

L I B E R A M I C O R U M

A Force of Energy

Essays in Energy Law
in Honour of Professor
Martha Roggenkamp

Ruven Fleming, Kars de Graaf, Leigh Hancher,
Edwin Woerdman (eds.)

© 2022 The copyrights of the various articles belong to the authors of the articles.

Published by University of Groningen Press
Broerstraat 4
9712 CP Groningen
The Netherlands
<https://ugp.rug.nl/>

This book has been published open access thanks to the financial support of the Open Access Book Fund of the University of Groningen.

ISBN: 9789403429533

ISBN ePDF: 9789403429526

DOI 10.21827/61eff4099c992

Painter portrait: Rianne Smit

Photographer portrait: Dirk Fennema

Cover design: Bas Ekkers

Typesetting: Riëtte van Zwol, LINE UP boek en media bv



First published in The Netherlands © 2022 by University of Groningen Press. Some rights reserved. Released under the Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International Licence.



FOREWORD

Today's societies are complex. There are many technical, economic and human factors, which contribute to this phenomenon. In many respects, rare are the few who understand the technologies, trade flows, the products and services, the identity and nature of suppliers and customers upon we all depend. Even if most goods and services seem to find their way naturally to the customer, economic exchanges are far from obvious. In parallel with this development, rules have replaced trust. Increasingly complex regulation governs every detail of public and private life. General principles of law no longer suffice. Codes, regulations, directives and guidelines affect life of the modern State, company and citizen.

I therefore disagree with the comments made by Professor Lokin, professor of Roman law at the University of Groningen, after Martha Roggenkamp's inaugural lecture as the Dutch first professor in energy law, which I had the pleasure to attend in 2006. In his view, energy law was very interesting but did not offer any additional insights to what his preferred discipline, Roman law, could already offer. It may be true that security of supply and the prevention of toxic emissions were probably issues the Romans had to think about, but it is unlikely that they needed energy specific rules, such as the ones discussed in this *Liber Amicorum*. Even if early insights in the problematic effects of using fossil fuels could have prevented some of today's problems, energy markets did not work then as they do today. Nor do I think that energy transition was something that kept the senators and the people of Rome awake.

Energy law has grown into a legal discipline of its own. In many respects, Martha's legal career grew at that same pace. I remember her first steps at the International Energy Law Institute at Leiden University, where I met Martha as a lecturer and research fellow in 1986. After having finished her thesis on pipeline regulation, she continued to publish, teach and speak on energy law related matters. In addition to her academic skills, which were formalized, or, more accurately, normalized, by her appointment as a professor at the University of Groningen, Martha is a born organizer. As natural as gas, she contributed to the foundation of the Dutch energy law association, NEVER, which she presides, as well as the creation of the Dutch energy law review. Her career is not centered on the Netherlands alone. With her Dutch and Norwegian roots, the North-Sea region is her home base.

Even so, Professor Lokin's words were important. Just as any other sector specific rules, energy law, belongs to the Law, as an overarching concept, which purports to regulate

human conduct and to avoid or to regulate conflicts. All rules must converge to upholding the Rule of Law, a precious good in scary times, such as the ones we live today, in which autocrats do not hesitate to use energy as a means of domination.

Luxembourg, 24 January 2022

Marc van der Woude

EDITORIAL PREFACE

When it became clear that Professor Martha Roggenkamp would retire from her chair in Energy Law at the University of Groningen, ideas started to flourish on how to mark this memorable occasion and pay tribute to her academic work and scholarly accomplishments. Several people who have worked closely with Martha over the last decades put their heads together to consider what would be an appropriate celebration of her work. It was decided that Martha should be honoured with nothing less than a *Liber Amicorum*, to showcase her immense knowledge of practically all aspects of energy law and to draw on the networks and connections that Martha Roggenkamp made across institutions and continents in the past decades.

As Martha was born in Groningen and became professor at the University of Groningen, the choice for a publisher came naturally: the University of Groningen Press (UGP). The editorial team not only invited prospective authors but was also actively approached by various lawyers, academics and other practitioners who at some point in time shared a part of their working life and interests with Martha, and who wished to be included in the book. We are delighted that many have delivered a contribution.

Martha Margrethe Roggenkamp is known for her academic rigour, her passion for energy law and her original, sometimes strong-willed, views. We asked the authors to write chapters that celebrate and reflect this. We invited Martha's colleagues to write academic contributions with a scholarly perspective on the past, present or future of a topic related to energy law, either in English or in any other language that Martha masters. Rather than having one overarching topic, we chose to leave the theme of each contribution to the author to decide. This resulted in sound, creative and often innovative coverage of a rich and diverse range of legal as well as non-legal topics related to energy law.

With family roots both in Norway and the Netherlands, Martha started her career with the study of Scandinavian languages as well as Dutch law at the University of Groningen. Until this day, Martha is able to debate energy law matters with Dutch, English, Norwegian, Swedish and Danish colleagues in their mother tongues. From her early academic years Martha's focus was simultaneously national and international, a duality that still infuses her approach to research and teaching today, connecting international developments to national and local issues.

Academia has been a big part of her professional life. After working as a student assistant at the Asser Institute in The Hague, Martha became a researcher at the University of Leiden's International Institute for Energy Law. This turned out to be an important stepping-stone in her professional development, as this Institute became one of the 'breeding grounds' for European energy law. Martha met many people there that were decisive for her development. This culminated in the establishment of the first chair in Energy Law at the University of Groningen in the Netherlands in 2005, and subsequently, keeping up with the wider developments in the field, she co-founded the Groningen Centre of Energy Law in 2007 (together with Edwin Woerdman). In line with developments in energy law, this centre of expertise was further expanded and renamed to Groningen Centre of Energy Law and Sustainability in 2019.

But academia was not all. Martha also worked for various law firms as *of counsel* for more than a decade. Here she established long-lasting relationships in the professional world and engaged in the world of energy law. As a result, Martha has always been a keen advocate for a type of energy law academic that is not fixated on methodological discussions and 'ivory towers', but one who keeps the practical implications of academic research firmly in sight. This is also what she did and still does as chair of the Dutch Energy Law Association, co-established by her in 2002 (together with five other co-founders, including Michelle de Rijke), which currently has some 400 members.

Martha's work as a pioneer of energy law in the Netherlands influenced many young scholars as well as practitioners in various countries – and continues to do so to this very day. Her numerous publications including the landmark reference work 'Energy Law in Europe' (informally referred to as 'The Energy Law Bible'), her devotion to establishing energy law as an academic discipline, and her relentless efforts to connect lawmakers and researchers were recognized by her appointment as Knight of the Order of the Netherlands Lion in 2019.

This *Liber Amicorum* pays tribute to her work and to the force of energy that she is. It revisits some of the energy law topics that have been most important to Martha's working life, but also takes a leap forward to explore the multitude of energy law issues that lie ahead. This vibrant collection of essays, which is up to date until 1 April 2022, can only echo one of Martha's favourite expressions: 'never a dull moment' in energy law!

Ruven Fleming, Kars de Graaf, Leigh Hancher, Edwin Woerdman
Groningen, 1 April 2022

CONTENTS

Foreword vii
Editorial Preface ix

CONCEPTUAL ISSUES 1

Reshaping EU Energy Law: Towards Degrowth 3
Romain Mauger

Competition and Regulation in the Renewable Energy Era 13
Machiel Mulder

Energy Law and Energy Transformation 20
John Paterson

The Carbon Price Paradox 28
Edwin Woerdman

INTERNATIONAL CHALLENGES 39

The Arbitration Option in Article 26 of the Energy Charter Treaty and its Applicability to
Disputes with the Russian Federation 40
Jan Willem Bitter

The Role of the Energy Charter Treaty for Decarbonization 53
Anatole Boute

Duck and Cover! From the Delusion of Climate Adaptation to the Authority of
International Sustainability Law 64
Marcel Brus

The North Sea Wind Power Hub Project: Some International and EU Law Aspects 73
Frans Nelissen & Ana Costov

Three Binaries in *People v Arctic Oil* 84
Suryapratim Roy

On Energy Law and Cross-Border Energy Investments: Is International Energy Investment Law a Distinct Subset of Law? 94

Cees Verburg

Artificial Islands under UNCLOS: Room for 'New Beasts'? 103

Jaap Waverijn

EUROPEAN OUTLOOK 111

Energy and Taxation: U.S.-lessons for Carbon Capture and Storage in Europe 112

Irene Burgers

Hydrogen Networks: Networks of the Future? 121

Ruven Fleming

Single Asset Interconnectors: Regulatory Issues and Recent Case Law 131

Silke Goldberg

Energy Communities under European Union Law: A Brief Review of Some Controversial Issues 142

Íñigo del Guayo Castiella

The NorNed Cable: Connecting Two Electricity Regulatory Systems 150

Leigh Hancher & Astrid Brunt

Digitalization of the Electricity Sector and Digitalization of Society: Effects on the Energy Transition 161

Adrien de Hauteclocque

Kernenergie: vriend of vijand? 173

Piet Jan Slot

NATIONAL DEVELOPMENTS 181

Transitioning to an Integrated Renewable Energy System in the Dutch North Sea 182

Liv Malin Andreasson & Lisa van Nieuwkoop

Energy Planning Legal Requirements and Offshore Wind in Norway 191

Catherine Banet

Regulatory Challenges to the Dutch Heat Transition 204

Iman Brinkman

Als juristen met technische begrippen gaan rommelen 213

Fokke Elskamp

Regulation of Norwegian Renewable Energy for Electrification in the Energy Conversion 222

Per Håkon Høisveen

There and Back Again: The Dutch Energy Sector from Privatisation to New Public Energy Companies 230

Ceciel Nieuwenhout

The Pendulum Swings in US Energy Policy: Where Now under the Biden Administration? 240

LeRoy C. Paddock

Regulering voor nieuwe energie-infrastructuur 254

Michelle de Rijke

LOCAL PERSPECTIVES 265

Energietransitie en vertrouwen: De casus windparken DDMOM en N33 266

Herman Bröring

Is Sharing Caring? 'Energy Sharing' within Energy Communities under EU Law 275

Lea Diestelmeier & Dirk Kuiken

Participatie en draagvlak voor hernieuwbare energieprojecten 283

Kars de Graaf & Hanna Tolsma

Earthquake Damage in Groningen: Billing beyond Liability Law? 293

Gerrit Vriezen

EPILOGUE 303

How to Make the Energy Market Complex and Inexplicable to Ordinary People 304

Helma Kip