## Table of Contents

Background for this Book		ix	
Ta	Table of Cases		
Ta	ble o	fLegislation	xv
1	Intr	oduction: EU Energy Law and the Approach	
		en in this Study	1
	1.1	Sources of Information on EU Energy Law	8
		Overview of the Book	13
2		Regulatory History of EU Energy: The Evolution of	
	EU	Energy Law from 1957 Onwards	15
	2.1	The First 30 Years of Hibernation	15
		2.1.1 The Transformation	17
		2.1.2 The Shaping of EU Energy Law by 'Harmonization	
		Legislation'	21
	2.2	The Early Days of EU Energy Law: The First Steps	
		Towards an Internal Market	22
		<ul><li>2.2.1 Draft Regulation on Investment Notification (1989–1996)</li><li>2.2.2 Commission Directives under Article 106(3)</li></ul>	23
		TFEU (1991–1996)	23
		2.2.3 The Exceptions: Article 106(2) EU	24
		2.2.4 Directives 80/723/EEC and 88/301/EEC	26
		2.2.5 Telecommunications Liberalization Continued:	
		Directive 90/377/EEC versus the Burden of Special	
		Rights and the Competition Policy Barrier	29
	2.3	Draft Commission Directives on Internal Markets for	
		Electricity and Natural Gas	31
		2.3.1 Dismissed Actions for Failure to Fulfil Obligations	2.2
		under Article 258 TFEU (1994–1997)	33
	2 /	2.3.2 Some Observations	38
	2.4	Draft Harmonization Directives: Obvious	20
		Misnomers (1991–1995)	39 41
		<ul><li>2.4.1 Price Transparency Directive</li><li>2.4.2 Electricity and Gas Transit Directives</li></ul>	43
		2.4.3 Utilities' Procurement Directive	46
		2.4.4 Hydrocarbons Licensing Directive	53
	2.5	First Set of Drafts for Stand-Alone Approximation Directives	59
		The Second Set of Drafts for Harmonization Directives	60
		Findings: Advocating Liberalization but Heading	
		Towards European Command and Control?	62
	2.8	Concluding Thoughts: The First Steps Towards an	
		Internal Market in Energy	64

3	The Evolution of the Sector-Specific Regulatory Framework	66
	3.1 Generation	69
	3.2 Third Party Access	70
	3.2.1 Regulation of TPA under the EU Energy Acquis	73
	3.3 Unbundling	77
	3.3.1 The Status Quo—From Account Unbundling to Legal	
	Unbundling and Ownership	78
	3.3.2 The Third Country Clause or 'Lex Gazprom'	83
	3.3.3 Ownership Unbundling and EU Law	84
	3.4 Exemptions and Derogations	88
	3.4.1 Public Service Obligations (PSOs)	89
	3.4.2 Unbundling of Small Companies	93
	3.4.3 Emergent and Isolated Gas Markets	94
	3.4.4 New Infrastructure	96
	3.5 Security of Supply	98
	3.5.1 Security of Oil Supply	99
	3.5.2 Security of Natural Gas Supply	101
	3.5.3 Security of Electricity Supply	103
	3.5.4 Infrastructure for Security	105
	3.5.5 Security of Supply in the General Internal Energy	10)
	Market Directives	106
	3.6 Concluding Thoughts: From State to Market and from	
	Monopoly to Competition—How Sector Regulation	
	Created Competitive Markets	107
	Created Competitive Warkers	
4	Treaty Law and the Energy Sector	110
	4.1 EU Competition Law and the Energy Markets	110
	4.1.1 Fundamental Competition Concepts for the Energy Sector	113
	4.1.2 Interpretation and Enforcement between EU and	
	National Competition Authorities: The Effect on	
	Trade between Member States	115
	4.2 Article 101: Cartels and Other Forms of Collusion	117
	4.2.1 Horizontal Restraints in the Energy Sector: Joint Selling,	
	Price Fixing, and Others	118
	4.3 Article 102: Abuse of a Dominant Position	121
	4.3.1 Access to Essential Energy Facilities and Services	121
	4.4 Vertical Restraints in the Energy Sector: Long-Term	
	Supply Agreements, Problem Clauses, and Others	125
	4.4.1 General Developments	125
	4.4.2 Destination Clauses	128
	4.5 Current and Future Standards for the Application of	120
		135
	Competition Law in the Energy Industries	13)
	4.6 External Dependence, Extraterritorial Application, and	126
	Competition Enforcement in an International Energy Context	136
	4.7 State Aid in the Energy Industries	137
	4.7.1 The Structure of Article 107 TFEU	139
	4.7.2 Prominent State Aid Proceedings Relating to Energy	145

	Table of Contents	vii
	4.8 Free Movement of Energy and the Exceptions	158
	4.8.1 Exceptions in the Name of Security and the Environment	160
	4.9 Concluding Thoughts: From Nothing, to Supporting, to an Increasingly Powerful Tool	173
5		
5	Environment and Energy: On a Bumpy Road Towards a Clean Energy Future	175
	5.1 EU Environmental Policies for Energy: Contradictions	
	and Dilemmas	175
	5.2 Key Questions, Concepts, Legal Frameworks	177
	5.3 Specific Environmental Issues of Energy	180
	5.3.1 Extractive Industries	180
	5.3.2 Transportation	182
	5.3.3 Environmentally Sustainable Power Production	183
	5.4 Process, Objectives, and Instruments of EU Environmental	
	Policy for the Energy Industries	185
	5.5 Areas of Primary EU Action	189
	5.5.1 Energy Efficiency	189
	5.5.2 Renewable Energy	190
	5.5.3 Climate Change Mitigation	194
	5.5.4 Emissions Trading	196
	5.5.5 Energy Taxation	200
	5.6 Examples of Other Environmental Measures Taken by	
	the EU in the Energy Field	202
	5.7 Carbon Capture and Storage: From a Regulatory	
	Reality to Making a Difference?	205
	5.8 When All Else Fails: The Geo-engineering of Climate Change?	207
	5.9 Concluding Thoughts: From Ideological Change to a	
	Reality Check	208
	Teamy Check	
6	The International Dimension of EU Energy	
	Law and Policy	212
	6.1 The Shaping of the EU's International Energy Policies:	
		212
	Players, Policy, and Issues	212
	6.2 The Legal Instruments and Legal Authority of the EU's	210
	External Energy Policy	219
	6.3 Technical and Financial Assistance Programmes	222
	6.3.1 Examples of Earlier Cooperation Programmes	223
	6.4 Bilateral Aspects of EU External Energy Policy: From	
	Associations to Dialogues	226
	6.4.1 Association and Economic Cooperation Agreements	226
	6.4.2 Partnership and Cooperation Agreements	229
	6.4.3 Energy Dialogues	230
	6.5 Multilateral Aspects of the EU's External Energy Policy:	2
	From Energy Charter Treaty to Energy Community Treaty	232
	6.5.1 Energy Charter Treaty: Past, Present, and Future	233

	<ul> <li>6.6 The Exportation of the EU Energy Acquis: From the ECT to the Energy Community Treaty</li> <li>6.6.1 The Energy Community Treaty</li> <li>6.7 Finally: Who Steers the Boat? Who Represents the EU? The EU Speaking with One Voice</li> <li>6.8 The EU and International Energy Trade: Governance, Sanctions, and Ethics</li> <li>6.9 The Impact of International Law: Trade in Energy Goods and Services and Environmental Protection</li> <li>6.10 Concluding Thoughts: The Emergence of the EU as an International Plane.</li> </ul>	244 244 248 250 259	
7	International Player From State to Market and Back: The Changing Role(s)	267	
	of Markets and States in The EU	269	
	7.1 The 1980s and the Movement from a State-Driven to a		
	Market-Driven Approach to the Energy Markets	269	
	7.2 Old and New Energy Economy Paradigm Concepts:		
	Security of Supply and Public Service	270	
	7.3 The 'Brave New World': Energy Economy Paradigms of the		
	1980s and 1990s	272	
	7.4 'Back to the Future': A (Partial) Return to the Old Days of	V:100 (0.110 )	
	State Intervention	276	
	7.5 Problems with a Market-Based Approach in the EU	276	
	7.6 'All for One and One for All': Economic Solidarity after	270	
	the Lisbon Treaty 7.6.1 Introduction	278	
	7.6.2 Solidarity and Market Failure	278 280	
	7.6.3 Economic Crises and Solidarity	281	
	7.7 Nabucco Pipeline Project	282	
	7.8 The 2009 Energy Law Package: From Bottom-Up to Top-Down	284	
	7.9 Concluding Thoughts: The EU in Search of the Balance	285	
8	Conclusion: European Energy Law Under the Impact of Globalization: From State to Market, from Plan to Contract, from Public Ownership to Economic Regulation and Beyond	287	
	2 done o marinip to beomonile Regulation and Deyond	20/	
Bi	bliography	297	
	Index		
	0000000	309	