

ATT RANSONERA UTSLÄPPSUTRYMME

En miljörettslig studie om utsläppshandel
enligt Kyotoprotokollet och EU ETS



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Abstract

Olsen Lundh C. 2010. Att ransonera utsläppsutrymme – en miljörettslig studie om utsläppshandel enligt Kyotoprotokollet och EU ETS. Rationing the available space for emissions – An environmental legal study on Emissions Trading under the Kyoto Protocol and EU ETS. Iustus Förlag 767 pp. Uppsala 2010. ISBN 978-91-7678-752-6. Language: Swedish.

This Environmental Law thesis deals with emissions trading in greenhouse gases under the Kyoto Protocol as well as under the European Union Emissions Trading Scheme (EU ETS). Thus, it deals with International Law, European Union Law and, since both trading schemes need to be implemented, National (Swedish) Law.

The thesis aims to analyze emissions trading under the Kyoto Protocol and the EU ETS, as legal instruments of environmental law. It focuses on the systems' ability to handle the problem with greenhouse gas emissions in a way that is not legally ecologically unsustainable.

Initially, the thesis describes the greenhouse gas issue from scientific, economic and legal perspectives. Hereinafter, a systematic review is made of the legal documents underpinning the international system of emissions trading in greenhouse gases under the Kyoto Protocol as well as the EU ETS.

Then, the "trading commodity" is analyzed. What are the legal implications in designing an emissions quota? How can something, originally defined in environmental economic theory, be described from an environmental law perspective? Is there an emissions entitlement involved - a right to emit? Is there any function in the quota that can possibly be designated as a right? If so, what does that right involve? In this context, ownership and property are discussed as well as other issues related to the idea that natural resources can be privatized by the state. As for the EU ETS, the discussion also concerns issues raised relating to its implementation: Introducing the system might violate fundamental rights and the distribution of quotas might, in many cases, constitute State Aid.

The main analysis concerns the systems' ability to avoid legal ecological unsustainability. A central connection is the instrument's ability to keep emissions within set limits, to allocate the space between the actors in a way that is identifiable and legally possible to enforce, and the ability to handle feedback and to be adaptive.

The overall conclusions are that emissions trading is a powerful environmental law command and control instrument and that free allocation is preferable to auction.

Keywords: Emissions Trading, Kyoto Protocol, EU ETS, greenhouse gases, sustainability, command and control, market based, free allocation

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