Chapter 6
Harnessing Offshore Wind Energy: Legal Challenges and Policy Conundrums in the European Union

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Abstract

Contemporary trends in European offshore wind power are explored, including: the status of the industry and its future prospects for growth; EU treaty and legislative obligations; as well as regulatory and policy issues pertaining to energy and climate change objectives. Special mention is made of EU case law on national renewable energy support schemes, along with the European Directive on maritime spatial planning; focusing on the need for further EU law reform and Member State legislative action to promote the regionalisation of the sector and the establishment of a new Energy Union.

Keywords


Introduction

The genesis of the European Union (EU) integration process may be traced back to the conclusion of three treaties in the 1950s. At the time, the collaborative arrangements did not extend to the establishment of a common energy

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market.\textsuperscript{2} As a result, EU Member States have long since retained considerable discretion in pursuing national policies promoting particular sources of energy, namely: nuclear power in France, Belgium and Sweden, oil in the United Kingdom, gas in the Netherlands, and coal in Germany.\textsuperscript{3}

Rather surprisingly, the development of a common policy on energy lacked a specific legal basis in EU primary law prior to the ratification of the Treaty on the Functioning of the European Union (TFEU), which amongst other matters aims to promote new and renewable forms of energy.\textsuperscript{4} Although the EU treaties are silent on which sources of renewable energy ought to be developed in the Member States,\textsuperscript{5} it is clearly apparent from the widespread development of wind farms in the North Sea and elsewhere that offshore wind power now forms an essential component of Europe's energy mix and has the potential to make a significant contribution to security of energy supply, as well as the reduction of greenhouse gas emissions (GGEs) in line with the EU's ambitious commitments to combat the causes of climate change.\textsuperscript{6} Moreover, the development of offshore wind power can also help the EU achieve some of the broader public interest objectives under its internal market and environmental policies including enhanced cross-border trade in so-called “green electricity”, while ensuring at the same time that the energy sectors in the Member States remain sustainable, secure and highly competitive as part of the world's largest low-carbon economy.\textsuperscript{7}

Ironically, despite the laudatory nature of the aforementioned objectives, EU law does not encourage directly, or indeed compel, the 23 coastal Member States to maximise the offshore wind resource in sea areas under their sovereignty and jurisdiction.\textsuperscript{8} As a result, the industry has evolved in a haphazard fashion at a pan-European level and this trend was further exacerbated by the absence until recently of common EU rules on maritime spatial planning.