

# Contemporary Issues of International and European Union Law : Tribute to Professor Dr. Manuel Lopes Porto

JOINT SEMINAR BETWEEN THE FACULTY OF LAW OF THE UNIVERSITY OF MACAU  
AND THE FACULTY OF LAW OF THE UNIVERSITY OF COIMBRA  
WITH THE SUPPORT OF THE SINO-LUSOPHONE ACADEMY OF THE UNIVERSITY OF COIMBRA

AND

RECOGNITION CEREMONY

28 OCTOBER 2024

COORDINATORS: TONG IO CHENG, JÓNATAS E. M. MACHADO

HONORARY COORDINATORS: RUI MARTINS, JOÃO NUNO CALVÃO DA SILVA



澳門大學  
UNIVERSIDADE DE MACAU  
UNIVERSITY OF MACAU

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JOINT SEMINAR BETWEEN THE FACULTY OF LAW OF THE  
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## PREFACE

The work now being published compiles the speeches and academic papers presented at the Joint Seminar between the Faculty of Law of the University of Macau and the Faculty of Law of the University of Coimbra, held at the former's facilities on October 28, 2024, under the theme '*Contemporary Issues of International and European Union Law*'.

The introductory and commendation speeches, delivered respectively by the Dean of the Faculty of Law of the University of Macau, Professor Tong Io Cheng, the Vice-Rector (Global Affairs) of the University of Macau, Professor Rui Martins, the Vice-Rector (External Relations and Alumni) of the University of Coimbra, Professor João Nuno Calvão da Silva, the Dean of the Faculty of Law of the University of Coimbra, Professor Jónatas Machado, the Associate Dean (Research) of the Faculty of Law of the University of Macau, Professor Wei Dan, and the President of the Institute of European Studies of Macau, Professor Paulo Canelas de Castro, underlined that this Joint Seminar between the two sister law schools, from the Macau Special Administrative Region of China and Portugal, and which counted on the support of the Sino-Lusophone Academy of the University of Coimbra, had a dual motivation and purpose: to celebrate a historical record of mutually beneficial relations for more than three decades between the two institutions, but also to launch a new initiative that opens a new era of a more intense and ambitious relationship; one joint seminar which is expected to be replicated annually, on a rotating basis between the two schools and which will further project the quality of research and teaching of these schools internationally, while simultaneously deepening their global recognition – one already well illustrated by the very honorable position that each institution occupies in the specialized rankings of University Law Faculties.

In its aim to celebrate decades of valuable relations between the

two Law Faculties of Macau and Coimbra, the Joint Seminar also sought to pay tribute to a great academic figure who, following in the footsteps of the first Coimbra Professors who, as area of studies Coordinators, among others, contributed to the establishment of the Law course at the Faculty of Law of the University of Macau (Professors João Almeida Garrett, Orlando de Carvalho, Rogério Soares, João Antunes Varela, Jorge de Figueiredo Dias), has himself, as invited Visiting Professor, played a decisive role in the development of the internationalization of this Faculty, with the launch in 2003 of the Master's Degree in European Union Law, International Law and Comparative Law in English and, even more broadly, in Macau, in the accreditation of European studies and global legal studies, particularly in the area of legal-economic sciences and European Union law: Professor Manuel Lopes Porto, distinguished Professor Emeritus of the Faculty of Law of the University of Coimbra, its former Dean, the founder and Director of the European Studies Course — a prestigious center for specialized research and teaching at that Faculty — and, amongst other public space roles, a member of European institutions, including academic ones. The always generous, knowledgeable, and, at all times humane and friendly contribution of Professor Manuel Lopes Porto in these areas in Macau, over more than two decades, both as an academic and as a public personality in Portugal and Europe at large, went beyond the confines of the University. This fructuous academic cooperation also extended to the Institute of European Studies of Macau and its activities, especially its international academic projects and the prestigious Master in European Studies, jointly developed with the University of Macau and which was pioneering in the Asia-Pacific area; this explains why the Institute of European Studies of Macau could not fail to be associated with this tribute, thus turning it into a homage from academic teaching and research institutions of Macau as a whole to a personality who nurtures love for Macau and who has given so much to Macau.

The important academic works presented in the Joint Seminar that this publication subsequently perpetuates and disseminates and

that deal with such important contemporary issues of international law and European Union law are, in their individual themes and depth, an eloquent demonstration of the maturity and academic excellence of each of the faculties and of the quality and elevation of the dialogue that they have always maintained. Starting with a reflection by Professor Lopes Porto himself on *The Role of Regional Blocs in a Globalized World; The Case of the European Union*, symbolically well representing the intellectual mentorship role that he always played on these matters in both schools and the impact exerted on subsequent generations of academics, it is followed by a study on *Legal Cooperation Among BRICS Countries* by Professor Wei Dan and one of her PHD supervisees, Yiliang Chen, one on *The European Union and the Promotion of International Peace and Security* by Professor Jónatas Machado, a study about the recent Ljubljana-The Hague Convention titled *Pursuing the Perpetrators of International Crime Beyond National Borders* by Professor Muruga Perumal Ramswamy, a learned overview of the topic *Regulatory Agencies in the EU* by Professor João Nuno Calvão da Silva and an assessment of *Developments of EU Energy Law and Policy* by Professor Paulo Canelas de Castro. In their attention to diverse contemporary problems of the globalised world, they also eloquently signal the capacity of these two schools, individually and collectively, to assert scientifically sound and audacious paths in the investigation of crucial problems of the modern societies of our times, called upon to undertake significant transitions, moreover in an uncertain or turbulent context. They also accredit the project that underpins and animates the Joint Seminar documented in this publication: that this will be the first of many other joint seminars and other common works between the two schools; that the ties between them will become ever stronger, for the benefit of the communities in which they are embedded and which they serve, and of the science of Law in general.

Paulo Canelas de Castro

Macau, December 2025





澳門大學  
UNIVERSIDADE DE MACAU  
UNIVERSITY OF MACAU



法學院  
FACULDADE DE DIREITO  
FACULTY OF LAW



JOINT SEMINAR BETWEEN  
FACULTY OF LAW OF UNIVERSITY OF MACAU AND FACULTY OF  
LAW OF UNIVERSITY OF COIMBRA:  
CONTEMPORARY ISSUES OF INTERNATIONAL AND EUROPEAN  
UNION LAW & RECOGNITION CEREMONY:  
TRIBUTE TO PROFESSOR DR. MANUEL LOPES PORTO

- Date:** 28 October 2024
- Venue:** E32-G020, Faculty of Law, University of Macau
- Organization:** Faculty of Law, University of Macau  
Faculty of Law, University of Coimbra
- Support:** Centre for Law Studies, Faculty of Law,  
University of Macau
- Research Circle on EU Law, Faculty of Law, University of Macau
- Research Circle on International and Economic Law, Faculty of Law, University of Macau
- Research Circle on Laws of Sino-Portuguese Speaking Countries, Faculty of Law, University of Macau
- Institute of European Studies of Macau

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## PROGRAM

14:45-15:00

### ARRIVAL OF GUESTS

15:00-15:45

### Opening of the Seminar & Recognition Ceremony

**Chair of the Session: Prof. Rui Martins,**  
Vice-Rector (Global Affairs), University of Macau

#### Opening Session (15:00-15:10)

Opening speech: (10 minutes, 5 minutes per each)

- **Prof. Tong Io Cheng**, Dean, Faculty of Law, University of Macau
- **Prof. Jónatas E. M. Machado**, Dean, Faculty of Law, University of Coimbra

#### Recognition Ceremony (15:10-15:45)

Tribute to Professor Manuel Lopes Porto for his contribution to activities in Coimbra and Macau

Awarder and awarding speech: (10 minutes, 5 minutes per each)

- **Prof. Rui Martins**, Vice-Rector (Global Affairs), University of Macau
- **Prof. João Nuno Calvão da Silva**, Vice-Rector (External Relations and Alumni), University of Coimbra

Commendation Speech: (15 minutes, 5 minutes per each)

- **Prof. Jónatas E. M. Machado**, Dean, Faculty of Law, University of Coimbra

- **Prof. Wei Dan, Associate Dean (Research),** Faculty of Law, University of Macau
- **Prof. Paulo Canelas de Castro,** President, Institute of European Studies of Macau

Acceptance Speech: (5 minutes)

- **Prof. Manuel Lopes Porto,** Professor, Faculty of Law, University of Coimbra

Conferral of souvenirs (5 minutes)  
Group Photo

15:45-15:55

COFFEE BREAK

15:55-16:50

1<sup>ST</sup> SESSION

**Moderator: Prof. Paulo Mota Pinto,** Faculty of Law,  
University of Coimbra

15:55-16:15

- **Prof. Manuel Lopes Porto,**  
Faculty of Law, University of Coimbra  
Topic: The role of regional blocks in a globalized world

16:15-16:35

- **Prof. Wei Dan,**  
Faculty of Law, University of Macau  
Topic: The legal cooperation of BRICS with the focus of Brazil and China

16:35-16:50

- Q & A

16:50-17:00

BREAK

17:00-17:55

2<sup>ND</sup> SESSION

**Moderator: Prof. Paulo Canelas de Castro,**  
Faculty of Law, University of Macau

17:00-17:20

- **Prof. Jónatas E. M. Machado,**  
Faculty of Law, University of Coimbra  
Topic: International Humanitarian Law

17:20-17:40

- **Prof. Muruga Perumal Ramaswamy,**  
Faculty of Law, University of Macau  
Topic: Pursuing the Perpetrators of International Crime Beyond National Borders: Is the recent Ljubljana-The Hague Convention a ‘shot in the arm’ or ‘reinvention of a wheel’?

17:40-17:55

- Q&A

17:55-18:05

BREAK

18:05-19:00

3<sup>RD</sup> SESSION

**Moderator: Prof. Tu Guangjian,** Faculty of Law,  
University of Macau

18:05-18:25

- **Prof. João Nuno Calvão da Silva,**  
Faculty of Law, University of Coimbra  
Topic: Regulatory agencies in the EU:  
a brief overview

**18:25-18:45**

- **Prof. Paulo Canelas de Castro,**  
Faculty of Law, University of Macau  
Topic: New Developments of EU Energy Law  
and Policy

**18:45-19:00**

- Q&A
- CLOSING

**19:30**

## DINNER

- Dinner offered to visiting colleagues





The Faculty of Law of University of Macau presented the Faculty of Law of the University of Coimbra with a souvenir  
(From left to right: Jónatas E. M. Machado, Tong Io Cheng)



University of Macau and University of Coimbra representatives presented a commemorative trophy to Manuel Lopes Porto  
(From left to right: Rui Martins, Manuel Lopes Porto, João Nuno Calvão da Silva)



University of Macau representative presented a souvenir to Manuel Lopes Porto  
(From left to right: Rui Martins, Manuel Lopes Porto)



The Faculty of Law of University of Macau representative presented a certificate of recognition to Manuel Lopes Porto  
(From left to right: Manuel Lopes Porto, Tong Io Cheng)



The Institute of European Studies of Macau's presentation of a commemorative trophy to Manuel Lopes Porto.  
(From left to right: Paulo Canelas de Castro, Manuel Lopes Porto, José Luís de Sales Marques )



Group photo of guests and speakers at the Joint Seminar Between Faculty of Law of University of Macau and Faculty of Law of University of Coimbra: Contemporary Issues of International and European Union Law and Recognition Ceremony: Tribute to Professor Dr. Manuel Lopes Porto

RECOGNITION CEREMONY:  
TRIBUTE TO PROFESSOR DR. MANUEL LOPES PORTO

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## OPENING SPEECH BY PROF. TONG IO CHENG, DEAN, FACULTY OF LAW, UNIVERSITY OF MACAU

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Esteemed Vice-Rector of University of Macau, Professor Rui Martins,

Esteemed Vice-Rector of University of Coimbra, Professor João Nuno Calvão da Silva,

Esteemed Dean of Faculty of Law of University of Coimbra, Professor Jónatas Machado,

Distinguished Professor Manuel Lopes Porto, and all my dear guests, colleagues, students and friends,

Good afternoon,

It is both an honor and a pleasure to welcome you all to this joint seminar between the Faculty of Law of the University of Macau and the Faculty of Law of the University of Coimbra. This gathering offers us a unique opportunity to engage in meaningful discussions on contemporary issues of International and European Union law, an area that has become increasingly relevant in today's interconnected world.

Today's seminar holds special significance for us, as it serves not only as an academic forum but also as a tribute to a remarkable individual whose impact resonates deeply within our institution. It is with profound respect that we honor Professor Manuel Lopes Porto for his exceptional contributions to legal education, international cooperation, and his support of the academic exchange between Macau and Coimbra.

Professor Manuel Lopes Porto career is a testament to intellectual excellence and public service. With over 45 years of experience, he has established himself as a leading authority in Competition Law and European Union Law, while also shaping policies at the national and international levels. From serving in the European Parliament to leading the National Planning Council of Portugal, his breadth of expertise reflects a lifelong dedication to public welfare, economic development, and the pursuit of justice.

However, his connection with the University of Macau goes beyond academic or political achievements. Professor Manuel Lopes Porto has been a mentor, collaborator, and friend to many within our faculty. His support has enriched our programs, strengthened our ties with Coimbra, and fostered a spirit of legal scholarship that bridges cultures and continents.

The theme of today's seminar, focusing on contemporary issues in International and European Union Law, perfectly reflects Professor Manuel Lopes Porto lifelong commitment to legal scholarship and international cooperation. His expertise in these areas, coupled with his dedication to fostering academic exchange, has been instrumental in strengthening the bonds between our institutions and enhancing our students' understanding of European legal frameworks.

We are particularly grateful for Professor Manuel Lopes Porto role in facilitating academic dialogue between Coimbra and Macau, two cities with deep historical connections and shared aspirations for legal excellence. His contributions have helped shape our approach to legal education and research, especially in understanding the complexities of regional integration and global legal frameworks.

Looking at today's program, which includes discussions on regional blocks in a globalized world, international humanitarian law, and regulatory frameworks, I am reminded of Professor Manuel Lopes Porto comprehensive vision of legal education – one that emphasizes both theoretical depth and practical relevance.

As we commence this joint seminar, I would like to express our sincere gratitude to Professor Manuel Lopes Porto for his outstanding contributions to legal scholarship and to our faculty. I also extend my warmest thanks to our distinguished speakers, our colleagues from the University of Coimbra, and all participants who have joined us today.

I would like to express my gratitude to everyone who has contributed to organizing this seminar, especially our partners from the Faculty of Law of the University of Coimbra. Your collaboration reaffirms the enduring connection between our institutions and serves as a foundation for future endeavors.

To Professor Manuel Lopes Porto — on behalf of the Faculty of Law, University of Macau, and all gathered here — I offer our deepest appreciation. Your legacy will continue to inspire us to pursue excellence, embrace change, and uphold the values of justice and cooperation.

Thank you all once again for being part of this meaningful occasion. I look forward to the discussions ahead and the new insights that this seminar will undoubtedly bring.

Please join me in warmly welcoming Professor Jónatas Machado, Dean of the Faculty of Law at the University of Coimbra, who will also share his opening remarks.

Thank you.

Tong Io Cheng  
Dean, Faculty of Law, University of Macau



## OPENING SPEECH BY PROF. JÓNATAS E. M. MACHADO, DEAN, FACULTY OF LAW, UNIVERSITY OF COIMBRA

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Esteemed Consul-General of Portugal in Macao and Hong Kong,  
Dr. Alexandre Leitão,

Esteemed Vice-Rector of University of Macau, Professor Rui  
Martins,

Esteemed Vice-Rector of University of Coimbra, Professor João  
Nuno Calvão,

Esteemed Dean of Faculty of Law of University of Macau,  
Professor Tong Io Cheng,

Distinguished Professor Manuel Lopes Porto, and all my dear  
guests, colleagues, students and friends,

Ladies and Gentlemen, good afternoon.

It is a great pleasure to join you today in this important moment for both the Faculty of Law of the University of Macau and the Faculty of Law of the University of Coimbra. Our two institutions share not only a common language, but also a deep sense of academic mission, an appreciation for legal tradition, and a commitment to preparing future generations for the complex challenges of the global legal order.

Today's joint seminar is a powerful affirmation of that shared mission. It represents far more than an academic gathering: it is an expression of a long-standing partnership, a bridge between legal

cultures, and a testament to the value of sustained intellectual dialogue. By bringing together scholars, researchers, and students from our two faculties, we enrich our own perspectives and strengthen the fabric of Lusophone legal scholarship.

In a world in which legal systems increasingly intersect — across borders, economic frameworks, technological innovation, and societal transformation — collaboration is no longer optional; it is indispensable. Seminars such as this one create the space where new ideas emerge, where comparative approaches deepen understanding, and where academic communities grow closer. They enable us to combine Coimbra's centuries-old tradition of legal thought with Macau's unique role as a meeting point between civil law and Asian legal cultures.

Our joint academic initiatives are also a reminder that universities thrive when they work together. When we share research, debate current issues, and explore innovative solutions collaboratively, we not only advance knowledge but also prepare our students to become global jurists — professionals capable of thinking critically, acting responsibly, and engaging constructively with different legal and cultural frameworks.

Allow me, briefly, to acknowledge the inspiration that the life and work of Professor Manuel Carlos Lopes Porto continue to offer. His deep commitment to the common good, his belief in the importance of economic and legal systems grounded in justice and dignity, and his lifelong dedication to teaching remain touchstones for our academic community. But above all, he reminds us that scholarship is a collective endeavour — one strengthened through openness, cooperation, and shared pursuit of truth.

It is therefore fitting that we honour his legacy today not only with words, but through action — by engaging in the kind of cooperative academic work that he so deeply valued.

Looking ahead, the partnership between our two faculties has enormous potential. Joint seminars can grow into sustained research clusters, co-taught courses, student exchange programmes, and collaborative publications that reach audiences across the Portuguese-speaking world and beyond. Together, we can continue to cultivate a transnational academic community that reflects the values of openness, intellectual rigor, and mutual enrichment.

Let today's seminar be not only a continuation of past cooperation, but the beginning of a new phase — more structured, more ambitious, and more dynamic. Let it serve as a platform from which students and scholars from Macau and Coimbra can engage with one another in meaningful, lasting ways. And let it reaffirm our shared mission: to promote legal education of the highest quality and to contribute to a more just and humane society.

Ladies and Gentlemen,

Thank you for your presence, your contributions, and your commitment to advancing the ties between our institutions. May this seminar inspire us all, and may our collaboration grow ever stronger in the years ahead.

Thank you.

Jónatas E. M. Machado



## AWARDER AND AWARDING SPEECH BY PROF. RUI MARTINS, VICE-RECTOR (GLOBAL AFFAIRS), UNIVERSITY OF MACAU

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Esteemed Consul-General of Portugal in Macao and Hong Kong,  
Dr. Alexandre Leitão,

Esteemed Vice-Rector of University of Coimbra, Prof. João Nuno Calvão da Silva,

Esteemed Dean, Faculty of Law, University of Coimbra, Prof. Jónatas Machado,

Esteemed Dean of Faculty of Law of University of Macau, Prof. Tong Io Cheng,

Distinguished Professor Manuel Lopes Porto,

Dear guests, colleagues, students and friends,

Good afternoon,

On behalf of the University of Macau (UM), I welcome you all here today, to the Joint Seminar between our Faculty of Law (FLL) and the Faculty of Law of University of Coimbra:

*Contemporary Issues of International and European Union Law and the Recognition Ceremony in Tribute to Professor Manuel Lopes Porto.*

The cooperation between our two universities and faculties of law dates to the nineties of the last century and it has been quite fruitful in the preparation and training of the Macao Legal Community. Then, it is a great pleasure to welcome here today the high-level representation from the University of Coimbra and its Faculty of Law, namely, Prof. João Nuno Calvão da Silva, Vice-Rector, Prof. Jónatas Machado, Dean of the Faculty, as well as Prof. Paulo Mota Pinto, all of them distinguished scholars from the University of Coimbra, that join us here today together with Prof. Manuel Lopes Porto.

Since today is going to happen the Joint Seminar between our two Faculties of Law: *Contemporary Issues of International and European Union Law*, organized by our Center for Law Studies, I wish that it can be a successful academic exchange, and I also hope that it can continue as an annual event held every year in either Coimbra or Macao.

Senior colleagues may remember, but it is probably new for younger colleagues and students that Scholars from the Faculty of Law of University of Coimbra, in particular, Professors João Almeida Garrett, Orlando de Carvalho, Rogério Soares, João Antunes Varela, and Jorge de Figueiredo Dias, contributed since the beginning to the foundation and development of our Faculty, with Prof. João Mota Campos and Prof. António Manuel Hespanha, as coordinators of areas of studies in the programs of Law, at all levels, since 1990.

The following generation, as invited visiting professors, gave also their contributions, like Prof. António Pinto Monteiro, the late Prof. João Calvão da Silva, Prof. JJ Gomes Canotilho, and the person we honor today, Professor Manuel Lopes Porto, in his case specially in the areas of Economy and European Law.

As Professor and Dean of the Faculty of Law of University of Coimbra, and in other duties, Dr. Manuel Lopes Porto, was always available to contribute to our Faculty and University. In UM and in

the Institute of European Studies (IEEM) (UM is an associate member of the Institute from its foundation in 1996) he has been a visiting professor teaching since the beginning of the respective programs, namely, the Master in European, International and Comparative Law, and the Master of European Studies.

He supervised some of our leading academic members, Professor Wei Dan, first Chinese Law Student to graduate with a Master and PhD in the University of Coimbra and in Portugal, plus, in Macao, Professor Almeida Machava, from Mozambique, first PhD Student graduating in law, in Portuguese language, in our FLL, that is currently a Professor in University Eduardo Mondlane, Maputo, Mozambique, and Research Assistant Professor in the Faculty of Law of University of Macau.

The IEEM published in English a version of his book, *Theory of the Integration and European Community Policies*, and Professor Wei Dan translated it to the Chinese language, and it was published by the University of Macau.

Besides, also, as a public person, like member of the European Parliament, President of the National Council for Education of Portugal, and President of the Municipal Assembly of Coimbra, he always supported our FLL and UM whenever necessary.

His relationship with Macao lasted for long, since he visited Macao in the end of the decade of 1980 with a delegation of the Alumni of the University of Coimbra, with the renowned writer Miguel Torga, and continued until today, not only within the scope of his academic relationship but also with his family members that are working and living in Macao.

I witnessed during my already long academic life at UM moments of academic significant achievements of our FLL with Professor Manuel Porto and our colleagues, with sincere academic and personal

joy, and it is my honor to be here today celebrating this excellent relationship of academic cooperation and personal dedication and friendship with the University of Coimbra and Professor Manuel Porto.

I congratulate the Faculty of Law of the University of Coimbra and the Faculty of Law of the University of Macau for the organization of this celebration and Professor Manuel Porto for his brilliant academic career and for sharing with us his merits and academic dedication and friendship.

Thank you very much!

Rui Martins

Vice-Rector (Global Affairs) of University of Macau

## AWARDER AND AWARDING SPEECH BY PROF. JOÃO NUNO CALVÃO DA SILVA, VICE-RECTOR (EXTERNAL RELATIONS AND ALUMNI), UNIVERSITY OF COIMBRA

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Esteemed Vice-Rector of the University of Macau,

Esteemed Directors of the Faculties of Law of the Universities  
of Macau and Coimbra,

Dear Friends,

Today is a very special day. A day that was necessary, institutionally  
and personally.

As Vice-Rector of the University of Coimbra in charge of  
International Relations and Alumni, today's tribute was a natural  
decision and a tribute that had to be paid in Macau. A great name of  
the Faculty of Law and the entire University of Coimbra, Professor  
Manuel Lopes Porto was and is also a great name in Macau, especially  
at the University of Macau, for more than three decades.

We all know Manuel Porto's very rich CV: an impressive political  
CV, including his two terms as a Member of the European Parliament;  
a brilliant academic CV, reaching the highest of academic life at the  
*Alma Mater* of Portuguese-speaking Universities, while also embracing  
the demanding duties of university management, as Director of the  
Faculty of Law, a position that Professor Jónatas Machado, a dear  
friend here today, also holds with excellence.

A joint seminar between the Faculties of Law of the Universities of Coimbra and Macau around our Professor Manuel Porto is also a tribute to this long-standing and decisive link in Sino-Lusophone friendship. A friendship that in Macau owes so much in recent times to names such as Rui Martins, Manuel Trigo, Gabriel Tong, Wei Dan and Paulo Canelas de Castro, to whom I would like to thank for his commitment in organising this afternoon's scientific conference.

Personally, if I may say so, I am deeply happy to have arranged, with the University of Macau, this very special moment for Professor Manuel Porto and his family. Because Manuel Porto deserves it. Manuel Porto deserves everything.

Manuel Porto is a good man. A man who only wants the good of others and only sees the good in others.

Manuel Porto is an immaculate citizen, dedicated to the community, not only in politics, but also in other public spheres, such as his work with the Catholic Church, an example of which is his presidency of the Academic Centre for Christian Democracy.

Manuel Porto is a caring and passionate husband, a loving father and grandfather. For him, family is above all else. Even in his frequent physical absences, Manuel Porto never fails to be very present.

Manuel Porto is his friend's friend, everyone's friend. A huge heart, an example to all his friends, his family by affection.

Manuel Porto is a happy man. Happy because he is good and grateful. Grateful for everything he has.

I try to draw inspiration from Manuel Porto every day: his kindness, his justice, his simplicity – typical of the great Masters –, his gratitude to God.

This tribute that I have dreamed up is, in this sense, a way of showing my gratitude, our gratitude, to Professor Manuel Porto...

Thank you, Professor Manuel Porto. Thank you for being the way you are and giving us hope in human nature. Thank you for everything!

João Nuno Calvão da Silva

Vice-Rector for External Relations and Alumni of the University of Coimbra



## COMMENDATION SPEECH BY PROF. JÓNATAS E. M. MACHADO, DEAN, FACULTY OF LAW, UNIVERSITY OF COIMBRA

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### Political Economy, Freedom And The Common Good Tribute to Professor Manuel Carlos Lopes Porto

I had the honour of being a student of Professor Manuel Carlos Lopes Porto in the discipline of Political Economy, in the first year of the undergraduate course. And it is with equal feeling that I dare to pay this simple tribute to this distinguished Professor of the Faculty of Law of Coimbra, who has earned wide admiration and esteem, nationally and internationally. I can say that having been a student of Professor Manuel Porto was an unforgettable and remarkable experience in all my education, for which I am very grateful. I am sure that he had a structuring and inspiring impact on the lives and thinking of several generations of students before and after mine, as well as on the academic community to which he belonged and on the life of our country.

This distinguished professor was characterized by a broad political and economic culture, a dizzying speed of reasoning and rigorous and sharp statements, always surrounded by a friendly, pleasant and well-disposed speech. At that time, there were still times of some ideological upheaval in Portugal. The Carnation Revolution had taken place less than a decade ago. The country was still looking for its democratic and social path in an international climate marked by the Cold War and the gradual affirmation of the process of European integration. Political and economic discussions, although less intense

than a few years before, took place and ran through the corridors of the Faculty and in the most varied spaces of conviviality, and were also characterized by ideological polemics and, in some cases, by personal acrimony.

At the Faculty of Law of Coimbra, the existence of different tendencies was noticeable, between those who defended a planned economy and those who believed that the free market was the solution to all problems. Among the professors the atmosphere was at the time a little more unclouded, correcting the excesses experienced during the revolutionary period. Professor Manuel Porto's various assistants were entirely allowed to give free rein to their political and economic thinking in practical classes, thus painting a varied and colourful mosaic of concepts and ideas, stimulating the scientific curiosity and critical capacity of the students.

In this context, Professor Manuel Porto's classes were culturally interesting and intellectually stimulating, able to familiarize students with the complex mechanisms that govern the economy. It was obvious that he did not believe in the constructive power of the so-called revolution of the proletariat or in the possibility of building a classless society where, as Karl Marx dreamed, man could devote himself to hunting in the morning, to fishing in the afternoon, and to criticism before going to bed. This does not mean that the social critique of the materialist dialectic was ignored and the injustices of the productive system were devalued.

In fact, it also did not seem clear to us that Professor Manuel Porto was willing to take the forces of the free market to their ultimate consequences, as advocated by authors such as Milton Friedman or Richard Posner, with the inherent risks of commodification of manifestly non-economic magnitudes. Nevertheless, at that time the American political and economic model was still very appealing, capturing the attention of the most sceptical intellectuals about communism and socialism, given the very positive contribution

that the United States had made to the victory over the forces of totalitarianism and the reconstruction of Europe after World War II.

Even so, Professor Manuel Porto's approach was always very rich and open to nuance. From him we learnt the virtues of John Maynard Keynes's counter-cyclical policies in combating economic depressions and recessions, through public investment, job creation and the stimulation of aggregate demand. We have also been alerted to authors such as John Kenneth Galbraith and his scepticism about the economic power of large multinational corporations and the technostucture they nurture over the political system, prices, consumption, the competitive market and workers' rights, including trade union rights and collective bargaining. For the students, it was increasingly clear that the State should assume an important role in the economy and society, with investments in infrastructure, health and education and regulatory interventions to correct market failures. Economic equilibrium and social justice could not be dependent on the free play of individual and collective interests and selfishness.

Professor Manuel Porto was also always attentive to the problem of economic integration at the global and regional level. His family connections to India naturally linked him to the thinking and concerns of economists such as Amartya Sen and Jagdish Bagwati. Both of them, in their own way, and despite the public divergences that characterized their relationship, were concerned with the creation of political, institutional, social and economic conditions that would favour development, growth and social justice, at the national level and on a planetary scale. Building on the thought of Adam Smith and David Ricardo, duly revised and corrected, these economists problematized the liberalization of world trade from the theory of comparative advantages, through the gradual elimination of state subsidies to production and customs barriers and measures of equivalent effect, with the aim of facilitating the free movement and exchange of goods and services at the international level.

Dr. Manuel Porto entered into this discussion, deeply studying the theories of economic integration and advocating a greater opening of the world economy. However, without ever being naïve to the point of closing his eyes to the risks of deindustrialisation, excessive dependence on the outside, unfair competition and economic and social inequality. These risks may be responsible for the setbacks we are currently witnessing, with the return of protectionism and even the declared trade war, in a geopolitical framework that generates the greatest perplexity.

An unconditional supporter of European integration, to which he was personally committed as a Member of the European Parliament, Professor Manuel Porto closely followed Portugal's accession to the European project, the deepening of the internal market, the creation of the European Union and the flourishing of European citizenship. Over several decades, his thinking seemed to be ideologically closer to the tradition of Christian democracy and the social market economy to which names such as Walter Eucken, Ludwig Erhard and Konrad Adenauer are linked, which emerged indelibly linked to the so-called German economic miracle and which would eventually be expressly enshrined in the Treaty on European Union.

At stake is an economic model that seeks to combine, in a dynamic and socially attentive way, a free but regulated market, the promotion of welfare policies and income redistribution, the participation of workers in the management and profits of companies, and monetary and fiscal stability. In the European Union, its fundamental pillars are the freedoms of movement of people, companies, goods, services and capital and competition. In addition, it is subordinated to the principles of respect for fundamental rights, democracy, the rule of law, and is duly framed by the seven European institutions and multiple bodies and agencies, some of them with an economically and socially relevant regulatory function.

In this model, the free market continues to be a driving force of

the economy, promoting efficiency in the allocation of resources and competition in the production and distribution of goods and services. However, it is at no time an end in itself or the lord to whom everyone must pay allegiance. On the contrary, the market is understood as a means to achieve various ends. Not being a master, he must be a serf, ensuring free economic initiative, contractual freedom, the right to private property – including the means of production – and the flow of production. It allows the general population access to the most varied consumer goods, in quantity and with considerable levels of quality and innovation.

But the market is always limited by other values, such as the rights of workers and consumers, public health, the environment, cultural heritage or spatial planning. Although he was not a fan of the free and unregulated market, Professor Manuel Porto did not fail to warn of the risk that excessive interventionism and regulatory and bureaucratic complexity, legitimized by these models, could gradually become embedded in the political and economic systems, petrifying the economy and threatening its ability to adapt and innovate. Hence, perhaps, his preference for the market.

Perhaps because I myself was raised in this environment, I soon sensed the Christian roots of Professor Manuel Porto's political and economic thought, something that I was able to confirm later when I learned of his ecclesial involvement. His constant concern for dignity, freedom, justice and equity was based on the intimate assimilation of an entire tradition based on the proclamation of the duty of care towards the most vulnerable – the poor, orphans, widows and foreigners – in the awareness that true religion must pass through one's neighbour towards God and men. Economic thought recognizes the material needs of the human being, since he is also body and community, but it always keeps in mind the biblical truth that man does not live by bread alone, but that he projects himself on the horizon of a spiritual and eternal reality that gives meaning and purpose to his earthly and finite existence.

In this collection of ideals, values and principles resided the critical instance that led Professor Manuel Porto to renounce a materialist vision of the world and of life, to reject political and economic totalitarianism and to look attentively and vigilantly at the market and international trade, lest one or the other become factors of indignity, injustice and extreme inequality. The economic system should establish relations of close substantive relationship with the political and legal systems, in order to provide the full and balanced realization of the individual and collective aspirations of human existence.

Professor Manuel Porto always sought to defend, above all, the common good, a very important concept in Christian social thought. This essentially consists of the thoughtful and harmonious protection of individual and collective interests, without ever slipping into individualism or collectivism. For Professor Manuel Porto, in line with what Adam Smith already advocated, the economy must be dynamized and regulated based on moral feelings of empathy and sharing in the social context and ethical principles of honesty in dealing, fairness in contracts and prices and respect for the dignity of the human person, without slipping into manipulation, predation, exploitation and exclusion of the poorest.

Manuel Porto always had in mind a more humane and solidary vision of economic and commercial integration, having in his Christian roots critical points of support that allowed him to face the human being and society in a frankly optimistic way, but always realistic and critical, never naïve. To honour Professor Manuel Porto, as is fair and due, is also to honour the values and principles that he represents and has always defended.

Jónatas E. M. Machado

Dean of the Faculty of Law of the University of Coimbra

## COMMENDATION SPEECH BY PROF. WEI DAN, ASSOCIATE DEAN (RESEARCH), FACULTY OF LAW, UNIVERSITY OF MACAU

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I am very honored to be here to pay tribute to Professor Manuel Porto. My Professor.

I do not intend to detail the great work of Professor Manuel Porto, nor his life path, but only to highlight some personal notes about the person and the professional Manuel Porto.

Professor Manuel Porto's academic career allowed him to develop an enviable scientific knowledge, and he knows how to use it in the most intelligent way for the liberation of minds in various domains. In the ten years that he served Europe as a member of the European Parliament, he was involved in the construction of Europe and the consolidation of European Law, but also at the service of international organizations such as the World Bank and the OECD, Professor Porto contributed to the adoption of international policies designed for the global context.

Yes, we are not talking about a "simple" Portuguese citizen, but an intellectual who always knew how to feel himself international, who always believed that international relations were the key to building nations and to strengthen cultures.

My academic career allowed me to cross paths with Professor Manuel Porto in 1999, at the University of Coimbra, Portugal, when I went there to pursue my master's studies. I remember as if it were today the simplicity of a great man when he accepted to accompany the preparation of my Master's Dissertation. The charm was so great

that I did not hesitate to knock on his door again to accompany me for the PhD.

I have indelibly recorded the various moments, during the preparation of both the master's dissertation and the doctoral thesis, in which at each meeting I received valuable advice from Professor Porto. In each of those meetings, the Chinese saying that "A single conversation with a wise man is worth a month of book study" became more and more crystallized to me.

I had the honor of translating his book "The Theory of Integration and Community Policies" from Portuguese to Chinese and as I was translating, I was fascinated by the intelligence with which it was written, a timeless work that still serves as a reference for scholars of international economic relations, especially on regional integration and inspires our master's students.

His lessons in this book represent a continuous contribution to a greater knowledge of the reality of European construction, by students of different degrees and from different areas (from Law to Economics, Political Science or International Relations) and by a much wider public, professionals and citizens in general, who cannot fail to be determined in their daily lives by this reality, so it is not surprising that it is constantly updated in its various editions, to accommodate current aspects of the life of Europe and the European Union, allowing its readers to be always updated.

But it is not only in the academic field that Professor Manuel Porto reveals his greatness. In the 25 years of coexistence and friendship he has revealed himself at every moment to be a great man, a human being of indescribable and immeasurable qualities.

A Chinese proverb says that "friends are like stars, even if you can't always see them, you know they're always there", this is to say that true friendship transcends physical distance and time. Although

geographically separated and the daily chores do not allow permanent contact, the truth is that Professor Manuel Porto has always been that ever-present star, a true friend.

With his characteristic humility, Professor Manuel Porto is a personality of recognized moral authority. By solemnizing the Scholar Manuel Porto, we simultaneously celebrate the man respected in various continents and social strata, whose path has always been marked by respect for diversity, recognition of the Other and his knowledge, humility, an immeasurable dose of humanism.

His constant engagement with teaching activities even when he could be enjoying his retirement is a reference to his commitment to other people and nurturing young generations with knowledge and a contribution to building better societies.

Due to the greatness of the person, some will say that this tribute is not very representative. It may be, I agree, but exalting the achievements of Professor Manuel Porto represents for us the crystallization of his thought and of knowing how to be and to live in a society, to continue to inspire generations.

Many congratulations! Professor Manuel Porto!

And thank you for being such a great intellectual and human being. From you we will continue to seek inspiration for our professional and personal lives so that we can also inspire others. That is our commitment to you!

Wei Dan

Associate Dean (Research), Faculty of Law, University of Macau

October, 2024.



## COMMENDATION SPEECH BY PROF. PAULO CANELAS DE CASTRO, PRESIDENT, INSTITUTE OF EUROPEAN STUDIES OF MACAU

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It is simultaneously easy and difficult to talk about Professor Manuel Porto and his connection to Macau and particularly the ties with the two institutions that in Macau he mainly dedicated his academic services and intellectual energies to: the Institute of European Studies of Macau (IEEM) and the University of Macau (UM). It is easy, on the one hand, because Professor Manuel Porto's actions in the academic world of Macau were so numerous, visible and influential that the mere reference to some of them shall easily be recognized by anyone who was graced with the opportunity to accompany, benefit from or simply witness this rich pathway. It is at the same time difficult, virtually mission impossible, because any recollection cannot but remain at the level of an almost vague and vain sketch, indubitably falling short of doing fair justice to the academic here deservedly recognized and the manifold community benefits of his actions.

Professor Manuel Porto first came to Macau to lecture for the Institute of European Studies of Macau, where since 2002 he consistently ensured the course on *Theory of Integration and EU Policies* over almost two decades. In this context, Professor Manuel Porto equally supported research on these key areas of European Studies and acted as mentor of swaths of students, mainly postgraduates. While collaborating with IEEM, Professor Manuel Lopes Porto equally contributed to the development by the latter institution and the Chinese Academy of Social Sciences of a European Studies curriculum. Similarly, his services under IEEM's banner for local bodies in Macau equally extended to GADI, the cabinet of the

government on international law, for joint projects of legal reform. Professor Manuel Porto has moreover actively participated in a good number of conferences and seminars organized by IEEM, on the sovereign debt crisis in Europe, on globalization, and on the occasion of a few Europe Days. His teachings have become perpetuated and made available to the wider public by the publication in English of his seminal textbook entitled *Theory of Integration and EU Policies* which IEEM endeavored.

Professor Manuel Lopes Porto's association with the Faculty of Law of the University of Macau as his invited visiting Professor occurred in particular in the context of the latter's flagship Law programme for training lawyers for the globalization era: the Master's programme in European Union Law, International Law and Comparative Law established in 2003, the first programme of the faculty in English and one catering for a universe of students for the first time hailing from all over the world. In this programme, Professor Porto has been responsible in particular for the *Economic Law of the European Union* course, at the core of the European Union Law area of studies. He has additionally always lent his enthusiastic support to the connected Jean Monnet Actions for which we became responsible at the University of Macau, namely two Jean Monnet Chairs (2007-2012 and 2018-2022) and two Jean Monnet Modules (2012-2015 and the one started in 2023) spanning a decade and a half of intense works, teaching on, conducting research, mentoring students and reaching out on EU and EU law-related matters as well as studies within the area of law and economics. In particular, he has been always ready to offer Jean Monnet seminars in the respective seminar series touching the more timely issues of the moment, with a particular keen attention on the economic and institutional relations of the European Union, with other partners and the world, in the context of globalization. He has similarly also contributed to the seminar series of the European Union Academic Programme-Macau, of the joint consortium University of Macau-Institute of European Studies of Macau, over the years 2012-2018. Professor Porto was also

the first speaker to intervene in the Jean Monnet Conference on the *50 years of the European Union: Assessing the Past, Looking Ahead* held in Macau in 2008, which gave rise to a book and the establishment of the European Union Studies Association Macau, the platform for joint actions by all the scholars and other professionals who in Macau hold a keen interest on European Studies. In the same vein, he also offered an acclaimed talk within the 2017 international conference organized by the aforementioned European Union Academic Programme-Macau that reflected on the *60 Years After the Treaties of Rome: What is the Future for the European Union?*. Not less impactfully, Professor Porto has equally contributed several articles and book chapters to publications in Macau, particularly the law journal of the Faculty of Law of UM, the *Boletim da Faculdade de Direito da Universidade de Macau*.

Besides having been one of the main developers of knowledge and social and political awareness on the European Union, its law and policies in the two main institutions mentioned involved in higher education, Professor Manuel Lopes Porto has also been a generous contributor to its accreditation in the wider academic world dedicated to European Studies, by assisting these Macau institutions network with other related foreign *fora*. Amongst such important sister institutions, mention be made first to the European Community Studies Association-World, of which Professor Porto has been the President, and also the Former Members Association of the European Parliament, dedicated to supporting other entities conduct European Union-related activities under its *EP to Campus* programme. Not less beneficially, he has always supported younger academics in Macau engaged with the same area of studies, by calling the attention to their works and Macau's relevance for dissemination of knowledge on the EU outside of Macau. A well-known global Professor himself, Professor Porto has always acted towards Macau, its institutions, and younger Colleagues as a benevolent bridge-maker, promoting mutual understanding and dialogue between different communities and their members. A *caput scholae* in the area, Professor Porto has moreover always proven ready and effectively available to lend a helping hand

to younger Colleagues motivated by the same interest in the area of European Studies.

All these commendable actions, Professor Porto did, no doubt because, beyond his natural generosity, he has a keen sense of the fundamental nature of the *universitas*: that the university, space of knowledge, research, dialogue, is inherently universal, boundaries-less. In all his actions in Macau, a common thread underlies, a common denominator is visible: the availability, desire and determination to contribute to the creation of the wider possible epistemic community on the European project, its relations, institutions and policies; for the benefit of their own and the prosperity and peace of Humankind. In Professor Porto's vision and his no less resolute action underlies a constructive belief that this epistemic community of European Studies' practitioners is one that transcends disciplines, schools, continents. In Professor Porto's vision, this community equally overcomes generational gaps; for rarely has a Professor elicited so much adhesion of different batches of Students as Professor Porto - with his inclusivity, attention to the students' aspirations and concerns, his dedication to mentoring and inspiring them, his unique personal touch and charm. Rarely has an academic unanimously gained the students' admiration and heartfelt friendship.

In paying tribute to Professor Manuel Lopes Porto, we are not only honouring the unique and distinguished personality, the deservedly acclaimed scholar; we are equally committing to preserving his legacy and pursuing the values of academic excellence, social fairness, humanism and inclusivity he has always stood for. Let his example continue to illuminate and inspire the two sister law faculties and communities that he helped bridge and to which he so generously devoted so much of his ingenuity and dynamism.

Paulo Canelas de Castro  
President, Institute of European Studies of Macau  
Macau 28 October 2024

## ACCEPTANCE SPEECH BY PROF. MANUEL LOPES PORTO, PROFESSOR, FACULTY OF LAW, UNIVERSITY OF COIMBRA

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Dear Colleagues,  
Dear Friends,

This tribute has for me a great meaning, for different reasons.

Of course, it is particularly so because it is a tribute of the University of Macau, together with the University of Coimbra, both here well represented.

And being conferred in Macau I cannot avoid mentioning the connections that I have with this prestigious region since more than three decades ago, on different occasions.

My first visit to Macau, in an academic context, was in 1987. Came then to Macau the choir of former members of the University of Coimbra, having invited to come with them also two other persons, two well-known persons of my country: António Almeida Santos, former Vice-Prime Minister of Portugal, and Miguel Torga, one of the most prestigious Portuguese writers.

From 1989 until 1999, in the period in which I was member of the European Parliament, I was always a member of the delegation working with China. It was a time in which Macau was still Portuguese, but the procedure of integration in China was going on. I came then three times on official visits to China, and in two of them the delegation came to Macau (and to Hong Kong). Besides other meetings, I shall never forget a meeting of four members of the delegation, in Beijing, with Lu Ping, the member of the Chinese government with

the responsibility of the negotiations with the Portuguese and with the UK governments; in particular, remembering the words that he expressed about the conversations with the Portuguese authorities.

The good evolution of Macau can, to a great extent, explain the presence, nowadays, of the Portuguese community, as is the case of having here six persons of my closest family: one daughter, my son-in-law and four grandchildren. You can understand that it has for me a very special meaning to have this distinction in the city where they live.

It was well stressed that this academic distinction is due to the academic cooperation that I have had with Macau for more than three decades, in the University and in the Institute of European Studies: lecturing, participating in seminars, publishing texts and being supervisor or member of juries of academic proofs. At the University I was also, for some years, a member of the Advisory Council, and quite recently renewed, until 2027, my participation as invited professor of the Faculty of Law.

Has also for me a great meaning the edition in Macau of my book “Theory of Integration and European Community Policies”, edited in Chinese by the University of Macau (translated by Professor Wei Dan), and in English, edited by the Institute of European Studies.

The area covered in this book is a very important scientific area, of course, as other areas of research and teaching. But it is very good to have in this way the opportunity to express to the students in Macau that the contributions of economic research, expressed in the EU policies, show that the ways followed, of openness, contribute to the progress of the European Union and of any other area or country, as China, and for our convergence.

After alternating periods of protectionism or of openness of the economies, in the last century, economic research has shown that

economists defending the openness of the economies were indeed right; public intervention should not be a protectionist intervention, the right way to follow being the promotion of the competitive conditions of the economies.

But together with this contribution of economic theory we have the clear indication given by the experiences in the last century, of slow growth or even stagnation in periods of protectionism and more growth in periods of openness.

And already in this century we have the great contribution of the experience of China, with the impressive rates of growth of the last decades due, to a great extent, to the openness of its economy, internally and externally.

Economic science and recent experience have also shown that the growth of other countries is a benefit not only for their economies, but also for other countries, opening more opportunities. And China is giving a good example in this sense, as well as the European Union (with the bad example, for some time, of the common agricultural policy, but no more nowadays).

It has indeed been a good experience to deal in Macau with scientific, economic and legal areas, which are areas of connection between China and Europe.

And I want to finish these words stressing in particular the benefits, for professors and for students, of the convergence at the University level, contributing in this way to a better and more friendly world in the 21<sup>st</sup> century.

Manuel Lopes Porto  
Macau, 28 October 2024



JOINT SEMINAR BETWEEN  
THE FACULTY OF LAW OF THE UNIVERSITY OF MACAU AND  
THE FACULTY OF LAW OF THE UNIVERSITY OF COIMBRA:  
CONTEMPORARY ISSUES OF INTERNATIONAL AND  
EUROPEAN UNION LAW

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# THE ROLE OF REGIONAL BLOCS IN A GLOBALIZED WORLD; THE CASE OF THE EUROPEAN UNION

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Manuel Lopes Porto

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**Abstract:** We are having now a new world, with emerging and reemerging countries having very important roles in the world economy. In this context, we could fear that the European Union would follow a protectionist policy. But it is not the case, the EU is a quite open economy (for some time with the exception of the Common Agricultural Policy), with good results.

And contributing in this way to show the advantages of international trade, it shows as well the possible advantages of a regional bloc: being the only way to give some steps, as forming a single market, having a currency common to several countries (the euro), promoting initiatives of great dimension (as the case of the Airbus project) or promoting territorial cohesion.

These achievements also benefit other areas of the world, with their citizens and their firms circulating and having business relations in Europe. And with its success the EU can lead other spaces to take similar steps, contributing also in this way to a better globalized world.

**Keywords:** Globalization; International trade; Regional blocs; Single market; Euro.

In the 21st century we will have a new world, a multipolar world, in which Europe, the United States and Japan (the *triade*) will go on

having an important economic role, but in which there will be other important powers, the BRICS, in particular China and India (Brasil in America), and other emerging countries. In fact, China and India are “reemerging” countries, having had for many centuries by far the biggest economies of the world, still in 1820 42.7 percent of world GDP, China with 28.7 percent and India 13.4, at a great distance of what were then or became later (as countries) France, with 5.5 percent, Soviet Union, with 5.5, United Kingdom 5.0, Japan 3.1, Germany 2.4, Spain 1.9, United States 1.8, Indonesia 1.6 or Pakistan 1.0.

China and India had afterwards great decreases, having in the beginning of this century 6 percent of the world GDP, China 4 percent and India 2 percent. But in the recent decades they are having enormous increases, in most of the years increases over 7 percent, being foreseen that in 2050 China will have 28 percent and India 17 percent of the world GDP; an increase due to a great extent to the openness of their economies, internally and externally

The growth of these economies, in particular the growth of China, causing competition difficulties in Europe, could of course have the risk of leading to a protectionist policy: in a line followed in USA by President Trump and suggested by some politicians in Europe.

But the European Union has followed along the decades a policy of openness, with good results. As recognized for example in “Strategy Europe 2020” (COM (2010) 2020, of 3.3. 2010), “the EU has prospered through trade, exporting round the world and importing inputs as well as finished goods. Faced with intense pressure on export markets and for a growing range of inputs we must improve our competitiveness vis-a-vis our main trading partners through higher productivity”.

It is an acknowledgement of the benefits of trade made also in many economic researches and by the EU in other documents, as in “Trade Policy Review – An Open, Sustainable and Assertive Trade Policy” (COM (2021)66final, of 18.2.2021), stating in the introductory words

that “trade is one of the EU’s most powerful tools. It is the center of Europe’s economic prosperity and competitiveness, supporting a vibrant internal market and assertive external action. As a result of the openness of our trade regime, the EU is the world’s largest trader of agricultural and manufactured goods and services and ranks first in inbound and outbound international investments”.

This strategy of openness is reflected in the average level of import duties of the European Union, of 3.6 percent, with 38 percent of the imports being not taxed (figures similar to those of the United States, here increasing now with Trump...), much more favorable to trade than the figures in most of the countries of the world, in the different continents (there was a wrong protectionist policy with the Common Agricultural Policy, but improvements have been made along the last decades).

With this strategy, the EU is having an important role contributing to the development of other countries, with exports to our area. It is to a great extent the case of China, the EU being the second destination of its exports, with 15.1 percent of the total, with the USA in the first place, with 17.4 percent.

Despite the challenges of openness, the EU, in particular the euro area, has by far the greatest surplus of the world in the current account balance. And it is so despite having some difficult competitive conditions, for example high costs of labour.

So, Europe has the important role, accomplished with success, of showing that it is possible to compete at the world level with the accomplishment of difficult but important social requirements (well stressed in a Council which did take place in Porto, during the Portuguese presidency of the Union in 2021).

The success of the European Union, in an open world, depends to a great extent on the condition of its market. This was also strongly

stressed in Strategy Europe 2020, stating that “a stronger, deeper extended single market is vital for growth and job creation”; in a document in which the strategy to be followed has three priorities, “mutually reinforcing”: smart growth, sustainable growth and inclusive growth; according to the first priority, being developed “an economy based on knowledge and innovation” (the comparative advantage in the coming years being not in other factors, as geographic localization or the price of capital, not to speak about the cost of labor...).

It is a strategy stressed of course also in other documents, as were the cases, already before, in 1997, of “The Action Plan for the Single Market”, in 2000 of the Lisbon Strategy, in 2010 of the Monti Report, “A New Strategy for the Single Market”, in 2015 “The Five Presidents Report. Completing the Europe’s Economic and Monetary Union”.

More recently, in 2020, we have the “New Industrial Strategy” (COM (2020) 102 final, of 10.3.2020) and its “Updating” (COM (2021) 350 final, of 5.5.2021).

In the beginning of section 3 of this second document, with the title “Strengthening Single Market Resilience”, it is well stressed that “The Single Market is the EU’s most important asset, offering certainty, scale and a global springboard for our companies, and wide availability of quality products”; but adding of course that “this asset can not be taken for granted” (the required measures must be taken...).

Quite recently, in September 2024, the Draghi Report, on “The future of European competitiveness”, stresses different ways to follow, for example to promote innovation and decarbonization.

The formation of the single market has been already a success, removing physical and technical barriers (not so much tax barriers, being needed unanimity in the Council to be approved the required measures). And only an institution as the EU, with a close cooperation

of its institutions, the Commission, the Parliament and the Council, could have this kind of success. The removal of physical and technical barriers could not be achieved with bilateral agreements, not to speak the creation of a single currency (now adopted by 20 countries).

This is an extremely important role of the European Union, of course with a direct benefit for its citizens and for its economic activity (not stopping at the borders, having the same technical standards in many products and the same currency in 20 countries...); but it is an integration in the market which benefits as well the citizens and in particular the entrepreneurs of other areas of the world having activity in the EU.

It is so because, without borders, also their citizens and their lorries, transporting their commodities, can move freely among the large area of the European Union. And, with greater economic impact, when we have the harmonization of technical norms, we have the same advantage for a firm of the European Union or for a firm of any other area of the world: with the accomplishment of the norms approved being able to have access to buyers of any of the EU countries, a market with 460 million citizens.

And also the benefits of the euro are not confined to its geographical area. Mainly the microeconomic benefits, being avoided transaction, uncertainty, information and calculation costs, are also benefits for entrepreneurs of all areas of the world which have business activity in an area, the "euroland", which will be always a very important market (not to speak about the benefit for tourists who come to this so attractive area, using the same currency in 20 different countries...).

A regional bloc as the European Union can have also a very important role giving the required conditions to the initiative and concretization of projects of great dimension which, due to its costs

and risks, a firm of one country alone would not have. As an example we can mention the project Airbus.

And also in this case its success benefits not only Europe, also all other countries, including the United States of America, with their transport companies having the possibility of buying Boeings or Airbuses, being not limited to one monopolistic company, the producer of Boeings.

Another case is the case of the cohesion policy, with special relevance for regional policy, which could not be followed with the required dimension by some less developed countries.

But it should be stressed that in this way are not benefitted only the less developed areas, with the richer countries of Europe and of other areas of the world being also benefitted: because we have for this reason a smaller immigration to there, perhaps of migrants that in some cases it would not be easy to integrate, causing social problems, and mainly because with higher income people and firms of the less developed regions can import more from the more developed countries (as Germany and other countries).

And in the European Union regional policy has been indeed a successful policy: nowadays with one of the biggest shares in the budget, contributing for the approximation of countries with lower GDP (not always with the approximation of all regions...).

All the contributions just mentioned show the role that the European Union has already had and can increase in the future. It is therefore important to go on with the strategy of deepening and enlarging the single market, “a single market for the 21st century”; with recent documents giving special attention to “the recovery and fundamental transformation of the EU economy in line with its green and digital objectives” (COM (2021) 66 final).

Besides the benefits of these contributions, for Europe and for other areas, with its success the EU will lead other regional blocs and countries to take similar steps.

Also in this way, the EU can have an important role contributing for a better globalized world.



## LEGAL COOPERATION AMONG BRICS COUNTRIES

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**Abstract:** The BRICS cooperation framework has undergone a transformative expansion, marking a pivotal milestone in its development and injecting new momentum into efforts to reshape global governance. As a leading force within the Global South, BRICS embodies a paradigmatic shift from regionally confined collaboration toward a cross-regional model of solidarity. This article explores the multifaceted dimensions of BRICS cooperation, including trade and investment, legal assistance, finance and alternative dispute resolution — highlighting the tangible progress achieved through bilateral partnerships, particularly between China and Brazil. Despite these advances, the mechanism confronts mounting internal challenges, including growing heterogeneity among members, the absence of a permanent coordinating body, and a fragile foundation of political trust. These issues threaten the cohesion and efficiency of the cooperation. To ensure long-term sustainability and effectiveness, BRICS countries shall enhance the mechanism through improvements in institutional design, regulatory alignment, and political coordination.

**Key words:** BRICS expansion; Global governance reform; Global South cooperation; China-Brazil cooperation.

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## Introduction

The concept of the “BRIC” nations — comprising Brazil, Russia, India, and China — first emerged in 2001 when economist Jim O’Neill of Goldman Sachs identified these four countries as key drivers of future global economic growth.<sup>3</sup> His analysis highlighted their substantial contributions to global output and population, positioning them as rising powers in the international system. The idea later evolved into a formal platform for cooperation: in 2006, the original BRIC countries established an intergovernmental grouping aimed at enhancing dialogue among major emerging economies. The group expanded in 2010 with the inclusion of South Africa, thereafter adopting the acronym “BRICS.” Designed to provide a counterbalance to the dominance of developed countries — particularly those in North America and Western Europe — BRICS represents a collective effort by leading developing nations to assert greater influence in global governance.

The formation of the BRICS can be understood as a response to the crisis of legitimacy of global governance system, particularly within the international financial system, which was exacerbated by the 2008 global financial crisis.<sup>4</sup> BRICS positions itself as a platform for dialogue and cooperation among member states, with the purpose

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<sup>3</sup> O’Neill, J. (2001). Building better global economic BRICs (Vol. 66, pp. 1-16). New York: Goldman Sachs.

<sup>4</sup> Wei, D., & Rafael, A. P. (2023). INFLUENCING COMPANIES’ GREEN GOVERNANCE THROUGH THE SYSTEM OF LEGAL LIABILITY FOR ENVIRONMENTAL INFRACTIONS IN CHINA AND BRAZIL: LIGHTING THE WAY TOWARD BRICS COOPERATION. *BRICS Law Journal*, 10(2), 37-67.

of establishing an international system based on the rule of law and multilateralism.<sup>5</sup>

In a significant development, Egypt, Ethiopia, Iran, and the United Arab Emirates were invited to join the group, with their membership set to commence on 1 January 2024. On January 6, 2025, Indonesia formally joined BRICS, becoming the first Southeast Asian nation in this organization worldwide.<sup>6</sup> While Indonesia holds the distinction of being the first ASEAN member state to join BRICS, it is not alone in expressing interest in joining the BRICS. Other Southeast Asian countries, including Malaysia, Thailand, and Vietnam, have also demonstrated a proactive stance by initiating steps toward potential membership in this group.

Following this enlargement, the BRICS nations collectively account for a population of approximately 3.3 billion people, representing over 40% of the global population.<sup>7</sup> As for purchasing power parity (PPP), the collective share of global gross domestic product (GDP) held by BRICS nations surpassed that of the G7 economies as early as 2018. This divergence has become more pronounced over time, and by 2024, BRICS countries were responsible for approximately 35% of global GDP, while the G7's (the United States, Germany, Italy, France, the United Kingdom, Canada and

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<sup>5</sup> Dan, W. (2008). China's Embrace of Regional Trade Agreements on The Way To Multilateralism. *Cadernos da Escola de Direito*, (9).

<sup>6</sup> Retrieved from <https://www.csis.org/blogs/latest-southeast-asia/latest-southeast-asia-indonesia-joins-brics>

<sup>7</sup> Retrieved from [https://www.startupindia.gov.in/chinese\\_simplified/content/sih/en/BRICS.html](https://www.startupindia.gov.in/chinese_simplified/content/sih/en/BRICS.html)

Japan) share had declined to around 30%, reflecting a notable shift in the global economic landscape.<sup>8</sup>

It is undeniable that the BRICS economies hold a distinctive position in the global economy. Their rapid economic growth and demographic advantages highlight a structural superiority compared to other regions of the world.

Currently, the BRICS nations and their initiatives have become a central topic in global economic discussions and international political debates. Many optimists predict that, as fast-growing economies and rising political forces, the BRICS countries hold the potential to redefine the transformation of the international economic power structure by 2050.<sup>9</sup>

Legal cooperation among BRICS countries plays a vital role in shaping the future of global governance. Through legal cooperation, BRICS countries reinforce the principles of multilateralism and collective decision-making. By working together on legal frameworks, these nations showcase a willingness to engage in dialogue, compromise, and collaboration within existing international institutions.<sup>10</sup>

This paper aims to analyze and evaluate legal cooperation among BRICS countries as well as the BRICS cooperation mechanisms within the framework of global governance.

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<sup>8</sup> Retrieved from <https://www.statista.com/statistics/1412425/gdp-ppp-share-world-gdp-g7-brics/>

<sup>9</sup> Wilson, D., & Purushothaman, R. (2006). *Dreaming with BRICs: The path to 2050*. In *Emerging economies and the transformation of international business*. Edward Elgar Publishing.

<sup>10</sup> Mao Ruipeng, 'Multilateralism and China's UN Diplomacy' (2020) 85 *China Int'l Stud* 44

# 1. The BRICS Cooperation Mechanism within the Global Governance Framework

## 1.1 The Crisis of the Global Governance System

Global governance refers to a system of management, rules, practices, and actions implemented to address cross-border issues.<sup>11</sup> Robert O. Keohane et al. introduced the theory of global governance, defining it as a multidimensional construct.<sup>12</sup> First, it encompasses various levels of human activities that generate transnational impacts. Second, it manifests as a set of international rule systems. Third, within an increasingly interconnected and interdependent network, it includes multiple rule systems that form an integral part of the network.

In practice, many international organizations have released relevant documents emphasizing the urgent need for reform within the existing global governance framework. These reforms aim to effectively address a range of global challenges, including poverty, hunger, public health crises, inequality, environmental degradation, and transnational security threats.

Although the international community has widely expressed a strong desire to enhance cooperation and improve governance, the global governance process has not advanced smoothly. On the

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<sup>11</sup> Gao, F., & Yu, Z. Y. (2024). Challenges in Global Governance and China's Governance Proposals. *Contemporary China and the World*, (4), pp. 60–72. doi: CNKI:SUN:DDZS.0.2024-04-007.

<sup>12</sup> Keohane, R. O., & Nye, J. S. (2003). Governance in a globalizing world. In *Power and governance in a partially globalized world* (pp. 193-218). Routledge.

contrary, it has encountered structural stagnation and even risks falling into a “governance vacuum” or “state of anarchy.”

On one hand, multilateral mechanisms centered on the United Nations suffer from procedural weaknesses that undermine their legitimacy.<sup>13</sup> The reform processes of the World Trade Organization (WTO) and the core institutions of the Bretton Woods system (the World Bank and the International Monetary Fund) frequently face resistance. On the other hand, the dominant role of traditional Western powers, such as the United States, in shaping international rules has been increasingly questioned.

The deficits in global governance expose the limitations of the current system in addressing complex and evolving global challenges. Emerging economies and developing countries have expressed dissatisfaction with the existing governance structure, arguing that it fails to meet the demands of the Global South for equity and development. The rise of unilateralism, protectionism, and geopolitical competition has further constrained international cooperation. At the same time, global governance has become more complex, as new cooperation mechanisms led or heavily influenced by developing countries have strengthened cross-regional collaboration. These mechanisms include, but are not limited to, the Belt and Road Initiative (BRI), the Asian Infrastructure Investment Bank (AIIB), and the Shanghai Cooperation Organization (SCO). However, shaping these new mechanisms poses significant challenges for emerging economies, including the BRICS countries.

In summary, the global governance system is undergoing a transformation. Its goal is to establish a more inclusive, sustainable, equitable, and diverse framework for international cooperation. As

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<sup>13</sup> Zürn, M. (2021). *Multilateralism in crisis: A European perspective 1. In Towards a New Multilateralism* (pp. 119-131). Routledge.

a group of influential emerging powers, the BRICS countries have drawn the attention and expectations of the international community since their first ministerial meeting in 2006. They have played a pivotal role in advancing global governance reform, promoting South-South cooperation, and driving institutional innovation and structural reconstruction.

## 1.2 BRICS and the Global South

In contrast to Northern countries, the term “Southern countries” intuitively refers to geography. However, in the context of the international governance system, it encompasses broader political, economic, cultural, and social dimensions. Northern countries predominantly consist of developed nations located in the northern parts of the Northern Hemisphere, while Southern countries mainly refer to developing nations situated in the southern parts of the Northern Hemisphere and throughout the Southern Hemisphere.

Since the rise of Western nations in modern times, the world has progressively formed a dichotomy between the developed “North” and the underdeveloped “South,” often characterized as the “global city” and the “global countryside.” Countries of the “Global South” generally hold a critical stance toward the Western-dominated liberal international order, expressing strong dissatisfaction with its inherent injustices and inequalities while calling for fundamental reforms to the existing international governance system.

Although Global South countries account for the vast majority of the world’s population, the developed countries of the North — representing just about 22% of the global population — consume over 70% of the world’s energy resources and are responsible for more than 50% of global greenhouse gas emissions. This imbalance has exacerbated the development gap between the Global North and South.

Moreover, Southern countries are often located in tropical and low-latitude island regions, making them the most direct victims of climate change. They face multiple challenges, including extreme weather conditions, rising sea levels, and ecosystem degradation. With vast numbers of impoverished populations and limited financial and technological capacities, these nations struggle to effectively address the impacts of climate change.<sup>14</sup>

This reality has fueled the demand among Southern countries for greater representation and influence in international affairs, as they seek to secure a more equitable and inclusive global governance system.

The formation and development of the BRICS countries represent a dynamic process showcasing the rise and collaboration of major and middle powers within the Global South. However, significant heterogeneity exists among Southern countries in terms of political systems, cultural traditions, and foreign strategies. Furthermore, constrained by national capabilities, most Southern countries have long concentrated their cooperation efforts within their respective regions, with limited connections beyond.

For instance, regional organizations such as ASEAN, the Gulf Cooperation Council (GCC), the Community of Latin American and Caribbean States (CELAC), the African Union (AU), and the Shanghai Cooperation Organization (SCO) were all established and developed based on geographic proximity, with their scope of cooperation largely confined to specific regions.

In contrast, the BRICS countries have transcended geographical boundaries, linking regions such as Asia, Europe, Africa, and Latin

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<sup>14</sup> Dasgupta, S., Laplante, B., Meisner, C., Wheeler, D., & Yan, J. (2009). The impact of sea level rise on developing countries: a comparative analysis. *Climatic change*, 93(3), 379-388.

America. This shift has facilitated the transformation of regional cooperation mechanisms among Southern countries into a global cooperation framework.

Although the BRICS countries differ significantly in terms of land area, population size, and economic output, each member state holds a certain level of representativeness within its respective region and is generally recognized as an emerging power or a regionally influential middle power. Amid the ongoing transformation of the international governance system, the BRICS countries are well-positioned to leverage the BRICS cooperation mechanism as a platform to fully utilize their respective geographic advantages and diplomatic resources, fostering greater alignment with other regional organizations in the Global South.

By enhancing coordination and collaboration with these regional mechanisms, the BRICS countries have the potential to establish a multilateral cooperation network encompassing the entire Global South. This strategic upgrade — from “regional South” to “global South” — could contribute to the emergence of a more inclusive, multipolar, and balanced global governance framework.<sup>15</sup>

## 2. The Current State of Legal Cooperation

### 2.1 Trade and Investment

In recent years, the BRICS countries have made initial progress in investment and trade cooperation, signing several cooperation documents, such as the Framework for Trade and Investment Cooperation and the Action Plan for Investment Facilitation. These efforts have elevated investment facilitation from the practical

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<sup>15</sup> Merino, G. E., & Tianjiao, J. (2025). BRICS+ and the Global Power Transition. *Chinese Political Science Review*, 1-33.

level to the level of intergovernmental coordination, reflecting a shared commitment to enhancing policy transparency, streamlining administrative procedures, and strengthening service capacities. However, the BRICS nations still lack a unified, comprehensive, and binding institutional mechanism for investment cooperation, and investment barriers remain a significant challenge.

The 2020 BRICS Trade and Economic Contact Group meeting emphasized the need to strengthen facilitation measures without compromising national interests, providing fair protection for investors. In 2023, negotiations for the WTO Investment Facilitation Agreement were concluded, but the BRICS countries exhibited divergent positions. China, Russia, and Brazil supported the agreement, while India and South Africa maintained their stance on preserving regulatory autonomy for developing countries.

This divergence highlights the need for the BRICS countries to further improve the transparency and accessibility of their investment policies, simplify review and administrative procedures, and reduce information asymmetry and institutional transaction costs. By doing so, they can foster a more efficient and predictable investment environment within the region, while safeguarding national interests and regulatory capacities.<sup>16</sup>

## 2.2 Legal assistance

Overall, the BRICS countries place significant emphasis on judicial cooperation in the criminal domain, while cooperation in civil and commercial judicial matters remains less developed.<sup>17</sup>

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<sup>16</sup> Silva, E. M. D., & Campos, B. R. S. (2021). Possible legal cooperation for a BRICS perspective on international and transnational economic law. *BRICS Law Journal*, 8(4), 31-37.

<sup>17</sup> Zhu, W. (2018). Current Status, Problems, and Prospects of Judicial

In the field of criminal law, the United Nations has adopted the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption to combat transnational crimes and curb corruption. These conventions provide member states with cooperation mechanisms to facilitate criminal judicial collaboration. All BRICS countries are signatories to these conventions, which establish a multilateral foundation for criminal judicial cooperation in combating transnational organized crime and corruption.

In the realm of civil and commercial matters, the Hague Conference on Private International Law has developed the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. These conventions provide a legal basis for cross-border service of judicial documents and evidence collection in international civil and commercial cases. However, not all BRICS countries are parties to these conventions. As a result, in key areas such as cross-border evidence collection, international service of process, recognition and enforcement of foreign judgments, and application of foreign law — areas closely tied to international civil and commercial disputes — the existing cooperation mechanisms are insufficient to support litigation. Consequently, they are unable to address the large volume of international civil and commercial disputes among BRICS countries effectively.

## **2.3 Finance**

### **2.3.1 New Development Bank**

In 2014, the BRICS countries officially signed an agreement to

establish the New Development Bank (NDB), marking a historic breakthrough in building an independent financial cooperation mechanism. The creation of this institution was the result of years of political dialogue and economic coordination among the BRICS nations. As early as the Delhi Declaration issued at the Fourth BRICS Summit, the member states had expressed their shared desire to establish an independent development bank. The primary objective was to pool resources to provide financial support for infrastructure development and sustainable development projects in BRICS countries, as well as in other emerging economies and developing nations.

The institutional design of the NDB partially draws on the operational model of the World Bank, with a strong focus on infrastructure investment and development assistance. Against the backdrop of increasing global economic uncertainties, the NDB is committed to offering its member countries flexible and robust financing channels. Notably, the bank has played a significant role not only in enhancing the financial capacity of developing countries but also in creating employment opportunities and promoting regional connectivity, showcasing its broad potential impact.

By the end of 2022, the NDB had provided cumulative financing of nearly \$32 billion for key projects in various sectors across developing countries. These projects span critical infrastructure areas such as transportation, bridge construction, railway systems, and water resource management, injecting vital momentum into the development of the Global South.

### **2.3.2 Contingent Reserve Arrangement**

To ensure financial security, another significant financial cooperation mechanism among the BRICS countries is the Contingent Reserve Arrangement (CRA). This mechanism stems from the BRICS nations' dissatisfaction with the slow pace of reform

within the International Monetary Fund (IMF) and their aspiration to establish a financial safety net independent of Western-dominated institutions.<sup>18</sup> The CRA is designed to strengthen member states' capacity to address short-term balance of payments pressures, provide liquidity support, and reduce reliance on traditional international financial institutions such as the IMF.

The total size of the CRA is \$100 billion, with each member country allocated withdrawal quotas based on their contributions. Unlike the IMF, the CRA adopts an equal voting system and a consensus-based decision-making process, ensuring that no single country can dominate the decision-making process. This voting mechanism is fundamentally different from the weighted voting system used by traditional financial institutions and promotes equality among member states.<sup>19</sup>

Together with the New Development Bank (NDB), the CRA represents a strategic initiative by the BRICS countries to challenge the dominance of the United States and Bretton Woods institutions within the global financial system. These initiatives form part of the broader efforts by the BRICS nations to establish a multipolar world order.<sup>20</sup>

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<sup>18</sup> Würdemann, A. I. (2018). The BRICS Contingent Reserve Arrangement: A subversive power against the IMF's conditionality?. *The Journal of World Investment & Trade*, 19(3), 570-593.

<sup>19</sup> Luo, H., & Yang, L. (2021). Equality and Equity in Emerging Multilateral Financial Institutions: The Case of the BRICS Institutions. *Global Policy*, 12(4), 482-508.

<sup>20</sup> Evaghorou, E. L. (2016). BRICS states new development bank: challenges and controversies for the global political economy system. *International Journal of Diplomacy and Economy*, 3(1), 59-74.

## 2.4 Alternative Dispute Resolution

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (commonly referred to as the New York Convention) provides an efficient framework for the recognition and enforcement of foreign arbitral awards across different countries. Given the lack of smooth judicial cooperation mechanisms in civil and commercial litigation among the BRICS countries, and the fact that all BRICS nations are signatories to the New York Convention, arbitral awards are more readily recognized and enforced among these countries. Therefore, the BRICS countries can encourage parties to resolve civil and commercial disputes through arbitration.

In the resolution of international investment disputes, the Washington Convention provides an efficient arbitration and mediation mechanism for disputes between foreign investors and host states. The International Centre for Settlement of Investment Disputes (ICSID), established under the Convention, has played a significant role in facilitating cross-border capital flows and enhancing investor confidence. Although bilateral investment treaties (BITs) that China has signed with several BRICS countries reference the possibility of submitting disputes to ICSID, the Washington Convention applies only to its contracting states. Currently, among the BRICS nations, only China, Egypt, and the UAE are contracting parties, while other members have not yet acceded. As a result, most investment disputes are subject to the more limited Additional Facility Rules, which are significantly weaker in terms of arbitration procedures, impartiality, and enforcement of awards. This inadequacy severely hampers the efficiency and credibility of investment dispute resolution within the BRICS framework.

In response, some scholars have called for more BRICS countries to join the Washington Convention promptly.<sup>21</sup> Additionally, they

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<sup>21</sup> Zhu, W. (2018). Current Status, Problems, and Prospects of Judicial

propose exploring the establishment of an independent dispute resolution mechanism tailored to the development needs of BRICS countries, in order to enhance the overall stability and predictability of the investment environment.

## 2.5 A special focus on China and Brazil

Brazil is the largest country in Latin America with a population of 214.7 million people<sup>21</sup> (6<sup>th</sup> place in the world) and one of the world's leading economies (8<sup>th</sup> place in the world by GDP, \$2.05 trillion<sup>22</sup>). Since 2000, the country's macroeconomic stability has been improving, resulting in significant GDP growth, which peaked at \$2.46 trillion in 2014. In 2015-2016, due to a number of reasons, there was an economic downturn, from which the economy is gradually emerging.<sup>22</sup>

In 2016, the trade volume between China and Brazil was \$67.1 billion, showing a slight decrease from \$71.59 billion in 2015. China has consistently been Brazil's largest trading partner for several years.

In the field of judicial assistance in civil and commercial matters, China and Brazil signed a specific treaty on judicial assistance in civil and commercial matters in May 2009. This treaty contains detailed provisions regarding the recognition and enforcement of judicial documents for service abroad, cross-border investigation and evidence collection, as well as the recognition and enforcement of judgments and arbitral awards in international civil and commercial

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Cooperation Among BRICS Countries. Hebei Law Science (05), 12–19. <https://doi.org/10.16494/j.cnki.1002-3933.2018.05.002>

<sup>22</sup> Venera Shaidullina & Igor Semenovskiy, 'BRICS Countries' Economic and Legal Cooperation through the Prism of Strategic Planning Documents' (2022) 9 BRICS LJ 4

cases. These provisions are highly beneficial for the resolution of civil and commercial disputes between parties from China and Brazil.

In the field of criminal judicial assistance, China and Brazil signed a specific treaty on criminal judicial assistance in May 2004, which outlines clear and specific provisions for matters related to criminal judicial assistance. In order to effectively combat transnational crimes, China also signed a dedicated extradition treaty with Brazil in November 2004, aiming to extradite criminals who have fled to another country back to their home country for criminal prosecution or execution of penalties.

In general, compared to other BRICS countries, the bilateral judicial cooperation mechanism between China and Brazil is relatively sound. They have signed corresponding bilateral treaties in the areas of civil, criminal, extradition, and investment. In contrast, their bilateral judicial cooperation mechanisms with South Africa and India are relatively weak, with fewer bilateral treaties signed in the areas of civil, criminal, and extradition.

### 2.5.1 Overview

China and Brazil have established a robust and asymmetrical trade relationship. As of 2023, Brazil stands as China's ninth-largest trading partner, while China remains Brazil's top trading partner. The total bilateral trade volume reached USD 181.53 billion in 2023, representing a 6.1% increase compared to the previous year.<sup>23</sup> Notably, Brazil continues to be China's leading supplier of agricultural commodities, underscoring the strategic importance of agribusiness in bilateral economic exchanges.

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<sup>23</sup> Retrieved from <https://www.china-briefing.com/news/china-brazil-economic-ties-trade-investment-and-opportunities/>

Chinese direct investment in Brazil has predominantly targeted sectors such as energy, mining, infrastructure and industrial manufacturing. In contrast, Brazilian capital flows into China have been directed mainly toward real estate, coal-related industries, automotive manufacturing, etc. With the continuous deepening of China-Brazil economic ties, opportunities for bilateral trade and investment cooperation are expanding into emerging strategic domains, including renewable energy, advanced technologies, electric and hybrid vehicle production, etc.

Diplomatic relations between the two countries were formally established in 1974, and the relationship was elevated to a strategic partnership in 1993, reflecting mutual interests in expanding cooperation across multiple fronts. Over the past two decades, bilateral ties have been largely driven by trade expansion and investment flows, which have significantly intensified since the early 2000s.

During President Luiz Inácio Lula da Silva's first administration (2003-2010), Brazil adopted a more assertive approach toward engaging with emerging economies, particularly China. Lula's administration recognized China's rising global influence and prioritized the enhancement of bilateral relations. During this period, Lula visited China four times, and in 2009, China surpassed the United States as Brazil's largest trading partner.

Both China and Brazil are founding members of the BRICS grouping, a multilateral platform aimed at enhancing cooperation in areas such as trade, investment, innovation, and sustainable development. China hosted the 14th BRICS Summit in June 2022, and Brazil is scheduled to assume the rotating presidency in 2025, signaling continued engagement within this emerging economies framework.

However, bilateral relations experienced a period of relative cooling during the presidency of Jair Bolsonaro (2019-2022), whose

administration adopted a foreign policy orientation more closely aligned with the USA under President Donald Trump. This shift temporarily influenced the tone and trajectory of China-Brazil engagement.

Since President Lula's return to office in early 2023, diplomatic and economic relations between the two countries have improved markedly. The Lula administration has actively sought to rebuild and expand ties with China, with a clear emphasis on intensifying trade and investment cooperation.

In March 2023, China and Brazil signed an agreement to conduct bilateral trade settlements in local currencies, thereby reducing dependence on the US dollar. This move reflects Brazil's interest in diversifying its monetary exposure and aligns with China's strategic goal of promoting the internationalization of the RMB.

Subsequently, in April 2023, during President Lula's state visit to China, the two countries signed 15 new cooperation agreements, with a combined estimated value of USD 10 billion, further cementing the comprehensive nature of their bilateral partnership.

## **2.5.2 Opportunities for China-Brazil cooperation**

China and Brazil have established a solid and multifaceted foundation for cooperation in economic and trade domains, characterized by a high degree of complementarity and significant potential for expansion across a range of strategic sectors.<sup>24</sup> The following areas represent key avenues for continued bilateral engagement:

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<sup>24</sup> Zhao, S., Chang, T., Ni, Y., & Zhou, P. (2023). An empirical study of trade in goods between China and Brazil: analysis of competitiveness and complementarity. *Economies*, 11(9), 224.

## **i. Energy and Mineral Resource Development**

Brazil's extensive reserves of oil, natural gas, and mineral resources position it as a strategic partner for China, which continues to seek stable sources of raw materials to support its industrial development. China brings to the partnership advanced capabilities in resource extraction, processing technologies, and infrastructure development, laying a solid foundation for expanded cooperation in resource-intensive sectors.

## **ii. Technological Innovation and R&D Investment**

In an era defined by rapid technological change, innovation-driven development has become a priority for both China and Brazil. Brazilian entities are increasingly exploring opportunities to engage with Chinese firms and research institutions in areas such as artificial intelligence, biotechnology, renewable energy, etc. By participating in China's innovation ecosystem, Brazilian investors can not only access

cutting-edge technologies but also strengthen their competitiveness within global value chains.

## **iii. Infrastructure Development**

China, with its globally recognized expertise in infrastructure financing, engineering, and project implementation, is capable to contribute to Brazil's infrastructure modernization. Meanwhile, it is important for Brazil to make improvements in transportation, urban infrastructure, and digital communications. Therefore, it created an opportunity for cooperation.

### **2.5.3 China-Brazil bilateral trade**

Since the formalization of diplomatic ties between China and

Brazil, bilateral economic and trade exchanges have experienced sustained and substantive growth. Notably, from 2008 onward, Brazil's export volumes to China have expanded steadily, reinforcing China's status as Brazil's principal commercial partner. While Brazil ranks among China's top ten trading partners — specifically, the ninth — China has consistently maintained its position as Brazil's largest trading counterpart.<sup>25</sup>

Although China and Brazil have not yet concluded a formal free trade agreement, the two countries have established a series of bilateral economic and trade arrangements aimed at enhancing commercial cooperation. In recent years, the BRICS cooperation framework has played an increasingly important role in facilitating trade between the two nations. Within this multilateral platform, China and Brazil have leveraged institutional mechanisms to promote trade facilitation, thereby advancing the liberalization of bilateral trade flows.

#### **2.5.4 Brazil exports to China**

China has maintained its position as Brazil's largest trading partner for 14 consecutive years. Among all Latin American countries, Brazil was the first to achieve annual bilateral trade with China exceeding USD 100 billion. Brazil has consistently maintained a trade surplus with China, while simultaneously serving as China's primary source of agricultural imports — a status driven by Brazil's absolute dominance in core agricultural products such as soybeans. With China's sustained economic growth and expanding middle class, bilateral trade is projected to remain robust. This presents significant opportunities for Brazil to further diversify its export portfolio and enhance export value.

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<sup>25</sup> Dias, C. R., Leite, G. S., & Mori, J. S. (2016). Development of trade relations between Brazil and China: An analysis of the years 2002-2014 [Article]. *Espacios*, 37(24), 16.

### 2.5.5 China exports to Brazil

China's exports to Brazil are dominated by machinery, information and communication technology equipment, instruments, textiles, steel, and transportation-related products, with new energy technologies and electric vehicles (EVs) emerging as particularly dynamic sectors. Take electric vehicles as an example, they have become the fourth-largest category of Chinese exports to Brazil. Leading Chinese brands such as BYD, Chery, and Great Wall have established a strong market presence.

### 2.5.6 Brazil as a Key Destination for Chinese Investment

Brazil has emerged as China's largest investment destination in Latin America. According to data released by the Macau Trade and Investment Promotion Institute,<sup>26</sup> China continues to serve as the principal source of foreign direct investment (FDI) from Asia into Brazil. In 2023, Chinese FDI inflows into Brazil reached USD 45.3 billion, representing a 22.1% year-on-year increase, thereby positioning China as Brazil's ninth-largest investor by the end of the year. Projections by the Brazil-China Business Council (CEBC) suggest that this upward trend could lead to Chinese outbound investment commitments in Brazil reaching USD 73 billion, potentially elevating China to the position of Brazil's fifth-largest foreign investor, following the United States, the Netherlands, France, and Spain.

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<sup>26</sup> Retrieved from the official website of the Macao Trade and Investment Promotion Institute: <https://www.ipim.gov.mo/zh-hans/portuguese-speaking-countries-news-sc/2025-02-19-%E4%B8%AD%E5%9B%BD%E5%AF%B9%E5%B7%B4%E8%A5%BF%E6%8A%95%E8%B5%84%E5%88%9B%E6%96%B0%E9%AB%98/>

Since 2021, Chinese investment activity in Brazil has shown consistent growth. Between 2014 and 2024, Brazil attracted 137 greenfield investment projects from Chinese enterprises, with a cumulative capital injection of USD 10.6 billion. These investments have been heavily concentrated in energy infrastructure, transportation networks, and the automotive manufacturing sector.

Despite not formally joining China's Belt and Road Initiative (BRI), Brazil — like many other regions — has witnessed a diversification of Chinese investment projects. This includes significant developments in financial cooperation, with major Chinese financial institutions such as Bank of China, China Construction Bank, Industrial and Commercial Bank of China, and the China Development Bank establishing branches in Brazil to support bilateral trade and investment. The localization of Chinese tech firms is also notable: the consumer electronics giant Lenovo employs over 1,600 local staff and has invested BRL 500 million (approx. USD 72.6 million) to establish a joint R&D center in Brazil. In the field of agricultural cooperation, Brazil's position as a leading global agricultural producer — characterized by advanced technologies, fertile land, and favorable climatic conditions — complements China's sophisticated agricultural supply chains and precision management systems, facilitating a high degree of strategic alignment between the two countries.<sup>27</sup>

Regarding the legal framework for investment, China and Brazil signed a Bilateral Investment Promotion and Protection Agreement in April 1994. However, this agreement has not been ratified by the Brazilian Congress due to several concerns, including issues of national sovereignty, principles of sovereign equality, the lack of empirical

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<sup>27</sup> Retrieved from

<https://www.china-briefing.com/news/china-brazil-economic-ties-trade-investment-and-opportunities/>

correlation between bilateral investment treaties and increased FDI inflows in Brazil, and inconsistencies between treaty provisions and Brazil's domestic legal framework.<sup>28</sup>

To address this gap, Brazil introduced a new model for international investment governance in 2013, known as the Cooperation and Investment Facilitation Agreement (CIFA). Unlike traditional bilateral investment treaties, which focus on investor protection, CIFAs emphasize institutional cooperation and investment facilitation, often incorporating diplomatic and non-adversarial mechanisms. For countries reluctant to adopt Investor-State Dispute Settlement (ISDS) mechanisms but still seeking to resolve investment-related disputes, CIFAs present a viable alternative.<sup>29</sup>

In the area of tax coordination, China and Brazil signed the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income in August 1991. In May 2022, the State Taxation Administration of China and Brazil's Ministry of Economy signed a protocol amending the 1991 agreement and its annex, updating and refining its provisions to reflect current bilateral tax cooperation needs.

### **3. Challenges and Improvement of the BRICS Legal Cooperation Mechanism**

Although the BRICS countries have achieved certain results in multilateral cooperation, their mechanism tends to function more as

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<sup>28</sup> Dan Wei, 'Bilateral investment treaties: an empirical analysis of the practices of Brazil and China' (2012) 33 *Eur JL & Econ* 663

<sup>29</sup> Dan Wei & Ning Hongling, 'Is Investment Facilitation a Substitute or Supplement? A Comparative Analysis of China and Brazil Practices' (2022) 19 *Braz J Int'l L* 326

a temporary platform to address specific crises (e.g., the 2008 global financial crisis). As the impact of such crises gradually diminishes, the momentum of BRICS cooperation has weakened, and its future prospects have been called into question. This paper argues that, at the current stage, the BRICS countries face significant challenges that hinder their effectiveness and progress toward integration:

### **3.1 Increasing heterogeneity among member states**

One of the greatest obstacles to BRICS cooperation lies in the high degree of heterogeneity in legal systems and national contexts among its members. The original five BRICS countries already represented diverse legal traditions, including civil law, common law, and mixed legal systems, with significant differences in legal principles, procedural rules, and judicial practices.<sup>30</sup> These disparities make it difficult to establish unified standards on key issues such as mutual recognition of legal documents, evidence standards, and procedural justice. With the addition of new members, the BRICS mechanism has expanded to include ten countries, doubling the number of participants. This expansion has further magnified the differences in language, culture, historical traditions, political systems, and development paths. The interests and diplomatic preferences of member states have become increasingly diverse, and some bilateral relationships even exhibit competition or conflict. These multi-level divergences increase the costs of communication and coordination, reduce the efficiency and depth of cooperation, and pose significant challenges to the institutionalization of the BRICS mechanism. Developing an inclusive and operational cooperation framework in a highly diverse context is an issue the BRICS countries must address for long-term development.

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<sup>30</sup> Maria, Z., & Vladimir, P. (2018). Experiences of legal integration and reception by the BRICS countries: five passengers in a boat (Without a Dog). *BRICS Law Journal*, 5(2), 4-23.

### 3.2 Lack of a permanent coordinating institution

Currently, BRICS legal cooperation primarily relies on platforms such as ministerial meetings, lacking a permanent body to implement decisions, monitor progress, evaluate outcomes, or resolve disputes.<sup>31</sup> This absence of a standing institution weakens the binding force of legal agreements and results in inefficiencies and weak enforcement, particularly when dealing with sensitive or complex cases.

### 3.3 Weak foundation of political trust

Although BRICS countries publicly emphasize unity and cooperation, in practice, they often hesitate to share sensitive information or actively promote collaboration due to considerations of national interest and security. This lack of trust further undermines the depth of cooperation.<sup>32</sup>

Trust is the foundation of cooperation. However, the BRICS countries exhibit relatively low levels of internal trust, which is the result of a combination of historical conflicts, strategic interests, and external pressures. First, there is the possibility of geopolitical conflicts within the BRICS framework, such as the border disputes between China and India, which could heighten suspicion and caution among member states, thereby affecting collective decision-making. Second, the national interests and priorities of individual member states do not always align with the collective goals of the BRICS

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<sup>31</sup> Neuwirth, R. (2019). "Brics law": An oxymoron, or from cooperation, via consolidation, to codification? [Article]. *BRICS Law Journal*, 6(4), 6–33.

<https://doi.org/10.21684/2412-2343-2019-6-4-6-33>

<sup>32</sup> Monya, D., & Ndzendze, B. (2021). Introduction: The Genealogies, Elements and Implications of a 'BRICS Order'. *The BRICS Order: Assertive or Complementing the West?*, 1-34.

alliance. Cooperation among members is often more of an initiative rather than a structured, binding framework, which weakens overall cohesion. On the external front, Western powers' efforts to court or pressure BRICS member states have further exacerbated internal distrust. Some member countries, due to their significant economic dependence on the U.S. and Europe, may align more closely with Western positions on major issues. This external interference deepens divisions and mistrust among BRICS members, limiting the bloc's potential to act as a cohesive entity with greater international influence.

Improving the BRICS cooperation mechanism requires a comprehensive approach. In terms of institutional design, it is essential to first strengthen the capacity of existing BRICS institutions to facilitate more effective cooperation across multiple sectors. At the same time, a dedicated secretariat should be established to coordinate the cooperation agenda, streamline decision-making and coordination processes, and enhance overall efficiency. Efforts should be made to align rules and standards in key areas such as law, investment, and finance, gradually reducing institutional barriers to cooperation. For example, negotiating preferential trade agreements and launching joint investment projects can help promote intra-BRICS trade and increase economic interdependence. On the multilateral stage, BRICS countries should strive to present more unified positions — for instance, maintaining consistent stances in international forums such as the United Nations and the G20 — to amplify the BRICS voice and advocate for reform of global governance structures. Moreover, enhanced coordination of foreign policy is necessary to resist external forces seeking to divide the group and to strengthen BRICS' collective influence on the global stage. By addressing these issues, BRICS can build a more cohesive and efficient partnership that benefits all member states.

## Conclusion

At present, the global governance system is facing both risks and the imperative for reform. The Global South, represented by the BRICS countries, is emerging as a key force in promoting a more multipolar world and driving changes in global governance. The BRICS cooperation mechanism not only embodies the shared development aspirations of Global South countries but also reflects their collective demand for a greater voice in international affairs. In recent years, BRICS has undergone a historic expansion, doubling its membership and injecting new vitality into the mechanism, while providing a broader platform for solidarity and cooperation among Global South nations.

However, with the increase in member states, the BRICS cooperation mechanism is also encountering a range of new challenges, including growing heterogeneity among members, the absence of a permanent coordinating institution, and a weak foundation of political trust. These issues have, to some extent, undermined the cohesion and decision-making efficiency of the mechanism. To ensure the long-term sustainability of BRICS cooperation, member states must enhance the mechanism through improvements in institutional design, regulatory alignment, and political coordination.

Through these efforts, BRICS has the potential to build a more cohesive, efficient, and inclusive cooperation framework — one that not only advances the common development of its members but also provides institutional support and strategic guidance for the broader rise of the Global South.

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# THE EUROPEAN UNION AND THE PROMOTION OF INTERNATIONAL PEACE AND SECURITY

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**Abstract:** This paper examines the role of the European Union in promoting international peace and security, highlighting its diplomatic, operational and normative instruments. It underlines how European integration in the decades after the Second World War linked the promotion of the internal market and democratic political union to objectives that largely transcended the economic dimension. The European approach is presented as a model of effective multilateralism and commitment to the international order based on stable and fair rules.

**Keywords:** European Union; International Security; Peacebuilding.

The European Union constitutes a manifestation par excellence of the constructive power of political and legal ideas and its ability to respond to the desires for justice and peace of individuals and nations. The result of an integration process designed and carried out in the aftermath of the Second World War, it also demonstrates that gradual transformations can culminate in qualitative changes and paradigmatic shifts. What began as an attempt to relaunch the economic growth of European nations that emerged from the armed conflict and prevent the use of raw materials and energy sources for military purposes, became a political union structured in accordance with constitutional principles of respect for human rights. human rights, democracy and the rule of social and environmental law. The European Union today

presents itself as an association of States and constitutions, with sui generis political, legal and institutional characteristics, endowed with the capacity to unify and positively shape the destinies of the European peoples and to exert considerable influence throughout the world.

It is undoubtedly built on the various religious, political, economic and cultural foundations that, for centuries, have made possible the historical development of a true European identity, of Greek, Roman, Jewish and Christian origin, immediately perceptible, in particular, in architecture, painting, sculpture, literature or music which have two culminating points in the Carolingian revival and the reform of Pope Gregory VII. The religious impulse led to the creation of medieval universities, which preserved and transmitted the scientific and technological knowledge acquired, gradually increased it and proceeded to its critical revision. Christian political philosophy taught that the Monarch was subject to a superior law, which gave legitimacy, meaning and limits to his power and forced him to define himself as the first servant of the people. Political, economic and religious motivations impelled Europeans to sail around the world and consolidate their imperial projects. But don't think that the history of Europe was a quiet one. Political, economic and religious tensions manifested themselves in dynastic wars between European monarchs, economic rivalries between the various states, political-religious wars, conflicting colonialist and nationalist claims and popular revolts and revolutions.

Theological debates led to schisms that had repercussions in political ideologies and economic theories and led to different visions of the world. In the name of these were important conflicts, such as the Crusades, the Battle of Lepanto or the war for two thirty years. After the Peace of Westphalia, European nations fought against each other as rival economic powers in a predatory struggle, obeying a mercantilist, metalist, nationalist and colonialist logic. Caesarism and Monarchical Absolutism laid the foundations of authoritarian and

nationalist political philosophies. States competed among themselves for control of peoples, territories and resources, Rivalry gave rise to successive armed conflicts such as, among others, the Napoleonic Wars, the Crimean War or the Franco-Prussian War, culminating in the two world wars of the twentieth century.

The developments that have taken place ever since then are well known. The Treaty of Paris (1951) created the European Coal and Steel Community, which has since been extinguished, and the Treaty of Rome (1957) established the European Atomic Energy Community and the European Economic Community. In the beginning, there were only six States, namely Belgium, France, Italy, Luxembourg, the Netherlands and the Federal Republic of Germany. For them, Europe should be a civilized area of rational and fraternal cooperation.

From then on, Community law emerged, which, through judicial rulings of seminal boldness and relevance, saw its primacy over national law and its direct effect on public and private entities affirmed, making possible a true silent revolution in the culture and constitutional structure of the European States and peoples. It was largely around this right that the European project developed, which was increasingly expanded and consolidated as it became clear that economic aspects are inseparable from the political, civic, social, cultural, environmental, and security and defence dimensions and that an economic union inevitably requires the gradual unification of all these dimensions.

Strengthened and impelled by this awareness, European politicians decide to take decisive and decisive, but gradual and prudent steps, towards ever higher levels of integration and harmonisation. This process proved to be quite complex and full of interesting vicissitudes, and it is only worth noting here that the Treaty of Maastricht (1992) created the European Union, the Treaty of Amsterdam (1997) strengthened its constitutional substance and the Treaty of Lisbon gave shape, content and legal force to the Bill of Powers and the

Bill of Rights that today structure European Union law. namely the Treaty on European Union, the Treaty on the Functioning of the European Union and the Charter of Fundamental Rights of the European Union.

With this normative canon, elements considered essential to the European project can be affirmed or reinvigorated, such as European citizenship, fundamental rights, the internal market, economic and monetary union, the external border, the abolition of internal borders, the area of freedom, security and justice, police and judicial cooperation or the common foreign and security policy.

The European Union has seen its competences extended to areas such as education, culture, vocational training, the environment, energy and industrial policy, developing what it could only have been discerned at an early stage. There are very few areas of social life in which the European Union does not exercise any competence. In addition, it came to integrate twenty-eight states and suffered a weight loss with the departure of the United Kingdom.

Its seven institutions – the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the European Central Bank and the Court of Auditors – today exercise political, legislative, administrative, regulatory, jurisdictional, financial, monetary, exchange rate and control functions, of continental scope, in accordance with the most important constitutional principles – democracy, Rule of law, separation of powers, loyal cooperation – of national and federal matrix and following higher standards of governance and political and legal action, increasing the quality of representation and collaborative democratic participation of European States, peoples and citizens.

The process of European integration has not ceased to represent a Copernican revolution in the legal order of the States and in the teaching of law. The centre of gravity is no longer constitutional

law – which a few decades earlier had dethroned civil law – and has become European Union law. In addition to national laws, regulations, administrative acts and court rulings, legal operators have to adapt quickly to the new reality of European regulations, directives and decisions, currently legislative or non-legislative in nature, recommendations and opinions. The national executives gave in to the European Commission's initiative.

The importance of national legislative procedures has been put into perspective in favour of the ordinary and special legislative procedures of the European Parliament and the Council. National political, legislative, administrative and judicial authorities know that they are subject to European Union law and that their violation opens the door to possible sanctions against the State accompanied by civil liability actions. The judges already consider it absolutely normal to refer a preliminary ruling to the Court of Justice of the European Union, which is experiencing an exponentially growing litigation.

The teaching of law has become more demanding, but also stimulating from an intellectual and cultural point of view. Law students have seen their horizons broadened and are confronted with a federal law that is equally valid and effective throughout the European Union. The Erasmus programmes have enhanced and normalised their coexistence with European colleagues from all backgrounds, making the concept of European citizenship current, relevant and immediately perceptible. The national legal order was suddenly reduced to the status of partial law, inviting students to look beyond the old physical and mental boundaries. When studying European Union law, one quickly realizes that what appeared to be a surrender, a ceding of sovereignty by European states, resulted, in the end, in the reinvigoration of their respective visibility and preeminence and in the increase of their capacity to act and influence in the world.

Naturally, the geographical and demographic enlargement and the political, legal, economic and commercial strengthening of the

European Union have not gone unnoticed and do not please everyone equally. Russia reacted with astonishment and resentment – after the fall of the Berlin Wall and the collapse of the Soviet Union – to the unification of Germany and the accession to the European Union of the newly independent Baltic states and a considerable number of their former satellite states. This enlargement was seen by the most imperialist Russian sectors as a boldness and insolence, which should not be without due consequences.

The United States sees in the European Union a political ally and an economic and commercial rival, not hiding its aversion to European power in trade negotiations and perceiving the Euro as a long-term threat to the supremacy of the Dollar. In addition, they find the European Union's regulatory propensity especially irritating, which has a direct impact on their companies, namely in the technological, pharmaceutical, financial or agri-food sectors.

They will not hesitate to take the measures deemed appropriate to weaken the European economy – as they did with the United Kingdom and France after the world wars – by adopting protectionist measures and by sabotaging and emptying the World Trade Organization's Dispute Settlement Body if, as long as and whenever this is deemed necessary or opportune. Other powerful economic blocs, such as China, India or Brazil, would also prefer to negotiate with twenty-seven small European states rather than with the European Union.

External forces know where they can take if they want to weaken Europe. They know European history and the vulnerabilities that come with it. They can start by fomenting and financing the Eurosceptic, nationalist, regionalist and independence movements that exist in Europe. Similarly, these forces will seek to take advantage of migratory pressures and the multicultural difficulties they raise to revive memories of distant religious conflicts and sow disorder in the streets of European capitals. In addition, they are able to exert their influence by questioning old border markers, opening old wounds and

resurrecting old ghosts. Divide and rule continues to be a fundamental motto.

Russian interference in Brexit is an example of this strategy, as is foreign support for Catalan nationalism, just to mention two more notorious examples. In addition, these forces will seek to control strategic interests and key infrastructure in areas such as the media, technology, energy or the financial system, in a way that distorts the functioning of the sphere of public discourse and the democratic political system and creates relations of political and economic dependence and subordination. There has been no shortage of ambitious European politicians willing to receive large sums of money in exchange for collaborating with extra-European and anti-European goals and interests. Against this background, European democracy must be both vigilant and militant.

The European integration project has been a successful trajectory that has ensured more than six decades of harmony and tranquility in the old continent, which even earned it the Nobel Peace Prize in 2012. This is an unfinished movement, anticipating the accession of new States, in a process not free from trepidation, controversy and internal and external contestation. The stakes are high and some political actors seem to be bored and tired with so much peace time. When some States opt for the unilateral defense of their own interests, the European Union must promote multilateral solutions and promote respect for international law, as it has done recently by helping to implement an alternative body to the WTO's appellate body for dispute settlement, sadly boycotted by the United States of America.

The European Union must be able to provide a unified and sovereign response to external challenges, seeking to preserve its original vocation for peace and to find a realistic balance with its geopolitical security and defence needs. It must know how to reform itself internally in order to speak with one voice on the international stage, but without ever creating a barrier of personal and institutional

separation between European governance and national governance, an option that sooner or later would be likely to potentiate and aggravate internal tensions.

Above all, the European Union must not forget nor be ashamed of its roots, on the pretext of promoting some ideologically artificial and sterile idea of multiculturalism and inclusion, without historical and cultural traction. It was these roots that allowed them to build their fascinating civilization and that built their identity. It is its sap that still nourishes its collective unconscious, its power of achievement and its capacity for attraction. Europe's spiritual and intangible heritage is its greatest and most valuable intangible asset. European roots must be rediscovered and revitalized. The seeds of human dignity, peace and justice that gave them life must be re-sown on European soil and spread throughout the world.

# PURSUING THE PERPETRATORS OF INTERNATIONAL CRIME BEYOND NATIONAL BORDERS: IS THE RECENT LJUBLJANA-THE HAGUE CONVENTION A 'SHOT IN THE ARM' OR 'REINVENTION OF A WHEEL'?

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**Abstract:** Impunity is categorically recognised as one of the major obstacle in seeking justice and reparations by the victims of international crimes and serious violations of human rights. Instances of impunity are some of the major challenges facing effective enforcement of international criminal law. The prevalence of impunity dissuade efforts and hopes in making perpetrators accountable and as the fear of consequences dwindle, it may actuate the repetition of the crime. Impunity also triggers serious adverse effects on communities recovering from conflicts in achieving essential changes aimed at creating an egalitarian and a peaceful co-existence in the future. It fuels abuse of power and undermines trust in the rule of law and related institutions. Impunity in several forms is prevalent across various nations around the world and unlike the popular belief is not limited to conflict and war torn countries. Measures aimed at preventing and eliminating impunity have taken several forms. However, the paper argues that community of nations cannot get complacent with the existing normative resources fighting against impunity and should constantly be on vigil to identify and patch loopholes that perpetrators could take advantage to seek impunity. It argues that the success of any initiative to fight against impunity will be highly dependent

on enhancing effective ‘international cooperation’ and ‘mutual assistance’, given the major limitation that it has so far been primarily an agenda of bilateral or regional cooperation without attracting the traction of the wider international community. The paper identifies the pioneering features of the recent international regime established under the Ljubljana-The Hague Convention and argues that its potential to fight impunity should gain a greater significance. The paper systematically assesses major normative standards emerging from the new Convention to determine their effectiveness in promoting international cooperation to fight against impunity and highlights how its specific legal standards could fill the lacuna in international criminal cooperation.

**Key Words:** International Crimes, Impunity, International Cooperation, Limitations, Ljubljana-Hague Convention.

## 1. Introduction

Despite the successful establishment of the international courts and ad hoc tribunals, as well as the categorical recognition of expanding criminal jurisdiction of national courts in the form of extra territorial and universal jurisdictions, challenges continue to remain in rendering international criminal justice. Instances of impunity are some of the major challenges facing effective enforcement of international criminal law. Impunity is categorically recognised as one of the major obstacle in seeking justice and reparations by the victims of international crimes and for serious violations of human rights. The prevalence of impunity not only dissuade efforts and hopes in taking initiatives aimed at making perpetrators accountable, but has the potential to motivate the very commission of the underlying crime itself. As the fear of consequences dwindle, it may actuate the repetition of the crime. Impunity also triggers serious adverse effects on communities recovering from conflicts in achieving essential changes aimed at creating an egalitarian and a peaceful co-existence

in the future<sup>1</sup>. It fuels abuse of power and undermines trust in the rule of law and related institutions. Numerous adverse socio-economic consequences resulting from impunity like triggering deep divisions among social and ethical groups, inhibiting reconciliation, propelling corruption, stifling social and economic progression, and causing indeterminate damage to different strata of the society are well documented by studies and commissions of inquiries<sup>2</sup>. Studies have also highlighted a wide array of ramifications resulting from the prevalence of impunity ranging from psychological consequences to environmental degradation<sup>3</sup>.

Impunity in several forms is prevalent across various nations around the world and unlike the popular belief, it is not limited to conflict and war torn countries. Similarly, impunity is not limited to countries where there are authoritarian rule or weak governments that do not have effective control of the entire territory. Although, impunity in a narrow perspective particularly in relation to the commission of international or other serious crimes could be traced more in the above countries, impunity in a broader sense is found to exist among different nations across the world, including in the developed and democratic states. For example, the 'Atlas of Impunity' published by Eurasia Group in 2023 adopting a holistic approach in defining impunity revealed various degrees of impunity existing in 163 countries that formed part of their study. The Eurasia quantitative

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<sup>1</sup> See Susan Opatow, (2002), "Psychology of Impunity and Injustice: Implications for Social Reconciliation" in Cherif Bassiouni (ed.), *Post-Conflict Justice*, Leiden: Brill-Nijhoff, 201.

<sup>2</sup> For example, see a study on economic consequences of impunity M.B. Gordon, et.al. (2009), "Crime and punishment: the economic burden of impunity" 68 *Eur. Phys. J. B* 133.

<sup>3</sup> For one of the earliest studies on the psychological impact see Diana Kordon, (1991) "Impunity's Psychological Effects: Its Ethical Consequences" 17 *J Med Ethics* 29.

study assessing impunity with reference to five extensive attributes in a scale 1-5 identified the existence of high overall impunity score of above 2.5 in seventy seven countries, a score between 1 to 2.5 among sixty nine countries and only seventeen countries below the score of 1. Although, the five attributes assessed under the study referred to the broader aspects of conflicts and violence, human rights abuse, governance without accountability, economic exploitation and degradation of environment without a specific focus on international crimes, the Eurasia study exemplifies that most countries face concerns of impunity at some degree. Such a finding prompts the argument that international initiatives aimed at eliminating impunity should transcend beyond egregious violation of international criminal law and seek to prevent impunity across the board and in particular those related to attributes like 'conflicts and violence' and 'human rights abuse' that have direct nexus to the international crimes.

Measures aimed at preventing and eliminating impunity have taken several forms. First and foremost, certain theories of criminal jurisdiction and its wider adoption among national states in asserting jurisdiction transcending beyond crimes committed within their territories is a crucial element in fighting impunity. In particular, the extension of territorial jurisdiction beyond land territory, asserting jurisdiction based on theories relating to personality or nationality, expansion of extraterritorial jurisdiction, and exercise of universal jurisdiction can all be cited as potential theoretical foundations relevant to the fight against impunity. Secondly, categorical recognition of international crimes as well as creation and functioning of ad hoc international criminal tribunals and International Criminal Court (ICC) are no doubt some of the most important international initiatives that have a distinct dissuading effect upon impunity. Thirdly, bilateral or regional extradition treaties have served as important instruments preventing impunity of perpetrators of crimes fleeing a jurisdiction.

In addition to some of above cited examples, various other

international initiatives that play a crucial role to curtail impunity could be cited. However, the community of nations cannot get complacent with the existing normative resources fighting against impunity and should constantly be on vigil to identify and patch loopholes that perpetrators could still take advantage in seeking impunity. In this regard, it is crucial to realize that the success of any international initiative to fight against impunity will be highly dependent on effective 'international cooperation' and 'mutual assistance' and any perceived limitation or loophole in the related legal spheres should gain the attention and priority of the international community. Despite some of the substantive international initiatives that have the potential to fight against impunity discussed earlier, the focus on enhancing criminal cooperation and mutual assistance has primarily been in the frontier of bilateral or regional cooperation without attracting the traction of the wider international community.

It is in the above context, the pioneering role of the recent initiative of the international community under the auspices of the government of Slovenia aimed at developing an exclusive international regime to promote international cooperation to fight impunity against international crimes gains a greater significance<sup>4</sup>. Despite the pious purpose and ambitious agenda, a closer scrutiny of the important normative standards and obligations resulting from the resulting treaty regime is an indispensable exercise to determine whether the essential features of the emerging regime are capable of addressing impunity distinct from existing bilateral or regional initiatives. The present paper aims at systematically assessing the major normative standards emerging from the Ljubljana-The Hague Convention to critically determine their effectiveness in achieving the major objective and purpose of the regime in promoting international cooperation to

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<sup>4</sup> For a historical account of the fight against impunity see Cherif Bassiouni, (2000), "Combating Impunity for International Crimes", 71 U. Colo. L. Rev. 409.

fight impunity and how its specific legal standards could fill the lacuna of the period before the Convention, which was mainly characterized by bilateral or regional cooperation measures.

## 2. Fundamental values and motivations moulding the legal framework

In aspiring to develop an exclusive multilateral framework promoting international cooperation to deter impunity, the Ljubljana - The Hague Convention rests on certain basic values and principles, which arguably are indicative of the fundamental pillars upon which its comprehensive legal framework is built upon<sup>5</sup>. Despite the diversity in criminalization among different national jurisdictions, the scope of application of the Ljubljana - The Hague Convention is chosen to focus on certain international crimes that are the most serious crimes of concern of the international community with an aim to prevent impunity for anyone committing such crimes. The drafters of the Convention are of the strong conviction that fighting impunity related to these crimes is indispensable to promote peace and stability, serve justice and uphold the rule of law, which values should dictate the interpretation of the specific provisions of the new Convention. While categorically recognising that this is an important initiative in international law development to fight against impunity for international crimes, the preamble of the Convention clearly acknowledges the role of other pertinent existing sources including customary international law and various other multilateral treaty regimes in the field of international humanitarian law and international criminal law, which arguably is a stark reminder that any obligations

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<sup>5</sup> For a comprehensive set of UN principles pertaining to combating impunity see Frank Haldemann and Thomas Unger (ed.), (2018), *The United Nations Principles to Combat Impunity*, Oxford: Oxford University Press.

arising under the present Convention should be read in the light and spirit of the existing customary law and legal standards enshrined in those explicitly acknowledged list of treaty instruments<sup>6</sup>.

The new Convention also reinforces the significance of the existing rights and obligations of states including their responsibilities under the general international law and its other specialized fields like humanitarian and human rights law as well as refugee law. Beyond the emphasis of the rights of the states, the Convention explicitly recognises the rights of various persons including the victims and witnesses of a crime falling within its purview. The right of the accused for a fair treatment during entire criminal proceedings is also equally avowed. For effective criminalization of acts of international crime, the Convention underscores the importance of the facilitation of the process of investigation and prosecution of such crimes. In this regard, the role of both domestic efforts and international cooperation based on international obligations as well as domestic law are equally emphasised.

With a clear realization that the above two processes in the context of international crimes would transcend beyond national boundaries of a single state<sup>7</sup>, the Convention acknowledges the indispensability of international co-operation for an effective implementation of the two processes at a domestic level. As a consequence, it concludes that the underlying goal of enhancing international co-operation can only be achieved through the consolidation of the international legal

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<sup>6</sup> The key pre-existing treaty instruments specifically acknowledged by the Ljubljana - The Hague Convention includes Genocide Convention, the four Geneva Conventions and additional protocols on international humanitarian law, as well as the ICC Rome Statute.

<sup>7</sup> The Convention delineates the potential of foreign presence of people of interest like suspects and witnesses as well as the evidential materials or assets that are critical for carrying out the said processes.

framework for cooperation, which the Convention seeks to provide. To dissuade potential concerns of such consolidation of international cooperation obligations impinging upon national sovereignty, the Convention recites the relevance of pertinent international law principles of sovereign equality, territorial integrity and non-intervention. Finally, it is important to note that in the pursuit to strengthen the international legal framework governing international cooperation to fight against impunity, the Convention attaches the primary responsibility upon states to investigate and prosecute international crimes by imposing a mandate on them to enact relevant legislative provisions and undertake necessary executive measures to discharge such responsibility.

### **3. The core legal standards and principles constituting the Convention**

The fundamental objective of the Convention to promote international cooperation in criminal matters is primarily aimed at combating impunity for three specific crimes namely genocide, crimes against humanity and war crimes. However, the objective of the Convention is not limited to facilitating international cooperation only with regard to the three crimes but also in applicable circumstances to a broader category of ‘other international crimes’. This dual narrative arguably balances the intention to prioritize the fight against impunity with regard to the three specific crimes and yet extend the utility of the Convention to a broad category of other international crimes in circumstances where State Parties may choose the application of the Convention. The preponderance of the fight against impunity with regard to the three crimes can also be substantiated by the fact that the Convention has chosen to provide a comprehensive definition of the three crimes in all plausible elaborate terms. Moreover, the Convention’s definitions of the three crimes are not just reproduction from an existing legal instrument, but derived from a variety of legal sources to ensure that the scope

of the definitions is presented in its broadest form to facilitate the indubitable application of the Convention<sup>8</sup>. With regard to these crimes that are specifically listed and defined, the application of the Convention is categorially mandated. In addition, the Convention also provides for the possibility for the State Parties to extend its application to crime(s) that are listed in any of the annexes to the Convention in relation to any other State Party, which has notified the intention to extend the application of the Convention to the same crime(s)<sup>9</sup>. Finally, the Convention also contemplates an optional application of the Convention with the agreement of the State Parties to certain conducts when a prescribed set of conditions are met. The prescribed conditions require that the conduct referred by a State Party requesting cooperation should amount to a crime of genocide, crime against humanity, war crime or crimes of aggression, torture and forced disappearance under international law and domestic law of the requesting State Party and the conduct in question constitutes an extraditable offence under the domestic law of the requested State Party.

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<sup>8</sup> For example, among the three specific crimes defined, the definition of 'war crimes' being defined in broadest terms is derived from multiplicity of sources including the relevant humanitarian law Geneva Conventions of 1949, laws and customs governing international armed conflicts under the general international law, as well as norms governing non-international armed conflicts. See Article 5(4) (a-f) of the Ljubljana-The Hague Convention 2023.

<sup>9</sup> The Ljubljana-The Hague Convention 2023 contains four annexes expanding the acts defined as war crimes by the Convention. See Annexes A-E. In addition, three distinct annexes additionally adds acts that will constitute as crimes of torture, forced disappearance and aggression respectively. See Annexes F-H.

Firstly, in defining the crime of genocide, while the definition accentuating the crucial component of intention to eliminate certain groups partially or fully, chooses to delineate a range of specific acts, the commission of which will constitute the crime. It is important to note that such acts are not limited to killings, but also other pertinent acts that could exacerbate genocidal effects on any group like causing serious harm to body or mind, infliction of conditions of life aimed at physical destruction, imposition of birth preventive measures and forcible transfer of children from the group. The crime against humanity is also defined to enlist a range of specific acts that are carried out as part of a known widespread or systematic attack upon civilians. Such acts also transcend beyond murder to include notable ones like acts of extermination, enslavement, deportation, forced transfers, illegal imprisonment, torture, rape and various grave forms of sexual violence, persecution of groups on various grounds prohibited under international law, forced disappearance, apartheid and other similar inhuman acts. The Convention does not stop in just enlisting the above acts but also goes on to define most of the acts in specific details to remove any potential ambiguity as to when an enlisted act in question will categorically amount to a crime against humanity. The drafters of the Convention deserve due credit for an elaborate narration of the constituting elements of the core of the enlisted acts, as it will serve as an useful reference for the pragmatic application of the Convention. Its utility will be discernible in achieving the more elusive element of international cooperation, especially when State Parties have to face a range of individual diverse cases involving transboundary investigation and prosecution.

The Convention takes a two pronged approach in defining war crimes namely those that could result in international armed conflict and those arising in the context of a non-international armed conflict. It is further categorized into three subsects namely those specifically arising from the breach of Geneva Conventions of 1949, those that result from the violations of other relevant laws and customs applicable to international armed conflict within the broader

international law framework and those that arise from the breach of laws governing non-international armed conflict. The three subjects consists of different lists of specific acts, the commission of which will constitute a war crime. While the acts in relation to the violation of the Geneva Conventions forming part of the first subject includes generic scenarios like wilful killing and inflicting serious injury, torture or inhuman treatment, unwarranted and illegal destruction or appropriation of property, unlawful confinement or deportation, hostage taking as well as certain illegal acts targeted at prisoners of war, the second subject is enumerated with a much longer list of acts covering a range of persons in a war setting.

The second subject consists of twenty five distinct acts inflicting upon diverse set of people, objects and places including persons hors de combat, civilian population, civilian objects, personnel and objects involved in humanitarian assistance or peace keeping, natural environment, undefended places or dwellings that do not form part of military objectives, population of occupied territories, buildings dedicated to non-military purposes like education, religion, hospitals etc., persons in power of an adverse party, individuals or nationals of a hostile party, certain enemy property and individuals of a hostile army, belligerent nationals of a hostile party and minor children below the age of fifteen. Although, the list in the second subject reiterates various typical criminal acts arising in the context of an international armed conflict, the systemic furnishing of them in a coherent order at one single sub-article of the Convention would certainly serve as a ready reckoner in determining the application of the Convention to an investigation or prosecution in question.

The third subject pertaining to non-international armed conflict enlist acts in violation of the common article 4 of the four different Geneva Conventions of 1949 against non-combatants and persons hors de combat, including violence, mutilation, murder, torture, cruel treatment, outrages on personal dignity, humiliating and degrading treatment, hostage taking, and extra-judicial sentencing

and executions<sup>10</sup>. In addition, the Ljubljana-The Hague Convention provides a list of a dozen different acts that are carried out in violation of the other international laws and customs governing non-international armed conflicts, which will also constitute a war crime. Those acts include four categories of intentional direct attacks on a range of people, personnel, objects and places that typically are not directly taking part of hostilities, pillaging, rape, forced pregnancy or prostitution, sexual slavery, and other forms of sexual violence, conscripting minor children below fifteen into armed forces or engaging them in hostilities, forced displacement of people, treacherous killing or wounding a combatant, declaration of 'no quarter will be given' constituting refusal to take surrendering combatants as prisoners, subjecting an adversary to physical mutilation or scientific experiments endangering their life or health, and destruction or seizure of adversary property without necessity.

As in the case of international armed conflicts, it is evident that the Ljubljana-The Hague Convention also provides a very comprehensive sets of lists of acts that will constitute a war crime in the context of a non-international armed conflict. These lists will serve as a clear frame of reference in determining the duties to extend international cooperation for any investigation or prosecution arising in the context of an internal conflict. To enhance the effectiveness of these lists, the Convention mandates each State Party to ensure that the crimes governed by the Convention indeed constitute a crime under its domestic law and are sanctioned by suitable penalties. However, it is relevant to note that despite the comprehensive enlistment, the Convention seeks to balance the needs of maintaining law and order in internal conflicts. The said balance is achieved by the conspicuous

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<sup>10</sup> However, the above acts are confined to non-international armed conflicts albeit with the exclusion of internal disturbances and tensions such as instances of riots or sporadic violence. See Article 5 (4) (d) of the Ljubljana-The Hague Convention 2023.

exclusion of internal disturbances and tensions from the purview of certain provisions of the Convention as well as upholding the prerogative of national governments in maintaining internal law and order and defending the unity and territorial integrity of their state in specific contexts. Finally, it also imposes a blanket prohibition that all crimes governed by the Convention should not be considered as political crimes or associated crimes or motives.

Despite providing a comprehensive set of definitions of the crimes governed under the Convention, it proscribes any interpretation of such definitions from limiting or prejudicing other definitions of crimes under existing or developing rules of international law<sup>11</sup>. In addition to the primacy provided to the existing or developing international law rules, the Convention also paves way for the State Parties to apply other existing agreements between themselves (in the place of the Convention) if such application will facilitate the cooperation with regard to any subject matter falling within the scope of the Convention. These subservient provisions of the Convention demonstrates its devout intention to serve the objective of fighting impunity from international crimes in the best possible manner even if it warrants the restraint in the application of the provisions of the Convention. However, at the same time, in cases where the Convention becomes applicable, it mandates a State Party to assert criminal jurisdiction in a comprehensive set of circumstances including crimes committed within its territorial jurisdiction or on board of aircrafts or vessels under its state registration, when the alleged offender is its national or stateless but its habitual resident, when the victim is its national, and when an alleged offender is physically present in its territory who is not extradited or surrendered to others for standing trial. Although the Convention proclaims a general principle

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<sup>11</sup> Indeed, this proscription is not just limited to the definitions of crime under the Ljubljana-The Hague Convention 2023 but also all the provisions of the Convention.

of cooperation, whereby State Parties are only required to execute cooperation requests according to their domestic laws, it forbids subjecting the underlying crimes to which the Convention applies to any statute of limitation in contravention of international law.

The State Parties are required to recognize the right of any person to complain about the crimes governed under the Convention and to follow-up such complaints with prompt and impartial examination and other subsequent measures. Upon the examination, the State Party in whose territory the suspect is present is required to take the suspect into custody or take other relevant legal measure<sup>12</sup>, followed by a preliminary inquiry of the facts of the case. If that suspect is a national of another state or is a stateless person, the State Party taking custody or relevant legal measure is required provide assistance to the suspect in communicating with the representative of the suspect's national state or state of habitual residence respectively. In addition to this obligation to assist, the State Party taking custody should also directly notify the relevant State Party of which the suspect is a national or habitual resident, about the custody, the findings of the preliminary inquiry and the intention to exercise jurisdiction. The Convention also imposes the obligation '*Aut dedere, aut iudicare*' (obligation to extradite or prosecute), where by the State Party in whose jurisdiction the suspect of the crime is found is required to submit the case of initiating prosecution unless it decides to extradite or surrender the suspect in relevant circumstances of the case. Moreover, such State Party is also required to maintain certain standards of evidence in prosecution and conviction of the suspect and guarantee fair treatment to the suspect at all stages of the criminal proceedings. Finally, in addition to the obligation to apprehend, prosecute and punish individuals

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<sup>12</sup> This obligation is subject to a limitation that such custody or legal measure be continued only for a period necessary for the institution of criminal, extradition or surrender proceedings. See Article 13(1) of the Ljubljana-The Hague Convention 2023.

committing the crimes, the Convention recognizes the need for imposing criminal, civil or administrative liability and appropriate sanctions upon legal persons, in the event of their participation in those crimes. This extension of obligations to incriminate associated legal persons demonstrate the determination of the makers of the Convention to only deter the commission of international crimes but also rule out any involvement of powerful entities that may serve as potential abettor of the such crimes.

There are also other unique features of the Convention that calls for attention and are arguably characterizes the Ljubljana-The Hague Convention as a modern day international legal instrument. One of those features pertains to the personal data protection obligations imposed upon State Parties under the auspices of the Convention, which is untypical for any criminal law instrument to address, let alone one focused on international crimes<sup>13</sup>. The Convention includes some standard data protection mandates that are imposed on a State Party requesting data transfer like prohibition of use of data outside the purpose of transfer or other incompatible purposes, prohibition of transfer to any third state, obligation to abide by special conditions imposed by the requested State Party, obligation to provide appropriate protection against certain accidental, unlawful or unauthorized handling, access or processing of personal data, and the obligation of erasure or anonymization of data.

The Convention also imposes some common obligations on both

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<sup>13</sup> However, a general European Union initiative in this regard should be noted. See EU Directive 2016/680 on the protection of natural persons with regard to the processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32016L0680> (accessed on 25 May 2025).

the requesting and requested State Parties like the obligation to transfer accurate personal data to each other, obligations of consultation, notification, correction and deletion in certain circumstances, obligations towards any concerned person to access, rectify or erasure of personal data in permitted circumstances, and obligation towards any concerned persons to seek effective remedy for violation of data protection obligation imposed by the Convention. However, two important caveats regarding the data protection obligations are worth noting namely a) although the Convention mandates that a concerned person should be informed about the transfer of personal data about that person and the purpose of transfer, the said information need not be furnished if it would be prejudicial to the purpose and object of the Convention and b) despite the recognition of a general obligation of a requested State Party to transfer personal data, the same may be refused if such a transfer is prohibited under the domestic law of the requested State Party or there are valid reasons to believe that the legitimate interest of the data subject will be adversely affected.

On the one hand, it is plausible that these extensive data protection obligations could raise concerns of potential delays in information sharing among State Parties, however any such concerns should be seen in the light of certain balancing provisions of the Convention seeking to expedite information sharing. In this regard, it is crucial to note that the Convention provides for a spontaneous sharing of information by a State Party to another State Party even in the absence of a request in order to facilitate the later to undertake or conclude criminal inquiries and proceedings or formulate a letter requesting the information in accordance the Convention<sup>14</sup>. Finally, with regard to the practical question of bearing the cost of executing any request

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<sup>14</sup> Albeit subject to various requirements and restrictions imposed upon the State Party to which information is so transferred without its request. For details see Article 17 (2-5) of the Ljubljana-The Hague Convention 2023.

for cooperation emanating under the Convention, a balance is sought to be achieved by sharing the cost between requesting and requested State Parties in specifically defined circumstances. Interestingly, while a prescribed list of costs is sought to be paid or reimbursed by the requesting State Party, the ordinary cost of executing a request under the Convention is to be generally borne by the requested State Party and the specific cost of transportation of a sentenced person to a State Party that will administer the sentence should be borne by such an administering State Party.

#### **4. Distinctive Cooperative Features Designed to Fight Impunity.**

Three major features of the Ljubljana-The Hague Convention 2023 contribute to the objective of achieving effective international cooperation to fight impunity from international crimes. Detailed set of obligations are enshrined in the Convention to achieve a) mutual legal assistance, b) extradition and c) transfer of sentenced persons. In addition, there are two special set of provisions, namely one establishing relevant central authorities and facilitating effective communication among State Parties and another seeking to protect specific type of individuals like victims of a crime and witnesses and experts in related criminal proceedings. The above five issues constituting the majority of the focus of the Convention and the crucial obligations relating to each of them as well as its unique characteristics needs a closer scrutiny to determine the effectiveness of the legal framework developed under the Ljubljana-The Hague Convention 2023.

##### **4.1 Measures Manifesting a Balanced Mutual Legal Assistance Framework**

The mechanism for mutual legal assistance is arguably the most important contribution emerging from the Convention, as it covers

numerous specific elements of assistance systematically, that were erstwhile not addressed comprehensively in a single multilateral instrument. Moreover, the Convention upholds its potential role to serve as the legal basis for mutual legal assistance even in circumstances where a State Party requires the provision of such assistance conditional upon the existence of a treaty and a State Party requesting assistance has not concluded any such a treaty<sup>15</sup>. At the very outset, it warrants the State Parties to provide mutual legal assistance in the widest form in general, and to the fullest extent possible in cases involving the liability of a legal person, for the purpose of investigations, prosecution and related judicial proceedings in relation to the crimes to which the Convention becomes applicable. These two fundamental obligations obviously set the emergence of the legal principle of cooperation in very broad terms, which will be a very useful tool in interpreting various specific obligations of mutual legal assistance under the Convention in the event of any disagreement between State Parties.

The obligation to provide mutual legal assistance indeed translates to serve a wide range of purpose under the Convention, which evidences its uniqueness in establishing a pioneering international legal framework seeking cooperation for fighting impunity in a whole range of fields, where there did not exist any comprehensive multilateral regime. While some of the fields or types of mutual legal assistance that could be sought under the Convention be seen as typical in instances of mutual cooperation in criminal matters, the others are arguably ground-breaking<sup>16</sup>. For example, taking of evidence or statement, examination of objects and sites, giving information and providing items of evidence and expert evaluations, execution of searches, seizure and confiscation, serving of judicial documents, providing

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<sup>15</sup> See Article 29 of the Ljubljana-The Hague Convention 2023. See also Matanat Asgarova, (2021) *op.cit.*

<sup>16</sup> See the Ljubljana-The Hague Convention 2023, Article 24.

original or copies of documents, data and records, facilitation of voluntary appearance of persons in a requesting State Party or to transfer a detained person on a temporary basis, and to take protective measures towards victims of crimes, witnesses and their rights could be seen as typical in instances of mutual legal assistance. However, the types or fields like use of special investigation techniques, conduct of cross-border observations, constitution of joint investigation teams and inclusion of an open purpose provision namely providing 'any other type of assistance' compatible with the laws of requested State Party are arguably some of the most innovative elements of mutual legal assistance features seen in the Convention.

While the Convention prescribes the procedure and supporting documents for seeking the request for mutual legal assistance to enable the requested State Party to ascertain the authenticity of the request, it mandates the requested State Party to generally maintain confidentiality on various aspects of the request. The requested State Party also has the right to seek additional information if it considers that the information furnished by the requesting State Party in the first instance are insufficient. While submitting the request for mutual legal assistance, the requesting State Party could also seek provisional measures to preserve evidence, maintain an existing situation or protect legal interests that are endangered. Despite the prescriptions to substantiate a request for mutual legal assistance through submission of initial documentation and furnishing of additional information, the requested State Party could still refuse to provide the assistance sought and the Convention categorically identifies the permissible grounds upon which such refusal could result. The Convention takes a notable approach in this regard by prescribing a set of specific grounds of refusal<sup>17</sup> and at the same time mandating due consideration to principles of human rights and fundamental

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<sup>17</sup> For the specific grounds of refusal recognized under the Convention see Article 30 (1) (a-j).

freedom emanating from both domestic and international law. To limit the potential adverse impact the grounds of refusal may have on assistance seeking, the Convention embeds a possible safeguard measure, whereby the requested State Party is obliged to consult the requesting State Party to explore whether the assistance could still be granted based on imposition of certain terms and conditions upon the requesting State Party to comply.

If the request is granted, a general obligation is imposed on the requesting State Party, whereby the information or evidence shared as part of the request are barred from being transmitted or used for purposes other than for which the original request was made, unless the consent of the requested State Party is obtained to that effect. The Convention also prescribes relevant provisions governing the execution of a request for mutual legal assistance, which is mainly aimed at ensuring that the request is executed in consonance with the domestic law of the requested State Party and the request is carried out expeditiously. At the same time, it also provides for a dual possibility of a requesting State Party seeking an express request when necessary or the requested State Party postponing a request to avoid any potential interference with any ongoing investigation, prosecution or court proceedings<sup>18</sup>. After the prescription of legal standards governing the request and provision of mutual legal assistance in general, the Convention furnishes individual provisions governing specific types or fields of legal assistance. The types of mutual legal assistance for which separate individual provisions are prescribed includes depositions of persons, hearings through video conferencing, facilitation of appearance of persons in a requesting State Party,

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<sup>18</sup> For a systematic study of potential problems that may arise in providing mutual legal assistance in the situations of absence of a treaty between states see Matanat Asgarova, (2021) “Problems of the Non-Treaty Based Mutual Legal Assistance on Criminal Cases between the States” 1 Law Rev. Kyiv U.L. 294.

transfer of detainees on a temporary basis, transmission of evidences, permission and facilitation of special investigative techniques, assistance for the conduct of covert investigation, establishment and operation of joint investigation teams, authorization and assistance for conducting cross-border observations, cooperation for confiscation of proceeds of crime or property, facilitation of restitution, and disposal of confiscated assets.

Albeit a closer scrutiny of the above individual provisions revealing numerous innovative features promoting international cooperation as well as safeguards balancing the diverse interest of different stakeholders, a detailed discussion of the same should be deferred for another paper in the interest of space. However, two additional measures introduced by the Convention regarding mutual legal assistance calls for a special attention before moving to the issue of cooperation in matters of extradition under the Convention is examined. Firstly, in relation to some of the most innovative elements of mutual legal assistance features mentioned earlier, the Convention has established clear standards governing criminal and civil liability of officials involved in related operations like cross-border observations, covert and joint investigations, and use of special investigative techniques. Laying down of liability standards demonstrates the Convention drafter's foresight of sensitivity of the underlying cooperative operations and the potential risks of civil and criminal injury that could result. Moreover, it also evidences their anticipation of the preventive role such standards could play in dissuading any official disregard to the rights of any stakeholders, while undertaking such sensitive and untypical mutual legal assistance operations. Secondly, arguably one of the cornerstone provisions having an overarching effect in supplementing the purpose and spirit of the mutual legal assistance is the specific provision recommending the State Parties to consider the possibility of transfer of proceedings for purpose of prosecution when such a transfer would serve the interest of proper administration of justice in cases involving multiple jurisdictions.

## 4.2 Cooperative Measures in Facilitation of Extradition

Request for extradition in relation to the crimes to which the Convention becomes applicable and the presence of a person sought by a State Party within the territory of a requested State Party are the essential requirements for the application of the provisions governing extradition under the Convention. However, the Convention recognizes some *de minimis* rules namely a) the crime in question for which extradition is sought should be punishable offence by at least one year of imprisonment in both the requested and requesting State Parties, and b) in cases where the person sought is already convicted and sentenced to prison in a requesting State Party, the minimum remaining duration of the sentence to be served should be six months. The Convention also establishes itself as the legal basis for extradition in similar lines with the mutual legal assistance discussed earlier, whereby if a requested State Party mandates the existence of an extradition treaty with the requesting State Party to process the extradition, then the Convention shall be deemed to serve that role<sup>19</sup>. In as much providing the substituting role for itself, the Convention also recognizes certain concrete grounds of refusal of extradition. These grounds are interestingly presented in two distinct sets namely the circumstances in which extradition should necessarily be refused (mandatory grounds) and the circumstances, which may result in a refusal of extradition (discretionary grounds).

The four mandatory grounds that will trigger a refusal of extradition pertains to serious concerns like requests made for untenable purposes like intention to prosecute on the basis of a

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<sup>19</sup> For certain consequences of absence of an extradition treaty see Vesna Stefanovska, (2016) “Extradition as a Tool for Inter-State Cooperation: Resolving Issues about the Obligation to Extradite”, 2 *Journal of Liberty and International Affairs* 38.

person's race, religion, gender, colour, sexual orientation, political belief, etc, concerns relating to the potential punishment by death penalty as a consequence of the extradition, concerns of the risk of torture or other prohibited treatments or punishment, and possibility of denial of fair trial or flagrant violation of fundamental human rights etc resulting from extradition, and the passing of a final judgement by a court of the requested State Party on the same criminal conduct of a person whose extradition is sought. The ten discretionary grounds based on which a refusal of extradition may result pertains to a mixed set of circumstances like risk of certain types of punishments being imposed on a person sought, person sought is a person to be tried by a competent international court or tribunal, existence of a final judgment on the same criminal conduct of the person sought already rendered by an international or court of another State, etc. Although, this set of discretionary grounds in comparison with the first set of mandatory grounds of refusal generally involves relatively less serious concerns, certain grounds like the opinion of the requested State Party that the execution of an extradition request could prejudice its sovereignty, security, public order or other essential interests are bound to create serious concerns and the likelihood of the requested State Party refusing extradition under such circumstances is almost certain<sup>20</sup>. Nevertheless, it is pertinent to note that the Convention also recognizes the possibility of a requested State Party imposing certain terms and conditions as necessary for the requested extradition to be honoured in the event of its contemplation to refuse or postpone the extradition.

Once the extradition is granted, a general rule of speciality is triggered, whereby the Convention proscribes the requesting state from initiating proceedings, sentencing or detaining the person extradited for any prior crime other than for which that person

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<sup>20</sup> See Article 51 (2) (j) of the Ljubljana-The Hague Convention 2023.

was extradited<sup>21</sup>. Interestingly, at the same time the Convention recognizes the possibility of alteration of the description of the crime charged during the criminal proceedings albeit subject to the condition that the altered description would still constitute an extraditable crime. Re-extradition to a third state is forbidden unless consent to that effect is sought from the requested State Party. The Convention also permits the refusal of extradition on the grounds of nationality, however, subject to the condition already noted namely the obligation of '*Aut dedere, aut iudicare*'. Any extradition request is required to be in writing to enable the establishment of authenticity along with necessary supporting documents and the requested State Party is the obliged generally to keep the fact and substance of the request confidential.

In the event of any conflicting extradition requests made by more than one State Party or competent international criminal court or tribunal, the requested State Party is empowered to make its extradition decision with due regard to any of its binding international obligation on 'primacy of jurisdiction' or in the absence of such an obligation, to a set of relevant circumstances prescribed by the Convention<sup>22</sup>. Although a requesting State Party is permitted to may a request for provisional arrest of the person sought to be extradited to ensure the presence of that person at the extradition proceedings, it is encouraged to take into account all periods of detention during the execution of the extradition request while determining the total period of detention when ultimately imposing the punishment for the crime during the final custodial sentence or detention order.

The Convention prescribes practical procedures for the surrender of the person after a request for extradition is granted and permits

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<sup>21</sup> For certain permitted exceptions in this regard, see Article 52 (1) (a) and (b) of the Ljubljana-The Hague Convention 2023.

<sup>22</sup> See Article 58 (2) of the Ljubljana-The Hague Convention 2023.

the handing over of any related property during the surrender that could serve as evidence or is a result of proceeds of the crime in question. The Convention even addresses the potential situations of the need to transit extradited persons or persons in the processes of being extradited through the territory of another State Party, which demonstrates its drive to lay down comprehensive provisions addressing all facades of international cooperation to facilitate extradition aimed at preventing impunity. The pious intention to promote the objective is further heightened by the incorporation of an interesting pragmatic and efficacious rule, whereby the requested State Party is permitted to grant an extradition through a simplified extradition procedure, if the person sought consents to the extradition and the extradition in question is not manifestly precluded by its domestic law.

### **4.3 Terms Governing Transfer of Sentenced Persons**

As a third major cooperative measure, the Convention recognizes the possibility of transfer of any person sentenced for the covered crime in a State Party to another State Party for serving the sentence. Although such a transfer could generally be requested by the Sentencing State Party or the receiving (administering) State Party, it is also possible for the sentenced person to express interest in being transferred. In any case, the transfer can be effected only upon the satisfaction of five specific conditions namely 1) the sentenced person is a national of the administering State Party, 2) the judgment relating to the sentence is final, 3) the remaining period left in the sentence that is yet to be served is not less than six months<sup>23</sup>, 4) the sentenced person or a legal representative consents to the

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<sup>23</sup> However, an exception in this regard is recognized by the Convention, whereby a transfer could still be made in cases where the remaining unserved sentence period is less than six months albeit subject to the agreement of involved State Parties. See Article 67(4) of the Ljubljana-The Hague Convention 2023.

transfer, when either the sentencing or administering State Party deems it necessary due to the age or body or mental condition of the sentenced person and 5) both the sentencing and administering State Parties consent to the transfer. Like in cases of mutual legal assistance and extradition, the present Convention contemplates its role as providing the required legal basis, when a transferring State Party mandates a treaty with a requesting State Party to effectuate the transfer but the same is absent<sup>24</sup>.

Interestingly, the Convention not only prescribes the requirements for transferring sentenced persons but also creates an obligation upon the sentencing State Party to provide information about the substance of Convention governing such a possibility. Moreover, both the sentencing and the administering State Parties are obliged to inform each other in the event of the sentenced person has expressed an interest in being transferred to the respective state and ultimately inform the sentenced person about the outcome of the request for transfer. The Convention prescribes detailed provisions on how the relevant requests and replies can be made under the Convention along with details of the supporting documents that needs to be enclosed. As discussed earlier, although the consent of a sentenced person is one of the core requirements to effectuate a transfer and subsequent administration of a sentenced person, such a consent is dispensed with by the Convention under two special circumstances. Firstly, the consent to transfer of a sentenced person to an amenable administering State Party is not required, when the sentenced person is subjected to an expulsion or deportation order or

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<sup>24</sup> For an analysis of the legal issues arising in the context of the transfer of sentenced persons in a bilateral treaty setting see Jamil D Mujuzi, (2012), “Analysing the Agreements (Treaties) on the Transfer of Sentenced Persons (Offenders/Prisoners) between the United Kingdom and Asian, African and Latin American Countries” 20 *Eur. J. Crime Crim. L. & Crim. Just.* 377.

other similar measures resulting from the sentence or a consequential administrative decision in the sentencing State Party. Secondly, the transfer of administration of the sentence to an amenable State of nationality does not require the consent of the sentenced person, when the sentenced person has fled or returned to the State of nationality being aware of the impending criminal proceedings or the issuance of the judgement in those proceedings against that person in the sentencing State Party.

If a transfer is carried out in accordance with the provisions of the Convention, a range of legal effects that could entail for the sentencing State Party and the administering State Party are systematically laid out, which are crucial to avoid any overlap or conflict of responsibilities between the two State Parties that are directly involved in the transfer of a sentenced person. In addition to establishing a general clarity to the situation resulting from the transfer, the relevant provisions also provide pragmatic guidance to both State Parties regarding how the transfer impacts or imposes specific obligations on their respective parts. The administering State Party is generally bound by the legal nature and duration of the sentence, as imposed by the sentencing State Party, for the purpose of continued enforcement after the transfer. However, the administering State Party is permitted to make some adjustment to the sanction imposed by the original sentence without aggravating the same in certain circumstances like its domestic law mandating such adjustments.

The administering State Party could also choose to undertake a conversion of sentence following its domestic legal procedures and fulfilling the conditions prescribed by the Convention in this regard. At the same time, the right to undertake a review of the judgement related to the sentence remains the exclusive prerogative of the sentencing State Party and the administering State Party is obliged to terminate the enforcement of a sentence, if the sentencing State Party informs of any decision or measure that ceases the enforceability of that sentence. The Convention also imposes a continued duty upon the

administering State Party towards the sentencing State Party requiring the furnishing of updated information relating to the enforcement of the sentence. Finally, as in the case of extradition discussed earlier, the Convention establishes pertinent provisions addressing a range of practical issues that would potentially arise in circumstances of transit of sentenced persons.

#### **4.4 Authorities, Communication and Protection of Persons**

Two essential elements for effective functioning of the core features of the Convention aimed at enhancing cooperation pertains to the establishment of central authorities in each of the State Parties as well as creation of channels for communication and contact points. The Convention mandates the designation of one or more central authorities in every State Party to facilitate the sending and receiving of requests and information as part of the cooperation the Convention seeks to achieve. Such central authorities are also designated with the role of encouraging prompt and proper execution of the requests made under the auspices of the Convention. Finally, a consultative role is also contemplated for these central authorities on matters pertaining to the application of the Convention whenever a consultation is sought by one or more State Parties. State Parties are also provided with the option to declare that requests under the Convention be addressed through diplomatic channels and/or International Criminal Police Organization. To enhance the efficiency of the communication about the execution of the requests made, the State Parties could also designate single points of contact within their competent authorities. The modern outlook of the Convention, which could also enhance the efficiency of the underlying cooperation, can be seen in its recommendation that the transmission of requests, information or communication related to the Convention be carried out using secured electronic means with the agreement of the relevant State Parties and after due regard for the need to protect confidentiality and ensure authenticity.

Finally, in seeking to protect certain persons like victims, witnesses and experts, who constitute a very pertinent group of people for the purpose and functioning of the Convention, a specific set of provisions governing the definitions, protection and proclamation of rights is incorporated in the Convention. In defining victims, it is interesting to note that the Convention transcends beyond natural persons subjected to harm and innovatively comprehends certain types of organizations or institutions sustaining direct harm to their property dedicated to certain prescribed purposes<sup>25</sup>. One of the bedrock provisions that arguably will play a most effective role in the functioning of the fundamental features of the Convention is the one prescribing protection for various key persons pertinent for the purpose and operation of the Convention.

State Parties are mandated to take protective measures against potential acts of retaliation or intimidation or ill treatment to victims and witnesses along with their relative or representatives, experts and any other persons, participating or cooperating in the process of investigation, prosecution or other proceedings governed by the Convention. The Convention also provides some indicative measures of protection like establishment of procedures pertaining to physical protection, relocation, non-disclosure or limited disclosure

of identity or location, safe deposition, physical and psychological well-being, as well as safety and privacy. The modern oversight of the Convention is again evident in its provision that prescribes the use of communication technologies to implement relevant safety measures. Finally, the Convention also categorically proclaims

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<sup>25</sup> The property subjected to harm should pertain to purposes like education, art, science, religion or charity, or related to historic monuments, hospitals as well as objects and placed used for humanitarian cause. See Article 81 (1) (b) of the Ljubljana-The Hague Convention 2023.

certain rights of victims including right to reparation for the harm suffered that comprehends elements like restitution, compensation or rehabilitation in appropriate circumstances. As part of the right, the State Parties are required to establish relevant procedures to enable victim participation and presentations for consideration at the suitable stage of the related criminal proceedings.

## 5. Concluding Remarks

The select review of the fundamental features of the Ljubljana-The Hague Convention 2023 in this paper reveals various important insights that merits an objective assessment to determine the extent it could be considered as a distinct development in the international fight against impunity. Several findings in this regard are worth noting. First and foremost, it is well evident that the comprehensive treatment of issues promoting cooperation on the three major aspects of mutual legal assistance, extradition and transfer of sentenced persons in a multilateral instrument in itself is a major achievement, under circumstances when they were typically a subject matter of limited regional or bilateral regimes. Moreover, at times when the major challenges faced in successfully seeking perpetrators of international crimes prove to be the most formidable challenge for international criminal cooperation, the legal framework established by the Convention has the potential to fill the void, if adopted widely. In this regard, the paper's focused analysis of the select fundamental values and motivations moulding the legal framework as well as the core legal standards and principles constituting the Convention reveals its strength in successfully incorporating a strong foundation that will withstand any challenges arising in the practical enforcement and future interpretation of the core obligations aimed at enhancing international cooperation to fight impunity.

In particular, the initiative of the Convention in providing comprehensive definitions of the three international crimes and related acts should not be seen as a reinvention of the wheel, as the analysis

reveals that the definitional provisions and the list of apposite acts are systematically elaborated to bring the necessary clarity for efficient functioning of the major features of international cooperation sought under the Convention. Additionally, the sensitivity to the existing or future rules of international law and attribution of primacy to such rules reveal the pious intention of the makers of the Convention to fill the gaps and not to disturb the tranquillity of any existing legal order. Moreover, the reinforcement of some of the basic traditional obligations like '*Aut dedere, aut iudicare*' demonstrates the determination of the Convention to derive and consolidate from existing normative standards in promoting its objective in establishing comprehensive international cooperation to fight impunity. At the same time, the paper also reveals the design of the Convention adapting to modernity through the pioneering incorporation and recognition of data protection obligations and provisions motivating the use of electronic means in the legal framework governing international cooperation.

The fine balance that the Convention seeks to achieve is also visible in the elaborate provisions governing three substantial features of mutual legal assistance, extradition and transfer of sentenced persons. In as much as semblance could be seen in the legal standards laid by the Convention governing each of the three features and various comparable regional or bilateral legal instruments on the same matters, the significant value the Convention adds should be recognized. In particular, bringing all the three distinct features within a single multilateral legal framework subjected to a common set of basic principles and values aimed at promoting a unified goal of fighting impunity from international crimes should enhance the utility of specific provisions of the Convention addressing each of the three features. Moreover, the contemplated establishment of central authorities along with the measures aimed at enhancing the communication between State Parties should strengthen the basic infrastructure and the mechanism promoting cooperation. The conviction of the Convention to secure the protection of involved

persons and reassert some of their rights demonstrates the drive to create ideal conditions to secure the success of the contemplated cooperative mechanism.

Despite the evident uniqueness of the Convention, the concentration of state signatories to the Convention so far being mainly those that have embraced the ICC regime, in itself should not be seen as a setback in the acceptance of the Convention. Given the pioneering nature and features of the Convention, it is important to recognize the complexity and sensitivity of the underlying issues addressed by the Convention, which will naturally take its own time for achieving a wider acceptance among states. Given the scope of the Convention that transcends beyond international courts and tribunals and aims to facilitate national courts seeking to prosecute and punish international crimes, the potential utility of the the Ljubljana-The Hague Convention 2023 for individual states interested in proactive pursuit of perpetrators of international crimes should be much higher than any other comparable legal regimes that exist. Moreover, the utility of the Convention in promoting other international criminal law initiatives like those of International Law Commission (ILC) work on crimes against humanity and the ICC should also be equally recognized at times when the world is increasingly been threatened with scourges of war.

## REGULATORY AGENCIES IN THE EU: A BRIEF OVERVIEW

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**Abstract:** There is a clear trend towards the *progressive strengthening of the competences* of EU agencies. Initially confined to mere ‘sunshine regulation’ prerogatives, these bodies are increasingly vested with formal licensing powers and decision-making powers in the execution of Community law, in an evolution allowed by a more flexible reading of the so-called Meroni principle. The trend towards European *federalisation* is particularly evident in the financial sphere.

**Keywords:** Regulatory State, European Union executive agencies, European Union regulatory agencies.

I – Within the framework of what is known as *executive federalism*, Community law and policies are implemented, as a rule, by the State administrative apparatus (*principle of indirect administration*). The European Union’s executive powers are exceptional and are justified by the need to safeguard the fundamental requirements of non-discrimination and legal certainty, the principles of the primacy of Community Law, direct applicability and direct effect, as well as uniform and effective implementation of EU Law.

Thus, when the principle of autonomy (institutional and procedural) jeopardises the effectiveness of EU Law or the principle of loyal cooperation (between member States) is insufficient to safeguard it, the possibility arises for the European legislator, in particular under Articles 290 and 291 of the TFEU (Treaty on the Functioning of the European Union), to *Europeanise competences*.

With respect for the principles of subsidiarity and proportionality, competences are transferred from member States to the European Union's institutions, bodies and agencies, in an increasingly profound trend towards the *communitarisation of national administrative rights...* and, in practice, the *erosion of the values of subsidiarity and national autonomy in the process of European integration.*

II – In terms of centralised implementation of Community Law and Policies, the Commission plays a key role, by virtue of the Treaties and, in particular, by virtue of the secondary Union law (based, above all, on Articles 290 and 291 of the TFEU), even though it is clear from (primary and secondary) Union law that there is a real *fragmentation of the European executive power*, spread across institutions such as the Commission, the Council and the European Central Bank.

Today, however, it is still possible to glimpse *a tendency to resort to the so-called (European Union) agencies*, especially in the context of the *networking of national, supranational and common administrative structures*, in an *integrated administrative action* that is increasingly relevant at Union level but omitted from the Treaties, even after the Lisbon revision.

III – In fact, we can see the *convergence of national administrative systems* - with the *communitarisation of the (organisational and procedural) structures of the member States* - and the development of a *mixed or composite system (joint administration) for the administrative execution of the Union's rules and policies*, in the genesis of a true *European administrative Union* anchored in *cooperation between various administrations and in the polarising role of the European agencies.*

In this way, and as a result of the (greater) control (of the Administrative Council) of the Union's agencies by the member States, the *comitology committees* have been losing prominence in the development of a *common or European administrative function*: the

agencies increasingly occupy the space of coeval *European governance*, as a privileged *forum* for the emergence of a genuine *co-administration*, one of the (most) striking features of current *European Administrative Law*.

IV – What’s more, due to the shortcomings of the indirect implementation of EU law and policies (e.g. in the implementation of the Internal Market) and the political difficulties in directly reinforcing the Commission’s mission and prerogatives, the *agencies have emerged as an unavoidable element in the current dynamic of regulation and supervision in the EU, which is institutionalised and centralised*. On the surface, this *Europeanisation of the regulatory dynamic* is indicative of the affirmation of the new bodies (the so-called agencies) at the institutional level of the Union in matters that (quite recently) have been the responsibility of informal cooperation structures between member States’ administrations and between them and the European administration (e.g. electronic communications, energy, air safety and the safety of medicines). In reality, however, *the Union’s agencies, in the context of a composite or integrated (European) administration, have basically served to strengthen the preponderance of the Commission*, as reflected in the paradigmatic reform of competition policy, apparently carried out in homage to the principle of subsidiarity and decentralisation objectives.

In a nutshell: *given the political resistance of other EU institutions and member States to strengthening its powers and competences, the Commission ended up consolidating and extending its role as European executive indirectly, through the emergence and increase of the mission and prerogatives of the EU agencies*, within the framework of certain constraints.

After all, *summo rigore*, what are European Union agencies?

V – In essence, for the sake of this speech, we are only talking about the (improperly) named regulatory agencies of the European

Union and not the *executive agencies*, which are truly part of the ‘central administration’ of the Union, at the service of and under the effective control of the Commission, even though they have legal personality.

In the context of the Union’s regulatory agencies, we are focusing our attention on the *Community agencies* and not so much on the agencies of the so-called second and third pillars, where there are still strong intergovernmental features and a preponderance of the interests of the Council and the member States, given the extreme political sensitivity of the areas in question (Common Foreign and Security Policy and Area of Freedom, Security and Justice).

VI – Playing a central role in network cooperation between national, supranational and common administrations, European Union agencies are not easy to define, given their main characteristic: *heterogeneity*.

In fact, in response to the specificity of each sector and the demands of time and place, EU agencies are *ad-hoc* solutions, which is why we prefer sectoral regulations, possibly combined with the adoption of common rules in certain areas (e.g. access to documents, data protection), to the approval of a *Framework Law*. The latter, as a cross-cutting regulation for very different organisations, is an undesirable solution, as it either imposes solutions that are unsuitable for different areas of activity, or is so minimalist that it ends up being useless. It would be better to produce a set of general guidelines to inspire the Commission in its proposals to set up the organisations under analysis.

VII – Despite the enormous diversity of European Union agencies, which makes any attempt to standardise them inadvisable and explains the *imprecise and confusing terminology and classifications that prevail*, it is possible to point out *some of the characteristics that usually characterise them*: autonomy - organic and functional - from

the Commission, the Council and the member States; creation by the Community legislator; geographical dispersion of headquarters; institutional stability (established, as a rule, without any term of validity); predominance of representatives of the member States on the Boards of Directors; legal personality in the legal systems of the member States - on the other hand, in terms of *external relations*, we must stress the limitations of international legal capacity, which is practically limited to the conclusion of *headquarters agreements* with the member States where they are to be established and mere *administrative arrangements* with administrations in third countries and international organisations, without binding the Union. Genuine international conventions by Community agencies would involve political considerations that would jeopardise the Union's institutional balance.

VIII – There is a clear trend towards the *progressive strengthening of the competences* of EU agencies. Initially confined to mere ‘sunshine regulation’ prerogatives, these bodies are increasingly vested with formal licensing powers and decision-making powers in the execution of Community law (e.g. ACER), in an evolution allowed by a more flexible reading of the so-called Meroni principle.

*The extension of the agencies' mission and powers ultimately strengthens the Commission's role in the regulatory Europeanisation* of the most diverse sectors of economic and social life. In two ways: directly, by not abandoning the (rigidity of the) Meroni doctrine; indirectly, because the *centralisation* of regulation and supervision in the Union is based on the networking of national regulators (e.g. Council of Regulators in agencies such as ACER), modelled as the Commission's technocratic armies, over which the Commission often enjoys (some) functional supremacy.

IX – The trend towards European *federalisation* is particularly evident in the financial sphere, as a reaction to the serious crisis that erupted in 2007/2008, which we believe can only be overcome in the

long term with a *Banking Union* and a *Budgetary Union* - indispensable for putting an end to the vicious circles of sovereign risk/bank risk - as well as by consolidating and strengthening a genuine *Political Union*, otherwise the Euro and the European integration project will die.

Among other measures aimed at preventing systemic risks and guaranteeing the stability of the European financial system as a whole, we highlight the *strengthening of European regulatory and supervisory schemes*, with *the emergence of an EU Financial Supervisory System*, made up of a European Systemic Risk Board - a body with no binding powers - and (three) *European Supervisory Authorities with unequivocally stronger powers than the other agencies*.

Thus, in addition to *soft law powers* which, through the mediation of general principles of law, produce (some) legal effects ('*hoft law*'), the European Financial Supervisory Authorities have (more) impressive powers: for example, *quasi-normative powers* - the Commission, which is competent to adopt delegated acts under Article 290 of the TFEU, only 'approves' the draft regulatory technical regulations drawn up by the ESA and hardly ever departs from them - and *quasi-decisional powers*, due to the *de facto* force of the draft executive technical regulations that the Commission ends up, as a rule, approving, on the basis of Article 291 of the TFEU.

X – But the ESA, among other prerogatives (e.g. in carrying out stress tests), also have (real) *decision-making powers*:

1) in (*exceptional*) *emergency situations*, the ESA can adopt *binding commands for national regulators* by issuing specific measures; and in the event of non-compliance by these entities, the European financial supervisory agency can address an *individual decision directly to the national financial institution*, in a framework of unprecedented centralisation and overlapping (substitution) with national supervisors;

2) in cases of violation of EU legislation, with the ESA decisions being able to be addressed directly and compulsorily to national financial institutions, when national regulators do not comply with the Commission's decision - based on an ESA recommendation;

3) in cases of dispute resolution between national supervisors, if the decisions to resolve these disputes are not complied with, the ESA can also address individual decisions to national financial institutions in areas of legislation that are 'directly applicable' to them.

In this context, however, we must not forget the existence of the *fiscal safeguard clause (get-out clause)*, which allows States not to comply with the ESA decision if it has a significant budgetary impact... In essence, it is a projection of the *national approach that still persists in European financial supervision*, with the supervisors of each country taking responsibility for the different financial institutions in their State and the State bearing the respective supervisory failures.

For this reason, the *ESA's supervisory and sanctioning powers are practically non-existent*, although we must remember, for example, the important supervisory functions entrusted to ESMA in relation to credit rating agencies.

In a nutshell: *the ESA are not a genuine revolution at EU institutional level* and are still a long way from the status of the American regulatory agencies that are inspiring the agencification process in Europe. However, it is important to emphasise the *different qualitative nature of the financial supervisory authorities from the other European Union agencies*, even when they have decision-making powers, since these are mainly administrative in nature and are granted within a well-defined regulatory framework (e.g. EASA).

XI – With more or fewer powers, the trend is inevitably towards the *growing prominence of agencies in the Union's institutional complex*, because these organisations are seen as interesting ways of combining

the (functional) logic of efficiency with the demands of democratic and constitutional theory.

But *the ‘proliferation’ of EU agencies is fundamentally due to the synthesis of interests that they embody*: the interest of the member States - in controlling the Boards of Directors (greater than in the comitology committees or in relation to any Commission service); the interest of European institutions such as the Council and the European Parliament - disinclined to (excessively) strengthen the powers of the Commission; and the interest of the Commission itself, due to the possibility of concentrating on political tasks and the convenience of dispersing administrative execution to other bodies, insofar as these have restricted powers and remain under its authority and supervision.

XII – In this line of thought, on the one hand, *the Commission’s (political) interest is served well by the rigid reading of the principle of institutional balance set out in the Meroni judgement*: the delegating authority cannot transfer to the agency powers other than those it itself possesses - the *nemo plus iuris* principle - which implies that the delegated entity fulfils the same requirements imposed on the delegator; even when there is authorisation for the delegation of powers, this must be express, it cannot be presumed; the scope of the delegation is restricted to powers of mere execution, strictly controllable by the delegator, and it is not possible to delegate competences that involve broad discretion.

However, just as in the United States of America, where the *‘non delegation doctrine’* has been made more flexible with great pragmatism - namely through the increase in accountability mechanisms - we believe that a more elastic interpretation of the delegation of powers in the Union is desirable, in the interests of the *principle of realism*, administrative efficiency and the practicability of European governance.

A realism of (more) flexibility in the jurisprudential interpretation of the Meroni principle that is not only (more) appropriate to the Union's institutional *status quo* - the growing prominence of agencies with significant powers - but also (more) compatible with the fundamental dimension of the principle of institutional balance: the guarantee of judicial protection against abuses of power.

In fact, at the time the Meroni ruling was handed down, by limiting the possibility of delegating mere executive powers in Community institutional life, the Court aimed to guarantee the position of the metallurgical companies concerned in court; nowadays, the acts of the agencies are (expressly) subject to review, so there is no justification for crystallising a solution handed down several decades ago, in such a different and distant context (ECSC Treaty, delegation to private individuals and not to public bodies such as agencies) ...

XIII – On the other hand, *the Commission's (political) interest in using agencies (albeit with limited missions and prerogatives and under strict supervision) fits in well with the preference for using specific legal bases for the policies to be implemented (and for Article 114 of the TFEU) over Article 352 of the TFEU: it makes it easier to set up these bodies, but gives them more limited mandates.*

XIV – We realise that the European agencies are a relevant combination of different (institutional and State) interests, but we believe that they do nothing to end the EU's democratic deficit: *the overvaluation of technical expertise even carries serious risks of transferring decision-making power from politics to science and of democratic control of public decision-making.*

It is fundamental, in the current risk society, that political decisions are based on solid and duly substantiated technical studies, however, we cannot replace democratically legitimised governments with governments of competent and independent technocrats, guided by a supposed (and arrogant?) scientific neutrality...

XV – In the European Union, we recognise some advantages in the logic of networking and in a consensual vision of regulatory activity, especially in terms of due respect for the sovereignty of the nation State. However, agencies legitimised essentially on the basis of participation (and transparency) run the serious risk of the common good being captured by highly organised socio-economic interests: (European) governance based on the ideal of participatory democracy can only complement (and not replace) the traditional mechanisms of (representative) democracy, otherwise lobbies will triumph over popular will...

XVI – On this basis, we conclude that it is important to strengthen (certain) accountability mechanisms for European Union agencies, especially of *political control* - by member States and institutions such as the Council or the European Parliament - and, within a framework of prudent self-restraint by the courts, of *judicial control* - with, for example, the admission of direct appeal against (*de facto*) binding opinions (of the agencies), without prejudice to the questionability of the final administrative act (of the Commission).

# DEVELOPMENTS OF EUROPEAN UNION ENERGY LAW AND POLICY: TOWARDS INTEGRATION, DECARBONISATION, AND SECURITY OF SUPPLY

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**Abstract:** The present study on the historical developments of European Union energy law and policy reviews the different legal and policy-making initiatives and instruments of the European Union and its predecessors, the European Communities, in an attempt to map and make sense of the fundamental shifts which occurred throughout these decades. It projects a picture of twists and turns, a not linear progression of the policy-making in the energy sector: from very humble beginnings, where States tapped variably on different natural resources but generally consistently reserved their right to determine their energy mix and established monopolies in the energy sector, towards the engagement in a pathway of variable forms of coordination of EU Member States' energy policies and overall Europeanisation of the sector, ultimately leading to the highly integrated, very complex EU energy system of today's.

Over 70 years after a first 'pre-historical' decision of some European states to pool their production of coal, at the time the most important source of energy, initiating the whole European construction, the European Union, still sometimes affected by external shocks, is growingly designing and implementing common public policies in the sector which are determined by principles and goals enshrined in different legal and policy instruments and which

are more immediately densified in targets that are periodically revised, incentivising reforms and progress. This complex system of laws and policies oriented towards market integration, decarbonisation, sustainability and security of supply, more fundamentally configures an overall project of societal transformation or transition – the energy transition, which entertains deep nexus with the parallel green, ecological and climate transitions. More recently, this fundamental project of societal transition appears to growingly be faced with challenges calling for technological advancement, resolute investments and the balancing of efficiency and security concerns with ones of social fairness and attention to and empowerment of all Europeans; that the energy transition also becomes a just transition.

**Keywords:** climate action; climate neutrality; decarbonization; energy efficiency; energy mix; energy transition; EU energy law; EU energy policy; Energy Union; Europeanisation; integration; governance; internal market; just transition; principles; security; shared competences; sustainability; renewable energy; targets.

## Introduction: Foundations and Core Principles

European Union (EU) energy law and policy is a dynamic and multifaceted domain that underpins the EU's efforts to create a unified, sustainable, and secure energy system. Rooted in the Treaties, particularly since the Lisbon Treaty amendment, and, more specifically, in Article 194 of the Treaty on the Functioning of the European Union (TFEU),<sup>1</sup> this discreet body of law and public policy, which has historically had very humble beginnings, balances shared competences between the EU and its Member States, acknowledging each State's right to determine its energy mix and exploit its own resources while working towards common goals.

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<sup>1</sup> Treaty on the Functioning of the European Union (TFEU), as amended by the Treaty of Lisbon, *OJ C* 202, 7.6.2016, p. 132.

The core objectives of EU energy law are to ensure the functioning of the internal energy market, guarantee security of supply, promote energy efficiency and renewable sources, and facilitate the interconnection of energy networks. The legal framework has evolved significantly over several decades, sometimes in apparently erratic moves, driven by the imperatives of market liberalisation and the hopes of enhanced efficiency, and, more recently, climate change mitigation and sustainability, as well as a heightened focus on energy independence and security following geopolitical shifts ensuing Russia's invasion of Ukraine.

The legal basis for EU energy policy lies primarily in Article 194 TFEU, which formalises shared competences in energy matters. The Union's policy actions are guided by five key principles:

- market integration: the principle promotes the creation of a fully integrated, competitive internal energy market without technical or regulatory barriers, which allows energy to flow freely across borders;
- security of supply: it calls for ensuring reliable and affordable energy supplies for citizens and businesses through diversification of sources and robust infrastructure resilience;
- sustainability and decarbonization: the normative message is one of promoting the transition to a low-carbon economy, and more recently and more ambitiously, a climate-neutral economy, in line with goals set out by the Paris Agreement and the European Green Deal;
- solidarity: it mandates cooperation between Member States to prevent and manage supply disruptions;
- energy efficiency first: the principle places an obligation on Member States to consider energy efficiency solutions in all relevant planning and investment decisions.

Apart from its constitutional foundation, EU energy law and policy, has equally been shaped by more specific secondary law and policy measures.

Their development may be analysed in different phases: a first one may still be classed as pre-historic or the one of humble prolegomena to EU energy law and policy – only eventually do these disparate moves translate into a distinct resolve to build a discreet body of EU law for the energy sector; the next ones can be seen as the proper historical development of a growingly cohesive although also more complex EU Energy law and policy field.

## **I. Prolegomena: Disparate Initiatives on Energy Matters throughout the Early Decades of the European Construction, but Lack of a Common European Energy Policy**

### **1. Energy is at the heart of the early European construction although not giving rise to a European energy policy**

European Union (EU) origins are directly related to energy. Energy was the starting point of European construction. Coming out of the World War II, Europeans faced a dramatic two-fold necessity: finding a political way to escape a multi-secular trend which made each state fight against other ones, engulfing Europe, and sometimes the world, in warfare competition, and reconstruction of their societies and economies, severely decimated by the war.

For the latter challenge, large amounts of steel were necessary for reconstruction as well as great amounts of coal were needed for steel production and the generation of electricity. This realisation underpins the Schuman Declaration made by French Foreign Minister

Robert Schuman on the 9th of May of 1950, where he proposed to link these two industries, to address the two primary tasks of the time: reconstruct the war-torn economy and to prevent warfare, and instead ensure lasting peace on the continent, by establishing the basis of a common market for coal and steel.

This shall lead to the adoption of the Treaty of Paris in 1951 whereby six European states (France, West Germany, Italy, Belgium, the Netherlands and Luxembourg) decided to join forces in those two key sectors of the economy, coal and steel, and create a Community that would replace conflict with cooperation and destruction with prosperity. With the establishment of the European Coal and Steel Community (ECSC), a cross jurisdictional control on the energy resources is foreseen that shall pave the way for greater economic cooperation in general. The six states members of the ECSC handed over their powers in the area to the High Authority, an independent supervision body tasked with exercising that control and ensuring market functioning. The ECSC Treaty in its Article 3 also sets out the concept of ‘security of supply’ in Community law, and as a main objective, a forerunner of a similar goal of the deliberate common European energy policy that shall emerge much later. The ECSC was established for a period of 50 years, expiring in 2002.

Soon after the launch of the ECSC, however, it was recognized that coal, a common source of energy within the founding members of the European Community (EC) in the immediate aftermath of World War II, would not be the driver of economic growth. It would instead be replaced by nuclear energy as the centre of the economy to cover the need for abundant low-cost energy. While at beginning of the 1950s the share of coal in primary energy supply amounted to almost 90%, by the mid 1950s European coal production increasingly faced dwindling relevance owing to the imports of cheaper coal from overseas and the growing importance of oil. This accredited the idea of establishing an Atomic Energy Community, believed to enable the supply of cheap electricity in times of growing demand and lower

dependence on oil imports. The 1956 Suez Canal Crisis further enhanced a climate propitious to think about a more coordinated energy policy and establishing an Atomic Energy Community, given the fear of unreliable oil imports from the Middle East.

As a result, the European Atomic Energy Community Treaty (Euratom) was introduced in 1957, by the Treaty of Rome, aiming to guarantee the safety and control of radioactive materials and promote the development of nuclear energy for peaceful purposes. Euratom's goals were to establish a framework for research on efficient use of atomic energy for peaceful purposes, the creation and implementation of common technical safety standards, investment incentives and a common supply policy for nuclear material. Another motivation was Europe's energy independence and to guarantee the supply of raw materials in the wake of the Suez Crisis, which threatened to cut off oil supplies. In real practice, the Euratom Treaty established an internal market for these products along with a Supply Agency (operational from 1960) that led to community policy in the field of nuclear energy. This was meant to "*ensure that all users in the Community receive a regular and equitable supply*" (Art. 52 of the Euratom Treaty), and a 20 per cent maximum supply of uranium from a single non-EU state. The Supply Agency's competency extended to "*an exclusive right to conclude contracts*" relating to supplies (Art. 53); though member states retained the right to appeal to the Commission. Following on the steps of the ECSC Treaty, the Euratom Treaty thus again provided a few energy policy tools based on exclusive supranational powers vested in a central authority. Several regulations adopted under the treaty are still in force today. In common, both the ECSC and the Euratom treaties sought to foster economic interdependence and security of supply for specific energy sources.

The Treaty establishing the European Atomic Energy Community (Euratom) was signed in Rome in 1957 at the same time as the Treaty establishing the European Economic Community (EEC) – itself also known as Treaty of Rome. Both Treaties of Rome entered into force

in 1958. One of the key drivers of the Treaty of Rome which created the European Economic Community (EEC), was of a much wider scope: economic integration, to be pursued by the free movement of economic factors and especially, first, the free movement of goods. Theoretically, this might have included energy. The aspiration would be to transfer the advantageous effects of an internal market to the energy markets. States were however of another view in the area at the time, and consequentially national markets remained largely protected - and so they remained for decades. The reality of prevalent energy resources also helped maintain this situation: in the sixties, the share of coal in primary energy supply further decreased steeply, oil (mostly cheaply imported) replacing coal as the most important energy source of the decade.

## **2. The oil crises of the 1960s and 1970s**

Negative developments in the Middle East and the ensuing climate of insecurity in Europe as to the main source of energy at the time, are going to somewhat affect the circumstances prevalent in the sector. As a result of the Six-Day War (1967) and the subsequent conflict between Egypt and Israel, the Suez Canal, constituting a front line in the dispute, shall not be reopened until June 1975 after the end of the Yom Kippur War. With this new Suez Canal crisis, European states became more aware of its fragile dependence on oil imports from the Middle East. As a direct reaction to the crisis, the EEC Member States adopted a Council Directive on December 20, 1968, requiring member states to maintain minimum stocks of crude oil and/or petroleum products for 65 days<sup>2</sup>. As the dependence on oil imports remained and even grew, this initial Directive was amended by a Council Directive from December 19, 1972, which increased the

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<sup>2</sup> Council Directive of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products (72/425/EEC).

minimum stock obligation to 90 days<sup>3</sup> with the deliberate purpose of preventing potential oil supply shortages and ensuring security of supply in the event of a crisis.

The Commission was also asked to come up with proposals on how to further develop European energy policy. The European Commission's 1968 '*Community Energy Policy*'<sup>4</sup>, set out dependency concerns, and the goal of building a Community energy policy, a "*Community energy policy which fully integrates the energy sector into the common market*", counterbalancing "*risks arising from the great dependence of the Member States on imports and from insufficient diversification of the sources of supply*".<sup>5</sup> The proposals in 1968 were that the EU should have a general framework for action and measures in place in case of supply disruption, and that a common energy market should be implemented. The period up to 1970 was however characterised by a combination of relatively low prices and ample availability, which explains that the proposed Community action did not proceed and the period instead witnesses the creation of vertically integrated energy companies in the member states.

It was not until a restriction of oil supplies led to the European Commission's predicting that the era of easy supply "*has little chance of being maintained*"<sup>6</sup>, that a slow movement towards the emergence

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<sup>3</sup> Council Directive 72/425/EEC of 19 December 1972 amending the Council Directive of 20 December 1968 imposing an obligation on Member States of the EEC to maintain minimum stocks of crude oil and/or petroleum products.

<sup>4</sup> European Commission, *First Guidelines for a Community Energy Policy*, COM (68) 1040 final, 18 December 1968, published in *Bulletin of the European Communities*, Supplement 1/69.

<sup>5</sup> *Ibid.*, p. 5.

<sup>6</sup> European Commission, *First Guidelines and Priorities for a*

of a true European energy policy is going to start to be observed. The event which is going to trigger this slow movement towards the “*Europeanisation*” of the energy sector intervenes in October 1973, when Egypt and Syria attacked Israel, leading to the Yom Kippur War. Western states supported Israel. In retaliation, the Arab countries of the Organization of Petroleum Exporting Countries (OPEC) imposed an oil embargo on those countries. The group also imposed sharp price increases on oil. The impact on Europe was fierce. The embargo and price hikes created severe economic problems and inflation across Europe. The crisis exposed how heavily Europe relied on imported oil and highlighted the lack of a unified European energy policy. In response, European governments and the public began reassessing their dependence on foreign oil. This led Member States of the European Communities to opt for individual solutions: measures focused on speed limits, car-free days, rationing, promoting public transportation, improving energy efficiency, and developing alternative energy sources (indigenous nuclear, (North Sea) oil and gas, and diversified supplies).<sup>7</sup>

The embargo was eventually lifted in March 1974, but the crisis this time proved to have a more lasting impact on energy policies and consumption patterns in Europe (and worldwide). It forced Western countries to confront their vulnerabilities and the new power of oil-producing nations. Special drivers for rethinking were the sense of vulnerability to interruptions of energy supply, and the inadequacy of securing supplies for the EC against a backdrop where policymaking

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*Community Energy Policy*, COM (72) 1700 final, 13 November 1972, published in *Bulletin of the European Communities*, Supplement 11/72, pp. 2-3.

<sup>7</sup> International Energy Agency (IEA), *Oil Crisis Report* (1974) and European Commission, *European Energy Policy* (1974), *Bulletin of the European Communities*, Supplement 4/74.

remained within an intergovernmental domain.<sup>8</sup> Outside of Europe, the 1973 oil crisis led the USA to propose the establishment of an OECD-based institution to confront OPEC. Thus, the International Energy Agency (IEA) was founded, in 1975, an entity which subsequently became a main focal point for the coordination of national energy policies. Specifically, in Europe, however, besides, the EEC Council's adoption, in 17 December 1974, of a Resolution concerning Community energy policy objectives for 1985<sup>9</sup>, in which it is proclaimed the need for a common European energy policy and the statement that this could only be achieved by setting up quantitative goals and objectives until 1985, amongst which the ones of reduction of energy imports from third countries to below 50%, if possible to 40%; 15% reduction of energy consumption; and 9% reduction of oil consumption, practical common results or actions in the sector remained rather low.

This situation did not fundamentally change either when a second oil shock intervenes in 1979, in the aftermath of the Iranian Revolution where protesters severely disrupted the Iranian oil sector and production was significantly curtailed, nor when, one year after, in 1980, the first Iran-Iraq war started, bringing the production of oil in Iran and Iraq to a severe decline and to steep spikes in the price for imported oil. European states again reacted with the adoption of national strategies towards efficient energy use and security of supply,

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<sup>8</sup> Emil J. Kirchner and Jan-Henrik Berk, "European Energy Security: Co-operative or Conflictual?", *Journal of Common Market Studies*, 2010, vol. 48, pp.859, *et sequitur, notius* p. 869.

<sup>9</sup> Council Resolution of 17 December 1974 concerning *Community energy policy objectives for 1985* OJ C 153/1, 1975.

and the Commission again made recommendations<sup>10 11</sup> with scarce follow-up: again, these recommendations were largely ignored by the Council and Member States - a situation which did not fundamentally change until the 1990s.

### 3. The humble beginnings of a common nuclear energy policy with the Chernobyl accident

The potential for Europeanisation of national energy policies or Community action in these decades thus remained largely exemplified by, but also limited to, the Union's nuclear energy policy. This again gained some momentum with the Chernobyl accident and the need to find response thereto.

The explosion at the Chernobyl nuclear plant in 1986 released large quantities of radioactive particles in the atmosphere spreading over much of Europe. Various information provision obligations formerly enacted did not function properly in times of this crisis. The European Community shall react to these by adopting Council Resolution of 4 July 1986 on the consequences of the Chernobyl accident<sup>12</sup> and enacting Council Decision of 14 December 1987 on

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<sup>10</sup> European Commission, *Communication on energy policy in the Community* (COM (79) 385 final, 25 July 1979).

<sup>11</sup> For instance, in 1981, the Commission predicted a substantial increase in energy demand, but recognising the heterogeneity of preferences amongst Member States did not propose any '*substantial centralization of energy policy instruments*' nor '*uniformity in the diversification of supply*' (*The Development of an Energy Strategy for the Community*, Communication from the Commission to the Council, 1981, 540 final, p. 10).

<sup>12</sup> Council Resolution of 4 July 1986 on the consequences of the Chernobyl accident, *OJ C* 204, 11.08.1986, pp. 1-2.

arrangements for the early exchange of information in the event of a radiological emergency<sup>13</sup> and creating the European Community Urgent Radiological Information Exchange (ECURIE) to guarantee constant monitoring of radioactive levels of air, water and soil. More legislation on maximum radioactive levels in food and health and safety measures for the population in the event of an emergency also followed.<sup>14</sup>

#### **4. No fundamental change with the Single European Act (1986), the Maastricht Treaty (1992), the Amsterdam Treaty (1997) and the Nice Treaty (2001): indirect facilitation**

The Single European Act (1986), the Maastricht Treaty (1992) and then the Amsterdam Treaty (1997) widened the focus of energy related matters, just lightly, with security of supply as a main issue. Although energy market deregulation, environmental protection and climate change problems became more prominent, they did not translate into an energy-specific European primary law, directly

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<sup>13</sup> Council Decision 87/600/Euratom of 14 December 1987 on Community arrangements for the early exchange of information in the event of a radiological emergency, *OJ L* 371, 30.12.1987, pp. 76–78.

<sup>14</sup> Council Regulation (Euratom) No 3954/87 of 22 December 1987 laying down maximum permitted levels of radioactive contamination of foodstuffs and of feeding stuffs following a nuclear accident or any other case of radiological emergency *OJ L* 371, 30.12.1987, p. 11 and the amending Council Regulation (Euratom) No 2218/89 of 18 July 1989 amending Regulation (Euratom) No 3954/87 laying down maximum permitted levels of radioactive contamination of foodstuffs and of feeding stuffs following a nuclear accident or any other case of radiological emergency, *OJ L* 211, 22.7.1989, p. 1.

establishing a common European energy policy.<sup>15</sup> The developments of EU primary law shall however indirectly facilitate its emergence through the reinforcement of the internal market and the adoption of a European environmental policy.

More specifically, following up on the signature of the Single European Act (SEA) and its injunction to create a true single market by removing the barriers that hindered the free circulation of goods, services, capital and people, coupled with the impetus of Jacques Delors, President of the European Commission, measures to establish an internal market were effectively systematically pursued to ensure that it would come true by the end of 1992 (Art. 13, introducing supplementing art. 8a).<sup>16 17</sup> Overall, the Single European Act pushed the European Community in a liberalising direction, generally forcing competition and a market-oriented approach. Although there was no explicit reference to energy policy, the general spirit towards an internal market, the prevalent principles of competition and

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<sup>15</sup> This is what the leading EU studies scholar to whom this study is dedicated, Professor Manuel Lopes Porto, ‘denounces’, while opening the section devoted to ‘Energy Policy’, in his seminal textbook, M.C. Lopes Porto, *Teoria de Integração e Políticas Comunitárias Face aos Desafios da Globalização*, 4th. ed., Coimbra, 2009, Almedina and M.C. Lopes Porto, *Theory of Integration and EU Policies*, Macau, 2004, Institute of European Studies of Macau, at p. 355.

<sup>16</sup> *Single European Act* (OJ L 169, 29.06.1987).

<sup>17</sup> Art. 8a: “*The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article and of Articles 8b, 8c, 28, 57 (2), 59, 70 (1), 84, 99, 100a and 100b and without prejudice to the other provisions of this Treaty .*  
*The internal market shall comprise an area without internal frontiers in which the free movement of goods , persons, services and capital is ensured in accordance with the provisions of this Treaty.*”

market integration and the overall liberalising actions provided the groundwork for an emerging energy policy.

Besides, the SEA incorporated a pillar on environmental protection.<sup>18</sup> As a result, relevant energy legislative acts could then be adopted based on both the internal market references in different provisions and the environment pillar introduced by the Single European Act.

And indeed, legislation on the internal energy market shall be first enacted from the 1990s. The first internal energy market Directives shall be adopted in 1996 and 1998 already.<sup>19</sup> Thus starts the first steps, however, timid, of a movement of gradual liberalization of the energy sector: by establishing some competition among operators that became trans-European, by asserting the principle of separation of energy production, transportation and distribution activities,<sup>20</sup> and by the introduction of market prices. Each Member State however, remained decision-maker in determining its own energy mix.

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<sup>18</sup> Articles 130R-130T, now TFEU Articles 191-193.

<sup>19</sup> See *infra* under II..

<sup>20</sup> The EU decided to distinguish clearly between competitive parts of the industry (e.g. supply to customers) and non-competitive parts (e.g. operation of the networks); oblige the operators of the non-competitive parts of the industry (e.g. the networks and other infrastructure) to allow third parties to have access to the infrastructure; free up the supply side of the market (e.g. remove barriers preventing alternative suppliers from importing or producing energy); remove gradually all barriers to supplier switching; introduce independent regulators to monitor the sector.

On the external side, an energy plan of action to 1995<sup>21</sup> was drawn, focused on putting the “*concept of Community solidarity into practice*” with the objective of “*geographical diversification of the Community’s external sources of supply*” and “*greater integration, free from barriers to trade, of the internal energy market*”<sup>22</sup>. Energy external objectives lacked however substantive legislation to achieve them.

No Community action was set out either in the external dimension in either the Maastricht (1992), Amsterdam (1997) or Nice (2001) Treaties. The Council had competency, acting unanimously on Commission proposals (consulting with the European Parliament) (Art. 130s)<sup>23</sup>. Commission competency was limited to the internal

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<sup>21</sup> Council Resolution of 16 September 1986 *concerning new Community energy policy objectives for 1995* (OJ C 241, 25.09.1986, pp. 1-2).

<sup>22</sup> *Ibid.*

<sup>23</sup> Article 130s

“1. (...)

2. *By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 100a, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, shall adopt:*

— (...);

— (...);

— *measures significantly affecting a Member State’s choice between different energy sources and the general structure of its energy supply.*

*The Council may, under the conditions laid down in the preceding subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.*

3. (...).

4. (...).

5. (...).”

energy market, though the Maastricht Treaty's Article 3<sup>24</sup> sets out the objective of extending the activities of the Community to the sphere of energy<sup>25</sup>. This is the first ever explicit mention of energy in primary law of the European Community, although it stopped there and did not include a set of provisions or chapter dedicated to energy.

## **II. Phase 1 of EU Energy Law and Policy's History (late 1990s-mid-2000s): Market Liberalisation, the Development of the Internal Energy Market and Key Legislation**

The process of market liberalisation in the European Union's energy sector during the late 1990s and mid-2000s involves a resolute shift from traditional, vertically integrated state monopolies which are to be dismantled and the determination to fostering competition to reach a competitive internal energy market. Motivated by economic efficiency, the desire for lower prices, and a belief in market forces, this transformation was implemented through a series of legislative measures and institutional changes. The primary objective was to create a single, integrated European electricity and natural gas market where any consumer could choose their supplier from a wide range of competitors, thereby fostering innovation and ensuring non-discriminatory access to essential network infrastructure.

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<sup>24</sup> *Treaty on European Union* (Maastricht Treaty) (OJ C 191, 29.07.1992).

<sup>25</sup> Article 3: *For the purposes set out in Article 2, the activities of the Community shall include, as provided in this Treaty and in accordance with the timetable set out therein: (...) (t) measures in the spheres of energy, civil protection and tourism.*

## 1. The First Energy Package (1996/1998): Initial Directives for opening up the electricity and natural gas markets

The journey of EU energy market liberalisation began with the adoption of the First Energy Package. This legislative milestone comprised two key directives: the Electricity Directive 96/92/EC in December 1996<sup>26</sup> and the Natural Gas Directive 98/30/EC in June 1998.<sup>27</sup>

The core objectives of these directives were the ones of ending national monopolies in the generation, import, and export of electricity and gas and introducing a gradual process of market opening to competition, primarily for large industrial customers who were deemed “*eligible customers*” and could choose their supplier. This initial phase aimed to open approximately one-third of national electricity markets.

For this, this first legislative package introduced a requirement for non-discriminatory access for third parties to the network infrastructure (transmission and distribution). This was a crucial step to ensure that new market entrants could transport their energy to customers without being hindered by the incumbent, vertically integrated companies that also owned the grids. To ensure transparency and prevent cross-subsidisation between the competitive layer (generation/supply) and the monopolistic (transmission/

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<sup>26</sup> Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity, *OJ L27*, 30.01.1997, pp. 20-29.

<sup>27</sup> Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas, *OJ L204*, 21.07.1998, pp. 1-12.

distribution) part of the energy business, the directives mandated accounting unbundling, that is the separation of these activities within integrated utilities.

These substantive options were organisationally supported by Member States being required to establish independent national regulatory authorities to oversee the newly opening markets and ensure fair application of the new rules.

The First Energy Package was a starting point, but its impact was limited. Member States had flexibility in implementation,<sup>28</sup> leading to varied levels of market opening across the EU. In many countries, the incumbent companies retained significant market power, and the accounting unbundling rule was often considered insufficient to guarantee truly fair competition. The recognition of these shortcomings laid the groundwork for the adoption of more robust legislation in the subsequent years.

## **2. The Second Energy Package (2003): Mandating supplier choice for industrial and domestic consumers**

The limitations of the first package led to the adoption of the Second Energy Package in 2003, which included the Electricity Directive 2003/54/EC<sup>29</sup> and the Natural Gas Directive 2003/55/

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<sup>28</sup> The first liberalisation package adopted in 1996 for electricity and 1998 for gas was to be transposed into member states' legal systems by respectively 1999 (electricity) and 2000 (gas).

<sup>29</sup> Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC - Statements made with regard to decommissioning and waste management activities, *OJ L* 176, 15.7.2003, pp. 37-56.

EC<sup>30</sup>. This second legislative package<sup>31</sup> significantly deepened the liberalisation process and accelerated the establishment of an energy market.

The most significant substantive change introduced by this second package of legislation was the establishment of a mandatory supplier choice for all consumers<sup>32</sup>. This was phased in, with industrial and commercial customers gaining full choice by July 1, 2004, and all domestic household consumers by July 1, 2007.

Parallely, the key requirement of the substantive strategy to ensure fair competition, that of unbundling, was strengthened: from mere accounting separation to legal unbundling. The ensuing result was the separation of competitive activities (generation and supply) from natural monopolies (transmission and distribution networks). The overall goal pursued with this strategy and corresponding

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<sup>30</sup> Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, *OJ L 176*, 15.07.2003, pp. 57-78.

<sup>31</sup> Besides the aforementioned second electricity Directive 2003/54/EC and the second gas Directive 2003/55/EC, the package also included Regulation (EC) No 1228/2003 on conditions for access to the network for cross border exchanges in electricity.

<sup>32</sup> Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity and repealing Directive 96/92/EC, *OJ L 176*, 15.7.2003, p. 37-56, Arts. 21-23; Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, *OJ L 176*, 15.7.2003, pp. 57-78, Arts. 23-25.

legislative instruments was to prevent incumbent companies from abusing their control over essential grid infrastructure to disadvantage competitors. Non-discriminatory third-party access (TPA) was the mechanism through which this was to be achieved. The transmission system operator (TSO) had to be a legally separate entity from the generation and supply businesses, even if both were still owned by the same parent company. The aim was to reinforce the independence of TSOs and ensure non-discriminatory network access.

Complementarily, the package introduced a set of enhanced consumer protection measures substantiating the aforementioned choice, including access to clear information regarding their consumption data, the possibility for switching suppliers within a specified timeframe (typically three weeks), and access to dispute settlement mechanisms.

The Second Package thus accelerated market integration and competition. It broke down many remaining national barriers and pushed the EU closer to a single energy market. However, the continued potential for influence by vertically integrated companies through common ownership structures is going to originate a debate over the effectiveness of legal unbundling versus full ownership unbundling which later shall lead to the adoption of complementary legislative measures. The first of these shall be a Third Energy Package, adopted in 2009, focusing on even stricter ownership unbundling. This Third Energy Package shall thence be accrued by the adoption a decade later (2019) of the “*Clean Energy for All Europeans*” Package.

### **3. Institutional development**

The initial double legislative push for liberalisation was supported by the development of new institutions meant to grant that the substantive regulatory principles designed to facilitate and manage the complex transition as well as to ensure a level playing field would be effectively implemented.

The main vector of this normative, organisational development rested in the formation of the Council of European Energy Regulators (CEER), a process which occurred in the late 1990s<sup>33</sup>. The CEER was a voluntary association of independent national energy regulators from across the EU, whose regulatory powers and independence were enhanced, for allowing them to monitor market behaviour and ensuring compliance with the new rules. The CEER's primary role was to facilitate cooperation and coordination among the national regulators, share best practices, and work towards harmonised regulatory practices. For that, the CEER was endowed with an advisory role whereby it provided expert advice to the European Commission on matters related to the internal energy market, helping to shape future legislation, including what shall eventually become the Third Energy Package. The CEER served as the functional precursor to what later became the official European Union Agency for the Cooperation of Energy Regulators (ACER), a body formally established in 2009, already as part of the Third Energy Package. The focus of this institutional development was to create a neutral system operator responsible solely for managing the flow of energy across the grid efficiently and transparently, regardless of which company generated or supplied the power. This was seen as vital for the development of a truly competitive and integrated European energy market.

The late 1990s and mid-2000s were a transformative period for the European energy sector. The First and Second Energy Packages progressively dismantled state monopolies, introduced competition, and mandated supplier choice for all consumers. Simultaneously, institutional bodies like CEER were formed to foster regulatory

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<sup>33</sup> The formal establishment of CEER intervenes in 2000. See Jorge Vasconcelos, "Towards the internal energy market; How to bridge a regulatory gap and build a regulatory framework", *European Review of Energy Markets*, 2005, Volume 1, issue 1, pp. 81-103, *notius* pp. 93-94

cooperation, and the principle of unbundling was consistently strengthened to ensure fair and non-discriminatory access to the grid. This era set the stage for a single, integrated, and competitive internal energy market in the EU.

### **III. Phase 2 (Mid-2000s-2010s): The EU Energy Law and Policy are Becoming more Linked to EU's Climate Policy and Goals**

EU's energy law and EU energy policy are intrinsically linked to its climate policy. This nexus is going to become more visible and stronger as the EU climate policy is going to grow in ambition. The mid-2000s to the 2010s period is going to be seen as a transformative era in the European Union's approach to energy and climate policy, mainly by shifting from indicative goals to legally binding and comprehensive frameworks.

Four main landmark legal and policy developments, chronologically ordered by their date of issuance, are going to underscore this general evolution in the period:

- the establishment in 2005 of the emissions trading system (ETS);<sup>34</sup>
- the adoption, in 2009, of the 20-20-20 Package and the introduction of binding targets;<sup>35</sup>

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<sup>34</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, *OJ L 275*, 25.10.2003, pp. 32-46.

<sup>35</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy

- the issuance, also in 2009, of the Third Energy market legislative package;<sup>36</sup> and the constitutionalisation, again with entry into force in 2009, of the EU Energy Policy in the Treaties.<sup>37</sup>

## 1. The EU Emissions Trading System launch (2005)

The EU ETS, launched in January 2005, is the world's first major international emissions trading system and remains the cornerstone of EU climate policy that puts a price on carbon, incentivising to reduce emissions.

The Emission trading system was conceived in response to the commitments made under the 1997 Kyoto Protocol,<sup>38</sup> which

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from renewable sources, *OJ L 140*, 5.6.2009, pp. 16–62; Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions, *OJ L 140*, 5.6.2009, pp. 136-148.

<sup>36</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, *OJ L 211*, 14.8.2009, pp. 55-93; Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, *OJ L 211*, 14.8.2009, pp. 94-136; Regulation (EC) No 714/2009, *OJ L 211*, 14.8.2009, pp. 15-35; Regulation (EC) No 715/2009, *OJ L 211*, 14.8.2009, pp. 36-54.

<sup>37</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed 13 December 2007, entered into force 1 December 2009, *OJ C 306*, 17.12.2007.

<sup>38</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 *UNTS*162.

set legally binding greenhouse gas (GHG) reduction targets for industrialized nations. Against this background of international governance negotiations, the development of the EU energy policy occurred by setting up a EU cost-effective, market-based mechanism to achieve its share of these reductions. A “cap-and-trade” system was identified as an efficient way to encourage emissions reductions where they were cheapest.

The core idea and rationale of the system is to put a price on carbon. A limit (cap) is set on the total amount of specific GHGs that can be emitted by covered installations (power generators and heavy industry, initially). This cap is divided into tradable allowances (EUAs), where one allowance equals one tonne of CO<sub>2</sub> equivalent. Companies can buy or sell these allowances as needed, creating a market that incentivizes investment in low-carbon technologies and industries to reduce their emissions.

The implementation of the system was designed as a staged process, where the initial phases (Phase 1 and Phase 2) were crucial learning periods:

- Phase 1 (2005-2007) was a three-year pilot conceived as a learning exercise. The cap was set nationally through National Allocation Plans (NAPs), and most allowances were given out for free. A major issue was “*over-allocation*”, where the caps were not tight enough to drive significant emission reductions, leading to a collapse in the carbon price;
- Coinciding with the Kyoto Protocol’s first commitment period,<sup>39</sup> Phase 2 (2008-2012) introduced a tighter, albeit still

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<sup>39</sup> Kyoto Protocol to the United Nations Framework Convention on Climate Change, adopted 11 December 1997, entered into force 16 February 2005. The first commitment period ran from 2008–2012.

largely allocated for free, cap. It also linked the EU ETS with international offset markets, allowing companies to use credits from reduction projects in developing countries to meet their obligations.

Despite the early challenges of over-allocation, the EU ETS successfully established a functional carbon market and created a value for carbon emissions. It covered a significant percentage of the EU's total GHG emissions in its early years. It proved the viability of a market-based approach and laid the essential legal and practical foundation for future revisions that would introduce an EU-wide cap and auctioning of allowances. This shall already occur in Phase 3 of the ETS, in another period of EU Energy law development (2013-2020).

## **2. The 20-20-20 Package (2009): Introduction of binding targets**

The 20-20-20 Climate and Energy Package, adopted in April 2009,<sup>40</sup> represented the EU's integrated and legally binding response

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See also Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC to link the EU greenhouse gas emission allowance trading scheme with the Kyoto Protocol's project mechanisms, *OJ L 338*, 13.11.2004, pp. 18-23.

<sup>40</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources, *OJ L 140*, 5.6.2009, pp. 16-62; Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community, *OJ L 140*, 5.6.2009, pp. 63-87; Directive 2009/30/EC of the European Parliament and of the Council of 23 April 2009 amending Directive

to the escalating climate crisis, building on earlier policy discussions and the 2007 European Council endorsement of an integrated climate and energy approach.<sup>41</sup> It set three headline targets to be achieved by 2020: a 20% reduction in EU greenhouse gas emissions from 1990 levels; raising the share of renewable energy sources in final energy consumption to 20%; a 20% improvement in energy efficiency.

The package consisted of several key legislative instruments to implement these targets across all sectors of the economy, namely:

- The Revised EU ETS Directive,<sup>42</sup> which established an EU-wide, single cap for covered sectors, setting a target of a 21% reduction below 2005 levels by 2020. This marked a shift from national-level allocation to a more centralized system;

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98/70/EC as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions, *OJ L 140*, 5.6.2009, pp. 88-113; Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006, *OJ L 140*, 5.6.2009, pp. 114-135; Decision 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, *OJ L 140*, 5.6.2009, pp. 136-148.

<sup>41</sup> European Council, Presidency Conclusions, Brussels, 8-9 March 2007, endorsing an integrated climate and energy policy and agreeing on the 20-20-20 targets, Council Doc. 7224/1/07 REV 1.

<sup>42</sup> Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community, *OJ L140/63*, 2009.

- The Effort Sharing Decision (ESD),<sup>43</sup> which set binding national targets for emissions from sectors not covered by the EU ETS (e.g., transport, buildings, agriculture, waste management). This ensured that all parts of the economy contributed to the overall 20% GHG reduction goal;
- The Renewable Energy Directive (RED-I),<sup>44</sup> which established binding national targets for each Member State to achieve the overall 20% renewable energy share goal;
- The Directive on Carbon Capture and Storage (CCS)<sup>45</sup> which created a legal framework for the safe use of CCS technologies.

The 20-20-20 package's overall significance cannot be underrated: it amounted to a major policy milestone, transforming the EU's climate ambition into a comprehensive and enforceable legal reality. The legally binding nature of the targets, particularly for renewable energy and non-ETS emissions, but also for energy efficiency, provided regulatory certainty and spurred significant investment and

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<sup>43</sup> Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020, *OJ L 140*, 5.6.2009, pp. 136-148.

<sup>44</sup> Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC *OJ L140/16*, 2009.

<sup>45</sup> Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC and Regulation (EC) No 1013/2006, *OJ L140/114*, 2009.

innovation in the clean energy transition. It demonstrated that climate action was not just an environmental imperative but also an integral part of strengthening energy security and economic competitiveness.

Ultimately, the EU successfully achieved all three 20-20-20 targets by the deadline,<sup>46</sup> proving that a concerted, legally backed strategy could deliver tangible results. Together with the other previous landmark legislative achievement, the EU Emissions Trading System, the 20-20-20 Climate and Energy Package established the EU as an important actor and even a global leader in climate action. They also set the stage and laid the groundwork for future, even more ambitious climate frameworks, such as the European Green Deal, and corresponding targets for subsequent phases,<sup>47</sup> namely 2030 and 2050.

### **3. The Third Energy Package (2009): Deepening energy market integration by further unbundling rules and establishing the Agency for the Cooperation of Energy Regulators (ACER) to oversee the integrated market**

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<sup>46</sup> European Environment Agency (EEA), *Trends and projections in Europe 2021: Tracking progress towards Europe's climate and energy targets*, EEA Report No 13/2021; see also European Commission, *Stepping up Europe's 2030 climate ambition – Investing in a climate-neutral future for the benefit of our people*, COM(2020) 562 final.

<sup>47</sup> European Commission, *The European Green Deal*, COM(2019) 640 final; Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality (European Climate Law), OJ L 243, 9.7.2021, p. 1 (setting the binding 2050 climate-neutrality objective and the 2030 net greenhouse gas emissions reduction target of at least 55% compared to 1990 levels).

Building on the incremental steps of the First and Second Energy Packages, the primary objective of the Third Energy Package was to address persistent shortcomings in the EU gas and electricity markets, such as an enduring lack of effective competition, insufficient investment in infrastructure, and inadequate cross-border cooperation. To remedy these shortcomings and deepening the integration of the EU energy market by fostering a genuinely competitive, secure, and sustainable EU energy market, the Third Package, which comprised two directives (2009/72/EC for electricity and 2009/73/EC for gas)<sup>48</sup> and three regulations ((EC) No 713/2009,<sup>49</sup> 714/2009,<sup>50</sup> and 715/2009<sup>51</sup>), introduced far-reaching measures. Generally, they were aimed at ensuring that all consumers could benefit from a wider choice of suppliers, fair prices, and enhanced security of supply through

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<sup>48</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, *OJ L 211*, 14.8.2009; Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, *OJ L 211*, 14.8.2009.

<sup>49</sup> Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (Text with EEA relevance), *OJ L 211*, 14.8.2009, pp. 1-14.

<sup>50</sup> Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 (Text with EEA relevance), *OJ L 211*, 14.8.2009, pp. 15-35.

<sup>51</sup> Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (Text with EEA relevance) *OJ L 211*, 14.8.2009, pp. 36-54.

market mechanisms. More particularly, the Third Energy Package reinforced the unbundling rules and provided for the establishment of the Agency for the Cooperation of Energy Regulators (ACER).

### 3.1 Further unbundling rules

A main cornerstone of the Third Energy Package was the significant strengthening of unbundling rules requiring the separation of energy supply and generation activities from the operation of the transmission networks (grids and pipelines), which are natural monopolies. The aim of unbundling is to prevent vertically integrated energy companies from discriminating against competing suppliers in terms of network access or investment, thus promoting fair competition. The Package established three main models for unbundling, with a clear preference for the most stringent form:

- Ownership Unbundling (OU): This is the most stringent model and the Package's preferred option. It requires that the generation/supply part of a company and the transmission system operator (TSO) are entirely separate, with different ownership structures. A company cannot own both the network assets and the energy content within those networks. The intention was to fully remove any incentive or ability for the TSO to favour its affiliated supply business; on the contrary the TSO should prove to be neutral;<sup>52</sup>

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<sup>52</sup> Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity, *OJ L 211*, 14.8.2009, p. 55, Articles 9-10; Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, *OJ L 211*, 14.8.2009, p. 94, Articles 9-10 (establishing ownership unbundling and requiring transmission system operators to act independently and without discrimination).

- Independent System Operator (ISO): In this model, the vertically integrated company remains the owner of the transmission network assets, but an independent entity is appointed to operate, maintain, and invest in the network. The ISO is functionally and legally separate from the supply interests of the parent company;
- Independent Transmission Operator (ITO): This model was introduced as a compromise for Member States and companies that were reluctant to adopt full ownership unbundling. Under the ITO model, the TSO remains part of the vertically integrated company, but it must be subject to rigorous independent governance and compliance oversight, with strict legal and functional separation from the commercial (generation/supply) parts of the business. Detailed measures for independent decision-making, information flows, and staff independence are mandated.

### **3.2 Creation of the Agency for the Cooperation of Energy Regulators (ACER)**

The Package required all Member States to implement one of those models and establish a robust National Regulatory Authority (NRA) to enforce the rules and certify TSOs' compliance, especially concerning cross-border pipelines.

With the aim of ensuring the consistent application of these new rules and to oversee the emerging integrated internal market across the EU, the Third Package, via Regulation (EC) No 713/2009 also has foreseen the creation of the Agency for the Cooperation of Energy Regulators (ACER). Based in Ljubljana, Slovenia, ACER was designed to complement and coordinate the work of the national regulatory authorities, which often had varying levels of independence and powers. ACER's key roles include powers of:

- coordination and assistance, which are the basis for ACER to

- coordinate the work of NRAs and assist them in performing their regulatory functions at a European level to ensure consistency in the application of EU energy law;
- participation in the development of EU-wide network rules (Network Codes and Guidelines) covering grid connections, market operations, and system security, as well as developing framework guidelines which the European Networks of Transmission System Operators (ENTSO-E for electricity and ENTSO-G for gas) use to draft detailed codes;
  - adopting binding decisions (under certain conditions): while NRAs are the primary decision-makers at the national level, ACER has the authority to take individual, binding decisions on issues concerning cross-border infrastructure, exemptions for new projects, and cross-border cost allocation, particularly where national authorities fail to reach an agreement or the issues have significant cross-border impact;
  - market monitoring and reporting, whereby ACER monitors developments in the electricity and gas markets, including retail prices, competition, and security of supply, and reports its findings to the European institutions;
  - ensuring the market integrity (REMIT): Under the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT),<sup>53</sup> ACER plays a crucial role in monitoring wholesale energy markets to detect and deter market abuse and insider trading in collaboration with NRAs.

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<sup>53</sup> Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, *OJ L* 326, 8.12.2011, pp. 1.

ACER's creation was a significant step toward "supranational" governance of the EU energy market, addressing the challenge of uncoordinated national decisions that could hinder the internal market's functioning.

#### **4. Treaty formalisation: Inclusion of Article 194 TFEU via the Lisbon Treaty, a formal legal basis for EU energy policy**

Concurrently, the entry into force of the Lisbon Treaty in December 2009 introduced Article 194 into the Treaty on the Functioning of the European Union (TFEU), providing, for the first time, a formal and explicit legal basis for EU energy policy, a true constitutional foundation for the EU's evolving energy policy.

Prior to this, EU energy law was largely developed using the internal market legal basis (Article 114 TFEU, formerly Article 95 Treaty on establishing the European Economic Community), which limited the scope of action and often faced legal challenges.<sup>54</sup> Article

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<sup>54</sup> See, *inter alia*, Case C-379/98, *PreussenElektra AG v Schleswag AG*, EU:C:2001:160, where the Court confirmed the wide discretion retained by Member States in shaping national energy policy and renewable energy support schemes, thereby illustrating the structural limits of internal market harmonisation in the energy sector prior to the Lisbon Treaty; see also Joined Cases C-204/12 to C-208/12, *Essent Belgium NV and Others*, EU:C:2014:2192, in which the Court upheld national rules on the ownership and operation of electricity and gas transmission systems, emphasising the constitutional sensitivity of energy infrastructure regulation within the internal market framework; and Case C-573/12, *Ålands Vindkraft AB v Energimyndigheten*, EU:C:2014:2037, demonstrating that energy policy objectives, including renewable energy promotion, may justify restrictions on internal market freedoms, thus highlighting the legal constraints of

194 TFEU embeds the previous market integration efforts within the Union's primary law of the EU as well as the ones of articulating the EU energy policy with the climate one and ensuring that this EU energy policy delivers on the aspirations for a secure supply within the Union's primary law or EU's constitutional law framework.

Article 194 TFEU explicitly establishes that energy is an area of shared competence between the EU and its Member States. This provision outlines the core objectives of the Union's energy policy, which are clarified to be the following ones:

- To ensure the functioning of the energy market;
- To ensure security of energy supply in the Union;
- To promote energy efficiency and energy saving and the development of new and renewable forms of energy;
- To promote the interconnection of energy networks.

Crucially, Article 194(2) TFEU explicitly reserves certain sovereign rights for Member States, ensuring that EU measures shall not affect a Member State's right to determine the conditions for exploiting its own energy resources, its choice between different energy sources (its "energy mix"), and the general structure of its energy supply. This delicate balance between shared EU competence and national sovereignty defines the boundaries of EU action in the energy field.

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relying solely on internal market competences for energy policy prior to the introduction of Article 194 TFEU.

## 5. Impact

All the previously mentioned secondary law initiatives adopted in this phase and the primary EU law one expressed in Article 194 TFEU proved mutually reinforcing. The ETS and the 20-20-20 package linked the EU energy policy to more ambitious goals and other policies of the EU such as the environmental one and the climate one, the Third Package provided the concrete legislative tools for market liberalisation and integration, while the Treaty article provided the legitimate, explicit legal basis required for these and future EU energy initiatives within an energy policy and law ever more ambitious, robust and complex.

The framework established by these diverse legal and policy developments set the stage for subsequent legislative efforts, such as, for instance, the Clean Energy for All Europeans Package (2019),<sup>55</sup> which further built upon and refined the rules, granting ACER additional competences to manage an increasingly complex and decarbonised energy system. Together, they represent a watershed moment, solidifying EU energy law as a distinct and critical area of Union competence aimed at creating a cohesive, competitive, and resilient energy market for all of Europe. Together these EU energy law instruments also established climate action as an additional driving force of EU energy policy and laid the groundwork for future, more ambitious targets in the sector, ones which shall be defined by subsequent initiatives in new phases of EU energy law and policy development.

## IV. Phase 3 (2010s-2020s): Deepening and Accelerating the Energy Transition

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<sup>55</sup> Communication from the Commission, *Clean Energy for All Europeans*, Brussels, 30.11.2016, COM(2016) 860 final.

In this phase, the overall EU energy law and policy framework is becoming more complex, creating a comprehensive, multi-layered system. In the period, EU energy legal developments more prominently extend this law and policy to focus on improving energy efficiency and achieving ambitious decarbonization targets.

The initial legal initiatives in the sector had established foundational legal requirements for Member States. Subsequent instruments in this new phase shall significantly raise the ambition for the post-2020 era.

## **1. Energy efficiency push: The 2012 Energy Efficiency Directive and the 2010 Energy Performance of Buildings Directive**

Salient amongst the initiatives that initially shall make up for this new phase of EU energy law development are first, the 2012 Energy Efficiency Directive (EED),<sup>56</sup> which mandated energy savings obligations and efficiency measures across the EU, focusing on supply, transmission, distribution, and end-user consumption and secondly, the initial 2010 Energy Performance of Buildings Directive (EPBD)<sup>57</sup> setting out the required minimum energy performance standards for new and renovated buildings and the mandatory implementation of energy performance certificates (EPCs)<sup>58</sup>.

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<sup>56</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC, *OJ L* 315, 14.11.2012, pp. 1-56.

<sup>57</sup> Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (recast), *OJ L* 153, 18.6.2010, pp. 13-35.

<sup>58</sup> See, in particular, Articles 4-11 (minimum energy performance requirements and energy performance certificates).

## 2. The 2030 Climate and Energy Framework (2014): Setting the stage for the post-2020 era with new, more ambitious targets

The 2030 Climate and Energy Framework adopted in 2014<sup>59</sup> in the follow-up of the European Commission's Green paper *A 2030 Framework for Climate and Energy Policies* issued the year before,<sup>60</sup> lends more ambition to the EU energy law and policy by setting the European Union's objectives for the period between 2020 and 2030 with a view to creating a more competitive, secure, and sustainable energy system. The framework was agreed upon by the European Council in October 2014 and formed the basis of the EU's contribution to the Paris Agreement<sup>61</sup>.

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<sup>59</sup> See the Conclusions of the European Council of Brussels, 24 October 2014, EUCO 169/14, CO EUR 13 CONCL 5.

<sup>60</sup> The Commission adopted the Green paper "A 2030 framework for climate and energy policies" in March 2013.

<sup>61</sup> European Council, *Conclusions on the 2030 Climate and Energy Policy Framework*, 23–24 October 2014, EUCO 169/14, endorsing the 2030 targets of at least 40% domestic reduction in greenhouse gas emissions compared to 1990 levels, a binding EU-level target of at least 27% renewable energy, and an indicative target of at least 27% improvement in energy efficiency; subsequently implemented through secondary legislation, including Directive (EU) 2018/2001 on renewable energy and Directive (EU) 2018/2002 amending Directive 2012/27/EU on energy efficiency.

Most conspicuously, it defines new, more ambitious binding targets for 2030,<sup>62</sup> including a GHG emissions reduction, renewable energy share, and a specific energy efficiency target, moving beyond the previous 2020 goals. Originally agreed in 2014 and having some elements updated in 2018 in the context of the *Clean Energy for All Europeans* package, its main targets include:

- a binding domestic reduction in greenhouse gas emissions of at least 40% by 2030 compared to 1990 levels;<sup>63</sup>
- a binding EU-level target of at least 27% share of renewable energy in overall consumption, with flexibility for member states;<sup>64</sup>
- initial targets for energy efficiency were less defined; with this Framework it is established that an indicative target at the EU level of at least 27% is set for improving energy efficiency in 2030 compared to projections of future energy consumption based on the current criteria;<sup>65</sup>

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<sup>62</sup> These binding targets the EU to be collectively met by 2030 allow for the states' freedom to establish their own national targets.

<sup>63</sup> This target has since been updated to a 55% net reduction target under the European Green Deal.

<sup>64</sup> This target was later revised upwards to at least 32% share for renewable energy by 2030, as a result of the adoption in December of 2018 of the RED II Directive

<sup>65</sup> See the Conclusions of the European Council of Brussels, 24 October 2014, EUCO 169/14, CO EUR 13, CONCL 5., p. 5; Subsequent revisions (in 2018, Directive 2018/2002 of 12.2018, as part of the "*Clean Energy for All Europeans*" package which updated targets for 2030; and the 2023 recast, Directive 2023/1791, 25.07.2023, shall establish that Member States must achieve new annual energy savings

- an objective to achieve a 15% electricity interconnection target between member states by 2030 within the internal energy market.<sup>66</sup>

### **3. The Energy Union Strategy (2015), the Governance of the Energy Union (2018/2019), and the Clean Energy for All Europeans (2019)**

The *Energy Union* Strategy is a Project of the European Commission to coordinate the transformation of European energy supply. It was launched in February 2015, with the aim of providing secure, sustainable, competitive, affordable energy.<sup>67</sup> EU's reliance on Russia for its energy, and the annexation of Crimea by Russia have been cited as drivers this policy. The European Council concluded on 19 March 2015 that the EU should commit to building an Energy Union with a forward-looking climate policy on the basis of the Commission's framework strategy, with five priority dimensions: energy security, solidarity and trust; a fully integrated European energy market: energy efficiency contributing to moderation of demand; decarbonising the economy; research, innovation and competitiveness.

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of at least 1.49% of final energy consumption on average between 2024 and 2030 through specific policy measures. Member States are legally required to collectively ensure an overall primary and final energy consumption reduction of at least 11.7% by 2030 compared to reference scenarios.

<sup>66</sup> See the Conclusions of the European Council of Brussels, 24 October 2014, EUCO 169/14, CO EUR 13 CONCL 5, p. 7.

<sup>67</sup> European Commission's Communication *A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy*" (COM(2015) 80 final).

The strategy includes a minimum 10% electricity interconnection target for all member states by 2020, which the Commission hoped to put downward pressure onto energy prices, reduce the need to build new power plants, reduce the risk of black-outs or other forms of electrical grid instability, improve the reliability of renewable energy supply, and encourage market integration.

Although not directly redounding on legislation itself, the Energy Union strategy held governance implications since it induced the legislative packages that followed, especially the Governance Regulation adopted in 2018 and more remotely the Clean Energy for All Europeans package. It also re-centered the European Commission as the strategic programmer.

The most noticeable consequence of the Governance of the Energy Union Regulation (EU) 2018/1999 was the establishment of the first synchronized 10-year planning/reporting cycle for energy and climate, integrating reporting under the Paris Agreement and EU targets. It may thus be seen as the “meta-framework” that binds the delivery of targets from the ETS, renewables, and efficiency directives into national plans and ensures EU-level accountability.

The *Clean Energy for All Europeans* started as a Commission proposal<sup>68</sup> which evolved into a legislative package with the same designation adopted in 2019. Mainly it amounted to the legislative “completion” of the Energy Union’s internal market and the governance pillars. It is the fourth major overhaul of EU energy legislation on the internal energy market after the three liberalization packages that had intervened between 1996 and 2009. It involves a shift in focus to consumers, flexibility and integration of renewables affordability by setting rules for generation, transmission, distribution, supply, and

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<sup>68</sup> Brussels, 30.11.2016 COM(2016) 860 final, Communication from the Commission.

market participation, putting consumers at the centre of the energy transition. Key acts in this regard are the Electricity Market Directive 2019/944<sup>69</sup> and Regulation 2019/943.<sup>70</sup> While the Directive sets common rules for the market's structure and consumer protection, the Regulation establishes the fundamental principles for the internal market's functioning, including market design, integration, and renewable energy rules.

#### **4. The European Green Deal (2019): A comprehensive strategy aiming for climate neutrality by 2050**

This phase is further marked by the adoption of EU's strategy for achieving climate neutrality by 2050, as outlined in the European Green Deal (EGD).<sup>71</sup> It shall subsequently be made legally binding by the European Climate Law. It still relies heavily on the preexisting comprehensive energy law framework which it contributes to renew. This EU energy legal framework shall henceforth further focus on secure, affordable, and sustainable energy supplies. For it to be

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<sup>69</sup> Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity and amending Directive 2012/27/EU (recast) (Text with EEA relevance) PE/10/2019/REV/1, *OJ L 158*, 14.6.2019, pp. 125-199.

<sup>70</sup> Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (recast) (Text with EEA relevance. PE/9/2019/REV/1) *OJ L 158*, 14.6.2019, pp. 54-124.

<sup>71</sup> See 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.

implemented further key policy-developments shall have to intervene like the later adopted “*Fit for 55*” package.

The EGD’s core goal is climate neutrality or net-zero greenhouse gas emissions by 2050. This target shall subsequently be formalized and rendered legally binding in the EU Climate Law. An intermediate target of reducing emissions by at least 55% by 2030 (compared to 1990 levels) has also been set to ensure progress.

The EGD represents a paradigm shift, moving environmental protection from a sectoral concern to a transversal guiding objective of EU law. It embeds the principle of environmental integration (Article 11 TFEU), requiring all EU actions and policies — including internal market, and the energy and climate policies — to support the transition to a sustainable future.<sup>72</sup>

Furthermore, the EGD leverages significant financial resources and revised state aid rules, to direct public and private investment towards green projects, infrastructure, and innovation, ensuring the economic viability of the transition.

It also innovates in adding a just and inclusive layer to the transitions advocated by setting out the “Just Transition” mechanism<sup>73</sup> and later

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<sup>72</sup> The nexus energy-climate action is crucial, since the energy sector accounts for over 75% of EU’s emissions.

<sup>73</sup> It comprehends the Just Transition Fund, established by Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund, PE/5/2021/REV/1 OJ L 231, 30.6.2021, pp. 1-20 and also regulated by the common provisions established to govern 8 EU funds whose delivery is shared with Member States and regions laid down by Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021.

on<sup>74</sup> the proposed Social Climate Fund, which aims to mitigate the social and economic impacts of the transition on vulnerable groups and ensure public backing, adhering to the principle of solidarity.

All in all, this strategy caps one phase of EU energy Law and Policy development by including some of the concepts matured over the period in a comprehensive coherent vision and opens up to further mature developments which shall start by attempting to implement the transition extensively in all the relevant remits. It shall also open up to the revision of most of the key instruments of EU energy law and governing EU energy policy, since these are now impacted by this new paradigmatic-shift new vision and have to reflect the new ambitions set therein, namely:

- the EU Emissions Trading System (EU ETS) instruments, which had established and over time reinforced the EU's cornerstone "cap-and-trade" carbon market, requiring large emitters in sectors like power generation, industry, and aviation<sup>75</sup> to pay for their greenhouse gas emissions;

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<sup>74</sup> Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing a Social Climate Fund and amending Regulation (EU) 2021/1060, PE/11/2023/REV/1 OJ L 130, 16.5.2023, pp. 1-51.

<sup>75</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275, 25.10.2003, pp. 32–46; as amended *inter alia* by Directive 2008/101/EC which extended the EU ETS to aviation activities.

- the revised Renewable Energy Directive (now RED II),<sup>76</sup> which entered into force on December 24, 2018, alongside other key Clean Energy Package laws henceforth establish a binding 32% EU-wide target for renewable energy by 2030, moving from binding national targets to indicative ones, and introduces rules for self-consumption and stronger sector-specific commitments. This concurs with the Member States being required to submit National Energy and Climate Plans (NECPs) to detail their contributions by late 2018/early 2019 as a result of the Governance of the European Union Regulation.<sup>77</sup> Sector-Specific Rules were also established for renewables in electricity, heating/cooling, and new rules introduced to promote and regulate self-consumption of renewable electricity;
- In 2018/2019, the EU Energy Efficiency Directive (EED), originally adopted in 2012, was also significantly updated (Directive 2018/2002), again as part of the “*Clean Energy for All Europeans*” package, designed still under the Juncker Commission,<sup>78</sup> setting a binding EU-wide target for at least 32.5% energy efficiency improvement by 2030 compared to 2007 projections, reinforcing energy savings obligations for Member States,<sup>79</sup> introducing the “*energy efficiency first*” principle, and

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<sup>76</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast), *OJ L 328*, 21.12.2018, pp. 82-209.

<sup>77</sup> The Energy Union Governance Regulation (EU) 2018/1999 requires Member States to submit their NECPs detailing how they meet goals. It created the first synchronized 10-year planning/reporting cycle for energy and climate.

<sup>78</sup> Brussels, 30.11.2016 COM(2016) 860 final, Communication from the Commission, *Clean Energy for All Europeans*.

<sup>79</sup> Article 7.

requiring National Energy and Climate Plans (NECPs) for implementation, with transposition deadlines around mid-2020;

- In 2018 there is also the revision of the Energy Performance of Buildings Directive (EPBD) revision, Directive (EU) 2018/844,<sup>80</sup> requiring EU countries to strengthen building renovation strategies. It amended older directives to boost renovation rates, improve new builds, support electro-mobility, and enhance user information, becoming a key part of the *Clean Energy for All Europeans* package.

## **5. The European Climate Law (2021): Making the 2050 climate neutrality objective legally binding and, subsequently, increasing the 2030 GHG reduction target to at least 55%**

The European Climate Law (Regulation (EU) 2021/1119)<sup>81</sup>, which entered into force in July 2021, represents a landmark piece of legislation that fundamentally shifts the European Union's climate ambitions from political commitment to a legally enforceable obligation. It translates the political objectives of the European Green

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<sup>80</sup> Directive (EU) 2018/844 of the European Parliament and of the Council of 30 May 2018 amending Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency (Text with EEA relevance), PE/4/2018/REV/1, *OJ L* 156, 19.6.2018, pp. 75-91.

<sup>81</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (“European Climate Law”), *OJ L* 243, 9.7.2021, pp. 1-17.

Deal package into concrete legal requirements, making the EU the first major economy to enshrine its climate neutrality goal into law.

Prior to the European Climate Law (ECL), the EU's long-term climate goals were largely framed within political agreements and policy documents. The Paris Agreement, while a treaty, allows parties to nationally determine their contributions (NDCs), which some authors consider to be not strictly legally binding in their outcomes.<sup>82</sup> The ECL changes this dynamic within the EU's internal legal order for it provides a robust legal framework that compels EU institutions and Member States to adopt the necessary measures to meet specific, binding climate targets.

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<sup>82</sup> See, *notius*, B. Mayer, *The International Law on Climate Change*. 2018, Cambridge University Press, who, especially in Chapter 3 ("The UNFCCC Regime, from Rio to Paris") and Chapter 7 ("International Action on Climate Change Mitigation"), while analysing the Paris Agreement's hybrid legal design, he argues explains the treaty obligation is to "*prepare, communicate and maintain successive NDCs*" (a procedural duty under Article 4.2), not to achieve the specific emission outcomes stated in an NDC. Thus, failing to meet a declared target does not, in itself, constitute a breach of the Agreement. Also, his *International Law Obligations on Climate Change Mitigation*. 2022, Oxford University Press, where Mayer, although not contesting the common description of NDCs as "non-binding", denounces the implication that the Paris agreement does not create binding procedural and conduct obligations. In a similar vein, already in 2016, D. Bodansky, "The Legal Character of the Paris Agreement." *Review of European, Comparative & International Environmental Law*, 2016, 25 (2), pp. 142-150, had concluded that the Paris Agreement is a treaty within the meaning of the Vienna Convention on the Law of Treaties, and therefore binding as an instrument, but also that this does not mean that every provision creates a legal obligation; the Agreement rather contains a mix of mandatory and non-mandatory provisions. In p. 148, he pointed out: "*The NDCs themselves are not legally binding. That is, a country's failure to achieve its NDC would not, in itself, be a violation of the Paris Agreement.*" A similar reasoning is expended by L. Rajamani, "The 2015 Paris Agreement: Interplay Between Hard, Soft and Non-Obligations." *Journal of Environmental Law*, 2016, 28 (2), pp. 337-358.

The primary goal of the ECL is thus to ensure that the transition to climate neutrality by 2050 is irreversible and is guided by the best available science. It does this by establishing a clear long-term direction, setting an ambitious intermediate target for 2030, and creating a robust system for monitoring, reporting, and scientific advice.

## 5.1 More ambitious goals and targets

The most significant provision of the ECL is the establishment of a legally binding objective,<sup>83</sup> the core commitment of climate neutrality in the Union by 2050. “Climate neutrality” means achieving a balance between anthropogenic greenhouse gas (GHG) emissions and removals by sinks within the Union, effectively reaching “net zero” emissions. This target’s scope is wide: it covers all GHG emissions and removals across all economic sectors within the EU (energy, transport, industry, buildings, agriculture, and waste).

This is supported by a clear legal obligation set out in Article 2 of the ECL which explicitly states that “*EU institutions and Member States are bound to take the necessary measures at EU and national level to meet the [abovementioned] target*”. This shifts the burden from a voluntary policy choice to a mandatory legal duty, with potential for legal challenge if sufficient action is not taken.

The ECL also outlines a post-2050 ambition since it includes a commitment for the EU to aim for negative emissions after 2050,

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<sup>83</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality (“European Climate Law”), Article 2(1) (climate neutrality objective by 2050) and Article 2(2) (definition of climate neutrality and scope covering all greenhouse gas emissions and removals across the economy).

which means that removals thence exceed remaining emissions.

Crucially, while the collective EU target is binding, the ECL does not specify how individual Member States are expected to contribute to this collective 2050 goal. This leaves flexibility for national governments to design their own pathways, provided the aggregate EU goal is met. Its achievement thus depends on the successful implementation of national-level plans and measures. Member States are required to submit and update their National Energy and Climate Plans (NECPs), which are then reviewed by the European Commission to ensure collective ambition is sufficient.

To ensure a credible path to the 2050 goal, the ECL substantially increased the EU's 2030 intermediate climate target. The previous 2030 target was a 40% reduction in GHG emissions compared to 1990 levels. Based on a comprehensive impact assessment, the EU has subsequently set the 2030 climate target of reducing net GHG emissions by at least 55% compared to levels in 1990. This new 2030 climate target is now included in the Climate Law. The target is for "*net*" emissions, meaning it accounts for both emission reductions and removals by natural sinks (such as forests and soil), primarily governed by the LULUCF (Land Use, Land Use Change, and Forestry) Regulation.<sup>84</sup>

## 5.2 Governance, accountability, and scientific advice

Beyond setting targets, the ECL establishes a new governance framework, based on scientific advice and that purports to ensure transparency and accountability.

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<sup>84</sup> The LULUCF regulation was introduced through the Regulation (EU) 2018/1999.

In this new organisatory setting, the European Commission is tasked with regularly monitoring progress towards the targets and conducting a formal assessment every five years, in line with the Paris Agreement's global stocktake cycle. If progress is insufficient, the Commission is authorized to take further action or propose additional measures.

With the intent that EU energy policy-making is consistently guided by robust, unbiased scientific evidence, the ECL also formally established an independent European Scientific Advisory Board on Climate Change (ESABCC), composed of 15 independent scientists, tasked with providing expert advice and scrutinizing EU measures and targets for consistency with the ECL and the Paris Agreement goals.

Moreover, the law includes a process for setting an intermediate climate target for 2040. The Commission must present a proposal for this target, alongside an indicative EU carbon budget for the 2030-2050 period, following advice from the ESABCC. It is expected that this new binding target may be established in 2025, in preparation for COP-30 in Belém do Pará.<sup>85</sup>

### 5.3 Legal and political significance

The European Climate Law represents a significant shift in

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<sup>85</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality ("European Climate Law"), *OJ L* 243, 9.7.2021, pp. 1-17, Article 4(3)-(5) (process for setting an intermediate 2040 climate target; obligation for the Commission to submit a legislative proposal and an indicative EU greenhouse gas budget for 2030–2050, taking into account advice from the European Scientific Advisory Board on Climate Change).

environmental governance. It moves EU climate policy beyond ad-hoc political agreements by creating a permanent, overarching legal framework.

By making the 2050 target legally binding, the ECL also provides long-term regulatory certainty and predictability for investors and businesses, encouraging investment in clean technologies and sustainable infrastructure.

Moreover, the legal nature of the targets offers a basis for potential legal challenges by citizens, NGOs, or other Member States if the EU or national governments fail to implement the necessary policies to stay on track. This potentially strengthens access to justice in the climate sphere within the EU.

## **6. The “*Fit for 55*” Package: Extensive legislative overhaul to align all sectors with the new 2030 targets**

The extensive legislative “*Fit for 55*” package<sup>86</sup> aims to reduce net greenhouse gas emissions by at least 55% by 2030 (from 1990 levels). It is a comprehensive overhaul of EU Energy Law with the revision of existing energy and climate rules, including the EU Emissions

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<sup>86</sup> European Commission, “*Fit for 55*”: *Delivering the EU’s 2030 Climate Target on the way to Climate Neutrality*, Communication COM(2021) 550 final, 14 July 2021; see also the accompanying legislative proposals for amending or revising, *inter alia*, Directive 2003/87/EC (EU ETS), Regulation (EU) 2018/842 (Effort Sharing), Regulation (EU) 2018/841 (LULUCF), Directive (EU) 2018/2001 (Renewable Energy Directive) (amended by Directive (EU) 2023/2413), and Directive 2012/27/EU (Energy Efficiency Directive) (as recast by Directive (EU) 2023/1791), and Regulation (EU) 2018/1999 on the Governance of the Energy Union.

Trading System (EU ETS), the Renewable Energy Directive (RED III), and the Energy Efficiency Directive (EED).

Presented by the European Commission in July 2021 as a set of interconnected legislative proposals designed to meet the legally binding EU target of reducing net greenhouse gas (GHG) emissions by at least 55% by 2030, as mandated by the European Climate Law, the resulting legislative package did operate the revision and updating of a dozen existing directives and regulations, fundamentally reshaping the EU energy policy, also in conjunction with the climate and transport policies.

The package is determined by three main vectors:

- expansion and reinforcement of carbon pricing (for which it revisits EU ETS, creates ETS II, and “extends” it with CBAM);
- increase of the ambition of renewable energy and energy efficiency targets (RED, EED, EPBD);
- expansion of regulatory standards to specific sectors (transport, LULUCF).

## **6.1 Reforming and expanding the EU Emissions Trading System**

The EU ETS, the bloc’s primary market-based tool for reducing emissions from energy-intensive industries and power generation, was significantly strengthened and expanded<sup>87</sup>.

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<sup>87</sup> Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment

The cap on emissions in the main ETS sector will be reduced at a faster rate, resulting in a 62% reduction by 2030 compared to 2005 levels. Free allowances for some sectors are being gradually phased out to increase the carbon price signal and encourage decarbonization accompanied by the phase-in of the CBAM. Emissions from ships calling at EU ports are progressively being included in the EU ETS from January 2024.<sup>88</sup> The EU ETS rules for aviation were also revised to align with global efforts and phase down free allowances.<sup>89</sup> The Market Stability Reserve (MSR), which manages the supply of allowances in the market, was strengthened to ensure the system's effectiveness and price stability.<sup>90</sup>

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and operation of a market stability reserve for the Union greenhouse gas emission trading system (Text with EEA relevance), PE/9/2023/REV/1, OJ L 130, 16.5.2023, pp. 134-202.

<sup>88</sup> Regulation (EU) 2023/957 of the European Parliament and of the Council of 10 May 2023 amending Regulation (EU) 2015/757 in order to provide for the inclusion of maritime transport activities in the EU Emissions Trading System and for the monitoring, reporting and verification of emissions of additional greenhouse gases and emissions from additional ship types (Text with EEA relevance), PE/10/2023/REV/1, OJ L 130, pp. 105-114.

<sup>89</sup> Directive (EU) 2023/958 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and the appropriate implementation of a global market-based measure (Text with EEA relevance), PE/8/2023/REV/1, OJ L 130, 16.5.2023, pp. 115-133.

<sup>90</sup> Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme, OJ L 264, 9.10.2015, as amended by Directive (EU) 2018/410 and, following up on the *Fit for 55* strategy, Directive (EU) 2023/959.

Additionally, a new, separate emissions trading system (ETS 2)<sup>91</sup> is established to cover fuel combustion in the previously unregulated sectors of buildings and road transport, and additional sectors (mainly small industry not covered by the existing EU ETS). The ETS 2 will complement other policies of the European Green Deal in the covered sectors, helping Member States achieve their emission reduction targets under the “*Effort Sharing Regulation*” (Regulation (EU) 2018/842). It is to become operational from 2027. This system will put a price on the carbon emissions from the fuels used in these sectors.

A key element of this development to the EU ETS system is the new Carbon Border Adjustment Mechanism (CBAM).<sup>92</sup> Designed to address higher risks of carbon leakage in light of increased climate ambition within the EU, the Council and Parliament agreed on a phase-in plan for a Carbon Border Adjustment Mechanism (CBAM) to price imported goods based on their embedded emissions. Starting in 2026, importers in sectors covered by CBAM (cement, aluminium, fertilizers, electricity, hydrogen, iron and steel, along with some precursors and downstream products) will be required to surrender newly created CBAM certificates equivalent to the embedded emissions of their products. In contrast to the original Commission proposal, indirect emissions from electricity and heat will also be covered for cement and fertilizers. The CBAM phase-in plan gradually ceases the free allocation of EU ETS allowances over a nine-year period (from 2026 to 2034) for sectors covered by CBAM. The phase-out of free

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<sup>91</sup> Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC as regards the establishment of a separate emissions trading system for buildings, road transport and additional sectors, *OJ L 130*, 16.5.2023.

<sup>92</sup> Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism, *OJ L 130*, 16.5.2023.

allocation will begin at a slow rate before accelerating towards the end of the period. It will also correspond directly to the CBAM phase-in, so that during the transition period CBAM will only apply to the proportion of emissions that are not subject to free allocation under the EU ETS.

Finally, to address the potential social impact and energy poverty caused by the new carbon costs in these sectors, the Social Climate Fund (SCF) was created.<sup>93</sup> This fund uses revenues generated from ETS II allowances to support vulnerable households and micro-enterprises with income support and investments in building renovation and clean mobility.

## 6.2 Enhancing renewables and energy efficiency energy laws

The package significantly revised core energy legislation to increase the uptake of clean energy and reduce overall consumption<sup>94</sup>.

A key element in the “*Fit for 55*” package is the revision of the Renewable Energy Directive (RED), to help the EU deliver the new 55 % GHG target. Under RED II, the EU was obliged to ensure at least 32 % of its energy consumption comes from renewable energy

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<sup>93</sup> Regulation (EU) 2023/955 of the European Parliament and of the Council establishing a Social Climate Fund and amending Regulation (EU) 2021/1060.

<sup>94</sup> See, e.g., the Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, COM/2021/557 final.

sources (RES) by 2030. The “*Fit for 55*” revision increased this target to 40%.<sup>95</sup> <sup>96</sup> It also established specific sub-targets for sectors like transport, heating and cooling, and industry.

Another core part of the EU’s “*Fit for 55*” package, was the 2023 revision of the Energy Efficiency Directive (EED) , which is fully in force since October 2023.<sup>97</sup> Focusing on the principle of “*energy efficiency first*” in policy and investment decisions, it sets binding targets for reducing primary and final energy consumption by 11.7% and 36% respectively by 2030 (from 2020 levels) to meet the EU’s climate goals<sup>98</sup>. It strengthens requirements for public sector efficiency, mandates energy management systems for large companies, and increases annual energy savings obligations for Member States to nearly double (from 0.8% to 1.5%),<sup>99</sup> gradually increasing from 2024 to 2030.

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<sup>95</sup> It shall subsequently be raised to a minimum of 42.5%, with an aspiration to reach 45% by the Repower EU act.

<sup>96</sup> Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, *OJ L* 2023/2413, 31.10.2023.

<sup>97</sup> Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast) (Text with EEA relevance), PE/15/2023/INIT, *OJ L* 231, 20.9.2023, pp. 1-111.

<sup>98</sup> Adopted in 2012, it was first recast in 2018, within the *Clean Energy for All Europeans* Package.

<sup>99</sup> Articles 8-10 of Directive (EU) 2023/1791, establishing binding national energy efficiency contribution trajectories and annual energy savings obligations for Member States.

The Energy Performance of Buildings Directive (EPBD) was equally subject to revision.<sup>100</sup> This directive works alongside the EED to boost renovation rates. It set ambitious goals, including all new buildings being zero-emission buildings by 2030, and sought to transform existing buildings into a zero-emission stock by 2050.

The package also included the revision of the existing Energy Taxation Directive (ETD), which aims to align the taxation of energy products with the EU's climate objectives and remove outdated exemptions, such as those for the intra-EU maritime transport sector.

### 6.3 Extension of standards to new sectors

To ensure a holistic approach, the *Fit for 55* package also included standards for specific sectors. In particular,

- Regulation 2023/851<sup>101</sup> set more ambitious emission reduction targets for new vehicles, including a 100% reduction target by 2035.<sup>102</sup> This effectively phases out the sale of new internal combustion engine (ICE) vehicles in the EU after that date;

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<sup>100</sup> Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast) (Text with EEA relevance), PE/102/2023/REV/1, OJ L, 2024/1275, 8.5.2024.

<sup>101</sup> Regulation (EU) 2018/842 as amended by Regulation (EU) 2023/857 on binding annual greenhouse gas emission reductions by Member States (Effort Sharing Regulation OJ L 107, 21.4.2023.

<sup>102</sup> Regulation (EU) 2023/851 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2019/631 as regards strengthening the CO<sub>2</sub> emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition, OJ L 110, 25.4.2023.

- The revised LULUCF (Land Use, Land Use Change, and Forestry) regulation<sup>103</sup> enhanced the EU's capacity to remove CO<sub>2</sub> from the atmosphere through natural sinks. It sets a higher collective EU target for net carbon removals of 310 million tonnes of CO<sub>2</sub> equivalent by 2030, with binding national targets for Member States;
- The *FuelEU* Maritime<sup>104</sup> and *ReFuelEU* Aviation<sup>105</sup> regulations<sup>106</sup>

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<sup>103</sup> Regulation (EU) 2023/839 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of Member States for 2030 and committing to achieve climate neutrality in the land sector by 2035, *OJ L* 107, 21.4.2023.

<sup>104</sup> As part of the European Commission's fit for 55 legislative package, the *FuelEU* maritime regulation promotes the use of renewable, low-carbon fuels and clean energy technologies for ships, essential to support decarbonisation in the sector. The regulation shall be fully applied from 1 January 2025 except for articles 8 and 9 on monitoring plans that are applied from August 2024.

<sup>105</sup> *ReFuelEU* aviation promotes the increased use of sustainable aviation fuels (SAF) as the single most powerful tool to decrease aviation CO<sub>2</sub> emissions. The measure is part of the fit for 55 package to meet the emissions reduction target of 55% by 2030. It sets requirements for aviation fuel suppliers to gradually increase the share of SAF blended into the conventional aviation fuel supplied at EU airports.

<sup>106</sup> Respectively, Regulation (EU) 2023/1805 of the European Parliament and of the Council of 13 September 2023 on the use of renewable and low-carbon fuels in maritime transport, and amending Directive 2009/16/EC (Text with EEA relevance), PE/26/2023/INIT, *OJ L* 234, 22.9.2023, pp. 48-100 and Regulation (EU) 2023/2405 of the European Parliament and of the Council of 18 October 2023 on ensuring a level playing field for sustainable air transport (*ReFuelEU* Aviation) (Text with EEA relevance), PE/29/2023/REV/1, *OJ L*, 2023/2405, 31.10.2023.

introduced mandatory greenhouse gas intensity reduction targets for marine fuels and renewable fuel blending obligations for aviation fuel suppliers at EU airports, respectively.

The “*Fit for 55*” package thus provides a fully aligned and interconnected legal toolkit that touches upon every sector of the EU economy, transforming high-level climate targets into a comprehensive body of operational law.

## **7. Geopolitical Shifts and the *REPowerEU* Plan (2022 onwards): The response to the Russian invasion of Ukraine, focusing on energy security, ending dependence on Russian fossil fuels and accelerating the clean energy transition**

Introduced in response to the energy crisis set by the invasion of Ukraine and the perceived weaponisation by Russia of its energy supplies, the *REPowerEU Plan*,<sup>107</sup> launched in May 2022, is the European Union’s strategy to rapidly reduce dependence on Russian fossil fuels by diversifying supplies and massively scaling up renewables and energy efficiency measures. It set more ambitious targets beyond the initial “*Fit for 55*” package, for example, a binding target of 42.5% aiming at 45% for renewable energy use by 2030.

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<sup>107</sup> European Commission, *REPowerEU Plan*, 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, COM(2022) 230 final, 18 May 2022; see also European Council Conclusions of 24-25 March 2022 on energy security and the reduction of dependence on Russian fossil fuels.

## 7.1 Immediate response to the security and supply crisis

More immediately, in 2022 it also enacted emergency short-term emergency regulations to stabilize markets and protect consumers. Voluntary gas demand reduction measures were agreed upon and minimum mandatory gas storage levels (90% by winter) were established.<sup>108</sup> Revenues of low-cost energy producers were capped, and a “solidarity contribution” was introduced on fossil fuel companies to redistribute funds to consumers.<sup>109</sup> Permitting procedures for renewable projects were fast-tracked through an emergency regulation.<sup>110</sup>

## 7.2 Turning a crisis into an opportunity for long-term reform and acceleration of the energy transition

More structurally, the *REPowerEU* plan resulted in the acceleration of reforms aimed at enhancing EU’s security of supply, especially by achieving significant reductions in Russian energy imports, and by diversifying supplies, boosting renewables, and improving energy efficiency.

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<sup>108</sup> Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 as regards gas storage, *OJ L* 173, 30.6.2022.

<sup>109</sup> Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, *OJ L* 261 I, 7.10.2022.

<sup>110</sup> Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, *OJ L* 335, 29.12.2022.

Amongst the key actions undertaken for diversifying supplies, the EU has drastically reduced its reliance on Russian imports by securing new sources of natural gas (LNG from the US, Norway, Qatar, amongst other sources) and signing new energy partnerships. Russian gas imports dropped from 45% of total EU gas imports in 2021 to 19% in 2024<sup>111</sup>; oil imports fell from 27% to 3%;<sup>112</sup> and coal imports have been banned entirely.<sup>113</sup>

The plan has also turned the green transition into a “sprint” race for the use of clean energy. The revised Renewable Energy Directive (now RED III) <sup>114</sup> mandates a binding EU-wide target of at least

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<sup>111</sup> European Commission, *REPowerEU Progress Report 2024* (or most recent Commission/Eurostat statistical release on EU energy dependence), documenting the decline of Russian gas imports from 45 % in 2021 to 19 % by 2024.

<sup>112</sup> European Commission, *REPowerEU Progress Report 2024* (or equivalent Eurostat/IEA data), showing the reduction in Russian crude oil imports as a share of total EU crude oil imports from approximately 27 % in 2021 to 3 % by 2024.

<sup>113</sup> European Commission, *Implementing Regulation on the ban of Russian coal imports* under the EU’s restrictive measures regime; see also Council Decision (CFSP) 2022/576) imposing import bans on coal derived from Russia (*OJ L* 111, 8.04. 2022).

<sup>114</sup> Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources and repealing Council Directive (EU) 2015/652, PE/36/2023/REV/2 *OJ L*, 2023/2413, 31.10.2023.

42.5% renewable energy in gross final consumption by 2030, with an aspirational goal of 45%.<sup>115 116</sup>

Sector-specific targets<sup>117</sup> were also revised, like the ones for transport, where Member States can choose between a binding target of a 14.5% greenhouse gas intensity reduction or a 29% share of renewables in final energy consumption by 2030<sup>118</sup>; moreover, a combined sub-target of 5.5% is set for advanced biofuels and renewable fuels of non-biological origin (RFNBOs), with a minimum of 1% from RFNBOs (primarily renewable hydrogen).<sup>119</sup>

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<sup>115</sup> Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (RED II), which establishes a legally binding EU-wide target of at least 42.5% renewable energy in gross final energy consumption by 2030.

<sup>116</sup> Directive (EU) 2023/2413 (RED III), recital and Article 3, which set an additional non-binding aspirational objective for the Union to reach a 45% share of renewable energy in gross final energy consumption by 2030.

<sup>117</sup> Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001 (RED III), which introduces binding and indicative sector-specific renewable energy targets for transport, industry, and buildings as part of the “Fit for 55” legislative framework.

<sup>118</sup> Directive (EU) 2023/2413 (RED III), Article 25, which allows Member States to choose between a binding 14.5% reduction in greenhouse gas intensity of transport fuels or a 29% share of renewable energy in final energy consumption in the transport sector by 2030.

<sup>119</sup> Directive (EU) 2023/2413 (RED III), Article 25(1) and Annex IX, establishing a combined sub-target of 5.5% for advanced biofuels and renewable fuels of non-biological origin (RFNBOs), including a minimum share of 1% RFNBOs in transport by 2030.

Similarly, the same trend is present for industry, where an average annual increase of renewable energy usage by 1.6% is required and at least 42% of the hydrogen used in industry must be from RFNBOs by 2030, rising to 60% by 2035<sup>120</sup>; and for buildings, for which an indicative target of at least a 49% share of renewable energy in buildings by 2030 is set out, with binding gradual increases for heating and cooling systems.<sup>121</sup>

Furthermore, since there is the notion that the lengthy and complex permit-granting processes for new renewable energy projects, grid connections, and associated infrastructure reinforcement may become a hindrance, delay target achievement and increase project costs, permitting is streamlined and fast-track procedures for new renewable energy projects are mandated, including the designation of “Renewables Acceleration Areas” and a presumption of “overriding public interest” to limit legal objections.<sup>122</sup>

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<sup>120</sup> Directive (EU) 2023/2413 (RED III), Article 22a, which requires an average annual increase of 1.6% in renewable energy use in industry and mandates that at least 42% of hydrogen consumed in industry originate from RFNBOs by 2030, increasing to 60% by 2035.

<sup>121</sup> Directive (EU) 2023/2413 (RED III), Article 23, which sets an indicative target of at least a 49% share of renewable energy in buildings by 2030 and introduces binding annual increases for renewable energy use in heating and cooling.

<sup>122</sup> Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001 (RED III), in particular Articles 15c–15f, which introduce accelerated permitting procedures for renewable energy projects, establish “Renewables Acceleration Areas,” and provide for a presumption that renewable energy projects are in the overriding public interest, including for the purposes of environmental and nature protection law.

## 8. Reforms to market design and the hydrogen and decarbonised gas market package (2023/2024)

Complementarily, reforms to the market design were introduced. The Commission proposed a reform of the existing electricity market rules in March 2023, as part of the Green Deal Industrial Plan which have led to the adoption of the amending Directive EU/2024/1711<sup>123</sup> and the amending Regulation EU/2024/1747<sup>124</sup>. The new electricity market design rules entered into force on 16 July 2024.

Adaptation of the markets was felt to be needed to better integrate renewable energies and attract investment in fossil-free flexible technologies that can complement variable energy production, such as demand side response and energy storage. They must also provide the right incentives for consumers to become more active and contribute to keeping the electricity system stable. The EU electricity market needs moreover to be transparent and efficiently monitored to ensure open and fair competition and protect against market abuse and manipulation. 2022 saw high and volatile energy prices and serious concerns about security of supply and led EU heads of government to call on the Commission to work swiftly on the structural reform of the electricity market to help Europe secure its energy sovereignty and achieve climate neutrality.

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<sup>123</sup> Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design (Text with EEA relevance), PE/2/2024/REV/1 *OJ L*, 2024/1711, 26.6.2024.

<sup>124</sup> Regulation (EU) 2024/1747 of the European Parliament and of the Council of 13 June 2024 amending Regulations (EU) 2019/942 and (EU) 2019/943 as regards improving the Union's electricity market design (Text with EEA relevance), PE/1/2024/REV/1, *OJ L*, 2024/1747, 26.6.2024.

The reforms adopted to the EU electricity market are a long-term response to price volatility caused by fossil fuel prices, aiming to better integrate renewables and protect consumers. New rules make electricity prices less dependent on volatile fossil fuel costs, providing more stable prices for consumers through long-term contracts. Long-Term Contracts like Power Purchase Agreements (PPAs) and two-way Contracts for Difference (CfDs) are also promoted incentivizing investment in low-carbon, renewable, and nuclear energy sources and securing stable revenues for producers. Parallely, there is also provision for some consumer empowerment and enhanced consumer protection, with the offer of more options for fixed-price contracts, rules on supplier choice, and provisions for citizens to actively participate as self-generators or through energy communities. The impact of these measures is already significant: since 2022, the EU has generated more electricity from wind and solar than from gas, reaching nearly 47% renewables in its electricity mix and installing record new capacities.

Improved energy efficiency was also sought by measures such as voluntary gas demand reduction (which exceeded a 15% target)<sup>125</sup> and updating energy efficiency directives for obtaining significant energy savings across the EU, to stabilize energy prices and mitigate the risk of shortages.

In 2024, the European Union also introduced major gas/hydrogen regulations, the “*Hydrogen and Decarbonised Gas Market*” package, comprising Regulation (EU) 2024/1789<sup>126</sup> and Directive

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<sup>125</sup> Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206, 8.8.2022.

<sup>126</sup> Regulation (EU) 2024/1789 of the European Parliament and of the Council of 13 June 2024 on the internal markets for renewable gas, natural gas and hydrogen, amending Regulations (EU) No 1227/2011, (EU) 2017/1938, (EU) 2019/942 and (EU) 2022/869 and Decision

(EU) 2024/1788,<sup>127</sup> aiming to decarbonize energy by integrating hydrogen and renewable gases, creating rules for dedicated hydrogen infrastructure, mandating methane emission reductions, and allowing blended hydrogen (up to 2%) in natural gas, with member states needing to implement the directive by mid-2026.

The EU has also sought to strengthen the infrastructure by investing in new LNG terminals and cross-border interconnectors, to ensure that all member states can access gas from at least two sources, thereby increasing the resilience of the energy system. Modernizing the grid to handle variable renewable energy flows requires massive investment. The plan requires an estimated additional €210 billion in investment by 2027, but the funding relies heavily on member state-control and voluntary grants.

## **Conclusion: EU Energy Law as a Complex, Integrated, and rapidly Evolving System driven by Climate Necessity and Security Concerns which Needs to further Ensure Efficiency and a Just Transition**

EU energy law is a highly integrated, complex system, heavily

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(EU) 2017/684 and repealing Regulation (EC) No 715/2009 (recast) (Text with EEA relevance) PE/105/2023/REV/1 OJ L, 2024/1789, 15.7.2024.

<sup>127</sup> Directive (EU) 2024/1788 of the European Parliament and of the Council of 13 June 2024 on common rules for the internal markets for renewable gas, natural gas and hydrogen, amending Directive (EU) 2023/1791 and repealing Directive 2009/73/EC (recast) (Text with EEA relevance) PE/104/2023/REV/1, OJ L, 2024/1788, 15.7.2024.

driven by the EU Green Deal's climate goals (and the implementing Fit for 55 package) and the urgent need for energy security following Russia's invasion of Ukraine (more clearly represented in the *RePowerEU* plan).

Key areas include renewable energy deployment, energy efficiency targets, further integrating national markets into a single EU market, and diversifying gas supplies - the latter one having been boosted by the *REPowerEU* plan.

This legal and policy-making framework relating to energy issues in Europe emphasizes solidarity between member states and preparedness for supply crises, making it at present one of the most dynamic legal fields within the EU.

These advancements in EU energy law and policy should not imply turning a blind eye to the outstanding challenges perceptible in the more or less immediate future. These challenges generally seem to involve the need to maintain the renovation of regulatory frameworks to manage dynamic, data-rich systems and ensure equitable transition outcomes. More specifically, key challenges seem to include:

- A technical, technological vector, whereby variable, decentralized renewable energy sources be integrated into the existing energy grid simultaneously ensuring the grid's stability, the interoperability of the different components of the systems and their capacity to respond to demand;
- A legal, regulatory vector, whereby existing evolve to accommodate new actors (e.g., "prosumers," energy communities) and business models, ensuring fair competition while contributing to an effective grid management. This vector seems to also need to comprehend appropriate responses to data and cybersecurity concerns: as the connectivity and reliance on data from smart meters and other digital tools increase also rises concerns with

data privacy and vulnerability to cyber-attacks;

- A financial, investment vector: significant infrastructure investment is needed (e.g., in smart grids and interoperable infrastructure);
- A social, justice vector: as the system transforms and the energy transition progresses, attention is required to ensure that the costs and benefits are distributed fairly, protecting vulnerable consumers, and avoiding “energy poverty” where households cannot afford essential energy services.

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