

# EJRR

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## SPECIAL ISSUE ON REGULATING NEW AND EMERGING TECHNOLOGIES

*Editors: Maria Weimer and Luisa Marin*

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*Suryapratim Roy*

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EU Environmental Law and the Internal Market, by Nicolas de Sadeleer, Oxford University Press, 2014 644  
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adigm, as the use of derogations under the International Covenant on Civil and Political Rights when facing disasters evidences state practice in this regard.<sup>9</sup> Lautá's book makes us reflect it is about time for law and public officials to catch up with developments in other fields, and acknowledge there is much homework for states to do before confronted with hazards. The idea that disasters have become more normal than exceptional, and thus should be managed and not handled as extraordinary events is something states have to take seriously into account. Lautá's book is a praiseworthy contribution paving the way for this change.

Overall, this is an invaluable volume combining reflection with ambition, tracing the field from early philosophical assessments and legal theoretical debates, to later developments across the world. It covers different legal fields, from human rights to the law of tort and criminal law. This is very interesting reading and certainly an important contribution in the flourishing literature on legal approaches to disasters.

*EU Environmental Law and the Internal Market*

by Nicolas de Sadeleer

Oxford: Oxford University Press, 2014, 560 pp.

£ 100.00; Hardcover

Jan Darpö\*

Nicolas de Sadeleer is without doubt one of the most productive and thorough of all legal scholars dealing with EU environmental law, at least among those who publish in English and/or French. There is hardly any area of environmental law that he has not commented upon during what is almost 30 years that he has been active as an author. He is also renowned for being analytical and detailed, which sometimes makes the reading of his texts – although very fruitful – somewhat time consuming. It was therefore with some hesitation that I agreed to review his latest book during the spring semester, commonly the most hectic period in the academic year. Finally I said yes, and took on the book after having concluded my teaching duties. I am happy to confirm that I do not regret my decision. It has been a sheer joy to read and, it goes without saying, I have learned a lot.

According to the publisher, de Sadeleer's book covers "*the gaps between environmental and trade law*

*and provides a systematic, robust and practically workable analytic framework of the conflicts opposing rapidly evolving environmental law and climate change measures and internal market as well as competition rules*". In order to perform this task, the book is divided into three main sections: I. Introduction to EU environmental law, II. Respect of Treaty provisions on free movement of goods, services and establishment, and III. Competition law and the environment. While the first section introduces the reader to the most important features of environmental law, the two chapters following analyse how this basic interest of European law may be understood when encountering two other core interests within the Union, namely free movement and undistorted competition. By doing so, the book gives a broad introduction to the legal system of the EU which can be enjoyed by lawyers and others from all sectors of society; business, administration, universities and civil society.

Part I on environmental law consists of 4 chapters. In the first, de Sadeleer elaborates on the basic concept of sustainable development, environmental objectives and the requirement to integrate environmental protection into all of the Union's policies and activities. Thereafter, well known environmental principles are analysed, such as the principle of a high level of protection, the polluter-pays principle and the prevention principle. A certain focus is concentrated on the precautionary principle, which is a subject that de Sadeleer has previously analysed in depth. Most importantly, the reader is not only informed about environmental principles as such, but their role in EU law is also analysed. In Chapter 2, de Sadeleer discusses the existence of a "right to a sound environment" according to Treaty law, the EU Charter of Fundamental Rights (EUCFR) and the European Convention on Human Rights (ECHR). With reference to case-law from different courts, he raises some very interesting points. Issues concerning competence, powers and the legal basis for environmental law are analysed in Chapter 3. The concept of "mixed agreements" is expanded upon, as well as

<sup>9</sup> Emmanuele Sommaro, "Derogation from Human Rights Treaties in Situations of Natural or Man-Made Disasters", in Andrea de Guttry, Marco Gestri and Gabriella Venturini (eds.), *International Disaster Response Law* (The Hague: T.M.C. Asser Press, 2012), pp. 323-352.

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complicated issues concerning the differences between secondary laws under Article 192 TFEU, the internal market (Article 114 TFEU) or other legal basis in Treaty law. Thereafter, a general overview of EU secondary environmental law is provided in Chapter 4. This is, however, not done by way of enumerating different regulations and directives, but through discussing some basic features of environmental law and governance, such as the administration in the EU and its Member States, the procedure of comitology, different legislative methods and soft instruments and their role in case-law, direct effect of environmental provisions, and what consistent interpretation and the principle of useful effect (*effet utile*) actually mean in practice in this area of law.

As already mentioned, Part II deals with the challenges in balancing environmental interests with the free movements of goods, services and establishment. This part discusses how the three “free movements’ rights” impact on the Member States options and possibilities to regulate environmental issues in national legislation. Free movement of goods is discussed in Chapter 5, with the initial focus on national fees and taxes. Questions concerning national quantitative restrictions and measures having equivalent effect on trade between the Member States come next, taking stock from landmark cases of the CJEU, such as *Dassonville*, *Cassis de Dijon*, *Keck*, *Mickelsson and Roos* in addition to many more. The Chapter concludes with a discussion on exceptions to the free movement of goods, proportionality in national measures and the requirement to notify the Commission. A section on freedom of establishment and free movement of services comes next (Chapter 6), illustrated with cases from both CJEU and the EFTA Court. Here, de Sadeleer also discusses to what extent national authorisation schemes and other requirements on establishments and incoming services can be accepted from a free movement perspective. The last chapter (7) in this second part of the book deals with the hot topic concerning the possibilities for the Member States to keep or introduce stricter regulation on areas which are covered by Union law on the environment. A thorough discussion on the differences between “harmonising legislation” and “minimum legislation” concludes this section of the book. In doing so, the author highlights the fact that the Lisbon Treaty leaves more room for national regulation on the environment than its precursors.

Part III of the book deals with the relationship between competition law and environmental protection, divided into 5 chapters. In Chapter 8, de Sadeleer discusses the definition of “undertakings” in Article 101 and 102 TFEU. Here – as in the rest of the chapters in this part of the book – the analysis focuses on the waste market in light of case-law from the CJEU and decisions from the Commission. Agreements with a distorting effect on competition are dealt with in Chapter 9, the conclusion being that the derogation possibilities in the third paragraph of Article 101 TFEU must be read broadly in order to promote technical and economic development in the environmental area. Chapter 10 analyses abuse of dominant market position by way of unfair pricing, market restrictions, discriminating conditions or tying of producers and consumers, all seen from the perspective of environmental protection and climate change. Services of general economic interests (SGEIs) are exempt from the general competition requirements in Union law, which is discussed in Chapter 11 from examples in case-law of the CJEU. Finally in Chapter 12, the prohibition against illegal state aid in Article 107 TFEU is given substantial attention in a broad discussion reviewing case-law and guidelines from the Commission. This last chapter serves well in illustrating that “traditional” areas of EU competition law become increasingly interesting to discuss in an environmental context, an area where national systems provide many examples of subsidies and traditional compensation schemes that may have a discriminating effect on competition among undertakings from different parts of the Union.

Nicolas de Sadeleer concludes his book by once more emphasising that, according to the EU Treaties, the interests of free trade and the environment shall be balanced against each other on equal conditions. In his view, this is the core meaning of Article 3(3) TEU, stating that the Union shall work towards the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. Moreover, he argues that both interests – competition and free movement, as well as environmental protection and measures against climate change – are interdependent and the law should be interpreted so as to allow for them to fortify each other. Reconciliation is the order of the day.

In my view, these concluding remarks from de Sadeleer illustrate well the strengths of his book. In broad brushstrokes, he informs us about the encounter between the two perspectives of EU law; business and free trade on the one hand, and the environment and climate change on the other. He analyses how law may be understood in order to reconcile these interests in line with the Treaties and expresses criticism where the application is weak or even counterproductive. In his role as a legal scholar, he also highlights where there is a need for reform in order to meet the aims of the law. Still, the book is easy to read and very informative. Through doing so, he manages to merge the different worlds of business and the environment, which makes the analysis fruitful for readers from all sectors of society, not least practitioners. This is certainly not a book reserved for just one category of reader, be that those who are already determined advocates of the environmental cause or free trade fundamentalists. As with any author, the depth of analysis varies depending upon the extent of the writer's own interests, and, in my view, some sections are more interesting than others. However, this is obviously also dependent up-

on my own preferences. However, all sections of the book can conveniently be used as a starting point for those who want to dive deeper into an area of law where business and environmental interests conjoin. Not least a very ambitious apparatus of footnotes, tables of different kinds, list of references and cases from different courts and literature are helpful tools in this respect. I also want to draw attention to the breadth of sources which de Sadeleer uses when discussing different topics. In my experience, this is the first time a legal scholar in this field of law utilizes cases from all three of the European Courts, that is the CJEU, European Court of Human Rights and the EFTA Court. As for the shortcomings of the book – we are talking about a title with more than 500 pages and thousands of references – there are also minor mistakes from time to time: A small number of typos, incorrect references and mixing of French and English abbreviations, but they have no consequence for the picture at large. In sum, an excellent book to place in the hands of law students, civil servants, business lawyers and administrators interested in EU law in connection with free trade, competition and the environment.