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<https://doi.org/10.21697/2026.15.1.04>

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# **SCALING UP THE ENERGY TRANSITION IN THE EU IN VIEW OF EU LEGISLATION BETWEEN 2020-2024**

Received: 2026-01-09; Revised: 2026-03-15; Accepted: 2026-04-13

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**Abstract:** This article analyses how the climate and energy transition accelerated in the (EU) during Russia's invasion of Ukraine, examining this through the lens of legislative work in the EU. The EU's response to the crisis caused by Russia on international and European energy markets had two objectives. Firstly, the adopted EU legislation was intended to address the immediate effects of sudden price increases and further strengthen the EU's resilience to future shocks. Secondly, to increase the energy security of EU countries, the role of renewable energy sources in the transition to a low-carbon economy was significantly increased, raising the EU ambition level for the use of renewable energy sources.

**Keywords:** climate and energy transition, renewable energy sources, climate targets, energy security, EU law

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## **1. Introduction**

In December 2019, the European Council committed to achieving climate neutrality by 2050.<sup>1</sup> Together with the Commission's communication on the European Green Deal (EGD),<sup>2</sup> which included policy initiatives to significantly reduce greenhouse gas emissions over 30 years, this marked a fundamental shift in EU countries' economic

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<sup>1</sup> The European Council conclusions of 12 December 2021.

<sup>2</sup> 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.

development programming within the European integration process.<sup>3</sup> These issues have taken on new significance in light of the EU's efforts to revive the European economy after the crisis caused by the Covid-19 pandemic, collectively known as the 'Recovery Plan for Europe'.<sup>4</sup> Approximately EUR 1.8 trillion in financial resources were allocated to Member States under the EU's multiannual budget for 2021-2027 and the Next Generation EU financial instrument. The EU's actions included strengthening the position of EU industry at the global level and combating climate change, including an energy transition aimed at maximising Member States' use of renewable energy.<sup>5</sup>

Unfortunately, the eagerly awaited economic recovery around the world also had negative consequences in the form of the first wave of the energy crisis in the EU and globally. As the economy emerged from the crisis, demand for energy carriers began to grow. This triggered a sharp increase in prices as early as mid-2021. The renewed surge in energy prices in the first half of 2022 was a consequence of Russia's invasion of Ukraine and its decision to suspend gas supplies to some EU Member States.<sup>6</sup> This caused energy prices in the EU to reach record highs that year.<sup>7</sup>

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<sup>3</sup> These initiatives, alongside the European Council's declaration in December 2020 to reduce net domestic greenhouse gas emissions by at least 55% by 2030, have compelled EU Member States to accelerate the energy transition; see: Sikora, *European Green Deal – legal and financial challenges of the climate change*, 687-690.

<sup>4</sup> Joint assumptions for reconstruction of 21 April 2020. A Roadmap for Recovery. Towards a more resilient, sustainable and fair Europe, <https://www.consilium.europa.eu/media/43384/roadmap-for-recovery-final-21-04-2020.pdf> (1.2.2020); According to the European Council's conclusions on 10-11 December 2020, the financial resources allocated to Member States under the EU's multiannual budget for 2021-2027 and the Next Generation EU financial instrument totalled around EUR 1.8 trillion. The EU's actions focused on strengthening the position of EU industry at a global level and tackling climate change, including the energy transition aimed at maximising Member States' use of renewable energy. This transition was also identified as one of the pillars of the EU's post-Covid-19 economic recovery strategy in the Commission Communication "EU Budget to Power Europe's Recovery" of 27 May 2020 COM(2020)442).

<sup>5</sup> Commission Communication "EU Budget to Power Europe's Recovery" of 27 May 2020 COM(2020)442).

<sup>6</sup> Kardaś, "Russia halts gas supplies to Poland and Bulgaria"; Wiśniewska, "Gazprom in 2022: production and exports down, profits up".

<sup>7</sup> On 26 August 2022, the Dutch TTF gas exchange recorded the highest gas price per 1 MWh since the outbreak of the war in Ukraine: EUR 339.195. Data from the TTF exchange: <https://pl.investing.com/commodities/dutch-ttf-gas-c1-futures-historical-data> (13.8.2024).

The EU's response to these two events was twofold. Firstly, it aimed to address the immediate effects of the sudden price increases observed since September 2021, while also seeking to strengthen resilience to future shocks. Secondly, to increase the energy security of EU countries, renewable energy sources were given a significantly greater role in the energy transition process. Achieving these two priorities was intended to bring the EU significantly closer to achieving climate neutrality by 2050.<sup>8</sup> Therefore, it could be argued that the energy crisis has become a catalyst for the next stage of the ongoing energy transition in the EU since around 2007.<sup>9</sup>

## 2. Legislative Activity of the EU Relating to the Energy Transition 2020-2022

During the Croatian Presidency in the first half of 2020, the EU institutions took a number of measures in response to the pandemic, including legislative measures. Consequently, the implementation of measures under the EGD was put on hold.<sup>10</sup> Nevertheless, the Commission published

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<sup>8</sup> Climate neutrality means achieving a balance between greenhouse gas emissions from specific sources and their absorption (see point 2 of the Communication "A Clean Planet for All"). "A European strategic long-term vision for a prosperous, modern, competitive and climate-neutral economy" (COM(2018)773 final). In accordance with Article 2(1) of Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021, which establishes a framework for achieving climate neutrality and amends Regulations (EC) No. 401/2009 and (EU) 2018/1999, the EU is committed to achieving climate neutrality by 2050 at the latest. This means reducing net greenhouse gas emissions to zero.

<sup>9</sup> In 2007, the EU agreed to reduce greenhouse gas emissions, increase energy efficiency and boost energy production from renewable sources by 20% each. The following year, five directives and a regulation were adopted in the EU, translating earlier political agreements into EU legislation. This package of measures, collectively referred to as the 'climate and energy package', focuses on solutions for renewable energy sources. For more details, see [...] *Pakiet klimatyczny – energetyczny. Analityczna ocena propozycji Komisji Europejskiej*, Urząd Komitetu Integracji Europejskiej, Warszawa 2008.

<sup>10</sup> Communication from The Commission to The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions "Sustainable Europe Investment Plan European Green Deal Investment Plan" of 14.1.2020, COM(2020)21 final; 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 "A New Industrial Strategy for Europe" COM(2020)102 final; Communication from The Commission to The European Parliament, The Council, The European Economic and Social Committee and The Committee Of The Regions "A new Circular Economy Action Plan For a cleaner and more competitive Europe" COM(2020)98 final.

the first strategic documents developing the EGD's assumptions and submitted two legislative proposals to the Council: a draft regulation establishing a Just Transition Fund, and a draft regulation establishing a framework for achieving climate neutrality (the European Climate Law<sup>11</sup>).<sup>12</sup>

2021 was a pivotal year for accelerating the energy transition, with the publication of the "Fit for 55" Communication by the Commission.<sup>13</sup> This ambitious, controversial and non-legally binding declaration aimed to increase the EU's ambition to reduce greenhouse gas (GHG) emissions by at least 55% by 2030. The choice of 2030 as one of the reduction targets *en route* to achieving climate neutrality on the European continent was also significant. The scale of the proposed changes, which essentially cover most industrial sectors, constitutes a profound transformation of the EU economy towards zero emissions.<sup>14</sup> Immediately after the publication of the Commission's proposal, concerns were raised about excessive interference in key national economic sectors and the threat to the energy security of these countries. This could lead to delays in achieving the aforementioned GHG emission reduction targets.<sup>15</sup>

The "Fit for 55" legislative package comprised thirteen draft legislative acts, forming a set of interrelated proposals. Most of these were revisions of existing directives and regulations.<sup>16</sup> The legislative proposals focused on changes in four areas. The first concerned climate and the environment. In this regard, the Commission prepared six legislative proposals

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<sup>11</sup> For more details, see: Bukowska, „Ramy prawne osiągnięcia neutralności klimatycznej w Europejskim prawie o klimacie”, 51-67.

<sup>12</sup> *Informacja dla Sejmu i Senatu RP o udziale Rzeczypospolitej Polskiej w pracach Unii Europejskiej w okresie styczeń-czerwiec 2020 (przewodnictwo Chorwacji w Radzie Unii Europejskiej)*, KPRM, Warszawa 2020, 21; <https://orka.sejm.gov.pl/Druk9ka.nsf/0/186DEB546A7AA250C12585C40036E303/%24File/565.pdf> (7.5.2024).

<sup>13</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Fit for 55: delivering the EU's 2030 Climate Target on the way to climate neutrality", COM(2021) 550 final, 14 July 2021.

<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Fit for 55: delivering the EU's 2030 Climate Target on the way to climate neutrality", COM(2021) 550 final, 14 July 2021.

<sup>15</sup> Romanowicz, „Gotowi na transformację? Polityka klimatyczna Unii Europejskiej w świetle Pakietu Fit for 55”, 42.

<sup>16</sup> The Fit for 55 package included a review of eight existing legal acts and introduced five new initiatives covering areas of EU regulatory activity such as climate, energy and fuels, transport, buildings, land use and forestry. Since September 2021, national experts have been working on individual parts of the 'Fit for 55' package within Council working groups.

that concentrated on increasing the EU's reduction target from 29% to 40% and updating national targets through a revision of Regulation (EU) 2018/842,<sup>17</sup> amending the EU Emissions Trading System (EU ETS) through a revision of Directive 2003/87/EC,<sup>18</sup> involving the land use and forestry sectors (LULUCF) in implementing the EU's more ambitious climate targets by revising Regulation (EU) 2018/841,<sup>19</sup> accelerating the pace of building renovations in the EU through a recast of Directive 2010/31/EU,<sup>20</sup> reducing CO<sub>2</sub> emissions from passenger cars and vans by recasting Regulation (EU) 2019/631,<sup>21</sup> and establishing a Social Climate Fund with the specific objectives defined in Article 3(2) of Regulation (EU) 2023/955 to provide support to households, micro-enterprises or transport users who will be most affected by the new system.<sup>22</sup> The second area of change was the energy sector. This included three legislative

<sup>17</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No. 525/2013 (Text with EEA relevance), OJ L 156, 19 June 2018, pp. 26-42.

<sup>18</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 (Text with EEA relevance), OJ L 275, 25 October 2003, pp. 32-46; the aim of this proposal was to comprehensively reform the EU Emissions Trading System (EU ETS), with the intention of reducing greenhouse gas (GHG) emissions by 61% in specific EU industrial sectors by 2030 compared to 2005 levels.

<sup>19</sup> Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No. 525/2013 and Decision No. 529/2013/EU (Text with EEA relevance), OJ L 156, 19 June 2018, pp. 1-25; the aim of amending this regulation was to reverse the current downward trend in the absorption of carbon dioxide and to increase natural absorption in the land use, land use change and forestry (LULUCF) sectors across the EU.

<sup>20</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 June 2010, pp. 13-35; the objectives of the proposal were to accelerate the pace of building renovation in the EU, including energy-efficient renovations in 15% of the EU's worst-performing buildings, and to reduce greenhouse gas emissions from buildings with a view to achieving a net-zero building stock by 2050.

<sup>21</sup> Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO<sub>2</sub> emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No. 443/2009 and (EU) No. 510/2011 (recast) (Text with EEA relevance.), OJ L 111, 25 April 2019, pp. 13-53; to reduce greenhouse gas (GHG) emissions, the legislative proposal stipulated that, from 2035 onwards, passenger cars and light commercial vehicles with combustion engines would be prohibited from being placed on the EU market.

<sup>22</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, OJ L 130, 16 May 2023, pp. 1-51.

proposals. A matter of great importance was raising the EU's renewable energy target from at least 32% to at least 40% of the overall energy mix by 2030 through amending Article 3(1) of Directive (EU) 2018/2001<sup>23</sup> also known as REDII as well as mainstreaming renewable energy in buildings (Article 15a) and also designating in the Member States renewables acceleration areas (Article 15c).<sup>24</sup> The adoption of new energy consumption targets of at least 11.7% by 2030 was included in Article 4(1) of the new Directive (EU) 2023/1791.<sup>25</sup> The recast of Council Directive 2003//96/EC on changing the taxation of energy products and electricity was another controversial element of the package due to its tax implications.<sup>26</sup> The third group of legislative proposals in the "Fit for 55" package included a new draft legislative act focusing on renewable and low-carbon fuels for aviation<sup>27</sup> as well as an amended Directive 2009/16/EC for maritime transport.<sup>28</sup> A new Regulation (EU) 2023/1804 was also proposed

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<sup>23</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) (Text with EEA relevance.), OJ L 328, 21 December 2018, pp. 82-209.

<sup>24</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, OJ L, 2023/2413, 31 October 2023.

<sup>25</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), OJ L 231, 20 September 2023, pp. 1-111.

<sup>26</sup> Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast), COM/2021/563 final, 14 July 2021; this legislative proposal included aligning taxation with EU energy, environmental and climate policies, and improving the functioning of the EU internal market by updating the scope of energy products and rates. It also aimed to rationalise the use of tax exemptions and reductions by Member States; In June 2025, the Council, under the Polish Presidency, noted it had worked on such issues as the taxation of waste used for heating purposes, the taxation of electricity output of small producers when it is for own-use and the ETD's alignment with RED II. The Council concluded that further work would remain necessary in order to reconcile the different positions of the Member States. In November 2025, a compromise text drafted by the Danish Presidency of the Council failed to gain the required unanimous support of Member States; <https://www.europarl.europa.eu/legislative-train/theme-a-new-plan-for-europe-s-sustainable-prosperity-and-competitiveness/file-revision-of-the-energy-taxation-directive> (29 December 2025).

<sup>27</sup> 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), OJ L, 2023/2405, 31 October 2023.

<sup>28</sup> 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), OJ L 234, 22 September 2023, pp. 48-100.

to accelerate the development of infrastructure for charging or refuelling vehicles using alternative fuels.<sup>29</sup>

A key feature of the “Fit for 55” package was the legislative proposal aimed at preventing GHG emissions from being leaked outside the EU. This took the form of a regulation establishing a carbon border adjustment mechanism (CBAM).<sup>30</sup> The proposal aimed to prevent efforts to reduce emissions within the EU from being undermined by an increase in emissions outside its borders. This increase could be caused by the relocation of production to countries with less ambitious climate change policies than the EU or by increased imports of high-emission products. This would be achieved in full compliance with international trade rules.

### 3. Assessment of Legislative Proposals in the ‘Fit for 55’ Package

The adoption of legally binding climate targets for reducing GHG emissions, as set out in the legislative acts of the “Fit for 55” package, covered the most important industrial sectors in the EU. Notably, the adopted objectives include enhancing natural carbon sinks and updating the emissions trading system to further reduce emissions. However, this is currently causing serious concerns among some Member States, as was highlighted during the Polish Presidency of the Council, for example.<sup>31</sup> Additionally, a framework was established to finance investments

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<sup>29</sup> Regulation (EU) 2023/1804 of the European Parliament and of the Council of 13 September 2023 on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU (Text with EEA relevance), OJ L 234, 22 September 2023, pp. 1-47.

<sup>30</sup> Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance), OJ L 130, 16 May 2023, pp. 52-104.

<sup>31</sup> Presentation of the Polish Presidency’s programme of activities by Prime Minister D. Tusk in the European Parliament, 22 January 2025; [https://www.europarl.europa.eu/doceo/document/CRE-10-2025-01-22-INT-2017011397344\\_PL.html](https://www.europarl.europa.eu/doceo/document/CRE-10-2025-01-22-INT-2017011397344_PL.html) (30 April 2025); see also the response of the Minister of Climate and Environment to the Marshal of the Senate of the Republic of Poland regarding energy transition dated 3 March 2025 (ref. no. DCE-WKiC.050.17.2024.PB), in which the Ministry of Climate and Environment informs that “the Polish government proposes to delay the entry into force of the second part of the EU ETS, i.e. the obligation to surrender allowances, by three years. This would allow time for appropriate investments to eliminate the risk of price increases for high-emission fuels, particularly in the area of heating. (...) any changes require a legislative initiative by the European Commission. It is then necessary to build a majority in the EU Council and the EU Parliament in order to vote on the relevant changes. Poland is taking steps to build such a coalition. For this reason, and in view of the deregulation measures that have been initiated, it is difficult to estimate what form the ETS2 system will ultimately take in Europe.”

in the green transition and provide social support to citizens and small businesses. The package also aimed to boost the production and use of renewable energy and improve energy efficiency.<sup>32</sup>

It should come as no surprise that such fundamental changes, which affect many economic sectors within the EU, have provoked negative reactions within the Council. Some Member States, including Poland, demanded that the proposed solutions for the energy market aim to maintain technological neutrality. This would enable nuclear energy to be financed by EU funds<sup>33</sup> and prevent the poorest social groups from bearing an excessive burden. This would also help to avoid exacerbating energy poverty and transport exclusion by negatively impacting the transport fuel market.<sup>34</sup>

Undoubtedly, the establishment of a mechanism for adjusting prices at the EU's external borders to take account of CO<sub>2</sub> emissions was one of the three most controversial issues included in the "Fit for 55" package.

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p. 3; [www.senat.gov.pl/download/gfx/senat/pl/senatoswiadczenia/5336/11\\_025\\_593\\_2\\_odp.pdf](http://www.senat.gov.pl/download/gfx/senat/pl/senatoswiadczenia/5336/11_025_593_2_odp.pdf) (8.5.2025)

<sup>32</sup> Press release 9 October 2023 Commission welcomes completion of key 'Fit for 55' legislation, putting EU on track to exceed 2030 targets, [https://ec.europa.eu/commission/presscorner/detail/pl/IP\\_23\\_4754](https://ec.europa.eu/commission/presscorner/detail/pl/IP_23_4754) (29.8.2024).

<sup>33</sup> The meeting of the EU Council of Ministers for the Environment took place on 6 October 2021; information from the website: <https://www.consilium.europa.eu/en/meetings/tte/2021/10/26/> (19 September 2024); Despite the reluctance of some Member States to finance nuclear energy from the EU budget, there has been a gradual shift in their approach over time, see the European Council conclusions of the of 21-22 October 2021, p. 5 tiret: "the Commission and the Council to swiftly consider (...) and support the transition to climate neutrality, taking into account the diversity and specificity of situations of Member States"; <https://data.consilium.europa.eu/doc/document/ST-17-2021-INIT/en/pdf> (19 September 2024); relevant in terms of the admissibility of financing nuclear technologies from the EU budget: Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities (Text with EEA relevance), OJ L 188, 15 July 2022, pp. 1-45; In the first half of 2024, the European Investment Bank announced that it might finance nuclear energy projects; 'EIB shifts on nuclear power under new leadership' Financial Times, 27 February 2024; <https://www.ft.com/content/418fbd05-b5d3-4cb3-a9e4-648b14694ec2> (19 September 2024).

<sup>34</sup> *Informacja dla Sejmu i Senatu RP o udziale Rzeczypospolitej Polskiej w pracach Unii Europejskiej w okresie styczeń-czerwiec 2021 (przewodnictwo Portugalii w Radzie Unii Europejskiej)*, KPRM, Warszawa 2021, p. 12.

Pursuant to Article 1(1) of the so-called CBAM<sup>35</sup> Regulation,<sup>36</sup> goods imported into the EU are subject to a greenhouse gas emission charge, thus ensuring a level playing field for European businesses. Combining this mechanism with the EU Emissions Trading Scheme (EU ETS) would reduce the risk of greenhouse gas (GHG) emissions leakage, i.e. companies relocating production from Europe to countries with less stringent environmental standards (Article 1(2)).<sup>37</sup> The main point of contention in the negotiations between the Council and the European Parliament was which economic sectors and types of products should be covered by the CBAM mechanism. Understandably, the Member States wanted to be involved in the selection process, so it was agreed that the range of products would be expanded through a separate legislative procedure.<sup>38</sup> Following the adoption of the package, the Commission concluded that this new mechanism would align with the EU's external action, promoting global CO<sub>2</sub> emission reductions and support the goals of the Paris Agreement (Article 1(1)).<sup>39</sup> In this context, two types of concern can be raised. Firstly, does the CBAM mechanism create obstacles to free and fair trade in external relations, thereby violating Article 3(5) of the Treaty on EU?<sup>40</sup> Secondly, is it compatible with WTO regulations

<sup>35</sup> The CBAM (Carbon Border Adjustment Mechanism) is a mechanism for adjusting prices at borders to take account of CO<sub>2</sub> emissions. According to recitals 11 and 12 of Regulation (EU) 2023/956, the aim of the CBAM is to avoid a situation where the EU's efforts to reduce emissions are undermined by an increase in emissions outside its borders, caused either by the relocation of production to countries with less ambitious climate change policies than the EU, or by increased imports of high-emission products. In the first transitional phase, the regulation applies to high-emission goods such as cement, electricity, fertilisers, iron and steel, and chemicals.

<sup>36</sup> Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance), OJ L 130, 16 May 2023, pp. 52-104.

<sup>37</sup> Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (Text with EEA relevance), OJ L 130, 16 May 2023, pp. 52-104.

<sup>38</sup> *Informacja dla Sejmu i Senatu RP o udziale Rzeczypospolitej Polskiej w pracach Unii Europejskiej w okresie styczeń-czerwiec 2021 (przewodnictwo Portugalii w Radzie Unii Europejskiej)*, KPRM, Warszawa 2021, p. 12.

<sup>39</sup> Press release of 9 October 2023: 'Commission welcomes completion of key "Fit for 55" legislation, putting EU on track to exceed 2030 targets'; [https://ec.europa.eu/commission/presscorner/detail/pl/IP\\_23\\_4754](https://ec.europa.eu/commission/presscorner/detail/pl/IP_23_4754) (29.8.2024)

<sup>40</sup> Pirlot, Carbon Border Adjustment Measures: A Straightforward Multi-Purpose Climate Change Instrument?, 43-44; <https://academic.oup.com/jel/article/34/1/25/6423116?login=false> (9.5.2025); Englisch, Falcao, EU Carbon Border Adjustments for Imported Products and WTO Law.

on free trade?<sup>41</sup> After all, there is a risk that the CBAM mechanism could itself lead to increased disparities in economic development between the EU and developing countries, since it will be much more difficult for the latter to transition to low-carbon production.<sup>42</sup>

Another legislative proposal of the 'Fit for 55' package – ultimately taking the form of regulation (EU) 2023/851<sup>43</sup> – which raised doubts among Member States was concentrated on gradually phasing out polluting vehicles in order to achieve zero CO<sub>2</sub> emissions from new passenger cars and vans.<sup>44</sup> At the same time, Member States would need to increase infrastructure for charging these vehicles and for the use of alternative fuels in road transport, shipping, and aviation. The Commission itself suggested the flexibility of the proposed changes after a critical assessment of the legislative proposal by representatives of the automotive industry.<sup>45</sup>

The third issue which sparked serious controversy in the Council, ultimately leading to the rejection of the Commission's proposal was the recast of Council Directive 2003/96/EC.<sup>46</sup> This concerned the align-

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<sup>41</sup> Leal-Arcas, Faktaufon, and Kyprianou, "A Legal Exploration of the EU's Carbon Border Adjustment Mechanism", 226-227.

<sup>42</sup> Lowe, "The EU's carbon border adjustment mechanism: How to make it work for developing countries".

<sup>43</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 (Text with EEA relevance), OJ L 110, 25 April 2023, pp. 5-20.

<sup>44</sup> Proposal for a Directive of the European Parliament and of the Council amending Regulation (EU) 2019/631 as regards strengthening CO<sub>2</sub> emission standards for new passenger cars and new light commercial vehicles in line with the Union's more ambitious climate objectives (COM/2021/556 final); information on the outcome of the trilogue: <https://www.europarl.europa.eu/news/pl/press-room/20221024IPR45734/deal-confirms-zero-emissions-target-for-new-cars-and-vans-in-2025> (7 September 2024).

<sup>45</sup> Commission press release of 1 April 2025: "Commission proposes flexibility to help manufacturers comply with 2025 CO<sub>2</sub> emission targets for new cars and vans"; [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_854](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_854) (6 May 2025).

<sup>46</sup> Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast), COM/2021/563 final, 14 July 2021; this legislative proposal included aligning taxation with EU energy, environmental and climate policies, and improving the functioning of the EU internal market by updating the scope of energy products and rates. It also aimed to rationalise the use of tax exemptions and reductions by Member States; In June 2025, the Council, under the Polish Presidency, noted it had worked on such issues as the taxation of waste used for heating purposes, the taxation of electricity output of small producers when it is for own-use and the ETD's alignment with RED II. The Council concluded that further work would remain necessary in order to reconcile the different positions of the Member States;

ment of the taxation of energy products and electricity with EU energy, environmental and climate policy, while still allowing Member States to generate revenue through excise duties.<sup>47</sup> Legislative work in the Council had not been completed by the end of 2025 due to the fact the Danish Presidency of the Council failed to gain the required unanimous support of Member States.<sup>48</sup>

The revision of the REDII Directive, which aims to increase the share of renewable energy sources in the overall energy mix to at least 40% by 2030, should also be viewed in a new light today.<sup>49</sup> While this article does not address technical issues, the recent failure of Spain's electricity system enables us to reconsider the risks associated with the rapid increase of renewable energy in the EU energy system without balancing it with conventional sources.<sup>50</sup>

When assessing the legislative activity of the European Commission, the European Parliament and the Council in the area of climate and energy between January 2020 and December 2021, it is evident that these EU institutions have consistently and systematically created new legislation to advance the energy transition process. This was an intense period for all those involved in EU law-making, but it followed a specific timeline resulting from earlier policy documents, such as the European Green Deal.

Shortly after the publication of the "Fit for 55" package, a number of insightful assessments were formulated within the legal doctrine framework. One of the multifaceted problems is that, rather than reinforcing

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<https://www.europarl.europa.eu/legislative-train/theme-a-new-plan-for-europe-s-sustainable-prosperity-and-competitiveness/file-revision-of-the-energy-taxation-directive> (29 December 2025).

<sup>47</sup> Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast), COM/2021/563 final, 14 July 2021, recitals 26 i 27 of the Commission's proposal.

<sup>48</sup> Information from the European Parliament website: <https://www.europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-revision-of-the-energy-taxation-directive> (2 September 2024).

<sup>49</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, OJ L, 2023/2413, 31 October 2023.

<sup>50</sup> Information from the Agency for the Cooperation of Energy Regulators (ACER): <https://www.acer.europa.eu/news/expert-panel-investigate-blackout-portugal-and-spain>; Rossetto, "Blackout hits Spain and Portugal: what happened and what's next".

each other, individual measures may actually weaken each other. For example, the overlap of regulations on energy efficiency and renewable energy sources with the EU GHG emissions trading system and the price signal it intends to send to participants may have negative environmental and energy security effects.<sup>51</sup> Furthermore, the clear emphasis on increasing energy production from renewable energy sources (RES) exposes EU citizens to the risk of unstable electricity supply, contradicting the package's objectives. A similar contradiction can be seen in the adoption of increasingly stringent GHG emission reduction targets, which result in higher energy prices, and the demand for affordable energy. Furthermore, treating GHG emission allowances as financial instruments carries the risk of speculation by entities other than their issuers, consequently increasing energy costs.<sup>52</sup>

It should be noted that in 2023<sup>53</sup> Poland decided to challenge individual legislative proposals before the Court of Justice of the EU and has maintained its claims thus far.<sup>54</sup> The allegations are fourfold. Firstly, Poland argued that the regulations should be adopted by unanimous vote on the basis of Article 192(2)(c) TFEU, as they affect a Member State's choice between different energy sources and the overall structure of its energy supply, and therefore an incorrect legal basis has been applied. Secondly, they concern the violation of the principle of energy solidarity under Article 194(1)(b) TFEU by increasing the EU greenhouse gas emission reduction target to 40% and the individual reduction targets of Member States, which threatens Poland's energy security. Thirdly,

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<sup>51</sup> Przybojewska, „Dostarczanie czystej, przystępnej cenowo i bezpiecznej energii w świetle zamierzeń Europejskiego Zielonego Ładu”, 13.

<sup>52</sup> Przybojewska, „Dostarczanie czystej, przystępnej cenowo i bezpiecznej energii w świetle zamierzeń Europejskiego Zielonego Ładu”, 13-14.

<sup>53</sup> Complaints to the CJEU concern: Regulation 2023/851 on strengthening CO<sub>2</sub> emission standards for new passenger cars and new light commercial vehicles (including the ban on registering combustion engine vehicles after 2035, Case C-444/23); Regulation 2023/857 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 (Case C-451/23); Regulation 2023/956 (the so-called CBAM Regulation, Case C-512/23); Decision 2023/852 on the establishment and functioning of a market stability reserve for the EU greenhouse gas emission trading system (Case C-445/23); <https://www.gov.pl/web/klimat/polska-zaskarzyła-dotsue-kolejne-dwa-akty-prawne-bedace-czescia-pakietu-fit-for-55> (10 May 2025).

<sup>54</sup> According to information from Poland's Minister for European Affairs dated 13 February 2025, the written stage of proceedings has been completed in all cases concerning the 'Ready for 55' package. No dates for possible hearings have yet been set. None of the complaints have been withdrawn.

<https://sejm.gov.pl/Sejm10.nsf/InterpelacjaTresc.xsp?key=DDYJX7> (10 May 2025).

they point to violations of the principle of proportionality (Article 5(4) TEU) by increasing the EU GHG emission reduction target to 40% and the individual reduction targets of Member States, which is based on an erroneous analysis contained in the regulatory impact assessment. Finally, challenging the so-called CBAM Regulation Poland argued that it lacked an appropriate legal basis, as it allegedly constitutes a tax measure, which would require unanimity.<sup>55</sup>

Given the criticism of some of the legislative proposals in the package, it is fortunate that the Court of Justice of the EU will review the final assessment of the adopted solutions. This will hopefully clarify some of the uncertainties surrounding the EU's energy transition.

#### 4. Legislative Measures Strengthening the Energy Security of EUEU Member States in the Wake of the Outbreak of Full-scale war in Ukraine

Undoubtedly, the outbreak of full-scale war in Ukraine was a groundbreaking, albeit unexpected, event that had a decisive impact on accelerating the energy transition in the EU. Consequently, issues directly related to the energy security of EU Member States were incorporated into the EU's climate and energy policy.<sup>56</sup> This provided the essential context for legislative action after 24 February 2022.<sup>57</sup>

In response to demands articulated by Member States in the Versailles Declaration,<sup>58</sup> in May 2022 the Commission presented the REPowerEU plan as the EU response to difficulties and disruptions in the global energy market caused by Russia's invasion of Ukraine.<sup>59</sup> The plan envisaged a rapid reduction in dependence on Russian fossil fuels by accelerating the transition to 'clean' energy. Other measures aimed to save energy,

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<sup>55</sup> Action brought on 8 August 2023 – Republic of Poland v European Parliament and Council of the EU (Case C-512/23), OJ 2023 L 130, p. 52.

<sup>56</sup> For information on energy security, Nowacki, *Prawne aspekty bezpieczeństwa energetycznego w UE*; Szafranski, *Prawo energetyczne. Wartości i instrumenty ich realizacji*.

<sup>57</sup> For information, Kołatek, „Znaczenie aktów delegowanych i wykonawczych w ramach reakcji Unii Europejskiej na kryzys energetyczny”, 4.

<sup>58</sup> The Versailles Declaration 10-11 March 2022 <https://www.consilium.europa.eu/en/press/press-releases/2022/03/11/the-versailles-declaration-10-11032022/> (29 April 2024).

<sup>59</sup> 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 “RepowerEU Plan”, COM(2022)230 final of 18 May 2022.

diversify energy supplies and replace fossil fuels with clean energy rapidly, while also combining investments in renewable energy and economic reforms.<sup>60</sup>

While the assumption in the REPowerEU that fossil fuel imports from Russia would be phased out by the end of 2026/27 was a direct consequence of the Russian Federation's violation of international law, and of the need for the EU to increase its energy security, other proposals in the document show that the Commission was using the political momentum to accelerate the transition further in the coming years. Consequently, the REPowerEU proposed raising the European renewable energy target for 2030 from 40% to 45%, ultimately setting it at 42.5%.<sup>61</sup> Equally important was the increase in energy-saving ambitions, with the EU-wide energy efficiency target for 2030 raised by at least 11.7%.<sup>62</sup> Another notable aspect of the REPowerEU was its connection to the "Fit for 55" legislative package without altering the latter's reduction targets. However, it was surprising that, in light of its ongoing efforts to reduce GHG emissions, the Commission decided to allow the EU's coal production capacity to be maintained for longer than originally planned.<sup>63</sup>

As the next step, in May of 2025, the European Commission in cooperation with the Polish Presidency prepared a REPowerEU roadmap for reducing dependence on Russian energy imports. This document

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<sup>60</sup> 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 "Repowereu Plan", COM(2022)230 final of 18 May 2022.

<sup>61</sup> During negotiations in the Council on the revision of 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, a number of amendments proposed by Poland to the draft were adopted. The deadlines for issuing permits were extended, Member States were given greater freedom to choose technologies within the areas of accelerated RES development, environmental and power grid safety issues were emphasised, and the ambition to increase the share of RES in gross final consumption to 45% in 2030 (minimum 42.5%) was abandoned. It was particularly important for Poland to obtain, at the stage of work in the EU Council, the maximum grant allocation for actions under REPowerEU in the amount of EUR 2.76 billion; see: *Informacja dla Sejmu i Senatu RP o udziale Rzeczypospolitej Polskiej w pracach Unii Europejskiej w okresie lipiec-grudzień 2022 (Przewodnictwo Czech w Radzie Unii Europejskiej)*, KPRM, Warszawa 2022, 18-20.

<sup>62</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), OJ L 231, 20 September 2023, pp. 1-111.

<sup>63</sup> 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 "Repowereu Plan", COM(2022)230 final of 18 May 2022, p. 2.

was more ambitious than the Member States had originally envisaged, as it also covered the Russian nuclear sector. Following discussions in the Council, which revealed strong support for the Commission's plan, the EC presented a legislative proposal to prevent Russian gas imports into the EU by the end of 2027 which ultimately took a form of regulation (UE) 2023/435.<sup>64</sup>

Following the publication of the REPowerEU plan, strengthening the EU's energy security in the short term became a significant legislative priority. In view of the approaching autumn and winter period and the associated risks resulting from increased demand for gas and electricity in Europe, two Council regulations: Council Regulation (EU) 2022/1369 on coordinated demand-reduction measures for gas and Council Regulation (EU) 2022/1854 were adopted with urgency.<sup>65</sup> A key innovation of Regulation 2022/1369 was the introduction of provisions allowing the Council to declare a gas supply security emergency in the EU (Article 4(1)), leading to mandatory gas demand reduction measures being implemented across the EU (Article 5(1)(2)). Until now, there were no provisions specifying the EU's response to supply disruptions from a major gas supplier lasting more than 30 days. Without regulation in this area, there was a risk of uncoordinated action by Member States that could have destabilised gas supplies to neighbouring countries.<sup>66</sup> The second regulation 2022/1854<sup>67</sup> required Member States to reduce their monthly electricity consumption by 10% (Article 3(1)) as well as reduce its gross electricity consumption during the identified peak hours by at least 5% on average per hour (Article 4(2)). The former has caused controversy due to the legal basis proposed by the Commission for establishing this measure and the resulting method of Council decision-making by qualified majority. Some Member States argued that certain

<sup>64</sup> Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No. 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC, OJ L 63, 28 February 2023, pp. 1-27.

<sup>65</sup> Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206, 8 August 2022, pp. 1-11 was adopted at the beginning of August 2022 and was intended to remain in force for one year. However, after this period, its validity was extended until 31 March 2024;

<sup>66</sup> Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206, 8 August 2022, pp. 1-11, recital 6.

<sup>67</sup> Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261I, 7 October 2022, pp. 1-21; no longer in force.

issues in the draft legislative act were related to taxation and should therefore be adopted unanimously.<sup>68</sup>

The acceleration of the energy transition under the REPowerEU plan was to be achieved through the revision of directives on energy performance in buildings,<sup>69</sup> energy efficiency<sup>70</sup> and the promotion of renewable energy.<sup>71</sup> Although these changes were already planned as part of the “Fit for 55” package, they have taken on additional significance in light of the REPowerEU plan. The issue of rising energy prices has proved pivotal. Improving energy efficiency and increasing the share of renewable energy sources (RES) in Member States’ energy balances has also become a means of strengthening the EU’s energy security in connection with the planned transition away from purchasing natural gas from third countries.

Furthermore, in response to the crisis on the EU energy market following the outbreak of war in Ukraine, Regulation 2022/2577 (also known as the ‘permitting regulation’) was adopted.<sup>72</sup> Similar to the revision of the Renewable Energy Sources Directive (recast known as the RED III Directive),<sup>73</sup> Regulation 2022/2577 established requirements for treating renewable energy sources and related investments in networks and energy storage as investments of overriding public interest

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<sup>68</sup> Estonia, Poland and Hungary raised doubts about the legal basis adopted; <https://www.consilium.europa.eu/media/59404/cm04715-xx22.pdf> (30 April 2024); For more information on choosing the legal basis for the EU’s climate and energy policy, see Mik, “Wybór właściwej podstawy prawnej aktów wspólnotowego prawa wtórnego, ze szczególnym uwzględnieniem projektów aktów należących do pakietu klimatyczno—energetycznego”, 9-50; Bukowska and Sosnowska, „Wybór podstawy prawnej aktów prawnych Unii Europejskiej z zakresu ochrony środowiska oddziałujących na strukturę energetyczną Państwa Członkowskiego”, 35-73; Mik, „Związanie Unii Europejskiej prawem międzynarodowym zmiany klimatycznej”, 17-46.

<sup>69</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 June 2010, pp. 13-35.

<sup>70</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 Text with EEA relevance, OJ L 315, 14 November 2012, pp. 1-56.

<sup>71</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) (Text with EEA relevance.), OJ L 328, 21 December 2018, pp. 82-209.

<sup>72</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 December 2022, pp. 36-44.

<sup>73</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, OJ L, 2023/2413, 31 October 2023.

for the purposes of procedures under environmental directives (Article 3(1)(2)). The measure aimed to reduce the time needed to issue permits for repowering RES generation installations by using a simplified environmental impact assessment for certain derogations provided for in relevant EU environmental legislation (Article 4).<sup>74</sup>

Clearly, the adopted regulation prioritised the objectives of EU environmental and climate policy. Until now, measures to increase the use of renewable energy sources have been implemented in line with high environmental policy standards. However, the change announced in Regulation 2022/2577 suggests that the fight against climate change is now taking precedence over other policies, including environmental and energy policies. This represents a perspicuous reevaluation of existing EU policies.

## 5. Summary

The disruption to international and European energy markets caused by Russia's aggression against Ukraine was a key factor in the new dynamics of the EU energy transition. The EU has significantly increased its existing ambitions in relation to climate protection, including reducing greenhouse gas emissions and introducing increasingly low-emission technologies.

While the Commission's proposals in the "Fit for 55" package significantly increased the EU ambition in terms of climate protection by reducing greenhouse gas (GHG) emissions, they continued the existing trend and largely responded to the demands of certain Member States. The outbreak of full-scale war in Ukraine caused a significant acceleration in EU legislative activity in the energy sector, leading to serious disruptions in international energy markets, among other things. The issue of Member States' energy security, which had not previously been articulated so clearly, became particularly important at that time. The EU's immediate response aimed to counteract the effects of sudden price increases. Nevertheless, the energy crisis was also used by the Commission to accelerate the energy transition further, for example by increasing the level of ambition for the use of renewable energy

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<sup>74</sup> Recitals 7-9 of Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L 335, 29 December 2022, pp. 36-44.

sources in Member States' energy mixes. It should be noted, however, that some of the measures adopted between 2020 and 2024 may indicate a re-evaluation of existing EU policies on climate, energy and the environment in favour of the former.

The scale and level of detail of the regulations introduced in recent years will undoubtedly influence the nature and extent of the energy transition in EU Member States. This will most likely require new control tools tailored to the specific nature of the energy sector. Therefore, it can be assumed that the EU transition to a zero-carbon economy by 2050 will lead to a deeper integration of Member States within the framework of climate and energy policies.

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