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AARHUS UNIVERSITY
BUSINESS AND SOCIAL SCIENCES

E-COMPENDIUM

ASB

Climate Law – Course no. 4621010090 – Spring 2012
Bachelor
Department of law
Sanford Gaines and Ulla Steen

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Dear students,
These are the compiled materials for the class on "Climate Law".

When using this compendium, please note:

1. The assigned materials under "Literature" you are supposed to read extensively or even intensively for each class and for the exam. Literature will be split up in "extensive reading" and "intensive reading". If the reference contains "extensive reading" behind brackets, this means you have to read it and understand the overall message of the literature. This reading I have included for you to get a better understanding of the overall issue at hand or get more background information. If the reference contains "intensive reading", you are expected not only to know the overall content, but read it more in-depth and comprehend the issues at hand, supplemented with details. If nothing is indicated you will be informed about the intensity of reading during class.

2. The assigned materials under "Legislation" you are allowed to bring to the exam. Please do bring the assigned legislation with you to each class as we will work with the materials.

3. If the compendium includes "Cases", you cannot bring them to the exam. Although you are not expected to memorize cases for the exam, you have to know the main issue at hand and how the issue is solved. We will discuss this in class.

4. During the last session before the exam we will once more go through the assigned materials in the compendium and guide you on what to read intensively and what to read extensively.

The use of this compendium will also be explained during the first class.

Finally, this is a compendium containing literature and not a student handbook. It is important that you attend classes to understand the content of the materials and select the relevant issues at hand. Note that what is intensive and extensive reading might change during the course.
The materials are assigned per Session of four hours each, so you can prepare before class. In particular, please read the materials for the Session 1 before the first class.

Part I – International Climate Law (prof. Sanford Gaines)

Session 1

1. Climate change and energy: overview

1.1 The science of climate change

Literature:

- JOHN HOLDREN, **"Meeting the Climate-Change** Challenge", Chaffee Memorial Lecture, 2009 (extensive reading) http://ncseonline.org/conference/8th-national-conference-climate-change-science-and-solutions/john-f-chafee-memorial-lectu

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- Intergovernmental Panel on Climate Change (IPCC), **4th Assessment (AR4), 2007, Synthesis Report**, part 2 (all sections) and section 3.1 (extensive reading)

http://www.ipcc.ch/publications_and_data/ar4/syr/en/main.html

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1.2 The climate-energy connection

Literature:

- IPCC, **AR4 Synthesis Report**, sections 5.3 – 5.5 [extensive]
- International Energy Agency, **World Energy Outlook 2010**, Executive Summary, pages 3-6, 8-10, 11-14 (extensive) http://www.iea.org/Textbase/npsum/weo2010sum.pdf
- IPCC, **Special Report: Renewable Energy Sources**, Summary for Policymakers, sections 2, 3, 4, and 5 (extenstive) http://www.ipcc.ch/news_and_events/docs/ipcc33/SRREN_FD_SPM_final.pdf

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2. Climate change governance (part I)

2.1 An introduction to public international law

Literature:

- Lecture notes on public international law

Aarhus--International Law.ppsx

2.2 The United Nations Framework Convention on Climate Change (UNFCCC)

Legislation:

- The full text of the **UNFCCC (**Articles 1-4 and Annex I (intensive); other articles (extensive) http://unfccc.int/resource/docs/convkp/conveng.pdf

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Session 2

2.3 International climate change governance: Institutions and practices

Literature: (A page or two will be prepared and posted to the course site showing the major organizations involved with climate change.)

2.4 The Kyoto Protocol to the UNFCCC

Legislation:

- The text of the **Kyoto Protocol** Articles 1 – 7 and Art. 12 (intensive reading)

http://unfccc.int/resource/docs/convkp/kpeng.pdf

3. Climate change governance (part II)

3.1 The theory of emissions trading

Literature:

- ROBERT N. STAVINS, 'A Meaningful U.S. Cap-and-Trade System to Address Climate Change' (2008), sections 1.1, 1.2, 1.3.2, 1.4, section 2 beginning and 2.1 - 2.2, 2.5.1 - 2.5.2, 2.7.2 - 2.7.3, and 3.1 (extensive reading)

http://www.feem.it/userfiles/attach/Publication/NDL2008/NDL2008-082.pdf

3.2 The Clean Development Mechanism

Legislation: Kyoto Protocol, article 10.

3.3 Emissions trading in practice

Literature:

- European Environment Agency 2011, Greenhouse gas emissions in Europe: a retrospective trend analysis for the period 1990 – 2008, chap. 3, pages 24-33 (extensive) http://www.eea.europa.eu/publications/ghg-retrospective-trend-analysis-1990-2008
- European Environment Agency, Greenhouse gas emission trends and projections in Europe 2011 - Tracking progress towards Kyoto and 2020 targets, report 4/2011, sections 2-4, pages 18-49 (extensive) http://www.eea.europa.eu/publications/ghg-trends-and-projections-2011
- Judgment of the Court of Justice of the European Union, Air Transport Assoc. of America v. Secretary of State for Energy and Climate Change, 21 Dec. 2011. Paragraphs 42-45 and 121-130 (intensive), http://curia.europa.eu/juris/document/document.jsf?text=&docid=117193&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=225716? ,

Session 3

4. What comes after the Kyoto Protocol?

4.1 Principles, problems, and approaches

Literature:

- ELLEN MARGRETHE BASSE and SANFORD GAINES, "Common but Differentiated Responsibilities and Respective Capabilities" as Part of the Post-2012 Climate Regime, Nordic Environmental Law Journal 2010 (2), 189 – 203. *Read* 189-199 (sections 1-5) (extensive reading)

http://www.nordiskmiljoratt.se/haften/NMT%202010-2.pdf

- The Hartwell Paper (May 2010), sections II.A. and II.B. (pages 12-16) (extensive reading)

http://eprints.lse.ac.uk/27939/1/HartwellPaper_English_version.pdf

Institute for Governance and Sustainable Development, "The Need for Speed" (July 2011) (intensive reading).
http://www.baser.dk/login?url=http://lib.asb.dk/ecompendium/climate_need.pdf

4.2 Conferences of the Parties (COPs): From Bali to Copenhagen, Cancun and Durban, and on to Qatar (COP18, 2012)

COP Documents :

4.2.1 COP13--The Bali "Roadmap"

http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf#page=3 Read **only** Decision1/CP.13 (intensive)

4.2.2 COP15—The Copenhagen Accord

http://unfccc.int/resource/docs/2009/cop15/eng/l07.pdf (intensive)

4.2.3 COP16—Cancun

http://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf#page=2 Review (extensive) parts I, II, and IV. Read (extensive) part VII and Appendix III.

4.2.4 COP 17—Durban

http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/awgkp_outcome.pdf (intensive)
http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_gcf.pdf (extensive)
http://unfccc.int/files/meetings/durban_nov_2011/decisions/application/pdf/cop17_durbanplatform.pdf (intensive)

Part II – European Climate Law (Associate Professor Ulla Steen)

Session 4

1. EU Policy and Legal Framework

1.1 The EU and its international obligations and commitments

1.2 Important provisions the Lisbon Treaty

1.3 EU Climate and Energy Package

Literature:

- European Commission, *20 20 by 2020 Europe's climate change opportunity*, COM(2008) 30 final. (extensive reading)

http://www.energy.eu/directives/com2008_0030en01.pdf

- European Commission, *Analysis of options to move beyond 20 % greenhouse gas emission reductions and assessing the risk of carbon leakage,* COM (2010) 265 final. (extensive reading)

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0265:FIN:EN:PDF

- Second ECCP Progress Report (Executive Summary) (extensive reading)

http://ec.europa.eu/clima/documentation/eccp/docs/second_eccp_report_xsum_en.pdf

- Henningsen, Jørgen. (2008).
  Chapter 10: Creating a sustainable energy sector in Europe. How ambitious is the new EU energy and climate policy.
  In: Roggenkamp, Martha & Hammer, Ulf: European Energy Law Report; 7, 1, pp. 141-146.
  Antwerpen: Intersentia
  http://www.baser.dk/login?url=http://lib.asb.dk/ecompendium/11892_Henningsen.pdf (intensive reading)

- Oberthür, Sebastian & Roche Kelly, Claire. (20-8-2008).
  EU Leadership in International Climate Policy: Achievements and Challenges.
  In: The International Spectator, Vol. 43, Iss. 3, pp. 35-50.
  http://www.baser.dk/login?url=http://dx.doi.org/10.1080/03932720802280594 (extensive reading)

- Lefevre, Jürgen. (2009).
  Chapter 6: A climate of change: An analysis of progress in EU and internaitonal climate change policy.
  In: Scott, Joanne.: Environmetal protection: European law and governance, pp. 171-189.
  Oxford: Oxford University Press
  http://www.baser.dk/login?url=http://lib.asb.dk/ecompendium/11897_Lefevre.pdf
  (intenstive reading only part "Climate Change, Energy Security, and Competitiveness" point 3 on page 183-189; the rest extensive reading).

Legislation:

- Article 4, 170, 191, 194 TFEU; Preamble TEU, Article 2, 6 TEU

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:321E:0001:0331:EN:PDF

- Make yourself familiar with the Climate change and energy package on the following link:

http://ec.europa.eu/clima/policies/package/index_en.htm
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0370:FIN:EN:PDF

- For use throughout the climate law course : Overview of EU climate change related legislation

http://ec.europa.eu/dgs/clima/acquis/index_en.htm

- Bring the following legislation to class:
  - Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

    http://europa.eu/legislation_summaries/energy/renewable_energy/en0009_en.htm

2. Key elements of the EU legal framework (Part I)

Session 5

2.1 Introduction to the key elements of the EU legal framework

Literature:

- L. MASSAI, "European Union" in "Current Developments in Carbon & Climate Law", 2009 (1) *Carbon & Climate L. Rev.* 117 2009, 117-120. (intensive reading)

  http://www.baser.dk/login?url=http://heinonline.org.ez.statsbiblioteket.dk:2048/HOL/Page?handle=hein.journals/cclr3&collection=journals&page=503

- L. MASSAI, "European Union" in "Current Developments in Carbon & Climate Law", 2009 (3) *Carbon & Climate L. Rev.* 503 2009, 369-370.

  http://www.baser.dk/login?url=http://heinonline.org.ez.statsbiblioteket.dk:2048/HOL/Page?handle=hein.journals/cclr3&collection=journals&page=369

- L. MASSAI, "European Union" in "Current Developments in Carbon & Climate Law", 2009 (4) *Carbon & Climate L. Rev.* 503 2009, 503-504. (intensive reading)

  http://www.baser.dk/login?url=http://heinonline.org.ez.statsbiblioteket.dk:2048/HOL/Page?handle=hein.journals/cclr3&collection=journals&page=503

- L. MASSAI, "European Union" in "Current Developments in Carbon & Climate Law", 2010 (1) *Carbon & Climate L. Rev.* 117 2009, 112-113. (intensive reading)

  http://www.baser.dk/login?url=http://search.proquest.com.ez.statsbiblioteket.dk:2048/docview/603198996/fulltextPDF/1315C9530692E284B85/1?accountid=14468

- K. KULOVESI, E. MORGERA, M. MUÑOZ, "Environmental Integration and Multi-Faceted International Dimensions of EU Law: Unpacking the EU's 2009 Climate and Energy Package", *Common Market Law Review* 48: 829-891, 2011.(intensive reading) 829-866 for Session 5

  http://www.baser.dk/login?url=http://www.kluwerlawonline.com/search.php?action=newsearch&topic=International+Law&author=kulovesi&title=&fulltext=&searchtype=author

2.2 Greenhouse gas monitoring and reporting of the EU (under UNFCC and Kyoto)

Literature:

- Climatefocus (Authors: M. von Unger, D. Conway and J. Hoogzaad, *Carbon Offsetting in Europe Post 2012, Kyoto Protocol, EU ETS and Effort Sharing,* 4 April 2011, 43p. (extensive reading)

http://www.climatefocus.com/documents/files/carbon_offsetting_in_europe_post_2012_kyoto_protocol_eu_ets_and_effort_sharing.pdf

- R. LYSTER, "Seperating the Wheat from the Chaff: Regulating Greenhouse Gases in a Climate of Uncertainty", 2007 *Carbon & Climate L. Rev.* 89 2007, 89-104. (intensive reading)

http://www.baser.dk/login?url=http://heinonline.org.ez.statsbiblioteket.dk:2048/HOL/Page?handle=hein.journals/cclr1&collection=journals&page=89

Legislation:

- Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:049:0001:0008:EN:PDF

- 2006/944/EC: Commission Decision of 14 December 2006 determining the respective emission levels allocated to the Community and each of its Member States under the Kyoto Protocol pursuant to Council Decision 2002/358/EC.
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:358:0087:0089:EN:PDF

2.3 The EU emission trading scheme (EU ETS)

Literature:

- Delbeke, Jos. (2006).
Chapter 1: The emissions trading scheme (ETS): The cornerstone of the EU's implementation of the Kyoto protocol.
In: Delbeke, Jos: EU energy law; 4 (*EU Environmental Law, The EU Greenhouse Gas Emissions Trading Scheme)*, 1, pp. 1-13.
Leuven: Claeys & Casteels
http://www.baser.dk/login?url=http://lib.asb.dk/ecompendium/11900_Delbeke.pdf
(extensive reading)

- Pohlmann, Markus. (2009).
Chapter 16: The European Union Emissions Trading scheme.
In: Freestone, David & Streck, Charlotte: Legal aspects of carbon trading : Kyoto, Copenhagen, and beyond, 1, pp. 337-366.
Oxford: Oxford University Press
http://www.baser.dk/login?url=http://lib.asb.dk/ecompendium/11901_Pohlmann.pdf.
(intensive reading)

- Massai, L. (2010).
Chapter 1: The revision of the EU emissions trading system.
In: Roggenkamp, Martha & Hamm, U.: European energy law report VII, 1, pp. 3-25.
Antwerp: Intersentia

http://www.baser.dk/login?url=http://lib.asb.dk/ecompendium/11902_Massai.pdf. (Intensive reading)

Legislation:

- **Consolidated version (includes all)** of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2003L0087:20090625:EN:PDF

2.4 The effort sharing decision (annual binding greenhouse gas emission targets for the Member States)

Literature:

- *Questions and Answers on the Decision on effort sharing,* MEMO/08/797 (intensive reading)

http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/08/797

- CAN-E, WWF, GP Effort Sharing Report, June 2011, *Achieving a 30 percent domestic carbon reduction target, Sharing the costs and benefits of green technology development in the European Union,* (20p). (extensive reading)

http://www.climnet.org/index.php?option=com_content&view=article&id=317:new-report-achieving-a-30-percent-domestic-carbon-reduction-target-sharing-the-costs-and-benefits-of-green-technology-development-in-the-european-union&catid=274:eu-energy-and-climate-policy&Itemid=286

Legislation:

- Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0136:0148:EN:PDF

Session 6

3. Key elements of the EU legal framework (Part II)

Litterature :

- K. KULOVESI, E. MORGERA, M. MUÑOZ, "Environmental Integration and Multi-Faceted International Dimensions of EU Law: Unpacking the EU's 2009 Climate and Energy Package", *Common Market Law Review* 48: 829-891, 2011.(intensive reading) 866- 891 for Session 6

http://www.baser.dk/login?url=http://www.kluwerlawonline.com/search.php?action=newsearch&topic=International+Law&author=kulovesi&title=&fulltext=&searchtype=author

3.1 Reducing emissions in the transport sector

Literature:

- I. LABORDE, "EU Regulation of Aviation CO_2 Emissions", 24 *Nat. Resources & Env't* 54 2009-2010, 54-56.(intensive reading)

http://www.baser.dk/login?url=http://heinonline.org.ez.statsbiblioteket.dk:2048/HOL/Page?handle=hein.journals/nre24&id=188&collection=journals

Greenhouse Gases; Aviation in the European Union Gas Emission Trading System EU ETS. (6-9-2010).
The Business of Global Warming, pp. 12-.
http://www.baser.dk/login?url=http://proquest.umi.com/pqdweb?did=2127375681&Fmt=7&clientId=29641&RQT=309&VName=PQD

Legislation:

- Draft decision of the EEA Joint Committee No 87/2011 of 1 July 2011

http://ec.europa.eu/clima/documentation/transport/aviation/docs/eea_01072011_en.pdf

- Directive 2008/101/EC: Amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (19 Nov 2008).

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:008:0003:0003:EN:PDF

3.2 Carbon capture and storage as a low carbon technology

Literature:

- Purdy, Ray & Havercroft, Ian. (2007).
  Carbon Capture and Storage: Developments under European Union and International Law.
  In: Journal for European Environmental & Planning Law, Vol. 5, Iss. 4, pp. 353-366.
  http://www.baser.dk/login?url=http://lib.asb.dk/ecompendium/12221_Purdy.pdf

Legislation:

- Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006
  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0114:0135:EN:PDF

3.3 Energy Efficiency – instruments and mechanisms

Legislation:

- COM (2011) 370 final : Proposal for a Directive of the European Parliament and the Council on energy efficiency and repealing Directive 2004/8/EC and 2006/32/EC

4. Implementation of climate law in the Member States: Denmark

Session 7

4.1 The Danish Policy and Legal Framework

Litterature:

- Energy strategy 2050

Summary of "Energy strategy 2050"

http://www.kemin.dk/en-us/newsandpress/news/2011/sider/energystrategy2050.aspx

- Danish strategy for adaptation to a changing climate, Danish Government, March 2008

http://www.kemin.dk/Documents/Klima-%20og%20Energipolitik/klimatilpasningsstrategi_UK_web.pdf

- Danish Energy Agency, The Danish JI and CDM Program Seven years of experience with climate projects around the world
- The Danish JI and CDM program:

http://www.ens.dk/da DK/KlimaOgCO2/forside/Documents/The%20Danish%20JI%20and%20CDM%20Program.pdf

- Danish Presidency of the Council of the EU
  http://www.kemin.dk/en-US/Climate_and_energy_policy/EU/danish_presidency_of_the_council_of_the_EU/Sider/Forside.aspx

4.2 Danish Installations covered by the ETS – from Second to Third Phase of the EU ETS Scheme

Literature:

- National Allocation Plan, 2008-2012 Denmark

http://www.ens.dk/en-US/ClimateAndCO2/national_allocation_plan/the_danish_allocation_plan_2008_2012/Sider/Forside.aspx

- The Danish Trading Registry – the annual EUA cycle
- http://www.ens.dk/en-US/ClimateAndCO2/emissiontradingscheme/DETR/ToU/Sider/Forside.aspx
- http://www.ens.dk/en-US/ClimateAndCO2/emissiontradingscheme/DETR/Review-of-all-Allowances-and-Credits/Sider/Forside.aspx

4.3 JI and CDM – the Danish Experience

Literature:

- Danish Energy Agency, The Danish JI and CDM Program Seven years experience with climate projects around the world
- The Danish JI and CDM program:

http://www.ens.dk/da-DK/KlimaOgCO2/forside/Documents/The%20Danish%20JI%20and%20CDM%20Program.pdf

- Danish Energy Agency - JI & CDM Newsletter, Dec. 2011.
- http://www.ens.dk/da-DK/KlimaOgCO2/forside/nyheder/Documents/Newsletter_dec_2011.pdf

Legislation :

- Consolidated Act on CO2 allowances, act no. 1222 of 15 October 2010: http://www.ens.dk/en-US/Info/Legislation/CO2_Emission_Trading_Scheme/Sider/Forside.aspx

Session 8

5. Renewable Energy (Part I - session 8)

5.1 A short introduction to EU renewable energy law

5.2 Directive 2009/28/EC on the promotion of the use of Energy from Renewable Energy Sources

5.3 Binding national targets for renewable energy and national action plans

Literature:

- European Commission, DG Energy, *Renewables make the difference,* 2010. (extensive reading)

  http://ec.europa.eu/energy/publications/doc/2011_renewable_difference_en.pdf

- Have a look at the following link and focus on the Member States' progress in reaching various renewable energy targets:

  http://ec.europa.eu/energy/renewables/reports/reports_en.htm

- European Commission, *Renewable Energy: Progressing towards the 2020 target,* COM(2011) 31 final. (extensive reading)

  http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0031:FIN:EN:PDF

- European Commission, Commission Communication on renewable energy, MEMO/11/54, Brussels, 31 January 2011. (intensive reading)

  http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/54

- Lowe, Philip. (2010).
  Regulating Renewable Energy in the European Union.
  In: Renewable Energy Law and Policy : RELP, Vol. 1, Iss. 1, pp. 17-21.
  http://www.baser.dk/login?url=http://search.proquest.com/docview/734723929?accountid=14468
  (intensive reading)

- Fräss-Ehrfeld, C. (2009).
  Chapter 4: Renewable energy sources: A chance to combat climate change.
  In: Deketelaere: Climate change law, poicy and practice; 1, 1, pp. 109-125.
  Austin: Aspen Publishers
  http://www.baser.dk/login?url=http://lib.asb.dk/ecompendium/11832_Fraess-Ehrfeld.pdf (intensive reading)

Legislation:

- Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:140:0016:0062:en:PDF

- Commission Decision of 30 June 2009 establishing a template for National Renewable Energy Action Plans under Directive 2009/28/EC of the European Parliament and of the Council

http://www.energy.eu/directives/nat-reap.pdf

6. Course round-up and exam-preparation (Part II – Session 8)