

# External dimension of the European Green Deal

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- COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS
- **The European Green Deal**
- COM(2019) 640 final, 11.12.2019
- A roadmap for making the EU's economy sustainable by turning climate and environmental challenges into opportunities across all policy areas and making the transition just and inclusive for all.
- A new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use.

**Transforming the  
EU's economy for a  
sustainable future**

**The  
European  
Green  
Deal**

Mobilising research  
and fostering innovation

A zero pollution ambition  
for a toxic-free environment

Preserving and restoring  
ecosystems and biodiversity

From 'Farm to Fork': a fair,  
healthy and environmentally  
friendly food system

Accelerating the shift to  
sustainable and smart mobility

Leave no one behind  
(Just Transition)

Financing the transition

Increasing the EU's Climate  
ambition for 2030 and 2050

Supplying clean, affordable  
and secure energy

Mobilising industry  
for a clean and circular economy

Building and renovating in an  
energy and resource efficient way

**The EU as a  
global leader**

**A European  
climate plan**

- Climate targets in the context of the Paris agreement/ UNFCCC : climate neutrality by 2050/ enhancing its short-term GHG emission reduction target, and thus the EU's **Nationally Determined Contribution (NDC)**, to at least 55% by 2030 compared to 1990.
- From the conclusion of the Paris agreement to global actorness
- Council Conclusions, 18 March 2024, *EU diplomacy promoting the just and inclusive green transition and supporting the implementation of global commitments*
- Council conclusions, 9 March 2023, *Climate and Energy Diplomacy “Bolstering EU climate and energy diplomacy in a critical decade”*
- Council conclusions, 21 February 2022, *EU Climate Diplomacy: accelerating the implementation of Glasgow outcomes*
- Council conclusions, 25 January 2021, *Climate and Energy Diplomacy - Delivering on the external dimension of the European Green Deal*

- 2. The Council reaffirms the EU's strong commitment to **work closely with partners to accelerate the global just and inclusive green transition**. The Council emphasises the key role of EU **green diplomacy in** anchoring and consolidating global commitments and **promoting their implementation**, including those captured in the outcome of the first Global Stocktake (GST) under the Paris Agreement. (...) **The EU and its Member States will continue to strengthen collaboration with partners** in developing and implementing ambitious Nationally Determined Contributions (NDCs) that effectively address the commitments taken in the GST, including '**transitioning away from fossil fuels**'.
- 27. In order to **ensure energy security** and reduce strategic dependencies in the decades ahead, the Council emphasises the need to strengthen and diversify global supply chains of critical raw materials necessary for the energy transition **in line with the Critical Raw Materials Act**, ensuring high environmental and social standards and taking full account of its geopolitical dimension.

- **Climate diplomacy remains a core component of EU foreign and security policy** and is an increasingly important, joint priority on the EU's and its Member States' dialogues and cooperation with third countries and regions (2022)
- EEAS: Climate peace and security nexus, *Concept for an Integrated Approach on Climate Change and Security* (2021)
- The EU is fully committed to continuing supporting partners. and in particular Ukraine, including in responding to Russia's systematic destruction of Ukraine's critical infrastructure, and in particular the energy system (2023)
- Building on the **Team Europe** approach
- EU energy diplomacy **will discourage all further investments into fossil fuel-based** energy infrastructure projects in third countries (2021)
- **Human rights**, democracy and the rule of law remain the EU's common compass and core values including in our green diplomacy. Access to a clean, healthy and sustainable environment is a human right (2023)

- External dimension of the EGD as part of the external action of the EU
- Objectives and competences, actorness
- Exercise of competence
- Promotion and cooperation: diplomacy

- -Legal basis and competences of the EU external action
- -EGD in FTAs
- -EGD diplomacy
- -Unilateral instruments
- -Withdrawal from the ECT

### -Art 191 TFEU

- 1. Union policy on the environment shall contribute to pursuit of the following objectives:
  - preserving, protecting and improving the quality of the environment,
  - (...)
  - promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

### - Art 192 TFEU

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.

### Art 191(4) TFEU

Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.

### ■ 194 TFEU

1. In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

- (a) ensure the functioning of the energy market;
- (b) ensure security of energy supply in the Union;
- (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
- (d) promote the interconnection of energy networks.

# -Legal basis and competences of the EU external action

- Art. 3(5) TEU
- “In its relations with the wider world, the Union shall uphold and **promote** its values and interests and contribute to the protection of its citizens. It shall **contribute** to peace, security, **the sustainable development** of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the **protection of human rights**, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.”
- Art. 21 TEU
- “1. The Union's action on the international scene shall be guided by the **principles which have inspired its own creation, development and enlargement**, and which **it seeks to advance** in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.
- 2. The Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to: (a) **safeguard its values** [...] b) consolidate and support **democracy, the rule of law, human rights** and the principles of international law; [...] d) foster the **sustainable economic, social and environmental development** of developing countries, with the primary aim of **eradicating poverty**; [...], f) helping “develop international measures to preserve and improve **the quality of the environment and the sustainable management** of global resources, in order to ensure sustainable development (...)

- **Global approach of external action objectives**

- Art 21 (3) TEU

“The Union shall respect the principles and pursue the objectives set out in paragraphs 1 and 2 in the development and implementation of the different areas of the Union's external action covered by this Title and by Part Five of the Treaty on the Functioning of the European Union, and of the external aspects of its other policies.

The Union shall ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure that consistency and shall cooperate to that effect.”

- Art 205 TFEU

The Union's action on the international scene, pursuant to this Part, shall be guided by the principles, pursue the objectives and be conducted in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union.

- Art 207 (1) TFEU

“The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.”

- Opinion 2/15, 16 May 2017, EU-Singapore free trade agreement

The commitments concerning sustainable development

- **166.** (P)rovisions of Chapter 13 of the envisaged agreement are **intended not to regulate the levels of social and environmental protection** in the Parties' respective territory **but to govern trade between** the European Union and the Republic of Singapore by making liberalisation of that trade **subject to the condition that the Parties comply with their international obligations concerning social protection of workers and environmental protection.**
- **167.** In the light of all the foregoing, Chapter 13 of the envisaged agreement falls (...) within the common commercial policy and, therefore, within the exclusive competence of the European Union referred to in Article 3(1)(e) TFEU.

■

- **Sustainable Development as a goal to be achieved:**
  - Labour Standards
  - Environmental Standards
    - The EU and its trade partners must: effectively implement international labour conventions and environmental agreements, including:
      - respect of core principles of the International Labour Organization (ILO), and;
      - effective implementation of the Paris Agreement on Climate Change
- Obligation not to lower standards:
  - Direct obligation not to lower.
  - Obligation for best endeavour to increase.

- TSD chapters:
  - an obligation to effectively enforce domestic environmental laws;
  - an obligation to effectively implement international environmental agreements (including the Paris Agreement and the NDCs); and
  - the prohibition from derogating or failing to properly and effectively enforce domestic environmental laws.

- EU-Singapore FTA
- Non-regression obligations prohibit Parties from derogating or failing to properly and effectively enforce their domestic environmental and labour laws **in a manner that affects trade or investment among the Parties.**
- EU-Chile FTA requires that '[a] Party shall not waive or other- wise derogate from, or offer to waive or otherwise derogate from, its environmental and labour laws **in a manner that weakens or reduces the protection afforded in those laws in order to encourage trade or investment**'.
- Paris Agreement went beyond just a non-regression obligation through the insertion of a progression clause

- Dispute settlement provisions

-Domestic advisory group (DAG) : TSD chapters have been exempted from the general dispute settlement mechanism of EU FTAs

Jan 2021: 2010 EU– Korea FTA panel of experts : domestic labor legislation in South Korea had failed to meet the State’s obligation to respect, promote and realize fundamental labor rights “in accordance with obligations deriving from membership of the International Labour Organization” as provided by the treaty. But: an on-going obligation (...) affording leeway for the Parties to select specific ways to make continued and sustained efforts”

### Opinion 2/15

This chapter “plays an essential role in the (...) agreement” (para. 162), which the Court interprets as “making liberalisation of that trade subject to the condition that the Parties comply with their international obligations concerning social protection of workers and environmental protection” (para. 166).

- Article 28(7) of the EU-Canada Strategic Partnership Agreement recognises that “a particularly serious and substantial violation of human rights or non-proliferation, as defined in paragraph 3, could serve as grounds for the termination of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) in accordance with Article 30.9 of that Agreement”
- According to Article 60(1) VCLT, a party can invoke a material breach of a bilateral treaty “as a ground for terminating the treaty or suspending its operation in whole or in part”.
- BUT
- Art.60(4) VCLT “The foregoing paragraphs are without prejudice to any provision in the treaty applicable in the event of a breach”.

- 22 June 2022 Communication of the Commission on
- 'The power of trade partnerships: together for green and just economic growth'

Enhancing enforcement by means of trade sanctions as a measure of last resort

*Complementary jurisdiction*

**EU-New Zealand FTA**

**EU/United Kingdom Trade and Cooperation Agreement**

- In the event of a serious and substantial failure to fulfil any of the obligations that are defined as essential:
  - - Seek a “timely and mutually acceptable solution” within the Partnership Council. - In the absence of a mutually acceptable solution within 30 days, either party may terminate or suspend the operation of all or part of the Agreement or of any supplementing agreement. Priority given to measures that least disturb the functioning of the FTA and any supplementing agreement.

- Investment protection

- *Vattenfall I v Germany* and *Vattenfall II v Germany*
- *Rockhopper v Italy*
- *WE v Netherlands* and *Uniper v Netherlands*

- CETA

- Opinion 1/17: Right to regulate

- Parties “**reaffirm their right to regulate** within their territories to achieve legitimate policy objectives, such as the protection of public health, safety, the environment or public morals
- **2021 EU–United Kingdom Trade and Cooperation Agreement**

## ■ Global Gateway

We will support smart investments in quality infrastructure, respecting the highest social and environmental standards, in line with the EU's values and standards. The Global Gateway strategy is a template for how Europe can build more resilient connections with the world.

### ***Ursula von der Leyen, President of the European Commission***

Between 2021 and 2027, Team Europe will mobilise up to €300 billion of investments for sustainable and high-quality projects, taking into account the needs of partner countries and ensuring lasting benefits for local communities. This will allow EU's partners to develop their societies and economies, but also create opportunities for the EU Member States' private sector to invest and remain competitive, whilst ensuring the highest environmental and labour standards, as well as sound financial management.

- **Global Gateway**
- **Leverage/** Financing projects “in digital, energy and transport sectors and to strengthen health, education and research systems across the world
  - – digital infrastructures and technologies “underpinned by proper regulation”;
  - – climate and energy “infrastructure investments and supporting regulation that will pave the way for the clean energy transition”;
  - – sustainable transport;
  - -health beyond the pandemic;
  - – and education and research for equitable and inclusive societies.

The Global Gateway is based on the Team Europe approach, consisting of the EU, the EU Member States – including their implementing agencies and public development banks – as well as the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD)

## **Sustainable Investment Facilitation Agreement (SIFA) with Angola, 2022, 2024 (Council decision 2024/829 )**

Part of the European strategy to secure access to critical raw materials/facilitate sustainable foreign direct investment between the parties by improving the transparency and predictability of the investment framework/ only one protection standard, the most-favoured nation (MFN) clause/ explicitly excludes recourse to investor-state dispute settlement mechanisms/ right to regulate in the public interest to promote sustainable development.

- The contracting parties shall:
  - (a) effectively implement the UNFCCC and the Paris Agreement, including its commitments with regard to its Nationally Determined Contributions; and
  - (b) promote the mutual supportiveness of investment and climate policies and measures, thereby contributing to the transition to a low greenhouse gas emission, resource-efficient economy and climate-resilient development.

## Promotion of technology transfers

- Samoa Agreement: UE-Organisation of African, Caribbean and Pacific States (OACPS)
- Cooperation in promotion and enforcement of the Paris agreement

## ■ The Carbon Border Adjustment Mechanism

Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023

Legal basis: Article 192(1) TFEU

EU importers of certain goods originating from third countries will have to acquire **public certificates (CBAM certificates) for carbon emissions embedded in imported goods**, based, in principle, on **the real emissions** released during the production process in the country of origin.

Equate the price of carbon emissions released in installations located in the EU and the price of embedded carbon emissions in imported products, preserving the competitiveness of industries located in the EU and promoting greater efforts in third countries to reduce emissions and implement more decarbonized production processes.

Brussels effect and global leadership

## ■ Council Conclusions 2024:

16. In line with the Carbon Border Adjustment Mechanism, aiming at reducing the risk of carbon leakage in a **WTO compatible** way, the Council calls for enhanced international cooperation and outreach to partners to lower carbon emissions in production processes.

**Compatibility of the EU CBAM with WTO rules**

### ■ Compatibility of the EU CBAM with WTO rules

- The principle on non-discrimination between like products : physical characteristics of the products, their final uses in the market, consumer tastes / processes and production methods (PPMs)
- The exception on measures relating to the conservation of exhaustible natural resources (art XX GATT)/ strictly “territorial” scope? (to justify measures that a Member adopts to protect health or life within its own territory)
- The chapeau of Article XX GATT 1994 : measures are not applied in a manner which **would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade**”.

**Exemption for products imported from LDCs and small island developing states (SIDS)/** transfer of revenues paid by EU importers with the purchase of CBAM certificates for imports of products from developing countries to the latter countries in order to **finance their decarbonization efforts**

- -Fossil fuels
- -Fair and equitable treatment
- -Modernisation
- -Withdrawal
- -The future of the intra-EU objection under the modernized ECT

## *EU external competence*

- 98/181/EC, ECSC, Euratom: Council and Commission Decision of 23 September 1997 on the conclusion, by the European Communities, of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects
- Legal basis: Article 54(2), the last sentence of Article 57(2), Articles 66, 73c(2), 87, 99, 100a, 113, 130s(I) and 235, in conjunction with the second sentence of Article 228(2) and the second subparagraph of Article 228(3) EC

## *Evolution of EU external competence*

- Withdrawal of the EU from the ECT
  - Council decision 2024/1638 of 30 May 2024
    - Legal basis: Article 194, para 2, Article 207, para 4, TFEU, Article 218, para 6, second subparagraph, points a) v)

## *Absence of coordinated withdrawal*

### *Some Member States remain contracting parties to the ECT*

- COUNCIL DECISION (EU) 2024/1644 of 30 May 2024 on the position to be taken on behalf of the European Union in the Energy Charter Conference
- COUNCIL DECISION (EU) 2024/3086 of 2 December 2024 on the position to be taken on behalf of the European Union in the Energy Charter Conference
  - Legal basis: Article 194(2), first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU

On 3 December 2024: the Energy Charter Conference officially approves the “modernised” version of the ECT

<https://www.energycharter.org/media/news/article/the-energy-charter-conference-adopts-decisions-on-the-modernisation-of-the-energy-charter-treaty/>

- Exclusion of Fossil Fuels/ Express carve-out for intra-EU disputes...

- Is mixity of the ECT mandatory?

### *Exclusive competence of the EU?*

- Modernisation of the ECT : Negotiating directives (10745/19) : unity “without prejudice to the division of competences
- Trade and sustainable development: Opinion 2/15, 16 May 2017, EU-Singapore free trade agreement
  - Mixity of the ECT as constitutional requirement : mandatory mixity?
    - Art 194 TFEU ; ISDS provisions in Opinion 2/15
    - Multilateral/ Bilateral Agreements (EU-UK TCA)

- Member States as parties to the ECT without the Union?
- An obligation to withdraw?
  - Obligation to ratify a mixed agreement? (Opinion 1/19)
  - Exercise of the EU competence by the Member States?

In the absence of obligation to withdraw:

- Withdrawal of the Union: Do the Member States need authorization to remain in the ECT?

*Art 2 (1) TFEU: When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts*

- COUNCIL DECISIONS (EU) 2024/1644 and 2024/3086 on the position to be taken on behalf of the European Union in the Energy Charter Conference

Legal basis: Article 194(2), first subparagraph of Article 207(4), in conjunction with Article 218(9) TFEU

*This is without prejudice to the division of competences between the Union and the Member States and any future coordination after the withdrawal of the Union from the Agreement*

## ISDS provisions and autonomy

- -Approval of the modernised ECT: Articles 7, 26, 27, 29 shall not apply among Contracting Parties that are members of the same Regional Economic Integration Organisation in their mutual relations.
- Pending arbitration proceedings ?
  - Declaration 26 June 2024, on the Legal Consequences of the Judgment of the Court of Justice of the EU (“CJEU”) in Komstroy and a Common Understanding on the Non-applicability of Article 26 of the ECT as a Basis for Intra-EU Arbitration Proceedings (“Majority ECT Declaration”)
  - Agreement *per se*: legal basis, Art 194 TFEU

### *Article 28 VCLT, Non-retroactivity of treaties*

- Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

### *Art 31 VCLT, subsequent agreement (interpretation?)*

- -Council Decision (EU) 2024/1852 of 25 June 2024 on the denial of advantages under Part III of the Energy Charter Treaty by the Union to any legal entity that is owned or controlled by citizens or nationals of the Russian Federation or of the Republic of Belarus and to any investment within the meaning of the Energy Charter Treaty which is an investment of an investor of the Russian Federation or of the Republic of Belarus
- Legal basis: Art 207 TFEU
- Declaration on behalf of the EU and 26 MS

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