection.

An important contribution of this book is how it highlights 'the "implementation deficit" that is so

manifest in EU environmental law' and that hinders the achievement of a high level of environmental protection. The lack of compliance by both private actors and public authorities remains problematic. Furthermore, the paucity of EU harmonisation of administrative sanctions across Member States, as well as the lack of regulation on inspections, contribute to the problem of compliance. While civil society could potentially play an important role in the enforcement of EU environmental law, the centralised nature of EU environmental law and the limited access by NGOs to the CJEU limit the role of civil society.

Finally, another added-value aspect of this book is its emphasis on the role of the CJEU in the development and implementation of EU environmental law. A large number of contributions analyse how the CJEU has not only cleared the way for strengthening environmental legislation, but also missed some opportunities. This book reveals the importance of case-law in the interpretation of EU environmental legislation and how the CJEU has played a significant role bringing the objectives of EU environmental law to fruition. It also shows how the CJEU has had the difficult task of balancing environmental interests with other social and economic concerns.

In view of the richness and complexity of EU environmental law, this book succeeds in providing an overarching analysis of the content and implementation of EU legislation in the most important, or well-known, environmental sectors. However, the contribution of this book could have been more significant if it had delved into emerging areas of EU environmental legislation that are under-explored (eg single-use plastics ban; protection of environmental whistleblowers; European Citizen's Initiatives in environmental matters; energy issues; the interplay between environmental regulation and digitalisation). This shortcoming is nonetheless recognised by the editors themselves, who, in the closing chapter of this book, mention a number of issues that are likely to merit further research. They consider how technological innovation (eg satellite monitoring) and new research tools (eg big data analysis) can help understand and enforce better EU law and point to the role of civil society in the pursuit of environmental accountability of EU and national institutions.

Ultimately, this research handbook is an important one-stop shop for academics, practitioners, and students. It is a valuable teaching resource to stimulate the critical thinking of advanced students about the EU's approach to environmental law. It is also a must-have for practitioners who are looking for short but critical analyses of the most important issues of EU environmental law.

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