

Josephine van Zeben, *The Allocation of Regulatory Competence in the EU Emissions Trading Scheme*. Cambridge: Cambridge University Press, 2014. 280 pages. ISBN: 9781139899208. GBP 65.

This book is destined to stun lawyers with an interest in regulation as a means to solve problems, due to its extra-legal dimension and the wealth of insights the author thus provides. Van Zeben assessed the performance of the EU Emission Trading Scheme (EU ETS) and her analysis makes good use of economic and political economic theories. Just be prepared to deal with economic jargon, such as collective action problems, free riders and rent-seeking agencies. The goal of the book is to explain the (sub-)optimal performance of the EU ETS as a regulatory tool for cost-effective climate change mitigation. The author lives up to these expectations and her approach offers an interesting example for further research in other areas of law.

Van Zeben focused on competence allocation, on the basis of the assumption that this affects the functioning of the EU ETS. In order to determine “optimal” competence allocation, and hence how competence allocation improves or undermines regulatory functioning, she identified three determinants for optimal regulatory functioning for the EU ETS:

- (i) The system’s ability to “internalize” and capture externalities;
- (ii) The system’s ability to accommodate heterogeneity of conditions and preferences;
- (iii) The system’s ability to maximize economies of scale and/or scope.

These determinants follow from the regulatory characteristics of mitigation of climate change, which presents a collective action problem with incentives to free-ride.

Since the emission of greenhouse gases gives rise to externalities at a global level, the norms should be set globally, as that level captures all costs and benefits of climate change and greenhouse-gas emitting activities and can thus overcome the collective action problem. Externalities continue to play a role at later stages in the regulatory process and therefore implementation and enforcement may also have to be centralized. Only installation-specific oversight appears best kept at Member State level. Theoretically, it is expected that if States gain more competences and for instance may distribute emission rights, they will be tempted to protect national interests and industries. The chapters on the actual allocation in the EU ETS reveal that as the Member States were initially responsible for implementation and enforcement, this is exactly what happened. The political economy chapter shows who preferred this suboptimal allocation and why, and why it was abandoned for a more regionally oriented one in the third trading stage.

The main contribution of the book lies in the use of (political) economic theories and assumptions to assess the functioning of a regulatory tool, and the empirical test offered by the case study. The EU ETS provides an interesting case-study to illustrate the theoretical part on competence allocation, as the initial allocation of competences in the first two trading stages in the period 2005–2012 was altered in the third trading stage from 2013 and onwards to improve regulatory functioning. This book shows that this approach gives lawyers an idea of where to look for problems and potential solutions in the regulatory framework. There is also an added value in having a lawyer analysing the EU ETS. Thus far, economists largely ignored the fact that the regulatory process can be broken down into three different components: norm-setting, implementation and enforcement. Van Zeben convincingly shows that allocation of implementation and enforcement competences are crucial elements to determine the effect of competence allocation on regulatory functioning.

Thus this book offers a precise analysis of the implications of competence allocation in an optimal and a real-life setting. In addition, the author explains in the political economy chapter why the real-life allocation differs from the optimal allocation. The author recognizes that an inherent weakness of an interdisciplinary approach is that it is a struggle to satisfy completely either audience. As a lawyer, I can only say that the information density in the non-legal parts is high. With the author I agree, however, that her book counterbalances this disadvantage by

granting the opportunity to learn to analyse an object from a different discipline and see regulation from a different perspective.

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