

Third Forum on Comparative and European Energy Law (FCEEL) on New Technologies for Decarbonization – Challenges and Regulatory Strategies, in Rotterdam

Quirijn van Oijen works as student assistant at Erasmus School of Law at Erasmus University Rotterdam.

The Third Forum on Comparative and European Energy Law (FCEEL) took place on 5 November 2024 at Erasmus University Rotterdam. This year's edition of the Forum was dedicated to the most pressing contemporary issues in the regulation of new decarbonisation technologies. It featured ten presentations and two round-table discussions. The speakers covered topics as varied as green hydrogen, solar and nuclear energy, energy storage, and the maritime industry.

FCEEL 2024 was intended to foster dialogue between experts on decarbonisation and the legal frameworks that purport to accelerate it. The audience spoke on regulatory challenges and solutions in Europe as a whole and in the Netherlands and Germany in particular. The convenors of the Forum were Prof. Dr. Leonie Reins and Postdoctoral Researcher Laura Kaschny from Erasmus University Rotterdam, Assistant Professor Dr. Max Baumgart from the Tilburg Institute for Law, Technology, and Society (TILT), Prof. Dr. Torsten Körber from the University of Cologne's Institute for Energy Law (EWIR), Prof. Dr. Charlotte Kreuter-Kirchhof from the Düsseldorf Institute for Energy Law (DIER), and Prof. Dr. Christian Pielow from the Bochum Institute for Mountain and Energy Law (IBE). The Forum, now in its third year, brings together experts from the Netherlands, North Rhine-Westphalia (Germany), and beyond. What comes next is a brief summary of the presentations and the discussions which followed them:

1. Comparative and domestic perspectives

The conference began with a welcome address by Prof. Dr. Leonie Reins and Assistant Professor Dr. Max Baumgart. The presentations were divided into two panels. The first was dedicated to comparative and domestic perspectives, and the second focused more specifically on European matters.

The first panel was introduced by Prof. Dr. Torsten Körber. Assistant Professor Dr. Ruven Fleming (University of Groningen and Technical University Freiberg) commenced the proceedings in earnest with a thorough explanation of his comparative research on the legal frameworks of eight countries. Dr. Daniel Busche (University of Düsseldorf) then examined the causes of the recent surge in the uptake of plug-in solar panels in Germany as well as the attendant legal challenges and the benefits which said development is likely to yield for the energy transition. Assistant Professor Dr. Ceciel Nieuwenhout from the University of Groningen focused on energy communities and Positive Energy Districts in Portugal and the Netherlands. These presentations were followed by a presentation from Dr. Friederike Eggert, Chief of Staff at SEFE, who provided an industry perspective on the transition to green hydrogen, addressing, among several other matters, the investment risks that stem from the

availability of alternative technologies, such as CO₂ networks, and from the unclear definition of green hydrogen in modern legislation. The concluding presentation of the morning session was delivered by Prof. Dr. Martha Roggenkamp from the University of Groningen and Laura Kaschny from Erasmus University Rotterdam. They began with an overview of the definitions of compressed-air energy storage that appear in legislation before developing themes such as regulatory priorities and the need for coherence in that domain.

The morning session ended with a plenary discussion. Prof. Dr. Pim Jansen (Erasmus University Rotterdam) kicked it off with several general questions that touched on the talks that had been delivered in the preceding hours. His questions were as eclectic as the talks themselves, touching, for instance, on the legal protections that are afforded to consumers who purchase plug-in solar panels and the legal constructs that SEFE employs to create stable demand for hydrogen. Prof. Dr. Johann-Christian Pielow (Bochum University) inquired into the potential inefficiency of compressed-energy air storage, which is reliant on natural gas, and spoke briefly on the role of the notion of “overriding public interest” in countries other than Germany. Some participants showed keen interest in the latter idea and were particularly fascinated by the theoretical question of whether ‘interest’ ought to be defined by reference to the state or the market.

2. European perspectives

After a brief break for victuals, Prof. Dr. Charlotte Kreuter-Kirchhof from the University of Düsseldorf introduced the second panel. The first presenter of the afternoon was Dr. Jolanta Apolewicz from Mykolas Romeris University. She juxtaposed the principles of environmental law against those of nuclear law to explain how the latter could become more ecocentric; she also reflected on the possibility that the dangers of climate change may be graver than those of nuclear power. PhD Candidate Shakya Wickramanayake from Tilburg University then spoke on the meaning of justice in the Twin Transition. The theoretical part of her presentation focused on the rationale behind preferring a justice-based approach to its alternatives and the assumptions that underlie these different philosophical treatments of the Twin Transition. The subject matter of the next talk was more technical: Prof. Dr. Theodoros Iliopoulos (Hasselt University) spoke about technology-neutral and technology-specific mechanisms for the allocation of public financial support to renewable energy projects. He emphasised that, contrary to the EU’s stated ideological preference for technological neutrality, technology-specific bidding is significantly more frequent in practice. Dr. Jolien Kruit, partner at Van Traa Advocaten, then described the legal challenges that presently confront the maritime transport sector, which is key both to the global economy and to the health of many ecosystems. Dr. Kruit described a curious paradox: the absence of a comprehensive legal framework in maritime transport is the product of lobbying on the part of the major industry players, but those self-same players are also the most vocal opponents of legal fragmentation. PhD Candidate Hannah Mosmans from Erasmus University Rotterdam gave the last presentation of the day. She spoke about dark fleets, with a particular focus on last year’s explosion on The Pablo. She pointed out that anonymously owned ships pose risks to safety, the environment, regulatory compliance, and the economy, as is evident from their widespread use for the carriage of sanctioned oil without insurance.

The Forum concluded with a round-table discussion. Assistant Professor Dr. Fleming turned the attendees’ attention to the oft-neglected problem of nuclear waste management. Dr.

Apolewicz and PhD Candidate Wickramanayake responded to his remarks by highlighting the importance of holistic *ex post* approaches and by analysing, in outline, a recent United States Supreme Court case (*Loper Bright Enterprises v. Raimondo* 144 S. Ct. 2244 (2024)) which revolves around the temporal horizon of scrutiny over regulatory decisions with long-term impacts. The questions from the audience were about the parallels between the current energy market and the early years of the internet, about distrust in markets, and about the differences in global and European standard-setting in the maritime trade. The speakers proffered some general observations at the very end of the Forum. Prof. Dr. Iliopoulos remarked on the need for coherence and prudence in rulemaking. PhD Candidate Wickramanayake voiced her concern about legal uncertainty, and Assistant Professor Dr. Fleming warned that debates that many believe were settled in the 1990s, such as those about the state versus the market and the regional versus the international layer of governance, have now been reopened, a development to which all who study energy law should be alive. Prof. Dr. Reins and Assistant Professor Dr. Max Baumgart then closed the proceedings.

3. Conclusion

Many of the participants opined that the event had succeeded in promoting and intensifying dialogue about energy law. Since the speakers specialised in different domains of law, policy, and practice, many of them had previously had few opportunities for extensive exposure to the modes of thought and reasoning that predominate in other disciplines. The exchanges during the talks and the panel discussions were cordial yet robust, and the speakers felt that they had improved their ability to perceive their own fields of expertise as parts of a broader effort to decarbonise regional and continental economies. Accordingly, also the Forum's convenors were of the view that the Third FCEEL was a great success. The fourth edition of FCEEL will be held at the Heinrich Heine University in Düsseldorf.

The Forum was supported by the small grants scheme of the research initiative on Rebalancing Public & Private Interests, the Erasmus Center of Empirical Legal Studies at Erasmus School of Law, the sector plan for law funding of the Ministry of Education, Culture and Research, and a network grant by Tilburg University. The co-operating energy institutes and energy law chairs were the Tilburg Institute of Law, Technology and Society (TILT), the Institute for Energy Law at the University of Cologne (EWIR), the Düsseldorf Institute for Energy Law at the University of Düsseldorf (DIER), the Chair for Public Law and Sustainability at Erasmus University Rotterdam, and the Bochum Institute for Mining and Energy Law (IBE). More information about FCEEL can be found on www.fceel.eu.

Weiterführende Links:

EnK-Aktuell 2024, 010448; Frisch/Kissling/Müller EnK-Aktuell 2023, 010270; Kaschny EnK-Aktuell 2022, 01137.