

Legislating for emissions trading

Reading articles in a European Union Directive or sections in a statute is an essential but also dry task for finding out what the law says. Legislative provisions can be cryptic and complex, e.g. when they are cross-referenced to other provisions in the same statute or Directive or other legislation.

This presentation suggests that in order to understand what the legal provisions 'mean' we have to be not just language detectives but also visionaries. Being a language detective entails to pay close attention to the terms used and the phrasing of the provision: does it impose a duty, does it confer a power, upon whom? Of what scope? Does it define the legal nature of an emission allowance? Being a visionary entails to imagine how the different provisions fit together to form a 'regulatory regime' e.g. of emissions trading, and how they contribute to shaping the world we live in: will the legal provisions lead to a reduction in greenhouse gas emissions? Who are the 'intermediary' legal actors that make the legal provisions happen, such as national Departments of Environment and environmental regulatory agencies in the various EU Member States? Who will financially benefit and who may incur losses when the legal provisions are implemented? The presentation further suggests that imagining the socio-economic world created by legislative provisions is a key element of reading a legal text socio-legally, which is, however, also to some extent constrained by the language detective task and empirical research.