Maastricht Centre for European Law

Greening Europe

MCEL Master Thesis Project 2020 – 2021 | finalized projects

Dorien Coppens

Democratic values in the Financial Dimension of the European Green Deal

EU Taxonomy Regulation and delegated acts - Harnessing public participation in one of the EU's main instruments for sustainable investments

The Taxonomy Regulation is set up as a framework under the European Green Deal to facilitate climate dedicated funding. For its implementation, strict deadlines are being posed to the European Commission to fill in this framework through delegated acts containing the technical screening criteria on which investments are considered 'environmentally sustainable'. Next to this, the text of the Taxonomy Regulation encourages public participation to this complex environmental decision-making. The Aarhus Convention on decision-making in environmental matters, to which the EU is a party, also dedicates a second pillar to public participation. As the legal literature on the interplay with the Aarhus Convention's procedural rights is limited where regulations spanning the financial and environmental dimension collide, this research aims to determine how the second pillar of the Aarhus Convention and its values enshrined on the European level can shape the Taxonomy Regulation's implementation. An evaluation of the Taxonomy Regulation's provisions alongside the theoretical framework build on the second Aarhus pillar and the EU's soft law approach to public participation reveals an intrinsic dilemma between effectively including the public in the decision-making and set time-frames. This theoretical dilemma is evidenced by a case study on the first Taxonomy delegated act. The EU's soft law approach to these concerns gives flexibility and avoids further bureaucratic 'box-checking' of public participation requirements, but a re-evaluation of the rationale of public participation is needed to come up with new ideas on how to approach this dilemma. Suggestions of a duty for the Commission to report to the Parliament on public participation practices, representation and citizen juries are made. Further research is needed to identify the right way forward for the EU to use its discretion under the Aarhus Convention to promote effective public participation in complex environmental decision-making where time is of the essence.

Anna Katharina Damm

Access to Corporate Information on Environmental Matters

Corporate Sustainability Reporting in the EU as a Means to Bridging the Gap Between Public and Private Obligations Under the Aarhus Convention

Access to environmental information is crucial to provide the public with sufficient knowledge in order to participate in environmental decision-making, hold public authorities accountable and gain substantive environmental protection. The right of access to environmental information is guaranteed under the Aarhus Convention. While the Convention focuses on access from public authorities, access from private entities is limited in personal and material scope. Although this narrow scope is mitigated by the Protocol on Pollutant Release and Transfer Registers, the Protocol does not overcome the gap between public and private obligations regarding the right of access to environmental information. In light of this, this thesis explores whether and to what extent EU Corporate Sustainability Reporting can be of added value in the endeavour to bridging the gap. A comparative analysis of the European Commission's proposal for a Corporate Sustainability Reporting Directive regarding the concept of environmental matters and the legal requirements of access shows that the proposal realizes a more ambitious concept, providing access to comprehensive information on corporate environmental matters from a double materiality perspective. Allowing for access to contextualized information, the proposal enables the public to make informed environmental decisions and to hold corporations to account for their impact on the environment. Direct access, including from corporations' business partners and companies in their supply chain, permits for comparisons accurately addressing environmental matters as a global issue. As a limitation, a right to request information on the environment from the corporation, as enshrined under the Aarhus Convention for public authorities, is not guaranteed. The thesis shows that the proposal is of added value to the right of access in regard to its concept, personal territorial and material scope, thereby bridging the gap between public and private obligations to access under the Aarhus Convention.

Audrey Danthinne

Aarhus Convention: A presumed standing for ENGOs under Article 9(3)?

This thesis draws attention to one of the interpretative dilemmas surrounding the access to justice pillar of the Aarhus Convention contained in Article 9, namely the relationship between the standing criteria of Articles 9(2) and 9(3), with particular emphasis on the condition of interest. The reason for this research is that some courts, both at national and EU level, have linked the scope *ratione personae* of Article 9(2), as defined in Article 2(5), to Article 9(3), thereby recognising a presumed standing for ENGOs under both provisions. However, the Aarhus Convention specifically provides for two different standing criteria, with a presumption of interest for ENGOs only under Article 9(2). This thesis first assesses whether these judicial interpretations can nonetheless find a legal basis in the Convention, by examining the Convention itself, the way it has been interpreted by its Compliance Committee and its drafting process. Secondly, this thesis reflects on the welcoming nature of these judgments. Indeed, these interpretations, although legally questionable, have provided ENGOs with standing to challenge an alleged violation of environmental law, which is particularly valuable in light of the increasingly important role ENGOs play in environmental litigation, as demonstrated in several cases around the world, and the difficulty they nevertheless face in accessing justice due to strict national standing rules. Therefore, this thesis also assesses whether a presumption of interest for ENGOs should be recognised under Article 9(3) in the same way as under Article 9(2) and explores different legal mechanisms that could provide a legal basis for this. The Aarhus Convention is a promising instrument for ensuring environmental protection and therefore deserves a detailed examination, which this thesis intends to do.

Janique Gommans

An Attempt to Merge EU Transport & Climate Legislation

The 2020 Update of the Single European Sky

The European Commission and the aviation sector consider the current Air Traffic Management (ATM) to be inefficient, as flight routes are longer in distance than necessary. Therefore, the 2020 Single European Sky proposal was initiated by the Commission under the European Green Deal to create one European airspace to enable more direct flight routes. The Commission claims that the proposal will lead to a 10% reduction in CO_2 emissions from the aviation sector from 2025 onwards, which would indirectly contribute to reaching the climate-neutrality objective by 2050 at the latest. This research aims to explore to what extent the Commission has integrated environmental considerations in the proposal and whether this is in line with EU environmental law obligations. By taking an explorative, observative and objective approach and by using the doctrinal legal research method and document analysis, this research aims to explore whether the Commission is in line with Article 5 (4) of the European Climate Law proposal, how the Commission has observed Article 11 TFEU and the Green Oath in the proposal, and whether these features are implemented ambitiously. The Commission did not conduct an assessment of the consistency of the proposal with the climate-neutrality objective and is therefore not in line with Article 5 (4) of the European Climate Law proposal. Article 11 TFEU and the Green Oath have been observed by the Commission in the 2020 Single European Sky proposal to the extent that it creates opportunities to integrate environmental protection requirements in the future, although the execution of these opportunities will only become clear from 1 July 2023 onwards. It was concluded that the Commission did integrate environmental considerations in the proposal to a certain extent, however, this is not fully in line with EU environmental law obligations examined in this thesis.

Laura Herreras

Enshrining Climate Neutrality in the EU

A discussion on the choice between a collective and national targets of climate neutrality from an EU law perspective

In 2020 the Commission presented the Proposal for the European Climate Law aiming to enshrine climate neutrality in the EU in legally binding terms. Although the EU institutions agreed on this common goal, they did not agree on the terms. For the Commission and the Council, climate neutrality was to be achieved at

Union level, while for the European Parliament, at Member State level. In the end, the co-legislators agreed upon a collective target of climate neutrality, which is codified in the recently adopted European Climate Law.

Drawing on this difference between collective and national climate neutrality targets, this thesis intends at creating a discussion on how these approaches are to be understood, particularly in view of EU primary law and recent governance and litigation developments. On this basis, this thesis presents what are the reasons of the EU institutions to defend a diverging climate neutrality target and analyses the compatibility of both approaches with primary law. Lastly, this thesis examines the position of both forms of climate neutrality in the EU, given the adoption of the European Climate Law and recent developments in national legislation and climate litigation in the national and European spheres. The findings of this study show that, even though the European Climate Law has codified a collective climate neutrality target, climate neutrality at Member State level may play a significant role in the following decades.

Nina Klubert

Addressing the Compliance Deficit with EU Environmental Law: What Role for the European Environmental Agency?

This thesis aims at establishing the reasons for the compliance deficit in the area of EU environmental law and at analysing whether providing the European Environmental Agency with enforcement powers could address this deficit. Therefore, it focuses on the question as to what extent could the European Environmental Agency play a role in enforcing the compliance with EU environmental law? In order to answer this question, a doctrinal legal research of legal documents and scholarly contributions has been conducted.

This thesis establishes that the compliance deficit is caused by deficiencies which exist in the enforcement measures applied by the Member States, the Commission, and the general public. Currently, the EEA mainly collects, evaluates, and provides information. It could be beneficial to provide the EEA with enforcement powers, allowing it to monitor and sanction infringements of environmental law. Thereby, several of the existing deficiencies could be resolved. However, the transfer of such powers is only possible if certain legal requirements are fulfilled. While these could indeed be fulfilled, they largely depend on the MS' willingness to grant such powers. Furthermore, extensive changes to the EEA's current functioning would be required and the EEA's current powers could be negatively affected. Therefore, the thesis concludes, the EEA could indeed play a role in the enforcement of compliance with EU environmental law, if it is provided with enforcement powers, and that this could be beneficial to solve the compliance deficit. However, before providing the agency with such powers, it should still be considered whether there are even more suitable solutions to address the compliance deficit.

Mathieu Koch

The compliance of the French wolf policy with EU law: a legal analysis

The European Gray wolf, an emblematic large carnivore species living on the territory of the European Union, features on the list of strictly protected species of the European Union's Habitats directive. On paper, those species are granted by EU law strong protection from human interferences, and it is only in exceptional cases under strict conditions that it can be derogated from this regime. However, for a controversial species like the wolf which often triggers strong opposition from local population where it (re)occurs, the daily management on the ground sometimes appears to be much different. It is in particular the case in France, where national authorities have implemented a systemic use of wolf shots to try and decrease depredation on livestock. Nowadays, it is up to 21% of the national wolf population which is culled to appease local stakeholders. Such a gap between theory and reality begs the question of what level of protection EU law really offers on the ground to its vulnerable species classified as strictly protected. In this paper, we investigate on the legal framework of the French policy as well as on the legislative and jurisprudential obligations coming from EU law to which Member States are bound. Confronting the two, we endeavour to lead a critical and independent legal review to determine the rate of compliance of this aggressive French legal framework with the strict protection to which the wolf is entitled under EU law.

Margarida Martins

Trade and Sustainable Development chapters in EU Free Trade Agreements

Challenging the exclusion of sanctions as a tool of inducing compliance with environmental standards in the context of international trade

This thesis strives to answer the research question of whether sanctions should be excluded as a compliance inducing mechanism towards an effective environmental protection in the context of Trade and Sustainable Development (TSD) chapters of Free Trade Agreements (FTAs) concluded between the EU and third countries, given the negative impacts international trade has on the environment and the position of the EU in global trade as one of the biggest drivers of pollution and environmental destruction beyond its borders. The EU has opted for a policy dialogue-based model of enforcement to its TSD chapters that has been called toothless and is under scrutiny. One option would be to introduce the possibility of recourse to sanctions in case of (protracted) non-compliance with environmental obligations contained in FTA's by either party, drawing upon a sanctions-based model similar to the approach the USA and Canada adopt in their FTAs, as it is unknown how an EU sanctions-based model would look like in practice, as it has not yet been attempted and provisions could vary in content and formulation.

This thesis concludes that the Commission appears to no longer exclude the possibility of considering sanctions. Moreover, trade sanctions are not considered a good option to pursue sustainable development ends, but financial sanctions in the case of (protracted) non-compliance of a partner country with the SD clauses of an FTA could function as an incentive to implement environmental reform. The fact remains, however, that for both trade and financial sanctions, there is so far no experience as to their effectiveness in practice. In terms of the compatibility of a mechanism of imposing sanctions by way of countermeasures in retort to violations of a TSD chapter, it is inconclusive whether such a measure would be in conformity with WTO law, but there is no indication to suggest that it would be illegal – especially in the case of financial penalties.

Maria Matias

Does the territorial principle establish jurisdiction for the European Union to extend the scope of the EU Emissions Trading Scheme to international aviation? An international law perspective.

The announcement of the Green Deal and the highly ambitious goal of becoming carbon neutral by 2050 has made the question of the extension of the EU ETS to international aviation once again relevant. Despite not expressing its intention of including international aviation within the scheme in the coming years, the EU has never wavered in its position that to do so would not be an infringement of international law as the territorial principle grants it jurisdiction to legislate in this manner. This thesis discussed whether under international law, the territorial principle grants jurisdiction to the European Union to extend the EU ETS to international aviation. It will be argued that under international law extraterritoriality is not automatically prohibited and states have interpreted the principle of territoriality broadly in some circumstances. It will be proposed that the EU adopts the effects doctrine, a variant of the principle of territoriality developed by the United States in the field of Antitrust law, as a more solid justification for the extension of the EU ETS beyond its borders.

Maritje Weydemann

The possibility of taking more stringent protective measures under Article 193 TFEU for Member States under EU-environmental law: Illusion or Reality?

Albeit the EU stepping up its game in the fight against climate change and environmental protection, some Member States may want to go a step further by applying even stronger protection than what is laid down under EU-law. This possibility is enshrined in Article 193 TFEU, making the option to implement more stringent protective measures dependent on certain conditions. Nevertheless, the CJEU has come up with various additional conditions through its case law, some of which are rather unclear. The lack of case law on this matter adds another layer of complexity, leading to legal uncertainty for Member States wanting to opt for higher protection on a national level. This contribution therefore looks at the different hurdles a Member State has to overcome in order to adopt Article 193 TFEU-measures. Unlike previous scholarly contributions, this paper not only looks at the scope of application of the provision in question and the various conditions a Member State has to fulfil in more detail, but importantly imbeds the discussion within the analysis of recent national climate litigation cases. This is done by reviewing three national cases in which claimants sought their national governments to opt for higher ambitions for the sake of the environment and showing how national governments may struggle in a next step in implementing these national judgments in light of Article 193 TFEU.