

Master's Programme in Business Law

CBAM and its dual role as a Trade Defence Mechanism and a Climate Diplomacy Tool through the lenses of Hard and Soft Law

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Abstract

The undertaken research examines regulations in the area of sustainability with special attention devoted to the study and critical analysis of the Carbon Border Adjustment Mechanism. Particularly the double role of the mechanisms as a Trade Defence Mechanism and a vital policy tool used to promote and advance the path to the carbon-neutrality in Europe is inspected. The focus of the study is drawn to the analysis of the strengths and weak points of the regulation from the legal, financial and socio-political point of view. Analysis is undertaken on the European level and subsequently proceeds down to the individual member state level.

Finland is used as part of the research to juxtapose the beginnings of the regulation as a proposal by the European Commission with the ability of smaller European countries to influence the path the proposed regulation takes and make sure that their vital interests are taken into account. Finland is also used as an example of how smaller enterprises, so called SME, in the smaller European countries react, adapt and find necessary tools, including interpretation of laws and regulations, to transpose sustainability legislation into concrete measures on the individual company-level.

An important conclusion of the study is that sustainability legislation cannot function by itself in the closed environment and be directed only towards European countries. Indeed, the success of the whole legal framework, is directly influenced by the “willingness to accept and comply” with the laws not only from inside the Block but from outside the European Common Market as well.

The second major conclusion of the research is that “Hard Law” instruments alone cannot achieve the desired by the proposed legislation results. The indispensable inclusion of “Soft Law” and “Soft Policies” into the framework of sustainability legislation provide the path, the “tool” to achieve the desired goals which are the transition of the European economy towards carbon-neutrality and effective prevention of the carbon leakage.

In the general conclusion the important issues of future development in the law making related to the sustainability regulation are being introduced and briefly analysed. These issues include the role of AI, social media and shift from the “classic law-making” towards hybrid legislation, which is based upon international agreements, soft policies and official and unofficial Codes of Conduct.

Keywords CBAM, Sustainability legislation, Soft Law, Hard Law, Special Taxation Instruments, Trade Defense Instruments, SME, CBAM, Omnibus

Tekijä Daria Kuparinen

Työn nimi CBAM ja sen kaksoisrooli kaupan suojamekanismina ilmastodiplomatian välineenä vahvasti ja heikosti velvoittavan oikeuden näkökulmasta.

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Tiivistelmä

Tutkielma tarkastelee kestävän kehityksen sääntelyä keskittyen hiilirajamekanismin (CBAM) tutkimiseen ja kriittiseen analyysiin. Huomio kohdistuu erityisesti mekanismin kaksoisrooliin kaupan suojamekanismina sekä tärkeänä poliittisena työkaluna Euroopan hiilineutraaliustavoitteiden saavuttamiseksi. Keskiössä on sääntelyn vahvuuksien ja heikkouksien oikeudellinen, taloudellinen ja sosiopoliittinen analyysi. Analyysi suoritetaan Eurooppalaisella tasolla edeten yksittäisten jäsenvaltioiden näkökulmiin.

Suomea käytetään analyysissä esimerkkinä, jotta voidaan havainnollistaa vastakkainasettelu sääntelyn lähtökohtana olevan Euroopan komission ehdotuksen ja toisaalta pienempien Euroopan maiden kyvyn välillä vaikuttaa ehdotetun sääntelyn kulkuun ja varmistaa omien etujen huomioonottaminen. Suomi toimii myös esimerkkinä siitä, kuinka pk-yritykset pienissä EU-maissa reagoivat, sopeutuvat, ja löytävät tarvittavat välineet, kuten lakien ja säädösten tulkinnan, kestävyyslainsäädännön muuttamiseksi konkreettisiksi toimenpiteiksi.

Tutkielman keskeinen johtopäätös on, että kestävyyslainsäädäntö ei voi toimia itsenäisesti suljetussa ympäristössä ja olla suunnattu vain Euroopan maihin. Koko lainsäädännön onnistuminen onkin suoraan riippuvainen toimijoiden halukkuudesta hyväksyä ja noudattaa lakeja, ei pelkästään Euroopan sisällä, vaan myös Euroopan yhteismarkkinoiden ulkopuolella.

Toinen keskeisistä johtopäätöksistä on se, että pelkät vahvasti velvoittavat oikeudelliset välineet eivät voi saavuttaa lainsäädännön tavoittelemia tuloksia. Sen sijaan heikosti velvoittavien, mutta ensiarvoisen tärkeiden oikeudellisten välineiden ja politiikkatoimien sisällyttäminen kestävyyslainsäädännön kehukseen tarjoaa keinon saavuttaa toivotut tavoitteet, joita ovat Euroopan talouden siirtyminen kohti hiilineutraaliutta ja hiilivuodon tehokas ehkäiseminen

Yleisessä johtopäätöksessä esitellään ja lyhyesti analysoidaan kestävyyslainsäädäntöön liittyvän oikeudellisen kehityksen tulevaa kehitystä koskevia tärkeitä kysymyksiä. Näihin kysymyksiin kuuluvat tekoälyn rooli, sosiaalisen median vaikutus ja siirtyminen "klassiseen lainsäädäntöön", eli kohti hybridilainsäädäntöä, joka perustuu kansainvälisiin sopimuksiin, pehmeisiin politiikkoihin sekä virallisiin ja epävirallisiin käytös- ja eettisiin ohjeisiin.

Avainsanat Hiilirajamekanismi, Soft Law, Hard Law, kestävyyslainsäädäntö, TDI kaupanpuolustusvälineet, erityisiä verotusvälineitä, CBAM, Omnibus

Table of contents

Preface and acknowledgements	i
Symbols and abbreviations.....	ii
1 Introduction	1
1.1 Purpose of the study and research questions	2
1.2 Research methods and key principles	3
1.3 Sources and structure of the thesis.....	4
2 New family of Trade Defence Mechanisms: Tools behind the shift towards the Green Energy	7
2.1 WTO rules and European Union TFEU. General overview of European ecological and environmental policies.....	7
2.2 CBAM as a continuation of ETS. Interconnection and intercorrelation of the two systems behind energy transformation.	10
2.3 CBAM as an example of the new family of special defence instruments.	12
2.3.1 CBAM as an anti-circumvention measure. A look from inside the EU. 15	
2.3.2 CBAM The limitations of scope of CBAM legislation as an obstacle to the environmental policy of EU.	16
2.3.3 CBAM as a Trade Defence Mechanism. The reaction of countries outside the EU.....	17
2.4 Recent developments in CBAM and look into the future.....	18
3 Cui Bono? Financial considerations behind European sustainability policy.	21
3.1 CBAM European fiscal policy and financial reasons behind CBAM legislation.	21
3.2 Financial impact of CBAM regulation on European member states. 24	
3.3 Financial impact of CBAM on the countries from outside the EU and “willingness to comply”.....	27
4 Legal frameworks behind Special Defence Mechanisms.....	31
4.1 General overview of the taxation policies in the area of sustainability.	31
4.2 Restrictive Taxation versus Incentives. European Sustainable Taxation policies under review.	34

4.3	Soft law instruments at the disposal of the governments and government institutions. European approach to soft law.....	39
4.4	European special taxation instruments and CBAM regulation. A look into the future.....	43
5	European sustainability legislation from the point of view of individual member states. Critical analysis and a look into the future.....	47
5.1	Introduction of new sustainability legislation in individual member states. The case of Finland.	47
5.2	Upcoming changes to European Sustainability Regulation. Omnibus legislative packages.	51
5.3	Critical role of Finnish government and commercial organizations in adaptation, implementation and interpretation of sustainability laws. Interviews with business and legal practitioners.	54
5.4	Assessment of the sustainability regulation on the level of individual member states. Overview and conclusion.	61
6.	General Conclusion.	64
	References.....	70
	Sources used in research.....	70
	References.	70

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Symbols and abbreviations

AD	Anti-dumping Agreement
CBAM	Carbon Border Adjustment Mechanism
ECA	European Court of Auditors
ECI	European Citizens Initiative
ETD	Energy Tax Directive
ETS	Energy Trade System
EU	European Union
EUR-Lex	EU law portal
GATT	General Agreement on Tariffs and Trade
GHE	Green House Gas Emissions
GDP	Gross Domestic Product
GNI	Gross National Income
ICAP	International Carbon Action Partnership
IEA	International Energy Agency
IETA	International Emission Trading Association
IGO	Intergovernmental entities
IMF	International Monetary Fund
MFF	Multiannual Financial Framework
OECD	Organization for Economic Co-operation and Development
OIOO	One in, one out principle
OMC	Open Method of Coordination
SCM	Subsidies and countervailing Measures
STI	Special Taxation Instruments
TDI	Trade Defense Instruments
TFEU	Treaty on Functioning of European Union
TFP	Total Factor Productivity
UN	United Nations
WTO	World Trade Organization

1 Introduction

The planet earth is a wonderful home to nearly 8,2 billion people.¹ It is up to us what kind of planet we will leave to the future generations to come. Among many fundamental problems facing people around the world is how we transition from fossil energy to cleaner and more sustainable alternatives. Until now fossil fuels have accounted for approximately 82 % of global energy.² They are also the main source of harmful emissions and are responsible, according to UN Climate Action, for over 75% of global greenhouse gas emissions.³

The EU is among the leading world institutions which promote the transition to green energy among its member states through different initiatives, executive actions and legal instruments. One of such initiatives is the European Green Deal.⁴ The main aim of the Green Deal is to achieve climate-neutral status for the European continent by 2050.⁵ With the aim of achieving this status the European Commission has concentrated on several objectives, one of which is to “... *promote EU energy standards and technologies at global level.*”⁶ In pursuit of this goal the Commission has developed and gradually applied different legal instruments aimed at enforcing clean energy

¹ Worldometer. Worldometer, formerly Worldometers, is a reference website that provides counters and real-time statistics for diverse topics. Data per 1 July 2025.

<https://www.worldometers.info/>

² Earth.org. Earth.org. is a non-profit environmental news and data platform that uses data journalism and accessible reporting to raise global awareness about climate change, biodiversity loss, and ecosystem degradation. Data per 1 July 2025. <https://earth.org/>

³ Climate Action, United Nations. The UN's Climate Action involves global efforts, focusing on cutting emissions (mitigation), adapting to impacts and limit warming to 1.5°C. Data per 1 July 2025. <https://www.un.org/sustainabledevelopment/climate-action/>

⁴ The European Green Deal. European Commission. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en

⁵ Climate Action and the Green Deal. European Commission. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/climate-action-and-green-deal_en

⁶ European Commission. Main objectives. A clean energy transition. Video. https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/energy-and-green-deal_en

consumption not only at European level but also among companies engaged in commercial activities with businesses and institutions situated and registered within the EU. One of such mechanisms is CBAM – Carbon Border Adjustment Mechanism.⁷ The CBAM belongs to the new family of Trade Defence Mechanisms and is a binding regulation from the realm of “Hard Law” and at the same time a “Soft Policy” tool aimed at channelling energy consumption towards cleaner and more efficient alternatives.

1.1 Purpose of the study and research questions

Sustainability legislation, its representative CBAM, the objectives behind the regulation, the challenges in legal implementation and transposition into the legal environment of individual member states, as well as the possible future development are the main subjects of this research paper. Having said this, the thesis will not delve deep into concrete numerical data behind the current and up-coming CBAM, as such numerical metrics are subject to rapid change. Instead, the research will concentrate on legal framework behind the regulation⁸, analyse and showcase the direction of the conceptual development of such special regulations within the legal framework of European Law⁹ and critically assess their path from the proposal by the European Commission until implementation by the individual member states.

Furthermore, the research will also encompass the vital critical analysis of the current socio-political and socio-economic environment around the issues of sustainability, the current challenges behind climate legislation, and

⁷ European Union. Taxation and Customs Union. CBAM. https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en

⁸ EU. CBAM regulation. Proposal of CBAM regulation. Brussels. 14. July 2021 <https://www.consilium.europa.eu/en/press/pressreleases/2025/06/18/carbon-border-adjustment-mechanism-cbam-council-and-parliament-strike-a-deal-on-its-simplification/>

⁹ EU. EUR-Lex. Sources of European Union Law. Last updated 21. April 2022. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:l14534>

concentrate on possible solutions to its implementation. The most important questions, which will be researched in this thesis are:

- 1) To which extent Trade Defence Mechanisms in their dual role as binding legislation and soft policy tool influence green transition?

To explore this question, the thesis will engage in critical analysis of CBAM, the logic behind the mechanisms, as well as their legality and co-existence with other binding and non-binding sustainability legislation. Critical analysis will be complimented by exploration of how sustainability legislation is transposed into the legal environment of smaller European Member States.

1.2 Research methods and key principles

This thesis utilises a multi-methodological approach by combining dogmatic legal analysis, interdisciplinary and law-in-context perspective, as well as empirical qualitative research. The primary research method is legal dogmatic method, the purpose of which is to examine the current legal framework, its content, and the weight of different sources of law (such as preparatory documents and case-law). One of the key objectives of the methodology is to systemise and interpret the legal rules in force, thus providing a comprehensive internal overview of the inspected area.¹⁰ In the context of this thesis, this methodology is used to map-out the legal basis, structure, and operation of the CBAM, as well as its relationship with other areas of the EU law, particularly Special Defence Mechanisms and Special Taxation Instruments related to green energy and clean energy transition. Furthermore, and to the extent necessary, this thesis will also investigate the proposed Omnibus changes potentially implemented into law in future.

¹⁰ Hirvonen, A. J. (2011). *Mitkä metodit?: Opas oikeustieteen metodologiaan*. Helsingin yliopisto. <https://helda.helsinki.fi/server/api/core/bitstreams/20149471-38b2-4cc8-94b7-2f6b3feed81d/content>

Secondly, to move beyond a purely textual examination of the law, the thesis incorporates policy oriented and socio-legal perspective. In this regard, the thesis incorporates to some extent a law-in-context perspective, which advocates for more interdisciplinary perspective on law, by “*placing institutions, rules, dispute settlement processes, and legal professionals in their social, economic, political and cultural contexts.*”¹¹ This supplements the “black-letter” approach of the legal dogmatic methodology by placing the CBAM in its socio-economic context, and allows the research to make findings and interpretations based on effectiveness, cost-effectiveness, equality and political acceptability of the legal framework, with the view of making *de lege feranda* recommendations.

Finally, the dogmatic and contextual approaches are complemented by empirical qualitative research in the form of semi-structured interviews with relevant stakeholders. The aim of this research is to explore, understand, and interpret the regulatory framework from the perspectives and experiences of participants in the system.¹² The interviews conducted with the senior law and regulatory practitioners of Finland enhance the overall analysis of the CBAM mechanism and provide a more interactive picture of the real-life challenges and strengths from the perspective of the professionals engaged in the everyday application of such mechanisms. The incorporation of this methodological tool also sheds light on the underlying trends and complicated issues of doing business in the times of regulatory uncertainty.¹³

1.3 Sources and structure of the thesis

¹¹ Snyder, Francis: *Establishing Law in Context: An Insider’s Perspective*, VerfBlog, 2024/3/20. <https://verfassungsblog.de/establishing-law-in-context/>

¹² Leavy, Patricia, *The Oxford Handbook of Qualitative Research*. <https://ebookcentral.proquest.com/lib/aalto-ebooks/detail.action?docID=1657789>.

¹³ Appendix I. List of interviewees

Since transition to the clean energy on the European continent and the way to achieve it are of interest to the several disciplines – the topic requires consideration of research results and analysis from different areas. These include scholars and experts in the area of taxation, taxation of energy emissions and transition to clean energy. Furthermore, in addition to legal sources, the thesis has sought to analyse different scholarly literature related to the subject matter, as well as EU databases related to different relevant legal frameworks. Consequently, the sources used in the study are official sources related to the EU regulation in the area of CBAM, Special Trade Defence Mechanisms, Special Taxation Instrument, Energy Trading Certificates, tax law literature, as well as literature related to the taxation of energy and the Green Deal. Systematization, analysis and semi-structured interviews are used in the study primary to support the main task of the research, namely the assessment of the role of Special Defence Mechanisms and namely the CBAM as part of the sustainability policy of the EU aimed at supporting the goal of achieving transformation to the clean energy.

The thesis will begin in the Chapter 2 with the overview of the European ecological and environmental policies. The chapter will explore the new family of Trade Defence Instruments and one of its vital parts the CBAM, its interconnection with and interreliance on other sustainability laws and regulations. Chapter 3 aims to critically assess the CBAM from the financial policy point of view, to understand the motives behind the introduction of the legislation, as well as who benefits and who is left disadvantages by the regulation. In this chapter the author will also touch upon the fiscal policies within the EU, the proposed distribution of income from new CBAM taxation instrument between EU and its member states, and possible future conflicts of interest.

In the Chapter 4, the legality of the CBAM regulation, its role as a taxation policy of the EU on one hand and anti-circumvention measure aimed at preventing the carbon leakage on the other hand, as well as the co-existence of

such legal instruments with the instruments from the realm of “Soft Law” will be studied. The Chapter 5 will complement the overall topic of the research by analysing the transposition of the legislation to the level of individual member states. The chapter is based on the results of the conducted interviews with the legal and business professionals in Finland. Though limited in scope such analysis is vital to main topic of the research as it shows the path of the regulation from the law initiative to the concrete implementation in the Member States. In the final chapter 6, as part of the general overview, the author will mention current trends in the direction of the socio-economic and socio-political environment around sustainability issues and will try to come up with the solutions which might help to address in future the extremely important issue of the shift towards greener energy.

2 New family of Trade Defence Mechanisms: Tools behind the shift towards the Green Energy

2.1 WTO rules and European Union TFEU. General overview of European ecological and environmental policies

The Special Trade Defense Mechanisms (TDMs) are based on the articles of WTO, which allow countries to introduce such policies in order restore a level playing field and fair competition.¹⁴ Such mechanisms encompass specially developed tariffs and customs duties used in the promotion and enforcement of specific policies on the governmental and intergovernmental level. The policies are available not only to individual countries but also to blocks of countries, like EU.¹⁵ In this chapter, the instruments available to the EU to promote, enforce and defend European industries from unfair competition from the countries with insufficient protection of ecology from harmful emissions will be explored.

Within the European Union the legal status of such instruments is based originally on the TFEU – Treaty on the Functioning of the European Union¹⁶. The respective Articles of the treaty 191, 192 and 193 provide us with information about the legal basis for the functioning of such mechanism. Firstly, Article 191 of the TFEU, is of paramount importance, as it outlines the objectives and principles of the policies of EU in the areas of ecology and environmental protection.¹⁷ The major principles stated in the Article are:¹⁸

¹⁴ WTO. Anti-dumping, subsidies, safeguards: contingencies, etc.

https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm

¹⁵ European Commission. Trade and defense. Enforcement and protection. https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence_en

¹⁶ EUR-Lex. Consolidated version of the Treaty on the functioning of the European Union.

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF>

¹⁷ EUR-Lex. PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE XX:

ENVIRONMENT. 9 May 2008. Official Journal of European Union. Article 191

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E191:EN:HTML>

¹⁸ EUR-Lex. PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE XX:

ENVIRONMENT. 9 May 2008. Official Journal of European Union. Article 191

<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E191:EN:HTML>

- Protecting and improving the quality of the environment.
- Protection of Human Health.
- Prudent and rational use of natural resources;
- Promotion of change in the countries outside of the EU when dealing with the issues of ecology.

If Article 191 deals largely with *policy direction*, the aim of Article 192 of TFEU is to establish legal basis behind ecology and environmental policies of European Union.¹⁹ The special legislative procedure is mentioned in paragraph 2 of the Article as a main vehicle of introduction the proposed measures into law. The *special legislative procedure*²⁰ means a procedure deviating from the *ordinary legislative procedure*²¹. This deviation from the ordinary procedure means that during special legislation:

- The sole legislator is the European Council;
- The role of European Parliament is limited – only consultation and accept / reject role;
- The adaptation of the special rules based on the underlining treaties;
- The Council adopts the procedure only after the parliament has provided its opinion.

Such lengthy and relatively complicated processes ensure that all points of view are heard and major considerations and worries of the member states are discussed with the goal of finding the solution which represents interests of the majority of European countries.

¹⁹ EUR-Lex. PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE XX: ENVIRONMENT. Official Journal of the European Union. Article 192 <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E192:EN:HTML>

²⁰ Special Legislation Procedure. EUR-Lex. <https://eur-lex.europa.eu/EN/legal-content/glossary/special-legislative-procedure.html>

²¹ Ordinary Legislative Procedure. EUR-Lex. <https://www.europarl.europa.eu/olp/en/ordinary-legislative-procedure/overview>

In order for article 192 to function properly from the legislative point of view, the *principle of minimum harmonization*²² was adopted into article 193 of the TFEU. The principle entails that EU Directives (in addition to directly applicable Regulations) use minimum standards, which allows member states to incorporate in their respective country legislation with more strict criteria.

The TFEU with its relevant articles 191, 192 and 193, further lays down the basis for the environmental and ecological policies within the EU. These general principles have progressively been transposed from sparse and inconsistent law to become part and parcel of mainstream legal instruments. Indeed, according to De Sadeleer “... *EU secondary environmental law has progressively grown from a sparse set of directives to a vast body of regulatory measures aiming both to regulate the main forms of pollution as well as to protect the main ecosystems along with some of their composite element*”.²³ Therefore, since the early days of ecology legislation, the legislative work of EU has expanded with the use of new legislative tools like special taxation instruments and adjustment mechanisms, which cannot be directly placed into the categories of direct / indirect taxation. Neither are they considered as purely tariff instruments.

In order to fully comprehend the mechanism behind the CBAM one cannot avoid the analysis of the legal basis behind ETS Emission Trading System²⁴ – as CBAM is continuation of this system and, at the same time, a step forward from ETS, since it has the aim of achieving more ambitious sustainability goals.

²² EUR-Lex. PART THREE: UNION POLICIES AND INTERNAL ACTIONS - TITLE XX: ENVIRONMENT. Official Journal of the European Union. Article 193 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12012E193>

²³ De Sadeleer, Nicolas, Environmental Governance and the Legal Bases Conundrum. *Yearbook of European Law*, 31(1), 373–401. 2012 <https://doi.org/10.1093/yel/yes016>

²⁴ ETS. European Commission. Climate Action. About the EU ETS. https://climate.ec.europa.eu/eu-action/carbon-markets/eu-emissions-trading-system-eu-ets/about-eu-ets_en

2.2 CBAM as a continuation of ETS. Interconnection and intercorrelation of the two systems behind energy transformation.

The ETS was launched in year 2005 as a shift in policies of EU towards incorporation of more stringent ecology and sustainability goals in the European Industries which use energy intensive production. The main aim was to generate revenue for transition from harmful emissions toward greener production. While avoiding the shift of focus from the CBAM to ETS, a comparison of these two regulations is essential, for illustrative purposes, as the former can be characterized as an extension of the latter.

Table 1: CBAM and ETS legislation – a comparative table:

	CBAM	Original ETS (ETS1)
	Regulation 2023/956	Directive 02003L0087-20240301
Who benefits financially	25% - European Member States 75% - EU	75% - European member states 25% - EU
Scope / inclusion	6 industries: iron, steel, aluminum, cement, fertilizers, electricity, hydrogen	9 industries: steel, cement, refineries, chemicals, aluminum, aviation, maritime transport electricity and heat generation.
Mode of operation	Operates externally. Carbon price to imports to EU	Operates internally. Cap-and-trade system inside EU
Mechanism behind the measure	Purchase of CBAM certificates	System of tradable allowances
Legal description of the instrument	Carbon tax	Auction of GHG (greenhouse gas) allowances Some allowances are given for free

When analyzing the overview presented in Table 1 above, two major constituents are of particular interest, which will be studied in depth in the next chapters: the legal status of the instrument and their financial aspects, namely the distribution of funds within the EU.

Firstly, as opposed to the ETS, the CBAM is a certain type of taxation instrument. It is a part of a new family of special instruments which combine law and policies in combined effort to achieve certain prespecified goals.²⁵ Furthermore the CBAM is an EU regulation²⁶, which has its basis in the general principles of TFEU treaty and its Article 288.²⁷ Thus, being a regulation, CBAM is, strict and directly applicable to all EU Member States as opposed to EU Directives which only set up goals but give member states the opportunity to choose the method of transposition.

The legal nature of the CBAM leads to a question: Why was the CBAM regulated to be more straightforward and binding than the previous ETS? To answer this question, one needs to look at the financial aspect of the whole legislative package. Accordingly, we must ask, why stricter regulation with 75% of funds going to the EU budget was legislated? There are two important aspects, which influenced the decision for the (original) CBAM: first, extreme crises which engulfed EU in the recent years (particularly Covid19, political and armed conflicts, as well as general economic downturn) which have resulted in high demand for financial support for member states. Secondly, the EU budget is by its nature an “*investment budget*”, and therefore, for projects like Green Deal and Fit for 55, EU can only use its own funds, without going into debt.

A more detailed analysis of financial considerations behind CBAM will be conducted in the next chapter which will be followed by analysis of legal

²⁶ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R0956&qid=1758542842072>

²⁷ TFEU Article 288. Consolidated version of the Treaty on the Functioning of the European Union, Part 6 https://eurlex.europa.eu/eli/treaty/tfeu_2016/art_288/oj/eng

status of the instruments and its impact on individual member states. In this exercise, Finland will be used as a illustrative example. The thesis will further continue with in depth analysis of the CBAM regulation, its duality, its role as a “anticircumvention measure” and controversies associated with its introduction.

2.3 CBAM as an example of the new family of special defence instruments.

The CBAM was chosen by the author for its duality as a member of the new family of hybrid instruments, for its role as a new tool from the realm of taxation and, at the same time, policy tool to influence the move towards cleaner energy and less environmental impact.²⁸ The mechanism was designed by the EU as an “anti-circumvention measure” to level the cost of goods in the energy intensive industries, which enter the EU from outside the common market with the ones produced by European countries within the EU.²⁹

So, what is the judicial basis for such trade defense and its part anti-circumvention measures? We can find the answer in the EU regulations. The author would like to mention two of them: the Anti-dumping Regulation (EU 2016/1036)³⁰ and the Anti-Subsidy Regulation (EU 2016/1037)³¹. Both Regulations reflect the huge changes in the world of economy and politics which should be addressed within the existing framework of GATT.³² The incorporation of changes due to the new sustainability regulation happens in this

²⁸ European Union. Taxation and Customs Union. Green Taxation – in support of a more sustainable future. https://taxation-customs.ec.europa.eu/archives/other-taxe/green-taxation_en

²⁹ European Commission. Taxation and Customs Union. Carbon Border Adjustment Mechanism. https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en

³⁰ Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union (codification) <https://eur-lex.europa.eu/eli/reg/2016/1036/oj/eng>

³¹ EUR-Lex. Consolidated text: Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union (codification) <https://eur-lex.europa.eu/legal-content/FI/ALL/?uri=CELEX%3A32016R1037>

³² WTO. GATT. General Agreement on Tariffs and Trade. https://www.wto.org/english/docs_e/legal_e/gatt47_e.htm

specific Regulation mainly through the interpretations and applications of general exceptions. Both regulations deal with possible “material injury(s)” to the European Union industries through unfair practices with CBAM regulation playing an important role and integral part of such protection mechanisms.

Reasons behind the adoption of CBAM regulation were explored by (among else) the Forschungsstelle für Energiewirtschaft (FfE), Germany,³³ in their study conducted in yr. 2023 immediately after CBAM was introduced into law in the European member states³⁴. In their report the German researches concentrated on the main reasons stating that “... *the CBAM-Regulation is intended to counteract global competitive disadvantages of intra-European companies with high CO₂ certificate costs by imposing a comparable CO₂ price on imports from non-European competitors.*”³⁵ The second reason of the legislation was the possibility to influence through obligatory legal instruments the requirements of the process of shifting from ecologically harmful practices towards greener energy solutions in the energy intensive industries³⁶.

Having said this, the idea behind the CBAM actually originated much earlier. According to the Finnish Customs Authorities “...*even though the CBAM is a new EU instrument, the idea behind the CBAM has been discussed in EU circles for some time already. The CBAM has French roots stretching back more than 15 years. One event that can be considered key in the emergence of the CBAM was a proposal by French president Jacques Chirac in 2007 at the Grenelle Environment Forum, where he suggested that a carbon tax be*

³³ Forschungsstelle für Energiewirtschaft (FfE). <https://www.ffe.de/en/>

³⁴ EUR-Lex. CBAM is introduced into law. Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R0956&qid=1758366444491>

³⁵ FfE. Carbon Border Adjustment Mechanism (CBAM) is in force. What needs to be considered? Page 1 <https://www.ffe.de/en/publications/carbon-border-adjustment-mechanism-cbam-is-in-force-what-needs-to-be-considered/>

³⁶ EU Calls. Institute of Entrepreneurship Development (iED). European Green Deal. <https://eucalls.net/blog/the-basics-of-the-european-green-deal>

*introduced for goods imported into the EU.*³⁷ Therefore, one can see that CBAM was designed from the start as the universal (within the EU) carbon tax and an anti-circumvention measure”.

However, what are these carbon taxes from the legal point of view? According to European Court of Auditors review from 2022, it is a tool: “... *that governments can use not only to raise revenue but also to support climate objectives*”,³⁸ with the European Commission proposing “... *new tax rates based on energy consume*”³⁹. On the other hand, the legal basis of the energy tax, and CBAM in particular, is based on the Energy Taxation Directive⁴⁰.

In this regard, this thesis condenses the challenges of the ambition towards green shift and the smooth implementation of the legislation into three main ones: Firstly, the limited scope of industries incorporated in the original CBAM.⁴¹ Secondly, the opposition within the EU countries, and the MNE functioning with the EU towards more stringent measures in the area of sustainability. Thirdly, the negative attitude of some countries from outside the EE towards the legislation. Indeed, the CBAM mechanism is seen by the majority of countries from outside EU as a protectionist measure which does not correspond to the values of the WTO.⁴² In this chapter the thesis critically assesses all three major obstacles to the proposed CBAM. The research will be focused on the general overview of the upcoming legislation and concentrate more on its role as an anti-circumvention measure leaving changes to

³⁷ Tulli.fi EU’s Carbon Border Adjustment Mechanism (CBAM) – origins and future. 26 May 2023 <https://tulli.fi/en/-/eu-s-carbon-border-adjustment-mechanism-cbam-origins-and-future>

³⁸ ECA. Europa.eu. European Court of Auditors. Energy taxation, carbon pricing and energy subsidies 2022.page 3 https://www.eca.europa.eu/lists/ecadocuments/rw22_01/rw_energy_taxation_en.pdf

³⁹ ECA. Europa.eu. European Court of Auditors. Energy taxation, carbon pricing and energy subsidies. 2022. Page 35 https://www.eca.europa.eu/lists/ecadocuments/rw22_01/rw_energy_taxation_en.pdf

⁴⁰ EUR-Lex. Energy Taxation Directive. 2021/0213 (CNS). https://eur-lex.europa.eu/procedure/EN/2021_213

⁴¹ European Parliament. CBAM. At a Glance. Fir for 55 explainer. Eprs.eu. [https://www.europarl.europa.eu/Reg-Data/etudes/ATAG/2023/754626/EPRS_ATA\(2023\)754626_EN.pdf](https://www.europarl.europa.eu/Reg-Data/etudes/ATAG/2023/754626/EPRS_ATA(2023)754626_EN.pdf)

⁴² WTO. World Trade Organization. <https://www.wto.org/>

the Value Chain Laws and regulations as well as electricity branch outside the scope of this research.

2.3.1 CBAM as an anti-circumvention measure. A look from inside the EU.

The main purpose of anti-circumvention measures is the prevention of carbon leakage.⁴³ Carbon leakage is the result and adverse effect of the cost-cutting used by MNEs and larger than medium enterprises. Such companies try to avoid paying high production costs and stringent sustainability requirements within the EU by shifting production and energy intensive purchases to the low-cost countries from outside the block. What constructive actions can EU then plan to counteract such behaviour? Firstly, the adaptation of the CBAM itself as a continuation of the ETS trading system. Secondly, better regulation of grants and subsidies granted to the MNEs by European Countries themselves in order to attract large enterprises to the specific European country. This happens through Regulations like 2022/2560⁴⁴ which aims to contribute to a strong, open and competitive internal market which:

“... enables both European and foreign undertakings to compete on merits. The Union benefits from a sophisticated and effective system of State aid control, aiming at ensuring fair conditions for all undertakings engaging in an economic activity in the internal market. This State aid control system prevents Member States from granting State aid that unduly distorts competition in the internal market.”

⁴³ EU Commission. Energy, Climate change, Environment. https://climate.ec.europa.eu/eu-action/carbon-markets/eu-emissions-trading-system-eu-ets/free-allocation/carbon-leakage_en

⁴⁴ EUR-Lex. REGULATION (EU) 2022/2560. On foreign subsidies distorting the internal market. <https://eurlex.europa.eu/eli/reg/2022/2560/oj/eng#:~:text=Regulation%20%2D%202022/2560%20%2D%20EN%20%2D%20EUR%2DLex.>

The main conclusion is that by providing the open and functioning internal market and at the same time, by limiting internal, harmful competition between EU countries themselves through limitation of exemptions from CBAM and opposing illegal state-aid – EU thrives to conduct common policy which is in everybody's interest be it international investor or local producer. This is an extremely challenging undertaking which requires quick and unbureaucratic process of adaptation of the parts of the regulation, which do not function according to the plan, and introduction of better revised versions.

2.3.2 CBAM The limitations of scope of CBAM legislation as an obstacle to the environmental policy of EU.

The second challenge behind the mechanism is the limited number of industries within the scope of the legislation.⁴⁵ Unfortunately for the green shift, not all industries are incorporated into the energy regulation. The choice is limited to certain industries ignoring other large-scale polluters. Such limited choice of industries was a result of complexity of the regulations and difficulty to reach agreements between the EU Member States, which have sometimes absolutely opposite interests from economic, social and political points of view⁴⁶.

The industries originally under the scope of CBAM⁴⁷ in year 2022 were:

- cement
- iron and steel and aluminum
- fertilizers
- electricity, and hydrogen

⁴⁵Marcu, Andrei, Mehling, Michael, Cosbey, Aaron, Fleury, Laure, Roundtable on Climate Change and Sustainable Transition. ERCST Feedback to the EU Commission on the 2040 Target. <https://ercst.org/extension-of-the-cbam-scope/>

⁴⁶Cornago, Elisabetta. Avoiding the pitfalls of an EU carbon border adjustment mechanism. 5 July 2021. Centre for European Reform. <https://www.cer.eu/insights/avoiding-pitfalls-eu-carbon-border-adjustment-mechanism>

⁴⁷ European Council. Explainers. At a glance. Fit for 55. <https://www.consilium.europa.eu/en/policies/fit-for-55/>

The number of industries (polluters) is quite limited and reflects the extreme difficulty within the EU of coming up with the joint solution as to what to include in the regulation. Unfortunately, when the Pan-European solution is at stake the sometimes opposite wishes of different countries within the EU must be balanced for the joint agreement while attempting not to degrade the regulation (directive) to a condition void of any real influence.

2.3.3 CBAM as a Trade Defence Mechanism. The reaction of countries outside the EU.

The third major challenge with the TDIs in general, and with CBAM in particular, is the sometimes extremely negative reaction of trade partners and business community from outside the EU. Indeed, designed as anti-circumvention measure to regulate and prevent dumping, as well as unfair practices and anti-subsidy measures within the EU – CBAM struggled from the beginning against fierce opposition from economic partners from outside of the block.

It is, however, prudent to note that countries can introduce their own anticircumvention instruments, as long as they are based on the WTO rules. Among these are the previously mentioned Anti-dumping Agreement (AD) and Agreement on Subsidies and Countervailing Measures (SCM) which form the legal basis of the protectionist TDI policies of the EU.

In the EU, TDIs are used to maintain the “*level playing field*”⁴⁸ between exporters and importers. In fact, according to the EU Trade Policy section of the Directorate-General for Trade and Economic Security: “*Open trade can grow businesses and create jobs, but fair competition must be maintained*

⁴⁸ OECD. Levelling the Playing Field. Trade Policy Brief. February 2019
https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/02/levelling-the-playing-field_1c85eb41/ae592bcb-en.pdf

between domestic and foreign producers”⁴⁹. But what is the concept of level playing field and is it level for all participants? In recent times there have been quite a few complaints submitted to the WTO which question the fairness of CBAM and consider such mechanism a highly protectionist measure which is against the WTO rules. China, Brazil, South Africa and India vehemently oppose CBAM.⁵⁰ Such opposition might also provoke retaliatory measures, which are not in the interest of EU in the post-Covid, challenging economic environment. Nevertheless, how EU Member States implement the CBAM to reflect interests of all players could be analyzed only in the future, as the CBAM has not come into force at the time of writing of this thesis.

2.4 Recent developments in CBAM and look into the future.

The analysis of this chapter is concluded with a look into the future of CBAM. However, it is extremely difficult to predict the success of the regulation as the trade wars rage and political situation around the world is extremely unstable. Among else, the ETD (Energy Tax Directive) and proposed changes to the directive directly influence the development, introduction and, hopefully, future success of CBAM.

The ETD is currently under review and the proposal for a change of legislation is currently under discussion.⁵¹ One of the topics being discussed is how to achieve the common goal of EU industries by remaining competitive in the changing global context and what the role of energy taxation could be in that process. One of the main objectives is avoiding of erosion of the tax base through “...a new feature, introduced by the ETD proposal, which is the

⁴⁹ Directorate-General for Trade and Economic Security. Trade Policy. Enforcement and Protection. https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence_en.

⁵⁰ GMK Centre. Countries ‘reaction to CBAM. <https://gmk.center/en/infographic/how-different-countries-around-the-world-reacted-to-cbam-introduction-in-the-eu/>

⁵¹ EUR-Lex. Council of European Union. Revision of Energy Taxation Directive. 12 June 2025. <https://data.consilium.europa.eu/doc/document/ST-7819-2025-INIT/en/pdf>

provision for the automatic indexation of minimum levels of taxation. The objective of the indexation is to avoid the erosion of the economic impact of the ETD over time⁵²".

The idea is also to gradually expand the scope of the regulation to new industries with consequent coverage of the entire value chain. The proposed negotiations will start at the end of year 2025 and are not covered by this research work as they are only in planning. (The consultations round has been launched by the European Commission on 1st July 2025). However, insofar as it is relevant to the topic of this thesis, the changes and expansions to the current regulation should be mentioned. The proposed additions concern: ⁵³

- Downstream products (down the value chain of current products under CBAM scope).
- More stringent anti-circumvention measures; ⁵⁴
- More extensive measures are incorporated into legislation measures aimed at the producers and suppliers of electricity.
- Aligning the taxation of energy products and electricity with EU energy, environment and climate policies.
- Updating the scope of taxable energy products and the structure of rates.
- A switch from taxation based on volume to taxation based on energy content.⁵⁵

⁵² EUR-Lex. Council of European Union. Revision of Energy Taxation Directive. 12 June 2025. Page 5 <https://data.consilium.europa.eu/doc/document/ST-7819-2025-INIT/en/pdf>

⁵³ European Commission. CBAM: Public consultation on the extension of CBAM to downstream products. https://taxation-customs.ec.europa.eu/news/cbam-public-consultation-extension-cbam-downstream-products-2025-07-02_en

⁵⁴ EU Commission. European Commission. A European Steel and Metals Action Plan. 19 March 2025 https://single-market-economy.ec.europa.eu/publications/european-steel-and-metals-action-plan_en

⁵⁵ EUR-Lex. Council of European Union. Revision of Energy Taxation Directive. 12 June 2025. Page 2 <https://data.consilium.europa.eu/doc/document/ST-7819-2025-INIT/en/pdf>

Though limited in its scope (not all industries are included and not the whole Value Chain) the legislation will bring (if successful) with it the mechanism of equalizing carbon costs between EU producers and producers from the outside the common market. One of related promising shifts in policies is the transformation and adjustment of the basis of the Energy Tax⁵⁶, and change of direction from volume towards CO₂ emissions and other qualitative measures. How positive the results remain to be seen, as too little time has passed from the first trial introduction of the legislation. Another positive measure is the special accounting for embedded emissions, which EU companies need to conduct to be able to distinguish whether they are required to comply with the regulation and report (and pay) CBAM taxes and tariffs.⁵⁷ Such accounting for embedded emissions helps companies and authorities alike to get better picture of importing specific goods to the EU. At the same time, exporters from outside the EU, are guided on how to report about the emissions embedded in their goods. These measure in the end will certainly help to construct a better policy favorable not only to the EU but also to the countries from outside the common market.

⁵⁶ EU Commission. Energy Taxation. https://energy.ec.europa.eu/topics/markets-and-consumers/energy-taxation_en

⁵⁷ How to calculate emissions for CBAM reporting. Tim Croker. ClimaTiq 15 July 2025 <https://www.climatiq.io/blog/how-to-calculate-emissions-for-cbam-reporting>

3 Cui Bono? Financial considerations behind European sustainability policy.

3.1 CBAM European fiscal policy and financial reasons behind CBAM legislation.

One of the main reasons why certain regulation or laws are planned and implemented is the financial aspect, or rather financial benefit from introduction.⁵⁸ The financial benefit could be different, ranging from achieving financial stability, promotion of growth, changing the industry mix, or influencing (similarly to the European Green Deal) transformation of industries and thus consumption towards clean energy.

In this chapter the thesis will explore the financial roots of the new family of special defence instruments like CBAM, the reasons behind its original implementation, and what influence they might have had on the finances and budgeting of EU. As previously mentioned, reasons behind any legislation are two-fold: politics and economics. The subject of this paper is the economic side of policymaking with more in-depth analysis of economics behind sustainable policies and decision making of EU and its Member State governments.

In this context, among the primary goals behind CBAM Regulation are⁵⁹:

- Protecting competitiveness of EU industries.
- Supplying EU budget with enough funds to promote the Green Deal.
- Some funds are intended to go to third countries to support their decarbonization.⁶⁰

⁵⁸ EU. Publication office of the European Union. The economic and competitive benefits of environmental policy. June 2024. <https://op.europa.eu/en/publication-detail/-/publication/a5d385bd-8b67-11ef-a67d-01aa75ed71a1/language-en>

⁵⁹ EU. "NextGenerationEU". Green Transition. https://next-generation-eu.europa.eu/index_fi

⁶⁰ United Nations UNCTAD. A European Union Carbon Border Adjustment Mechanism: Implications for developing countries. 2021 https://unctad.org/system/files/official-document/osginf2021d2_en.pdf

To explore the question of (re)distribution of funds from the upcoming CBAM regulation in more detail we need to go back to the financial crises which unfolded after the Covid-19 pandemic. The war in Ukraine and Covid-19 crisis put a huge strain on the EU budget⁶¹. Due to the huge strain on the Union finances EU plans to retain up to 75% of funds generated from CBAM⁶².

This additional strain on funding is reflected the study by European Investment Bank⁶³ conducted in year 2022 “How bad is the Ukraine war for the European recovery?” on the effects of the Ukrainian war on the European recovery after the Covid19. The study concludes that: “...*The massive spending needed to make Europe greener and more digital was already widely known before the war. Since then, other investment needs, such as expenditures to secure Europe’s energy supply, have become clearer*”⁶⁴. The study reflects the immense need for financial funds to realize all EU goals⁶⁵ and, at the same time, to mitigate the consequences of war in Ukraine and Covid-19.

Therefore, it would be prudent to ask where the CBAM funds intended to be channeled are? Is it only towards Green Transition or changing socio-economic and socio-political conditions compelling EU to allocate funds to other immediate goals? One possible way of attempting to answer this question is to

⁶¹ Busse, Claire, Loss, Rafael, Puglierin, Jana, Zerka, Pawel: The crises that made the European Union: European cohesion in the age of covid, ECFR.eu. European Council on Foreign Relations. Policy brief. December 2020. <https://ecfr.eu/wp-content/uploads/The-crisis-that-made-the-European-Union-European-cohesion-in-the-age-of-covid.pdf>

⁶² European Union. Q&A. Questions and Answers: An adjusted package for the next generation of own resources. 20 June 2023. https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_3329

⁶³ European Investment Bank. <https://www.eib.org/en/index>

⁶⁴ European Investment Bank. Economics-Thematic studies. How bad is the Ukraine war for the European recovery? https://www.eib.org/files/publications/how_bad_is_the_ukraine_war_for_the_european_recovery_en.pdf

⁶⁵ European Commission. The Commission proposes the next generation of EU own resources. 22 December 2021. https://ec.europa.eu/commission/presscorner/detail/en/ip_21_7025

inspect the so-called ‘own resources’ of the EU.⁶⁶ If we use the 2021-2027 EU budget there are three plus one major resources:

- Customs duties
- VAT contributions
- GNI, direct contributions
- New, so called, “own resources”.

Our points of interest are Customs duties (to a lesser degree) and reallocation of funds from legal instruments like CBAM towards EU-budget’s “own resources” (as a major subject). However, before the analysis of the structure of EU’s own resources it should be recalled that EU’s own budget is by nature an investment budget. This means that EU is not permitted to run a deficit.⁶⁷ Having said this, and taking into account the above-mentioned unprecedented demand for funds, the EU Commission had no other choice but to add additional sources to the internal funding. One of the newest such sources is the EU Commission proposal on 16 July 2025 for the “*Multiannual Financial Framework (MFF)*”⁶⁸ which includes provisions about CBAM. The whole proposal is a part of the European Fiscal Reform⁶⁹ initiated in April 2024 and is aimed at increasing the financial resilience of EU.

The main conclusion from the brief overview of the financial reasons behind CBAM is that EU needs extra financial means to fund all its ambitious goals with Green Transition being one of them. On a general level, the major goal of

⁶⁶ European Commission. Own resources. (Project for the budget 2021-2027). https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/2021-2027/revenue/own-resources_en

⁶⁷ EUR-Lex. Consolidated version of the Treaty on the Functioning of the European Union. Chapter 1: The Union’s own resources - Article 311 (ex Article 269 TEC). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12008E311>

⁶⁸ European Commission. The 2028-2034 EU budget for a stronger Europe. https://commission.europa.eu/strategy-and-policy/eu-budget/long-term-eu-budget/eu-budget-2028-2034_en

⁶⁹ European Commission. European Fiscal Reform. New economic governance framework. 30 April 2024. https://economy-finance.ec.europa.eu/economic-and-fiscal-governance/eu-assessment-and-monitoring-national-economic-policies/evolution-eu-economic-governance/new-economic-governance-framework_en

EU fiscal policies is balancing of its own internal investment budget which was thrown off balance during the Covid-19, war in Ukraine and changes in the economic growth prospects around the world.

3.2 Financial impact of CBAM regulation on European member states.

Before moving to the analysis of the impact of CBAM on the countries from outside the EU one should consider the impact of CBAM on internal market within Europe. The question under review will be: “Do European Countries equally financially benefit from introduction of CBAM, or are there regional differences in perception of the upcoming CBAM instrument?” The analysis will be conducted from the fiscal policy point of view.

One must understand, that though CBAM regulation is binding to all European Countries, each respective country’s industry mix and the usage of products and technologies directly impact the outcome of the introduction of such regulation. So, what are the main differences between individual European countries playing the major role in financial impact of the mechanism? As CBAM regulation is only coming in force in future, the analysis is based on the existing ETS regulation whose continuation CBAM is.

First thing which attracts attention is an economic difference between various regions within EU.⁷⁰ The European North and West with their more developed industrial component of economies benefit more from the sustainability regulation as opposed to the European South with more service oriented and agricultural economies. The other point is that larger, stronger companies within the EU benefit more from the regulation than the peripheral ones.

This point of view is widely shared by specialists, such as Nicolas Koch and Michael Themann in their work “Catching up and falling behind: Cross-country evidence on the impact of the EU ETS on firm productivity”, where the

⁷⁰ Böning Justus, Di Nino Virginia, Benefits and costs of the ETS in the EU, a lesson learned for the CBAM design. January 2023, ECB. European Central Bank. Working Papers, <https://www.ecb.europa.eu/pub/pdf/scpwps/ecb.wp2764~3ff8cb597b.en.pdf>

authors explore such differences in detail, with major conclusion being that: “...the policy impact on TFP (total factor productivity) may depend on the level of firms’ technological advancement within the industry. While technological leaders may scale-up energy efficiency gains from abatement (Porter Hypothesis⁷¹), least efficient firms may instead face a productivity slowdown in adapting to the policy (conventional wisdom).”⁷²

What other financial considerations are there to explore when analyzing the impact of future CBAM on the countries within the EU? One further element for consideration is the distribution of financial gains between European Union and individual member states. Indeed, there are winners and losers within the EU from the shift in European policies from ETS (both ETS1 and ETS2) towards CBAM. The proposed regulation also affects various regions and industries differently.

One useful source of insight into the regional distribution of fiscal gains and losses within the EU and the associated impact is the OECD.⁷³ In their report named “The EU’s CBAM: Implications for Member States” the OECD’s economists analyze the fiscal impact on the states within the EU from the introduction of the regulation. In their report the authors state that: “... However, exposure is greater in some EU countries, such as the Baltics and some Eastern European economies, where CBAM imports from non-EU countries account for up to 6 percent of total imports.” Furthermore: “... The share of CBAM products in EU trading partners’ total exports is 6 percent on average across the 20 exporters with the largest share of CBAM products in total imports and does not exceed 11 percent (Bosnia and Herzegovina)”⁷⁴. The report thus

⁷¹ Porter Hypothesis. *America’s Green Strategy*, Michael Porter, 1991. Scientific American 264: 168 <https://www.scientificamerican.com/article/essay-1991-04/>

⁷² Themann, Michael, Koch, Nicolas, catching up and falling behind: Cross-country evidence on the impact of the EU ETS on firm productivity. August 2022, Volume 69 ScienceDirect <https://www.sciencedirect.com/science/article/abs/pii/S092876552200032X>

⁷³ OECD. <https://www.oecd.org/>

⁷⁴ OECD. The EU’s CBAM: Implications for member states”. Page 13 <https://www.elibrary.imf.org/view/journals/001/2025/125/article-A001-en.xml>

clearly indicates greater exposure of Baltic countries and Eastern Europe to the cheaper exports of high energy intensive products.

Moreover, in relation to such products as steel, aluminum, and iron: *“For some EU countries, a significant share of these imports originates in non-EU countries, indicating a high product-specific exposure. For instance, 89 percent of Greece’s aluminum and 75 percent of Ireland’s iron and steel are imported from outside the EU.”*⁷⁵ As such countries participate in Intereuropean Value Chains it might constitute for them financial disadvantage as the final merchandise produced with the use of above-mentioned exported products might become more expensive for European MNEs. That could lead to internal tensions within the market (one of the examples is Omnibus-I, which will be discussed further in this research). According to the author of this thesis, EU should address not only the worries of trade partners from outside the market but devote sufficient attention to the internal partners.

To round-up this analysis, it is prudent to briefly touch upon, what are the significant differences between the European Member States from the industrial development point of view and how CBAM might affect them. In this regard, it’s important to highlight the division between industrial North-West and more agricultural and service-oriented South-East. These historical and geographical lines create various divisions between relatively industrially developed East-European countries, to which more industrially developed Western European countries relocated part of their industrial production in the 90s. Such East-European subcontractors down the value chain will be highly disadvantaged by the increase in costs due to the CBAM.

Unfortunately, at this stage, it is not feasible to analyze the impact of such internal value redistribution within the EU as CBAM regulation is coming into force only at the beginning of the year 2026 and ETS1 and ETS2 “faze out” is also in the future. Though the effect on the internal Value Chain within the EU

⁷⁵ OECD. The EU`s CBAM: Implications for member states”. Page 15 <https://www.elibrary.imf.org/view/journals/001/2025/125/article-A001-en.xml>

is outside the scope of this research it is extremely vital to mention it, as it directly influences and will influence in future the collective policies of EU in the area of sustainability and Green Transition.

3.3 Financial impact of CBAM on the countries from outside the EU and “willingness to comply”.

The next important question in this research is how CBAM regulation affects countries from outside the EU. For this purpose, it is convenient to start the analysis from the reactions of the countries from outside EU towards initial CBAM regulation. Such reactions should be divided not only according to the regions which are usually used in the main studies but also based on their *willingness to comply*. Such willingness to comply with CBAM regulation will be the main topic of this paragraph.

In this thesis the countries are grouped into three major groups: the countries, introducing national CBAM alternatives, the countries who haven't yet made their mind or are still contemplating, and the ones who strictly oppose the CBAM regulation:⁷⁶

- Countries, who plan to incorporate similar regulations – UK, Norway, (USA before Mr. Donald Trump's presidency), Canada, Australia, Taiwan.
- Countries, who haven't made their mind or in the process of decision making – Asian countries, Brazil.
- Countries, who strictly oppose CBAM – China, Russia, India, South Africa and from the European Union, Poland.

The research in this chapter will attempt to analyze why certain countries want to join the CBAM regulation, why some countries strictly oppose it, and what

⁷⁶ Burgess, James, EU's CBAM to spur other countries to introduce carbon border levies: IETA S&P Global. Commodity Insights. 18 April 2024 <https://www.spglobal.com/commodity-insights/en/news-research/latest-news/energy-transition/041824-eus-cbam-to-spur-other-countries-to-introduce-carbon-border-levies-ieta>

the European Union could do to mitigate the (un)reasonable concerns of third parties?

Starting with the reasons behind joining in our introduction of CBAM alternatives in the countries outside the EU, the report published by 2 July 2025 by IETA - International Emissions Trading Association states that among many reasons to consider similar to CBAM systems are among else⁷⁷:

- Ensuring the competitiveness of local industries (Canada).
- Linking of the Carbon Markets between EU and UK after Brexit (UK).
- Carbon leakage prevention (Australia).

One can draw a conclusion from the short overview above that the main reason for the introduction of similar CBAM regulations is the competitiveness of country's own industries and entry into the lucrative European markets.

As to the considerations of certain countries on whether to introduce similar legislation to CBAM policies, but where the legislation is not yet developed or implemented in full, according to the IETA:

- Contesting European CBAM, but, at the same time, developing own CBAM systems to retain revenues from levies (Brazil).
- Change in the CBAM policies due to introduction of such policies in EU; Staying competitive (Japan; South Korea).

Again, one can notice, with the countries from outside the EU it is more to do with staying competitive and entering the European Union market than ecology, sustainable transformation or the transition to the cleaner production of energy intensive goods.

The final group of countries in the report are the ones who are vehemently opposed to CBAM:

⁷⁷ International Emissions Trading Association. IETA is a non-profit organization representing businesses committed to smart, well-designed and effective carbon markets to help achieve the goals of the Paris Agreement and reach net-zero emissions by 2050.
<https://www.ieta.org/about>

- Dual approach. Firm opposition to CBAM. Measure is considered unilateral and trade-restricting. At the same time, vast improvements in carbon accounting and measures to report on carbon emissions with greater precision. Reason, possibility of unhindered access to EU markets (China).
- Dual approach. The same as in China. Firm opposition to the EU's CBAM and, at the same time, negotiations about trade agreements with EU (India).
- Relevance of CBAM in trade relations with EU is minimal due to war in Ukraine. Strong opposition to CBAM. Measure is considered discriminatory and a trade barrier (Russia).

When we take Russia away from the analysis, we are left with the two of the largest world economies (World Bank, GDP, 2024): China (world's second largest economy)⁷⁸ and India (world's fifth largest economy)⁷⁹. One cannot just ignore the point of view of such economically strong countries. There are several considerations why these countries oppose CBAM or want to negotiate better conditions for their countries.

In regard to China – the second largest world economy has an internal carbon pricing system similar to the EU but with much lower values.⁸⁰ Unfortunately, China employs many of the EU's ETS methods, which are phasing out in Europe. While Europe is limiting subsidies to internal industries, China continues to use them with Offset credits, Free Allocations and other similar protective measures.

In regard to India – it is an extremely important export market for European countries.⁸¹ This makes the enforcement of CBAM difficult. According to the

⁷⁸ World Bank Group. GDP 2024 https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true

⁷⁹ World Bank Group. GDP 2024 https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?most_recent_value_desc=true

⁸⁰ China. ICAP. International Carbon Action Partnership. <https://icapcarbonaction.com/en/ets/china-national-ets>

⁸¹ European Commission. Trade and Economic Security. India. EU trade relations with India. Facts, figures and latest developments. https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india_en#:~:text=

EU Observer, EU trade deals with India could be at risk unless India is exempted from the carbon taxation mechanism.⁸² Accordingly, negotiations with India might prove to be extremely difficult and will take place more in the realm of political agreements than ecology.

Therefore, what are the main conclusions from the brief overview of the reactions of the outside world towards EU's new regulations? Firstly, it is all about protecting local (especially small) industries for the countries from outside the EU. Secondly, the countries from outside the Block are ready to negotiate, but the reason behind such negotiations will be economic and not the green transformation or issues of ecology.

The willingness to negotiate due to financial incentives is shared by Dolphin Geoffroy and Ferrucci Gianluigi, who analyse the possible effect of introduction of CBAM policies on EU and non-EU countries: “...in the longer run, the impact of CBAM on EU countries and exporters to the EU will depend in part on their ability to source imports from within the EU and redirect exports to non-EU countries, respectively—in addition to how ambitious carbon pricing policies will get outside of the EU... while the macroeconomic impact of the EU CBAM, whether measured relative to total trade or GDP, is modest, it is more material for some specific country-product pairs.”⁸³

One can make two important conclusions based on this assessment of the CBAM mechanism: First, the future scope of the CBAM itself, or in other words which industries and areas of activities are included in the legislation. Secondly, the current and future market dynamics - the possibilities for export or import of the industries within the scope of CBAM.

⁸² Fox, Benjamin, EU trade deal at risk without exemption from carbon tax, India warns. 8 May 2025 Published in EUobserver. <https://euobserver.com/eu-and-the-world/ar59f2c61e#:~:text=EU%20trade%20deal%20at%20risk%20without%20exemption%20from%20carbon%20tax%2C%20India%20warns>.

⁸³ Dolphin, Geoffroy, Ferrucci, Gianluigi, The EU's CBAM: Implications for Member States and Trading Partners. IMF. Working papers. Pages 20-21. 20 June 2025 <https://doi.org/10.5089/9798229000420.001>

4 Legal frameworks behind Special Defence Mechanisms.

4.1 General overview of the taxation policies in the area of sustainability.

In previous part of the research, the underlining causes behind CBAM from the fiscal (financial) point of view were inspected. But before governments or supranational⁸⁴ and intergovernmental unions of countries, such as EU, can use the benefits from such legislation there are two important steps: which kind of legislation is most suitable to achieve certain objectives, and what legal steps are to be done for the proposed legislation to become binding. In this chapter the basis of European fiscal policies are therefore examined from the legal point of view to answer, why certain policies, such as new family of sustainability regulations and especially taxation instruments, are better to achieve specified goals. Goals in question being the transition to sustainable growth not only within the EU but in other countries around the world.

When choosing from different available legal instruments EU chose special climate regulations, whose representatives are ETS and CBAM, due to various considerations, including the maximum financial benefit to the EU overall. Consequently, what special instruments does EU have at its disposal and why choose such instruments and not the classic instruments from the realm of direct or indirect taxation? The answer lies in the EU's internal division of powers.⁸⁵

⁸⁴ Supranational Organizations. <https://wirtschaft-entwicklung.de/en/glossary/supranational-organisations>.

⁸⁵ EUR-Lex. Summaries of EU Legislation. Division of competences within the European Union. <https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html?fromSummary>

As taxation belongs to the traditional and widely used fiscal measures around the world, it was not possible for the EU to employ it directly⁸⁶. The main reason was the difficulty of agreeing on the common taxation policies within the EU.⁸⁷ Because of that, EU had to turn to the new family of the so-called special instruments, which combine innovative approach to policies and law.

In this chapter, firstly, EU's need to design more transparent and efficient structures for sustainability taxation is explored. Recently, large number of legal initiatives related to Green Transition and Energy taxation and reduction in European laws and regulations have led to very burdensome and complicated taxation (from the point of view of sustainability). This point of view is shared by Alenka Turnsek, the EY EMEA Sustainability Tax Leader, who mentions that: *“The environmental tax and regulation legislation landscape is increasingly complex and fragmented.”* This is due to, according to Mrs. Turnsek, *“...more environmental externalities, whether carbon related or not, are identified and written into the green legislation, supply chains will be subject to taxes and pricing measures at multiple places in the supply chains”*.⁸⁸ This analysis stresses the more complex structure of sustainability taxation.

Before proceeding further, it is important to briefly mention what taxation is. Taxation is, in a general sense of the word, a fiscal measure, with fiscal measure being in turn a “specific” government (or special political and economic, like EU) action that uses taxation to reach certain predetermined goals⁸⁹.

⁸⁶ EUR-Lex. Fact Sheets on the European Union. Direct taxation: Personal and company taxation. <https://www.europarl.europa.eu/factsheets/en/sheet/80/direct-taxation-personal-and-company-taxation>

⁸⁷ EU council. How EU tax policy works. <https://www.consilium.europa.eu/en/policies/eu-tax-policy/>

⁸⁸ Turnsek, Alenka: How tax is influencing the design of sustainable supply chains. 15 November 2021. EY Global. https://www.ey.com/en_jp/insights/tax/how-tax-is-influencing-the-design-of-sustainable-supply-chains

⁸⁹ Horton, Mark, Assistant Director, IMF European Department, El-Ganainy, Asmaa. IMF. International Monetary Fund. Fiscal Policy: Taking and Giving Away. <https://www.imf.org/en/Publications/fandd/issues/Series/Back-to-Basics/Fiscal-Policy>

It is therefore prudent to start the analysis of sustainability taxation from the point of view of “Design of Tax Structure”⁹⁰ by comparing instruments available to EU from the realm of taxation, their pros and contras in relation to the sustainability agenda, their possibilities to be used as part of EUs fiscal policy. and the rise of new special taxation instruments.

Before any taxation instrument, be it classic or from the new family of special instruments, could start to produce benefits desired by its creators, the legislative proposal should become legal. How does taxation (and, in our case, special taxation instruments) become legal and enforceable by law? Who has the right to implement taxation policies?

When talking about right to implement taxation policies the example of Finland Finland is used as a case-study. In the section 3 of the Constitution of Finland⁹¹ “Parliamentarism and the separation of powers” it is stated that “...*The legislative powers are exercised by the Parliament, which shall also decide on State finances*”⁹². The provision of the Constitution thus gives Finnish Parliament the right to make decisions about taxations.⁹³ Similar provisions exist in other Member States as well, granting the legislative power to various governmental constituents.

But what about taxation policies of intergovernmental entities? Such measures are based on legally binding agreements or agreements about joint policies between Member States. One example is the OECD. The policy guidance provided to European Countries by OECD is based in the legal sense on the agreements between member states. For example, in its report “The Political Economy of Environmentally Related Taxes” is stated, that all OECD

⁹⁰ Cremer, Helmut, Pestieau, Pierre, Rochet, Jean-Charles, Direct versus Indirect Taxation: The Design of the Tax Structure Revisited, August 2001, International Economic Review. Vol.42 <https://www.jstor.org/stable/827029>

⁹¹ Intergovernmental entities. IGOs. Harward Law School. <https://hls.harvard.edu/bernard-koteen-office-of-public-interest-advising/about-opia/what-is-public-interest-law/public-service-practice-settings/international-public-interest-law-practice-setting/intergovernmental-organizations-igos/>

⁹² Constitution of Finland. Section 3. Eng. <https://www.finlex.fi/en/legislation/translations/1999/eng/731>

⁹³ OECD. <https://www.oecd.org/>

member countries “...apply several environmentally related taxes – according to the definition agreed between OECD, IEA and the European Commission”⁹⁴.

Also, other international forums, such as the IMF, provide their share of guidance and assistance in the development and promotion of sustainable policies. The IMF is in itself is a very important influencer in the area of promotion of the Green Transition. Its reach is worldwide and encompasses different countries and different regions around the world. The main goal of the IMF is to provide research and guidance to what are the best practices for sustainable tax systems in the area of sustainability.⁹⁵ Such “best practices” by IGOs are the bases for development of EU’s own instruments in the area of energy and sustainability taxation.

4.2 Restrictive Taxation versus Incentives. European Sustainable Taxation policies under review.

Returning to the “Tax Structure Design” – or in other words to what policies are available to the government and intergovernmental organizations such as EU, the two major ones are restrictive policies and tax incentives. Different climate laws and regulations and instruments, such as CBAM, do not exist in separate legal environments, but are closely intertwined and interconnected with other measures which function from within the common market. This is why the analysis of such policies on the general level and in their context is required, which is the same for all taxation instruments. The policies under review will be restrictive and incentive policies. The brief overview will concern the instruments within these policies that are used to promote, encourage and enforce sustainability and taxation of energy transformation. The

⁹⁴ OECD. The Political Economy of Environmentally Related Taxes. OECD Publishing 2006. https://www.oecd.org/content/dam/oecd/en/publications/reports/2006/06/the-political-economy-of-environmentally-related-taxes_g1gh6ad1/9789264025530-en.pdf

⁹⁵ IMF: Environmental Mandate & Activities International Monetary Fund. <https://un-emg.org/wp-content/uploads/2019/07/IMF.pdf>

possible effect of the policy instruments will be summarized in the short tables.

While CBAM falls into Restrictive Measures⁹⁶ with ETS also constituting a restrictive fiscal measure with elements of tax incentives through still existent trading of ETS on the market, the benefits and negative effects of pure Tax Incentives are further critically assessed in order to make a conclusion which instruments might be best suited to implement Sustainability Goals on the individual country level. Consequently, the analysis proceeds with the analysis of the EU Special Taxation Instruments.

Restrictive Measures⁹⁷, which in this context include:

- Higher taxes on fossil fuels;
- Waste management taxation; and
- Pollution taxation.

In addition these measures include tax incentives, among else⁹⁸:

- Tax deduction on the usage of green energy;
- Tax credits, for example, for the capital expenditure on the newer, fossil-free equipment; and
- Lower VAT rates on *green products*.⁹⁹

The legal basis for the above-mentioned measures is usually local (each individual EU Member State) Tax Laws or EU legislative proposals¹⁰⁰ with

⁹⁶ CATO Institute. Legal Issues with the European Carbon Border Adjustment Mechanism. Cato Institute, 9 August 2021, Briefing paper No 125, <https://www.cato.org/briefing-paper/legal-issues-european-carbon-border-adjustment-mechanism>

⁹⁷ Brokelind, Cécile, Servaas van Thiel, Tax Sustainability in an EU and International Context. 2020, IBFD Publishing. <https://akateeminen.com/tuote/c%C3%A9cile-brokelind/tax-sustainability-in-an-eu-and/9789087226206>

⁹⁸ Mills, Spencer, Tax Incentives for Renewable Energy: Impacts and Analyses. 2016, Nova Publishers. <https://novapublishers.com/shop/tax-incentives-for-renewable-energy-impacts-and-analyses/>

⁹⁹ Green products, according to the European Commission's "Eco-design for Sustainable Products Regulation"⁹⁹ ESPR are the products, which are more sustainable and circular, which also means they are suitable for recycling and repair and reuse.

¹⁰⁰ European Commission. Decision-making on EU Tax Policy. https://taxation-customs.ec.europa.eu/decision-making-eu-tax_en

separate agreements greatly influenced, as was previously mentioned, by International Organizations such as OECD or IMF.

The first set of measures to be researched by the author are Restrictive Measures. Therefore, what are the Restrictive measures applicable to the theme of sustainable taxation and special taxation instruments? The Restrictive Measures consist of higher taxes on fossil fuels, waste management taxation, pollution taxation, CBAM – and to a certain extent also ETS falls under the restrictive measures category.

The positive and negative effects of Restrictive Measures are illustrated below:

Positive Effects	Negative Effects
Reduced Greenhouse gas emissions	Increased costs for businesses
Less air pollution	Increased prices for consumers
Additional Tax revenues for the Government	Relocation of business to other countries with lower fuel taxation

Table 2: Positive and negative aspects of Restriction measures.

What conclusions can we draw from the analysis of this table? One can easily see that perceived benefit of cleaner air and more healthy living standards do not always offset the increased costs for businesses and consumers. The balance between the additional costs and possible benefits is hard to achieve, which is the main concern for the governments when introducing such policies. Another issue is the limitations of such policies due to internal differences within the European countries as to what extent the taxation policies of individual governments are governed by internal power struggles within countries' political and economic environment. For example, in her research work *Environmental Taxation and the Law*, the author Janet E. Milne states that: “...*Even within the taxation universe, the legal allocation of power to use environmental taxation within one level of government and among*

*different levels of government can vary significantly from country to country, as can the limits placed on powers.*¹⁰¹ One can draw the conclusion that taxation instruments, being in case of energy taxation the combination of law and politics, are quite complex in themselves and should be adjusted not only to the specific goal and industry but also to the region in question and its socio-political environment at the moment of policy introduction.

As to the analysis of Tax incentives, these are among else: tax deductions on the usage of green energy, tax credits, for example, for the capital expenditure on newer, fossil-free equipment and, and naturally lower VATs, among else. The analysis will concentrate on two major issues: capital expenditure and tax credits for the usage of green energy.

This part of the analysis pertains to the tax deductions on the usage of green energy and will continue with pros and cons of capital incentive equipment. Therefore, what are the pros and cons of such methods? The conclusions are summarized in the form of a table for better overview of the policy.

The positive and negative effects of Tax Incentives are, amongst others:

Positive effects	Negative effects
Possibility to get investment credit for “green” equipment	Increased fiscal costs for the government
Temporary accelerated depreciation which brings down tax burden for the enterprises	Distortion in investment decisions, when decisions are based on the tax incentives rather than the genuine need
Possibility to get funds from EU for the sustainability projects	Possibility of cheating and fake investments

¹⁰¹ Environmental Taxation and the Law. Janet E. Milne. Edward Elgar Publishing 2017. https://www.e-elgar.com/shop/gbp/environmental-taxation-and-the-law-9781785361999.html?srsId=ABOornk4dOjuZQ2F2JTzvmAmShH57a75Wtn5FV7GZ4_aWCPSPZxHNN

Table 3: Positive and negative aspects of tax incentives.

Though rational and bringing a lot of benefit to the companies and economy overall, the above-mentioned specific Tax Credit (Incentives) bear with them high risks of unfair practices on one side and distortion in market-based mechanisms on the other side.¹⁰²At the same time, EU tries to mitigate the negative impacts of the state aid through, for instance, recent initiative called CISAF – Clean Industrial Deal State Aid Framework. The initiative is aimed at supporting the transition of heavy industries towards cleaner energy¹⁰³.

In conjunction with above mentioned recent initiatives the principle of “Polluter pays”¹⁰⁴ has been emerging with the European legal framework as the basis of fair taxation of pollution. In their work researchers Bob Ward and Naomi Hicks stress that:” ... *Regardless of which type of instrument is used, many economists argue a carbon price should be global and uniform across countries and sectors so that polluters do not simply move operations to so-called ‘pollution havens’ – countries where a lack of environmental regulation enables them to continue to pollute without restrictions*”¹⁰⁵.

Two important conclusions can be drawn from the above findings: Firstly, there is clear interconnection and correlation of tax incentives with tax restrictions to achieve maximum effect and fair level field. Secondly, uniformity and universality of tax regulation in the area of energy taxation seems to

¹⁰² Kyriazis, Dimitrios, Fiscal State Aid Law and Harmful Tax Competition in the European Union. 2023. Oxford Studies in European Law. https://europarl.primo.exlibris-group.com/discovery/fulldisplay?context=L&vid=32EPA_INST:32EPA_V1&search_scope=MyInst_and_CI&tab=Everything&docid=alma991001505976804886

¹⁰³ Borenius ltd. Herler, Casper, Malmberg, Heidi, Pylkkö, Alli. EU’s New State Aid Framework Enables Support for Clean Industry. 29 July 2025. Legal Alerts. <https://www.borenius.com/legal-alerts/2025/07/29/eus-new-state-aid-framework-enables-support-for-clean-industry/>

¹⁰⁴ OECD. PPP. Polluter Pays Principle. 26 February 2008. https://www.oecd.org/en/publications/the-polluter-pays-principle_9789264044845-en.html

¹⁰⁵ Ward, Bob, Hicks, Naomi: What is the polluter pays principle? 2012, The Guardian. Updated explainer published in 2022, Grantham Research Institute on Climate Change and the Environment. LSE. <https://www.lse.ac.uk/granthaminstitute/explainers/what-is-the-polluter-pays-principle/>

bring the maximum positive effect and levels the economic possibilities between the industrially developed and less developed countries.

However, the Green (Climate) Legislation, especially in the area of taxation is still in the development phase. The above-mentioned universality and combination of different taxation instruments and policy incentives are the preferred way to go, but it is important to stress the flexibility requirement; In the world of paramount social, political and economic changes, which happen with faster and faster speed, flexibility is the *Modus operandi* of the future legislative development in the area of sustainability.

4.3 Soft law instruments at the disposal of the governments and government institutions. European approach to soft law.

In this chapter, the analysis and conclusions made based on the previous chapters are drawn, with the main conclusion that the soft law instruments,¹⁰⁶ such as agreements, regulations, and general policies of individual governments international organizations, play increasingly important role in strengthening the impact of the binding laws and regulations. It is noted that such interconnection and interdependency, especially in areas of sustainability and legislation behind the Green Transition, are of paramount importance. Therefore, it should be asked, what are the soft law instruments that support and bring forward the, quite often rigid, framework of hard law?

Firstly, the perception of legality of the law instruments which do not belong to the Hard Law family should be explained. Indeed, such “Soft Law” instruments were first used in the International Law and later found their way into the legal environment of IGOs and even further into the level of individual member state legislation.

¹⁰⁶ Karlsson, S. I. (2008). J. J. Kirton and M. J. Trebilcock 2004, Hard Choices, Soft Law: Voluntary Standards in Global Trade, Environment and Social Governance. *International Environmental Agreements Politics Law and Economics* <https://doi.org/10.1007/s10784-008-9075-5>

For better understanding of the subject matter the description of such instruments provided by Professor Pronto in his law review *Understanding the Hard/Soft Distinction in International Law* is applied.¹⁰⁷ In the review Professor Pronto mentions the important role of soft law instruments in conjunction with International Law, stating that “...*international law, which (perhaps more than domestic law) allows the regulation of human activities through nonbinding law* “. ¹⁰⁸ An important conclusion therefore is that soft law instruments were originally designed for the challenges within the structure of International Law and only after that found their way to the level of individual states. But what about the issue of legality and legal compliance of such laws and regulations? According to Professor Pronto, review of the subject of compliance within the soft law policies and regulations is of importance. Though the analysis is provided for International Law, many legal instruments have already been successfully incorporated on the more local level, for example, on the level of EU.

Professor Pronto further states that: “...*however, in international law, formal compliance is sometimes not the intended goal. Instead, the function of the law may be to guide the action of states and other actors at the international level. Therefore, such rules may not be formally "binding" is often not by fault but by design. It simply was not an issue of particular concern to the negotiators to secure a legal basis for compliance. Or, if it was a consideration, a cost-benefit analysis might have led to an assessment that a non-binding approach would, in the aggregate, have a greater impact than a formally binding text (ratified by few)*”.¹⁰⁹ A conclusion can be inferred, that the issue with the soft law instruments is not one of compliance but the so

¹⁰⁷ Professor Arnold Pronto is a Director of the Codification Division and a member of the Secretariat of the International Law Commission. Arnold N. Pronto, *Director (D2) and Secretary of the 6th committee*. https://cil.nus.edu.sg/wp-content/uploads/2020/09/Arnold-Pronto_Bio.pdf

¹⁰⁸ Arnold N. Pronto, *Understanding the Hard/Soft Distinction in International Law*, 48 *Vanderbilt Law Review* 941 (2021): <https://scholarship.law.vanderbilt.edu/vjtl/vol48/iss4/2>

¹⁰⁹ Arnold N. Pronto, *Director (D2) and Secretary of the 6th committee*. https://cil.nus.edu.sg/wp-content/uploads/2020/09/Arnold-Pronto_Bio.pdf

called “non-binding approach” which helps bring forward many policies and regulations.

So, how are the soft law instruments available to regulate different human activities? According to the study done by Mariolina Eliantonio¹¹⁰ about soft law instruments at the disposal of the governments and government institutions “... *law and economics scholars have often pointed out that also ‘soft’ instruments (such as guidelines, self-regulation, and social norms) can be powerful devices to steer people’s behavior. That is, compliance with particular norms may sometimes be achieved without any intervention of the state, neither in setting the standards, nor in the enforcement*”.¹¹¹ This thesis aligns with the observations of this research that quite often in the area of sustainability and Green Transition soft law instruments can achieve more positive effect than the rigid enforcement of Hard Law on its own. Indeed, the description of soft law instruments done by representatives of EU state that “...*the rules of conduct that are laid down in instruments which have not been attributed legally binding force as such but nevertheless may have certain (indirect) legal effects, and that are aimed at and may produce practical effects*”¹¹².

The legality and legal issues of interconnection and intercorrelation of soft and hard law is one of the vital themes to be assessed when talking about special climate legislation which supports “Hard Law” regulations with the “Soft Law” instruments. As a showcase of a particular instrument of soft law, the OMC – Open Method of Coordination¹¹³ is brought forward in this thesis.

¹¹⁰ Mariolina Eliantonio is Professor of European and Comparative Administrative Law and Procedure. Her research is focused on the enforcement of European law before national and EU courts. <https://www.maastrichtuniversity.nl/m-eliantonio>

¹¹¹ Eliantonio, Mariolina, Korkea-aho, Emilia, Mörth, Ulrika, “Research handbook on Soft Law”, *Edward Elgar Publishing, 2023*. <https://doi.org/10.4337/9781839101939>

¹¹² Better regulation and the Improvement of EU regulatory environment institutional and legal implications of the use of “soft law” instruments. Background note. Page 3 March 2007 [https://www.europarl.europa.eu/RegData/etudes/note/join/2007/378290/IPOL-JURI_NT\(2007\)378290_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/note/join/2007/378290/IPOL-JURI_NT(2007)378290_EN.pdf)

¹¹³ EUR-Lex. Open method of coordination. <https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html>

The OMC is already used in conjunction with ETS – Energy Trading System, and it is expected to be used in future in the area of CBAM.

What is the OMC and what other methods stand at the disposal of EU when talking about the interconnection and intercorrelation of Hard and Soft law in relation to sustainability regulation? There are quite a few, the most recent ones being: the “one in, one out principle” (OIOO)¹¹⁴, Omnibus-I proposed Directive (simplify and declutter),¹¹⁵ and other progressive methods like European Citizens Initiative (ECI),¹¹⁶ which help form new Pan-European economic and environmental policies in the areas of clean energy and future-proof sustainable development of the European continent.¹¹⁷

In its overview EU`s Directorate-General for Employment, Social Affairs & Equal Opportunities has stated that “... *The OMC was launched at the Lisbon Council in March 2000 in order to identify and promote the most effective social policies*”¹¹⁸. From this definition a conclusion can be drawn that OMC is planned as part of the new family of soft law regulations to reinforce the implementation of the European Hard Law through different policies. The main features of the OMC are for Member States to:¹¹⁹

- Jointly identify and define objectives to be achieved (adopted by the Council);
- Jointly establish measuring instruments (statistics, indicators, guidelines); and

¹¹⁴ European Parliament. “One in, one out” (OIOO) approach. [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/753421/IPOL_STU\(2023\)753421_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/753421/IPOL_STU(2023)753421_EN.pdf)

¹¹⁵ EU. Omnibus-I. TEM. Ympäristövaliokunta 6. May 2025.

<https://www.eduskunta.fi/FI/vaski/JulkaisuMetatieto/Documents/EDK-2025-AK-20351.pdf>

¹¹⁶ EU. European Citizens` Initiative. <https://citizens-initiative.europa.eu/en>

¹¹⁷ FEPS. Foundation for European Progressive Studies. December 2024.

<https://library.fes.de/pdf-files/international/21833.pdf>

¹¹⁸ EUR-Lex. Summaries of EU Legislation. Reinforcing OMC. <https://eur-lex.europa.eu/EN/legal-content/summary/reinforcing-the-open-method-of-coordination-for-social-protection-and-social-inclusion.html>

¹¹⁹ EUR-Lex. Open Method of Coordination. Main features. <https://eur-lex.europa.eu/EN/legal-content/glossary/open-method-of-coordination.html>

- Benchmarking, i.e. comparison of EU countries' performance and the exchange of best practices (monitored by the Commission).

The positive methods behind OMC are learning best practices from peers and creating shared values in the different areas of social policies and sustainability regulation being one of them. Unfortunately, there are also certain negative features to the OMC and the most controversial of them is “naming and shaming”¹²⁰ which is already in use in ETS trading regulation¹²¹. The policy includes:

- Public criticism of underperforming countries;
- Peer pressure; and
- Forcing countries to improve and not to be seen as laggards.

While the practice of “naming and shaming” in relation to CBAM is not yet available, as again the legislation is only coming into force on 1 of January 2026, the Penalty mechanism of Directive 2003/87 is sure to arise some controversy.

4.4 European special taxation instruments and CBAM regulation. A look into the future.

Despite certain controversial issues within the OMC, there are a lot of positive examples of how “Soft Law” has complemented and will continue to complement the “Hard Law” approach, especially in Tax Policies. Tax Policies of EU and its Member States are in the sense quite challenging to agree upon and mostly left to the discretion of individual countries.

¹²⁰ European Parliament. At a glance. The Open Method of Coordination. October 2014. Members Research Service. <https://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf>

¹²¹ EUR-Lex. Directive 2003/87/EC. Establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC. Article 16. Penalties. 13 October 2003. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32003L0087>

According to the European Commissions communication “... *the use of non-legislative or soft law approaches could be particularly effective in cases where they have a firm legal foundation, based on the Treaty and the case law of the Court of Justice. In such cases, instruments such as Communications, recommendations, guidelines and interpretative notices can provide guidance to Member States on the application of the Treaty principles and promote the rapid removal of obstacles to the Internal Market. The use of such instruments can also address, at least to a certain extent, the above-mentioned problem of the asymmetry of a legal approach. This is because, first, these instruments can point to potential legal problems and indicate possible ways forward for dealing with them in order to avoid legal conflicts or even litigation. Second, these instruments can contribute to the development of new tax rules when the Court has found the old ones unlawful*”¹²². The taxation soft law instruments and guidelines mentioned above are currently in wide use in different European countries and on the general European level and are incorporated behind such important sustainability policies of EU such as Fit for 55¹²³ and European Green Deal¹²⁴. These policies bring forward the innovative approach of combining obligatory legislation, for instance the European Climate Law,¹²⁵ and the European policy notices,¹²⁶ as well as regulatory suggestions.

¹²² EUR-Lex. Procedure. COM (2001) 260: Communication from the Commission to the Council, the European Parliament and the Economic and Social Committee Tax policy in the European Union - Priorities for the years ahead. Final. Official Journal 10 October 2001. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52001DC0260>

¹²³ Popp, Rebekka, Kambli, Namita, Fit for Society: Benchmarks for a Social “Fit for 55” Package, JSTOR Sustainability, European Climate Initiative, EUKI, <https://www.jstor.org/stable/resrep33888>

¹²⁴ European Environmental Bureau. The European Green Deal (EGD). <https://eeb.org/wp-content/uploads/2025/05/The-European-Green-Deal-Knowledge-Brief.pdf>

¹²⁵ European Commission. European Climate Law. (EU 2021/ 1119) EUR-Lex. https://climate.ec.europa.eu/eu-action/european-climate-law_en

¹²⁶ European Policies. Notices from the European Commission, such as the one in November 2024 (C/2024/6792), EUR-Lex. <https://www.sustainabilityinbusiness.blog/2024/12/european-commission-notices-concerning-disclosures-on-sustainability/>

To conclude the overview of the chapter, the paramount topic of future enforcement of sustainability policies is revisited. Unfortunately, the Green Agenda does not realize itself purely out of goodwill, and it is met sometimes with great amount of resistance not only from outside the EU but also from within. What future approaches are therefore better suited to counteract this worrisome trend?

The author considers that *assertive approaches*¹²⁷ to Green Transition applied together with the so called *Brussels effect*¹²⁸ might yield better results in persuading different players to join forces to achieve reasonable and reliable goals of sustainability transformation than above mentioned “naming and shaming”. This is corroborated by the Professor Anu Bradford, who states that “... *EU remains an influential superpower that shapes the world in its image. By promulgating regulations that shape the international business environment, elevating standards worldwide, and leading to a notable Europeanization of many important aspects of global commerce, the EU has managed to shape policy in areas such as data privacy, consumer health and safety, environmental protection, antitrust, and online hate speech*”¹²⁹.

Further in this research, the transposition and subsequent implementation of sustainability laws and regulations on the level of the individual member states is explored. This includes issues, such as how the laws are introduced, interpreted, and the line to the individual practitioners. One important consideration is what help enterprises and especially the smallest ones get in the current unstable socio-economic and socio-political environment from the government organizations and legal practitioners. In addition, it is important

¹²⁷ Ailish O’Rourke-Henriette. Assertive approach. What is Assertive? A Look at Assertiveness in Theory and Practice. 1 July 2025. MBM. Making Business Matter.

<https://www.makingbusinessmatter.co.uk/what-is-assertive/>

¹²⁸ The risks and opportunities of the EU’s green trade agenda. Trevor Sutton, Sagatom, Saha, research paper, Brookings Institution. 26 March 2025. <https://www.brookings.edu/articles/the-risks-and-opportunities-of-the-eus-green-trade-agenda/>

¹²⁹ Bradford, Anu, The Brussels Effect. How the European Union Rules the World. 2020. Oxford University Press. <https://global.oup.com/academic/product/the-brussels-effect-9780190088583?cc=fi&lang=en#>

to consider, what are the possibilities available to the smaller European countries to influence the original proposals of European commission (in our case sustainability legislation and CBAM) to protect their own financial and economic interests. What challenges and opportunities lie within the proposed simplification of the sustainability laws. To explore these issues, this thesis uses Finland and Finnish legal and business environment to get a better insight.

5 European sustainability legislation from the point of view of individual member states. Critical analysis and a look into the future.

5.1 Introduction of new sustainability legislation in individual member states. The case of Finland.

One of the important topics within the sustainability regulation of EU is how the individual member states react to the newest legislative proposals. Furthermore, the possibilities available to the smaller European countries to influence the original proposals of European commission (in our case sustainability legislation) to protect their own financial and economic interests are explored. The upcoming changes to the sustainability laws and regulation will be used as an example to picture such communication of views between Finland and EU on the legislative proposals.

First, couple of words about Finnish attitude towards sustainability and an extremely high commitment of Finnish people towards the protection of own natural resources. Protection and preservation of own environment is an important basis for many policies currently implemented in Finland.¹³⁰ In fact, according to the Climate and Nature barometer 2025 of the Ministry of Environment of Finland “...*the appreciation of nature brings the Finns together very strongly: as many as 97 % of the respondents to the Nature Barometer consider that nature improves people’s health and wellbeing, and 96% consider that clean nature is an important part of the Finnish identity*”¹³¹.

¹³⁰ SGI. Sustainable Governance Indicators. Finland. 2024. https://www.sgi-network.org/2024/Finland/Environmental_Sustainability

¹³¹ Ympäristöministeriö. Awareness of progress of biodiversity loss has increased, climate solutions seen as opportunity for Finland. Press release 17 March 2025 <https://ym.fi/en/-/awareness-of-progress-of-biodiversity-loss-has-increased-climate-solutions-seen-as-opportunity-for-finland>

Furthermore, in the “Environmental protection legislation and guidelines” of Finland it is stated that: “...*The development of the national environmental protection legislation is closely linked to EU law, and Finland participates in the processes to influence its content. Besides legislation, work to promote the environmental protection targets is done through various kinds of instructions, guidelines and training events.*”¹³² As one can see from the quotation above, the Government influences sustainability transition in Finland not only through influence on the direction of sustainability legislation within the EU but also through different instruction and guidelines within the country. The addition of the “Soft Law” instruments to the legislative process is the widely used tool of the Finnish government and will remain one of the favorite mechanisms of influencing sustainability in the future. As the whole legislative process, including tax and tariffs policies, shifts towards use of Hard Law and soft law instruments, the importance of the point of view of citizens will come to the forefront of any future policy decisions.

As a member of the EU, Finland is not fully independent in its sustainability policies, including taxation, tariffs, and the proposed CBAM legislation. This constitutes the weak part of current legislative process viewed from the point of view of the individual Member States. Therefore, what is the possible way to influence the path of the proposed legislation? When confronted with the new European legislative proposal, in our case it is CBAM, Finnish government actively participates in the consultation rounds on the European Level. But before such rounds could take place a lot of hard work is invested into studying the forthcoming legislation. Firstly, for example, CBAM legislation and its possible impact on the Finnish economy is analyzed by respective research bodies, conducting their work for and on behalf of the Finnish government. One such example is a study into the proposed legislation

¹³² Ministry of Environment of Finland. Environmental protection legislation and guidelines. 9-2025 <https://ym.fi/en/environmental-protection-legislation>

conducted by ETLA¹³³ – Research Institute of Finnish Economy for the Finnish Government in year 2020, on the possible impacts of the future upcoming CBAM on Finnish economy. The report submitted to the Finnish decision-makers states among other conclusions that “...no matter how well a CBAM is constructed and communicated to EU trading partners, it is likely to face challenges from those who are affected...”. In its research the specialists from ETLA also mention that: “...the fiscal incentive and the uncertainty of where the resources might be used are features that may weaken its value as a source of public revenue. The use of CBAM as a source of revenue generation rather than a mechanism for the prevention of leakage does not strengthen the WTO compatibility and may exacerbate trade tensions.”¹³⁴ As one can see, already in year 2020, Finnish researchers and economists raised appropriate concerns about the scope and methods and reasons for the introduction of European sustainability regulation, including CBAM.

After the preliminary results are received and analyzed by the member states, countries within the EU move to protect their vital financial interests. Such engagement in protection of own countries interests constitutes a dilemma between the EU interests as the Intergovernmental Organization – with its own political, social and economic agenda, and financial budget – and interests of the individual member states. Such interests, especially after the Covid-19 and all uncertainty in the world, are less and less aligned within the EU as a cohesive entity. Therefore, the decision process becomes very difficult with different lobby groups within the Union fighting for the interests of their countries or block of countries.

Next, the concrete instruments member states use to protect their fiscal interests and to influence the direction of proposed legislation are inspected.

¹³³ Finnish ETLA ([Elinkeinoelämän tutkimuslaitos](https://www.etla.fi/ennusteet/)) is the Finnish Economic Research Institute, a private research institute focused on applied economic research to support policy-making. <https://www.etla.fi/ennusteet/>

¹³⁴ Carbon Border Adjustment Mechanisms and Their Economic Impact on Finland and the EU. Prime Minister’s Office, Helsinki 2020, page 129 https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162510/VNTEAS_2020_48.pdf?sequence=1&isAllowed=y

In order to get maximum benefit for the country and still support the ambitious goals of the EU in the area of Green Transition, the Finnish Government uses its “soft power” to influence every sustainability policy of EU mentioned above. How are such “soft power” policies implemented? One example of such “soft power” are the formal and informal consultation and discussion rounds within the EU during which the Finnish government and its representatives have the possibility to bring to the discussion table the above-mentioned concerns about, for example, of the reaction of the trade partners from outside the EU towards the proposed legislation.

In providing such feed-back on the highest European level, small countries such as Finland have the real possibility to influence which path the sustainability legislation takes now and in future. One example of such influence is the hard work done in year 2022 by the then Minister of Finance Annika Saarikko¹³⁵ whose main aim was to bring to the attention of the European lawmakers the legitimate concerns of the Finnish state towards sustainability legislation and tariff-taxation within its general legal framework. The promotion of interests of one’s own country and industry by different lobby groups¹³⁶ from Finland, which also actively participate in the informal discussions about future proposed legislation, bring to the attention of European Legislators the highly appreciated insider view from the active practitioners thus also, in their way, influencing the future path of the original legislation. These are prime examples of the “Soft Power Instruments”, which are used in addition to the “Hard Law”, and which help the promotion of the Sustainability Growth within the EU without downgrading the interests of the individual countries within the Union.

¹³⁵ Ministry of Finance. EU finance ministers to discuss Finland’s recovery plan. 25 October 2021. Press release. <https://vm.fi/en/-/eu-finance-ministers-to-discuss-finland-s-recovery-plan>

¹³⁶ OECD. Lobbying in the 21st Century TRANSPARENCY, INTEGRITY AND ACCESS. OECD Publishing, Paris. https://www.oecd.org/content/dam/oecd/en/publications/reports/2021/05/lobbying-in-the-21st-century_bb7a371a/c6d8eff8-en.pdf

5.2 Upcoming changes to European Sustainability Regulation. Omnibus legislative packages.

In the previous chapter, various methods and tools that countries within the EU possess to address their concerns when new legislation is introduced were recalled. In this chapter, the thesis addresses the issue of changes to the legislation which happen after the legislation is already incorporated into the legal environment of the member states.

The legislation under review will be the new legislative package (proposal) called Omnibus-I. The legislation proposal is exactly the measure EU Commission wants to use to address the adverse impacts, among others, of the original CBAM regulation. The proposed package is not a single law or single piece of legislation, but a set of principles directed at amending and simplifying several laws and regulations. The main aim of the EU Commission is: “... *an unprecedented simplification effort, by achieving at least 25% reduction in administrative burdens and at least 35% for SMEs before the end of the mandate*”¹³⁷.

It is, however, important to stress that simplification and reduction of the reporting burden are the *Conditio sine qua non* for successful functioning and growth of especially the small and medium businesses in Europe which suffer disproportionately from epidemics, wars and unfavorable economic environment. This is highlighted in the report on European SMEs by Paula Sculze Brock et.al, confirming this point of view by stating that: “...*European small and medium-sized enterprises (SMEs) continue to navigate a challenging economic environment.... The economic outlook remains uncertain, with significant downside risks for global economic growth, including uncertainty regarding tariffs on products exported to the United States. SMEs*

¹³⁷ European Union. Questions and answers on simplification omnibus I and II. 26 February 2025 <https://www.europarl.europa.eu/legislative-train/package-simplification-business/file-first-omnibus-package-on-sustainability>

continue facing numerous challenges such as limited access to finance, regulatory complexity, and the need to adapt their business models. ¹³⁸

So, what is the aim of the proposed legislative package? It is first and foremost the addressing of the above-mentioned regulatory uncertainty and excessive bureaucratic burden. Indeed, according to the European Commission press release the aim of Omnibus legislation is to: “... *simplify sustainability due diligence requirements so that companies in scope avoid unnecessary complexities and costs... reduce burdens and trickle-down effects for SMEs*”¹³⁹. The above-mentioned changes to CBAM through the proposed Omnibus-I package are:¹⁴⁰

- *Simplification for SME importers.* New CBAM *de-minimis* threshold exemption of 50 tons mass allows, according to EU-Commission, to “keep around 99% of emissions still in the CBAM scope, while exempting around 90% of the imports.”¹⁴¹
- Simplification of rules for companies within the CBAM scope.
- Strengthening the long-term rules to avoid circumvention and abuse.

All these proposals are extremely important and vital, especially for small and medium-sized companies. Unfortunately, recent developments show that EU cannot reach the uniform agreement about Omnibus-I. Again, the main obstacle to the legislative process is the political uncertainty about tariffs and trade within the EU and differences of opinions within the Union itself. This once again highlights the close intercorrelation of Hard Law, Soft

¹³⁸ [SCHULZE BROCK Paula](#); [KATSINIS Anastasis](#); [LAGÜERA GONZÁLEZ Jaime](#); [DI BELLA Laura](#); [ODENTHAL Ludger](#); [HELL Markus](#); [LOZAR Borut](#); [SECADES CASINO Berta](#), Annual Report on European SMEs 2024/2025, SME performance review, European Commission. JRC Publications Repository. 21 May 2025. <https://publications.jrc.ec.europa.eu/repository/handle/JRC142263>

¹³⁹ Commission simplifies rules on sustainability and EU investments, delivering over €6 billion in administrative relief. European Commission. 26 February 2025 https://ec.europa.eu/commission/presscorner/detail/en/ip_25_614

¹⁴⁰ Omnibus-I and CBAM simplification proposal. https://taxation-customs.ec.europa.eu/carbon-border-adjustment-mechanism_en

¹⁴¹ De-minimis CBAM https://ec.europa.eu/commission/presscorner/detail/en/ip_25_614

Law and politics, especially in the area of finance (meaning tariffs and taxes) dealing with sustainability challenges, which intervene in the negative way with the sustainability goals of EU on the whole.

The lack of compromise within the European Member States is not the only force adversely affecting European sustainability goals. It is important to also pay attention to the certain negative effects stemming from the simplification of sustainability legislation itself. Such adverse effects come from the internal division within the small and medium-sized enterprises: the ones who had the means to voluntarily invest in sustainability reporting and the ones who prefer to sit and wait. This point of view is widely supported among scholars in Finland.¹⁴² Hopefully, for the more advanced SME`s the cost of the financial investment (meaning sustainability reporting) will be offset by the benefit of being chosen by bigger companies as their sub-contractors within the larger Value Chains. Whether this advantage for SME, who have already voluntarily invested in sustainability, be realized – remains to be seen as constant simplifications to the previous sustainability legislation might cancel the positive effects from such investments.

To conclude this chapter, it is important to point to the couple of challenging issues within the changes to CBAM and overall, to the Sustainability legislation. Firstly, the speed. The extreme speed with which legislation is adopted and implemented into laws. We are talking in reality 5-10 years, which is astounding. Such changes can be too harsh and too quick, especially for SME. The second issue is who benefits from abrupt and constant changes to the legislation? While the EU Commission's decision to de-clutter and to simplify current EU regulations for SME should be commended, at the same time signs that all changes are done with financial markets and investor needs in

¹⁴² University of Eastern Finland. Growing pressure on sustainability reporting for SME in EU. 15 July 2024 UEF Research Centre for Sustainable Circular Economy. <https://sites.uef.fi/cece/2024/07/15/growing-pressure-on-sustainability-reporting-for-smes-in-eu/>

mind, and not the real need of smaller countries within the EU, can be observed.

The third major challenge behind the legislation is the substantial socio-economic and socio-political differences within the EU itself. How the proposed changes reflect the huge differences within the EU? Finland being a comparatively small, open economy, which traditionally concentrates on export of highly refined industrial goods, feels the uncertainty of constantly changing and modified regulations to a greater extent than larger economies like France and Germany.

To reflect in more detail on the process of adaptation of sustainability regulations into the legal environment of individual countries and to get better insight into the challenges and opportunities behind such adaptation the author of this thesis turned to the interviews with Finnish official organizations and business practitioners.

5.3 Critical role of Finnish government and commercial organizations in adaptation, implementation and interpretation of sustainability laws. Interviews with business and legal practitioners.

In this chapter, the thesis continues with the analysis of the legislative proposals of the EU and how they are accepted, analyzed and channeled into concrete actions at the level of the business community of the individual member states. The analysis was based on the semi-structured interviews conducted with different parties involved in sustainability issues in Finland, such as officials of different administrative, government, certifying organizations and providers of capital financing. The semi-structured nature of the interviews, which is a mix of ready, in-advance structured questionnaires, with the free-flowing conversation, allowed for the collection of sufficient data to represent different opinions and points of view.

Before proceeding with analysis, the author would like to explain her choice of interviewees. When deciding which group to include in the research, which group might provide the best and most comprehensive picture of the integration of the sustainability reporting into legal environment in Finland and its practical use and integration into other laws and regulations, the author decided to concentrate on law, administrative and certification functions of the official organizations and the organizations working on behalf of or together with the government organizations.

The limited number of interviewees who were chosen and who, themselves, agreed to be interviewed could be explained through several reasons: The first is the still existent lack of certification of the professionals in sustainability regulation; The second reason is winter spring, being one of the busiest seasons of the commercial year; And the third reason being the complexity of the subject and the newness of the information. Despite the above-mentioned challenges, the author managed to assemble a well-represented group of professionals, who served as a window into legislative development of sustainability reporting on the administrative level. While deciding on the scope of the interviews the author based her choice on her personal knowledge of economic and socio-legal environment in her long-time professional capacity as an authorized chartered accountant of Finland.

To be able to explore the effects of sustainability laws on the functioning of the concrete entities within the business environment of the individual member states the author divided the interviews into three distinct topics:

- The subsequent and sufficient interpretation of sustainability regulations through legislative and administrative work by different official and semi-official organizations;
- The second area of interest was the adaptation of sustainability regulation into the economic activities of the SME companies; and
- The third topic to be addressed was co-existence and co-dependance of the other sustainability regulations, with Value Chain Law being one of the most important ones.

The analysis starts with the first topic of the interview: The important role of different government organizations and entrepreneurs' unions in interpretation and channeling of constantly generated and updated regulations to the level of individual companies.

It is stressed that interpretation of the current and upcoming laws and regulations is of paramount importance to every country in the world. The interpretation of laws and regulations in the area of sustainability is still a very new area of expertise. In this regard, the excellent work of official bodies, including Accounting Board, Tax Board or Auditing Board, which are parts of different Ministries in Finland is of great impact. The interpretations done by such major boards are provided mainly in the form of answers to the applications by the companies or, if the matter is of paramount importance to the legal climate within the country, through statements of position of the board in relation to the certain issues at stake. As such, the decisions of the boards channel the laws and regulations into concrete business practices. The above-mentioned boards possess independent decision-making powers, and their decisions have paramount effect on how the law moves down the legislative line. Their role is especially important for the smaller business entities without the support of own legal teams, as such boards:

- Issue of preliminary rulings on income tax and value added tax upon application by taxpayers ¹⁴³;
- Issue instructions and statements on the application of the Accounting Act and bookkeeping, whenever the board deems it necessary to promote good uniform accounting practice; and
- Provide general guidance and development of auditing, issuing warnings and remarks, revoking approval, decisions related to rectification requirements and appeals.

The decisions of the boards and the whole functioning of such interpretation bodies are directly correlated with the strong policies of the Government of

¹⁴³ Keskusverolautakunta. <https://vm.fi/hanke?tunnus=VM142:00/2024>

Finland around sustainability and sustainable development. As such, these policies influence the decisions of the interpretation bodies, which in themselves influence the path for the legislation to take. Such decisions are a tool to channel the transposition of law into concrete business practices.

During the interviews, policies of the Finnish government which were an example of “Soft Law” and a “tools” to influence the issues of sustainability were discussed with the interviewees. During interviews the author got acquainted with the so called “unofficial” Code of Conduct,¹⁴⁴ which is employed in Finland when allocating government contracts and which goes hand-in-hand with legally binding “Act on Public Procurement and Concession Contracts.”¹⁴⁵ After learning about such co-existence of “Hard” and “Soft” law policies on the state level the author came up with the term *Duality*, as opposed to the “Double materiality”, when talking about commercial organizations. This Dual nature of authorities is in promotion and reinforcing sustainable values in the society overall and at the same time being an example of such values.

Despite all the positive achievements, it is important to highlight the negative effect of being in-between two legal environments the negative influence this has on the economic life in Finland. Up till now there hasn’t been practically any decision by the Boards (Tax Board, Accounting Board, Auditing Board) which cover the interpretation of sustainability declarations. The laws are very new, only very recently integrated into Finnish legal environment (year 2023)¹⁴⁶ and practically immediately on their footsteps came information

¹⁴⁴ Ministry of Finance of Finland. Code of Conduct for contracting entities published to promote social sustainability in public procurement. 16 December 2021. Ministry of Finance of Finland. <https://vm.fi/en/-/code-of-conduct-for-contracting-entities-published-to-promote-social-sustainability-in-public-procurement>

¹⁴⁵ Act on Public Procurement and Concession Contracts (1397/2016) <https://www.finlex.fi/fi/lainsaadanto/2016/1397>

¹⁴⁶ Finnish Government. TEM. 29 September 2023. Implementation of EU Carbon Border Adjustment Mechanism starts in October creating new obligations for importers. Press release. <https://valtioneuvosto.fi/en/-/1410877/implementation-of-eu-carbon-border-adjustment-mechanism-starts-in-october-creating-new-obligations-for-importers>

about potential changes through Omnibus proposals. The process of interpretation by Boards and development of new law doctrines is thus in a certain *legal limbo* with old laws still being applicable but while there is already a strong understanding that the new legislation will not build upon the existing laws but simplifies and downgrades them instead.

Especially negatively affected by the abrupt Omnibus-I (and upcoming Omnibus-II, III and IV) proposals are the very small- and medium-sized enterprises working in consulting, legal consulting, small auditing and accounting companies, sustainability software developers and other small businesses Omnibus-I strives to protect. The interviewees expressed their frustration, that limited resources invested in the development of such consulting and schooling have not resulted in the expected profits because of the “legal tsunami” associated with Omnibus which resulted in lack of motivation by SME to use such education packages.

The second question discussed during the interviews was how the SMEs in Finland react to and try to adapt and comply with the newest sustainability requirements.

During the interviews conducted business practitioners and representatives of official organizations alike expressed their frustration with extreme and constant changes to the laws and regulations in the area of sustainability. Such abrupt changes bring with them uncertain future to the already developed programs, recommendations and consulting packages.

In addition to the dedicated and hard work of consulting companies in promotion of awareness about sustainability regulations, different professional associations serve as an excellent entry point into the world of sustainability, especially for the smallest companies. Such activities, quite often organized by associations free of charge, include articles published on the websites with free access for everybody, YouTube videos, live presentations during open entrepreneurs’ days, and play an extremely important role in the promotion of sustainability. Such education packages provide safe and highly

professional environment for the small and medium-sized enterprises to thrive and succeed in the current highly unstable situation. As an active accounting and business law practitioner the author can state that in Finland, there is a very good “coverage” of the SME by professional bodies. In her professional capacity the author cannot recall a single company in Finland that did not belong to some kind of association.

When the role of sustainability in the lifecycle of the companies, especially the smaller ones, was discussed with the interviewees, the participants talked of the importance of the ratings provided by different rating agencies when making decisions whether to provide, for example, guarantees for credit applications or be guarantors of the export operations. Such information is especially important when we talk about SME. In order to receive more affordable loan financing or receive credit support for the export/import expansion, which are not even within the scope of sustainability regulation or even upcoming Omnibus-I, quite often proof of sustainability is required and must be provided. The reason for such requirement is the desire and quite often the obligation of providers of capital to channel the finance into well-governed, environmentally oriented, socially just projects. This proof is usually only possible through the certified assurers.

It was further discovered through the interviews that the interviewees of certain organizations came up with an easy and affordable solution especially designed for the smaller companies. One of the most interesting solutions is a free-of-charge ESG internet portal organized by creditworthiness rating or *Bonitet (Bonitas, Lat.)* providers, where enterprises fill in information about their business activities themselves. Such voluntary reporting portals help smaller companies to be better prepared for the challenges which lie ahead, especially when talking about Value Chain Requirements, and are also used by wider circle of private, official and government organizations up and down the Value Chain. The only minus is that the information about such possibility is not yet widely known. However, tools as the voluntary reporting portal

bring structure, consistency and level playing field for all companies big and small, who engage in the commercial activities in Finland.

The third important question that was discussed during the interviews was the interconnection and intercorrelation of sustainability legislation with one of the most important and in its way encompassing laws - the Value Chain Laws.

Though the European Value Chain regulations (CSDDD and Critical Materials Act) are not part of this research, before proceeding with the study of sustainability legislation it is important to touch upon in brief on the ramifications of these regulations and their impact on overall sustainability legislation and its part Carbon Border Mechanism.

Though it is used for the larger entities, in future, the Value Chain laws and regulation¹⁴⁷ requirements will increasingly become a part of the daily life of small businesses, even if they are not yet directly binding to micro and SMEs. Indirectly, however, they will affect more and more micro and SMEs, especially if they are part of a supply chain, for example as a subcontractor”¹⁴⁸.

Based on the results of the interviews, a clear trend towards voluntary reporting was noticeable, as small- and medium-sized enterprises become more and more involved in the Value Chains of bigger enterprises (GVCs- Global Value Chains). Small and medium Finnish enterprises are also quite active in the international trade and have to take into account the international treaties and obligations. The sustainability reporting obligations in that sense arise not directly from the laws and obligations, dealing directly with the

¹⁴⁷ Aoife HANLEY, Finn Ole SEMRAU, Frauke STEGLICH, Rainer THIELE. The cumulative effect of due diligence EU legislation on SMEs. Study. European Parliament. September 2023. [https://www.euparl.eropa.eu/thinktank/en/document/EXPO_STU\(2023\)702597](https://www.euparl.eropa.eu/thinktank/en/document/EXPO_STU(2023)702597)

¹⁴⁸ University of Oulu. EU sustainability regulation also affects small businesses. Kerttu Saalasti Institute Blogi. Anne-Mari Kukkola, Master of Business Administration YAMK (Financial Management), Business Specialist, VATUPASSI - Responsible Future Project Nivala-Haapajärvi Region NIHAK Ry <https://www.oulu.fi/en/blogs/kerttu-saalasti-institute-blog/eu-sustainability-regulation-also-affects-small-businesses>

sustainability, like EU CSRD, but from other laws and obligations such as Global Value Chain Law.

To be a part of GVC smaller companies also have to provide (often unofficially) proof of incorporation of sustainability in the everyday operations mentioned previously. This unofficial proof could be obtained, as learned from the interviewees, in the form of voluntary ratings, for example, through the above-mentioned ESG-portals. Unfortunately, these voluntary ratings are not enough for the larger companies, obliged by laws and regulations, to get more formal assurance of their sustainability achievements, or for the sub-contractors of large international Value Chains, who want to be sure that all required demands are met. Such companies usually ask licensed providers for legal and licensed assurance services for sustainability. These legal assurance of sustainability reporting are only provided by licensed professionals. These services are in themselves quite new and only recently developed. The change in reporting regulation which Omnibus-I regulation might bring, is challenging for such assurance providers especially in such small countries like Finland, as a lot was invested in the development of sustainability confirmation procedures and education programs, which now, even before Omnibus-I came into force, are put on ice. At the same time, based on the results of the interviews, the same issue of being in-between two legal environments – the current stricter framework, and the future, less strict Omnibus-I – give more wiggle room to the small and medium-sized companies on what and how to report in the area of sustainability.

5.4 Assessment of the sustainability regulation on the level of individual member states. Overview and conclusion.

The semi-structured interviews helped the author to understand how sustainability laws are introduced, function, and are being interpreted within the business community of Finland. In the course of the interviews, invaluable information for the research using semi-formal interview format was acquired. All practitioners, representatives of the authorities, specialists with whom the author had the honor to conduct the interview, added to the

author`s understanding of the role of different organizations, government and private companies, professional associations in promoting sustainability and ensuring that sustainable goals. The challenging time in between laws and regulations taught the author the importance of long-term goals: Issues of sustainability cannot be solved by quick change in reporting demands. Sustainability and sustainable choices come first and foremost into our life through education, and through the spread of knowledge about issues of sustainability. It also takes time. The semi-structured format gave the interviewees also the possibility to deviate from the presented questionnaire and concentrate on and share with the author the issues which lie at the heart of each company or authority or association of professional practitioners.

The discussions with interviewees brought into the limelight the influence of certification agencies and auditors and assurers on the development of the “soft power tools” to channel the sustainability laws into concrete business and financial activities. This was evident in two major ways:

- Voluntary sustainability reporting. Reputational and Financial benefits through voluntary sustainability reporting. Voluntary introduction by the enterprises (especially by the SME) of the concept of sustainability within their business operations brings with it reputational and marketing benefits and access to the better and cheaper financing or to the lucrative contracts within the Value Chain.
- Obligatory sustainability regulations. Supervision and control of sustainability laws and regulations through authorities, showcases the intention, in this example of the Finnish Government, to follow the directives of the European Common Market and introduce the concept of sustainability, of the sustainable business on the country level.

When analyzing and discussing the sustainability requirements be they through Hard or Soft law one cannot avoid the subject of Artificial Intelligence (AI). One of the interesting facts that came to the author`s attention during the interviews is the development and the extremely quick implementation of the electronically AI-assisted emission registration and reporting. The AI

is being implemented in accounting for emissions at extremely high speed. Such AI assisted programs allow for direct compliance of data of the different sustainability regulations. These programs enable the direct transfer of the data into official reports for the purpose of analysis and taxation. Unfortunately, small companies, as opposed to medium-sized, do not have financial resources to invest in such accounting programs due to the adverse economic situation. The SMEs in Europe and especially in Finland have very limited finance and do not want to invest in extra programs be it educational or sustainability software without being forced by law in the current unstable and complex economic situation.

At the same time interviews showcased the resilience of Finnish companies, their high level of willingness to incorporate sustainability on the voluntary basis and demand for the more stable legal environment and laws and regulations that are not changed every year. The author, like everybody else, anticipates Omnibus-I legislation and will follow with interest the transfer of the EU legislation into Finnish laws, the interpretation of these laws by professional Boards in Finland and actual implementation by companies big and small. The author hopes that decluttering laws and regulations and less bureaucracy, especially for SME, will bring actual results and help European small and medium companies to thrive and successfully compete on the international markets.

6. General Conclusion.

The undertaken research examined regulations in the area of sustainability with special attention devoted to the study and critical analysis of the Carbon Border Adjustment Mechanism and its double role as a Trade Defense Mechanisms and a vital policy tool used to promote and advance the path to the carbon-neutrality in Europe. The focus of the study was drawn to the analysis of the strengths and weak points of the regulation viewed from the point of view of legal, financial and general socio-political environment on the European level with subsequently going down to the individual member state level.

Finland was used as part of the research to demonstrate the path of the regulation from the proposal by the European Commission to the ability of smaller European countries to influence the path of the proposed regulation, make sure, that their vital interest are taken into account and future distribution of profits and disadvantages from the proposed legislation is fairly spread among the European member states. Finland was also used an example to showcase how smaller enterprises, so called SME, in the smaller European countries react to and adapt the legislation, find necessary “tools”, including interpretation of laws and regulations provided by legal entities, to transpose sustainability laws into concrete measures on the individual company’s level.

The first important conclusion is that sustainability legislation cannot function by itself in the closed environment and be directed only towards European countries, the success of the whole legislation and CBAM being one of its parts, is directly influenced by the “willingness” to accept and comply with the laws not only from inside the Block but from outside the European Common Market as well.

The second major conclusion of the research is that “Hard Law” instruments alone can not achieve the desired by the proposed legislation results. The

indispensable inclusion of “Soft Law” and “Soft Policies” into the framework of sustainability legislation provide the path, the tools to achieve the desired goal which is the transition of the European economy towards carbon-neutrality and effective prevention of the carbon leakage. Still, the conducted research shows, that the vital role of “Hard Law” is not diminishing, but rather adapting to the ever faster changing international socio-legal and socio-economic environment. For the Hard law still remains the responsibility, among other things, to eliminate harmful effects of different subsidies and tax deductions, which hinder fair competition and contribute in adverse way to the greenwashing and carbon leakage. Another vital role of the “Hard Law” instruments is to set binding frameworks for the soft law instruments like “Code of Conducts” to function alongside “Classic” law instruments. The main challenge of the combination of the “Soft” and “Hard” law is that the development of the binding Hard Law instruments takes much more time and trail behind the socio-political and socio-economic changes.

It is further important to stress the vital role of monitoring the effectiveness of both legal instruments. Monitoring and regular assessments are vital to avoid the current unfavorable situation with “over bureaucratization” and “over-burdening” of the legal environment in the area of sustainability.

The thesis has mainly examined the past and present of the sustainability laws and one of its parts the CBAM regulation, but it is likewise vital to briefly touch upon the future trends and developments in the area of law making, which directly influence the sustainability legislation in Europe. The above-mentioned trends are: rise of AI, role of the internet and social media, tendency towards “de-bureaucratization” and “de-cluttering” of the legislative process.

We start with the last trend, which is the “de-cluttering” and “de-bureaucratization” of laws and regulations. Over-bureaucratizing of the whole sustainability regulation, abrupt changes to the legislation, very short “legislative cycles” constitute a real threat to the whole Green Agenda. In the thesis it is argued that the recent changes in socio-political and economic environment

do not give extra time to quietly and thoughtfully develop new suitable sustainability legislation. Accordingly, “classic law-making”¹⁴⁹ is best suitable to the stable socio-political and socio-economic environment.

In order to overcome the challenge of developing suitable legislation fast, on time and exactly for the needs of current moment and with the aim to future-proof the legislation package for at least for the next several years, one has to turn to the hybrid solutions and “flexible” law-making. This flexible law-making could be imagined as simpler, faster, more adjustable legislation, which is more adaptable changes. This point of view is shared by many experts from many different backgrounds. For example, the recent developments in European lawmaking aimed at simplification and optimization of legislation process, with European Commission’s REFIT program (Regulatory Fitness and Performance Program)¹⁵⁰ being one of the attempts to simplify the whole legislative process. Furthermore, it is also important to mention the recent addition in the form of a Communication for “A simpler and faster Europe: Communication on implementation and simplification”¹⁵¹ which represents one of such shifts in law making.

Moreover, social media and the role of internet in influencing the major decisions as well as adaptation of law-making process to the rising client expectations, is crucial. By “client” different groups of people, organizations and government institutions among the few, which are the end recipients of such law-making activities are meant. The influence by the readily available news (with the newest information available practically in an instant) of such groups already now highly influence the law-making process¹⁵². The information about a new law might be perceived as positive or negative depending on the interpretation of such information by different groups interested in

¹⁴⁹ FINLEX. Legislative Drafting Process Guide. <https://lainvalmistelu.finlex.fi/en/>

¹⁵⁰ European Commission REFIT programme.

¹⁵¹ European Commission. Communication for a simpler and faster Europe. 2024-2029. https://commission.europa.eu/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-more-efficient-and-future-proof_en

¹⁵² Nina, Sofia, A Review on the Impact of Social Media on Modern Legal Systems. <https://bluemarkpublishers.com/index.php/IJLSS/article/view/56>

such interpretation. The result of such interpretation, especially done by the different lobby groups¹⁵³, might in the end influence the end result itself. The honest, professional and impartial explanation of the upcoming law is essential to the positive perception of the future law and “eagerness to implement”.

¹⁵⁴ Again, once established positive perception of certain regulations could and will be changed with time as new groups enter the workforce, new technologies change the way we live and do business. The effect of the perception of information in certain ways by large group(s) of people might result in cancelation of certain legal initiatives or in substantial changes to the original version.¹⁵⁵

The rise of AI artificial intelligence and its role in process of law making is likewise important to analyze. AI is in itself interconnected with the two previous trends and possesses the enorm potential to influence the creation, implementation and further perception of laws and regulations.¹⁵⁶

What might be the future role of AI in de-cluttering and de-burdening and possible de-bureaucratization of legal process? AI could help for example, in preparation documents for the legislative readings, fool-proofing texts in different languages, cross reference laws and regulations used in the process to name the few. It could be envisioned in quite a near future that AI would take more and more roles in lawmaking process leaving to the lawyers more in the area of the review and finishing work and taking away the burdensome tasks thus increasing the speed and quality of preparatory work. This point of view

¹⁵³ European Parliament. Directorate-General for Parliamentary Research Services. Lobbyists and interest representatives: How do the European Union institutions engage with lobbyists? <https://www.europarl.europa.eu/at-your-service/en/transparency/lobby-groups>

¹⁵⁴ Lind, E. Allan, Arndt, Christiane, Perceived Fairness and Regulatory Policy: A Behavioural Science Perspective on Government-Citizen Interactions. OECD Regulatory Policy Working Papers No. 6. https://www.oecd.org/content/dam/oecd/en/publications/reports/2016/12/perceived-fairness-and-regulatory-policy_054cc819/1629d397-en.pdf

¹⁵⁵ Asuene. How EU Law Is Made: Behind the Scenes of European Policymaking. <https://asuene.com/us/blog/%FO%9F%87%AA%FO%9F%87%BA-how-eu-law-is-made-behind-the-scenes-of-european-policymaking>

¹⁵⁶ Thomson Reuters. How AI is transforming the legal profession. <https://legal.thomson-reuters.com/blog/how-ai-is-transforming-the-legal-profession/>

is shared by many professionals working in the area of law making.¹⁵⁷ It is also prudent to remember that extreme benefits brought by the AI come also with worrisome features, which should be addressed and are being addressed by the lawmakers. In addition, the rise of AI-lawyers, which could provide sophisticated analysis of the subject matter, should be taken into account.¹⁵⁸ At the same time, one should be extremely careful even at the higher level of such analysis and double-check the truthfulness and reliability of information.¹⁵⁹ To what extent one could benefit from such AI-analysis in the official lawmaking process depends on the AI-regulation itself. There is a huge resistance from, for example, MNEs (Multinational Enterprises) which fear that more regulation could slow down the development of new artificial intelligence solutions.¹⁶⁰ With AI-regulation being in the infant stage in Europe and with the first laws concerning Artificial Intelligence¹⁶¹ being agreed on it is very difficult to forecast the direction of the development of regulations dealing with the process of lawmaking with the help of AI.

The above-mentioned trends are only one of many aspects to consider, as issues of sustainability refer to the wider group of problems and require first and foremost “willingness to negotiate” and “willingness to accept” the differences in economic and socio-political development around the world and different trajectories and paths the issues of sustainability are addressed in different countries. The agreements in the area of sustainability, including

¹⁵⁷ Neal, Jeff, The Legal profession in 2024: AI, Harvard Law Today

¹⁵⁸ New York State Bar Association. AI`s Escalating Sophistication Presents New Legal Dilemmas. https://nysba.org/ais-escalating-sophistication-presents-new-legal-dilemmas/?srsltid=AfmBOoprQJ1e2l5oY-umfnXs4Y4hNHU6aSvZ2kW9wRbQCcxuNg0YM_j

¹⁵⁹ International Bar Association and the Centre for AI and Digital Policy. The Future is now: Artificial Intelligence and the Legal Profession. September 2024. <https://www.ibanet.org/document?id=The-future-is%20now-AI-and-the-legal-profession-report>

¹⁶⁰ Rådberg, Moa, Frisell, Victoria, From Challenges to Success: Navigating AI Adoption in Multinational Settings, University of Gothenburg, Case study, spring 2025. <https://gupea.ub.gu.se/bitstream/handle/2077/88429/IBT%202025-13.pdf?sequence=1&isAllowed=y>

¹⁶¹ European Commission. Shaping Europe`s digital future. European approach to artificial intelligence. https://commission.europa.eu/system/files/2020-02/communication-shaping-europes-digital-future-feb2020_en_4.pdf

taxes and levies on the carbon-intensive production, can bring positive results only in conjunction with other measures, like educational campaigns, investments in the awareness of the citizens of different countries towards the issues of Green Transition and introduction of the international voluntary “Codes of Conducts”.

The author completes her overview with the extract from the speech during COP30 in Belem, Brazil by UN Climate Change Executive Secretary Simon Stiell: *“We knew this COP would take place in stormy political waters. Denial, division and geopolitics have dealt international cooperation with some heavy blows this year. But friends. COP30 showed that climate cooperation is alive and kicking, keeping humanity in the fight for a livable planet, with a firm resolve to keep 1.5C within reach. I’m not saying we’re winning the climate fight. But we are undeniably still in it, and we are fighting back. Here in Belem, nations chose solidarity, science, and economic common sense”*.

The author wishes to stay positive about the future of sustainability and Green Transition. Yes, we are living in different situation when compared to the time, when CBAM and other sustainability measures were planned, and it is clear that not all tools and measures from the realm of old, classic law instruments (including tariffs and taxes) will work in the future, but the desire of ordinary people to do something for their planet, which is the only home they have, is huge and that gives the author certainty to look into the future with optimism.

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Tables:

Table 1: CBAM and ETS legislation – a comparative

Table 2: Positive and negative aspects of the Restrictive policies

Table 3: Positive and negative aspects of Tax Incentives