

## GREEN TRANSITION LAWS OF THE EUROPEAN UNION: A NEW INTERNATIONAL LEGAL TOOL TO SUSTAIN GLOBAL ECONOMIC INEQUALITY AND DEVELOPMENTAL INJUSTICE?

**Onur URAZ\***  
Araştırma Makalesi

### **Abstract**

*This study examines the European Union's Green Deal as an international legal instrument, analysing its potential hegemonic impact on developing and least developed countries. While the Green Deal aims to promote environmental sustainability, its extraterritorial effects raise concerns about justice and the perpetuation of historical and economic inequalities. Framed within critical legal studies, the analysis highlights how the Green Deal's ambitious standards and regulatory frameworks impose disproportionate burdens on countries with limited institutional and financial capacities, perpetuating 'climate colonialism'. The EU's reliance on resource extraction from vulnerable regions underscores persistent global inequalities, while initiatives like the Common Ground Taxonomy demonstrate how environmental policies can reinforce economic dominance and marginalise smaller states. Despite its sustainability goals, the Green Deal risks exacerbating developmental injustices by privileging the interests of industrialised economies over equitable global cooperation. The study advocates for reforming the Green Deal through an equity-focused lens, emphasising financial and technological support, reparative mechanisms for historical injustices, and inclusive compliance timelines. By addressing these structural inequalities, the EU can transform its Green Deal into a fair and collaborative model of sustainability. Failure to adopt such reforms risks reducing it to a tool of economic hegemony rather than a framework for collective environmental progress.*

**Keywords:** European Union Green Deal, International Law, Critical Legal Studies, Neo-Colonialism, Green Transition

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\* Assist. Prof., Hacettepe University, Faculty of Law, e-mail: onururaz@hacettepe.edu.tr, ORCID: 0000-0003-1761-049X.

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***Avrupa Birliği'nin Yeşil Dönüşüm Hukuku: Global Ekonomik ve Gelişimsel Eşitsizliği Sürdürmek İçin Yeni Bir Uluslararası Hukuk Aracı Mı?***

**Öz**

Bu çalışma, Avrupa Birliği'nin Yeşil Mutabakatı'nı uluslararası bir hukuki araç olarak eleştirel bir şekilde incelemekte, gelişmekte olan ve az gelişmiş ülkeler üzerindeki potansiyel hegemonik etkisini analiz etmektedir. Yeşil Mutabakat çevresel sürdürülebilirliği teşvik etmeyi amaçlasa da, ülke dışı etkileri adalet ve tarihsel ve ekonomik eşitsizliklerin sürdürülmesi konusunda endişelere yol açmaktadır. Eleştirel hukuk okulu ve postkolonyal perspektiflerle çerçevelenen bu analiz, Yeşil Mutabakat'ın iddialı standartlarının ve düzenleyici çerçevelerinin, sınırlı kurumsal ve mali kapasiteye sahip ülkelere nasıl orantısız yükler getirebileceğini ve 'iklim sömürgeciliğini' yaratabileceğini tartışmaktadır. AB'nin gelişmemiş veya gelişmekte olan bölgelerden kaynak çıkarılmasına olan bağımlılığı, kalıcı küresel eşitsizliklerin altını çizerken, Ortak Zemin Taksonomisi gibi girişimler, çevre politikalarının ekonomik hakimiyeti nasıl güçlendirebileceğini ve küçük devletleri nasıl marjinalleştirebileceğini göstermektedir. Sürdürülebilirlik hedeflerine rağmen Yeşil Mutabakat, sanayileşmiş ekonomilerin çıkarlarını adil küresel işbirliğine tercih ederek kalkınmaya yönelik adaletsizlikleri artırma riski taşımaktadır. Bu çalışma, Yeşil Anlaşma'nın finansal ve teknolojik destek, tarihsel adaletsizliklere yönelik onarıcı mekanizmalar ve kapsayıcı uyum zaman çizelgelerini vurgulayan eşitlik odaklı bir mercekten yeniden düzenlenmesini savunmaktadır. AB, bu yapısal eşitsizlikleri ele alarak Yeşil Mutabakatını adil ve işbirliğine dayalı bir sürdürülebilirlik modeline dönüştürebilir. Bu tür reformların benimsenmemesi, anlaşmayı kolektif çevresel ilerleme için bir çerçeve olmaktan ziyade ekonomik ve hukuki bir hegemonya aracına indirgeme riski taşır.

**Anahtar Kelimeler:** Avrupa Birliği Yeşil Mutabakatı, Uluslararası Hukuk, Eleştirel Hukuk Çalışmaları, Yeni Sömürgecilik, Yeşil Dönüşüm

**Introduction**

The present study aims to examine the manner and extent to which the European Union's (EU) green transition laws -i.e. a series of legislations centred around the EU Green Deal,<sup>1</sup> in their capacity as novel legal instruments with extraterritorial legal impacts, may function in a 'hegemonic' fashion that promotes or engenders economic inequality vis-à-vis developing

<sup>1</sup> The EU Green Deal is expected to trigger around 200 directives and regulations. (See. Claudia Buysing Damste et. al., "How the EU's Green Deal is driving business reinvention", PWC, available at. <https://www.pwc.com/gx/en/issues/esg/eu-green-deal-reinvention.html>). Please see the following timeline for the legislations adopted so far. EU Council, "Timeline - European Green Deal and Fit for 55", available at. <https://www.consilium.europa.eu/en/policies/european-green-deal/timeline-european-green-deal-and-fit-for-55/>

and least developed countries. The notion of states collectively assuming responsibility for environmental protection is not a recent phenomenon.<sup>2</sup> The 1972 Stockholm Declaration,<sup>3</sup> which emerged from the inaugural United Nations (UN) Conference on the Environment, marked the first occasion on which states collectively accepted a normative commitment to protect the environment at both national and global levels.<sup>4</sup> In following decades, a series of international documents and treaties were drafted to address ever-growing environmental problems, including the increasing carbon footprint, water and land pollution, ecosystem degradation.<sup>5</sup>

Still, it is interesting to note that the environmental agenda became more prominent and developed some 'teeth' following the 2008 financial crisis, as well as with the rise of the 'green economy' concept. The green economy promised “the mutual compatibility of economic prosperity and environmental protection through the implementation of environmentally

<sup>2</sup> Philippe Sands, “Environmental Protection in the Twenty-First Century: Sustainable Development and International Law,” in *the Global Environment*, ed. Norman J. Vig and Regina S. Axelrod (London: Routledge, 2023), 116–37.

<sup>3</sup> United Nations, “Report of the United Nations Conference on the Human Environment, Stockholm, 5-16 June 1972,” *United Nations Digital Library*, 1973, <https://digitallibrary.un.org/record/523249?ln=en&v=pdf>.

<sup>4</sup> See. Robert Falkner, *Environmentalism and Global International Society* (Cambridge: Cambridge University Press, 2021).

<sup>5</sup> To name a few examples:

- “International Convention for the Prevention of Pollution from Ships (MARPOL),” opened for signature November 2, 1973, *International Maritime Organization*, <https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/ConferencesMeetings/Documents/MARPOL%201973%20-%20Final%20Act%20and%20Convention.pdf>.

- “Basel Convention on the Control of Transboundary Movements of Hazardous Wastes,” opened for signature March 22, 1989, *UNEP*, <https://wedocs.unep.org/bitstream/handle/20.500.11822/8385/-Basel%20Convention%20on%20the%20Control%20of%20Transboundary%20Movements%20of%20Hazardous%20Wastes%20-20113644.pdf?sequence=2&%3BisAllowed=>.

- “United Nations Framework Convention on Climate Change,” opened for signature May 9, 1992, *United Nations*, [https://unfccc.int/files/essential\\_background/background\\_publications\\_htmlpdf/application/pdf/conveng.pdf](https://unfccc.int/files/essential_background/background_publications_htmlpdf/application/pdf/conveng.pdf).

- “The Paris Agreement,” opened for signature December 12, 2015, *United Nations*, [https://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf).

compatible growth stimuli”,<sup>6</sup> with the objective of ensuring “inclusive and sustainable economic growth and further tackle other dimensions of current crises, such as the food and energy crisis”.<sup>7</sup> In light of this understanding, many developed and developing countries - at least to some extent - have started to legislate for a green transition.<sup>8</sup> Carbon trading markets are being established and regulated at a rapid pace;<sup>9</sup> environmental, social, and governance (ESG) and corporate sustainability reporting schemes are being implemented;<sup>10</sup> and the norms and standards of ‘sustainable finance’ are being created.<sup>11</sup>

Nevertheless, it is challenging to contend that any state or international body has invested more extensively in the green transition and in converting principles into a codified series of legislations under the European Green Deal than the EU.<sup>12</sup> Coincidentally, Europe was one of the hardest hit regions during the 2008 economic crisis; at the same time, it is in a situation of decline in the face of the economic and technological growth of China and the United States, and is heavily reliant on Russia for energy. It should nevertheless be acknowledged that the EU remains one of the world’s largest markets and Europe’s historical strength in the technical and political influence on

<sup>6</sup> David Neusteurer, “The Concept of Green Economy and Its Role in Hegemonic Neoliberal Capitalism,” *Socijalna Ekologija* 25, no. 3 (2016): 311–24, <https://doi.org/10.17234/socekol.25.3.5>, p. 312.

<sup>7</sup> Ibid.

<sup>8</sup> See, in general, Nicholas Bryner, “The Green New Deal and Green Transitions,” *Vermont Law Review* 44, no. 4 (2020): 723–76; Tamara Antonia Krawchenko and Megan Gordon, “How Do We Manage a Just Transition? A Comparative Review of National and Regional Just Transition Initiatives,” *Sustainability* 13, no. 11 (May 28, 2021): 6070–85, <https://doi.org/10.3390/su13116070>.

<sup>9</sup> Richard G. Newell, William A. Pizer, and Daniel Raimi, “Carbon Markets: Past, Present, and Future,” *Annual Review of Resource Economics* 6, no. 1 (November 10, 2014): 191–215, <https://doi.org/10.1146/annurev-resource-100913-012655>.

<sup>10</sup> See, in general, Christian Herzig and Stefan Schaltegger, “Corporate Sustainability Reporting,” in *Sustainability Communication*, ed. Jasmin Godemann and Gerd Michelsen (Springer, 2011), 151–69, [https://doi.org/10.1007/978-94-007-1697-1\\_14](https://doi.org/10.1007/978-94-007-1697-1_14).

<sup>11</sup> See International Finance Corporation, “SBFN Toolkit: Sustainable Finance Taxonomies,” *Sustainable Banking and Finance Network*, 2024, [https://www.sbfnetwork.org/wp-content/uploads/2024/05/SBFN-Toolkit\\_Sustainable-Finance-Taxonomies.pdf](https://www.sbfnetwork.org/wp-content/uploads/2024/05/SBFN-Toolkit_Sustainable-Finance-Taxonomies.pdf).

<sup>12</sup> European Commission, “The European Green Deal,” December 11, 2019, [https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC\\_1&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:b828d165-1c22-11ea-8c1f-01aa75ed71a1.0002.02/DOC_1&format=PDF).

international law and relations is enduring.<sup>13</sup> However, a shift in the global economy, if managed properly, could significantly benefit Europe in the long run. Indeed, the EU's ambitions for the Green Deal appear to extend beyond purely environmental concerns, as evidenced by the aggressive review of gas, coal and nuclear legislations following the Russian aggression against Ukraine.<sup>14</sup>

In addition, the EU Green Deal necessitates not only technological progress but also extensive legal adaptation and expertise, both of which incur additional costs for market participants. A preliminary assessment might not reveal an adverse overall impact. It can be contended that the green transition in the EU is concomitantly engendering a system that is salutary for environmental protection. Such an observation would be true if the EU Green Deal only imposed burdens on the EU market actors. However, due to the direct and indirect economic, social and political influence of the EU, actors from developing and least developed countries, and consequently the legal frameworks and practices of these countries, have been heavily influenced by EU practices and normative frameworks.

This prompts the question of whether the EU Green Deal and its normative framework will become a new legal instrument that perpetuates or reinstates developmental and historical injustices. The aim of this contribution is to focus primarily on the international legal aspect of this question through the lenses of critical legal studies (CLS). This contribution varies with the extant literature in two key aspects. Firstly, the legal literature on the EU Green Deal appears to be predominantly preoccupied with the technicalities of

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<sup>13</sup> See Mehmet Biresselioğlu, Berfu Solak, and Zehra Funda Savaş, "Framing the Impacts of the European Green Deal: Reflections on the EU as a 'Normative Power' and Beyond," *Ankara Avrupa Çalışmaları Dergisi* 23 (July 30, 2023): 91–134, <https://doi.org/10.32450/aacd.1439839>.

<sup>14</sup> Directorate-General for Financial Stability, Financial Services and Capital Markets Union, "EU Taxonomy: Complementary Climate Delegated Act to Accelerate Decarbonisation," European Commission, February 2, 2022, [https://finance.ec.europa.eu/publications/eu-taxonomy-complementary-climate-delegated-act-accelerate-decarbonisation\\_en](https://finance.ec.europa.eu/publications/eu-taxonomy-complementary-climate-delegated-act-accelerate-decarbonisation_en); Matina Stevis-Gridneff and Somini Sengupta, "Europe Calls Gas and Nuclear Energy 'Green,'" *The New York Times*, July 6, 2022, sec. World, <https://www.nytimes.com/2022/07/06/world/europe/eu-green-energy-gas-nuclear.html>.

transition and doctrinal issues.<sup>15</sup> Secondly, and relatedly to the previous point, as evidenced by the references in Sections I and II, while the possible hegemonic influence of the EU Green Deal has been identified and examined in the literature from both economics and international relations disciplines, there has been no research conducted from a legal perspective.

CLS methodology in international law involves challenging the idea that law is neutral, arguing it reflects power dynamics and entrenches inequalities. It critiques the existing international legal order for favouring powerful actors and reinforcing hierarchies. CLS deconstructs legal discourse to expose biases, particularly in human rights, trade, and international organizations. It critiques liberal legalism for legitimizing power structures and uses interdisciplinary methods to analyse law's role in global politics. CLS aims to highlight injustices and advocate for a more equitable international legal system.<sup>16</sup>

Equipped with this perspective, the analysis commences with the doctrinal basis of the EU Green Deal and aims in particular to demonstrate the potentially indirect coercive effect of the legislative power of the normative framework on parties outside the EU.<sup>17</sup> The subsequent discussion will explore the potential for rethinking relevant normative arrangements in the context of theories of the interplay between hegemony and international law, and their role as instruments for perpetuating developmental injustice and economic inequality. The article will put forward certain suggestions as a conclusion to manage the potentially hegemonic impact of the EU Green Deal.

<sup>15</sup> While it is not possible to examine the entire literature due to the physical constraints of the article, the following examples can be named: Nicholas Bryner, "The Green New Deal and Green Transitions,"; Alicja Sikora, "European Green Deal – Legal and Financial Challenges of the Climate Change," *ERA Forum* 21, no. 4 (November 3, 2020), <https://doi.org/10.1007/s12027-020-00637-3>; Jendrośka, Jerzy, Moritz Reese, and Lorenzo Squintani. "Towards a new legal framework for sustainability under the European Green Deal." *Opolskie Studia Administracyjno-Prawne* 19, no. 2 (2021): 87-116.

<sup>16</sup> Beckett, Jason "Critical International Legal Theory". In *obo in International Law*, <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0007.xml>

<sup>17</sup> See Section I.

## I. Green Transition Laws of the EU

On 11 December 2019, the European Commission unveiled a series of policy initiatives under the title of the EU Green Deal.<sup>18</sup> The overarching objective of the Green Deal is to eliminate the carbon footprint of the EU bloc and achieve 'climate neutrality' by 2050. The strategy is designed to disassociate economic growth from resource utilisation, thereby ensuring that economic growth is achieved in a manner that is environmentally sustainable. It was stated that the Green Deal would eventually encompass all sectors of the economy, with particular emphasis on transport, energy, agriculture, construction and industry. The Deal also prescribed a European climate law, which entered into force on 29 July 2021.<sup>19</sup>

The EU's motivation is said to lie in the significant role of EU Member States in greenhouse gas emissions leading to ozone depletion,<sup>20</sup> the changes and disasters that the EU will suffer if global warming expectations are realised, and the historical 'destruction' of the EU's forests and ecosystems.<sup>21</sup> In general terms, the primary target is to curtail the EU's greenhouse gas emissions by a minimum of 55% by 2030 compared to 1990 levels.<sup>22</sup>

In pursuit of this objective, the EU has formulated a series of targets and methodologies, encompassing diverse headings directed towards the same objective. In recent years, substantial progress has been witnessed, with the adoption of novel instruments, including binding obligations for Member States and industries, governance frameworks, and funding mechanisms, while existing instruments are undergoing reform. A significant proportion of the Green Deal's policies and regulations have a direct impact on relevant actors within the EU. The ongoing debates and challenges surrounding the 'internal aspects' of the Green Deal, including the extension of EU

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<sup>18</sup> Directorate-General for Communication, "The European Green Deal," European Commission, 2024, [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en).

<sup>19</sup> EU, "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')," June 30, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1119>.

<sup>20</sup> Robin Clarke, "Problems," European Environment Agency, November 23, 2020, <https://www.eea.europa.eu/publications/92-827-5122-8/page014.html>.

<sup>21</sup> Ibid.

<sup>22</sup> European Commission, "The European Green Deal," December 11, 2019, p. 4.

competencies to new areas, are indicative of the intricate and multifaceted nature of the endeavour. The journey towards implementing the Green Deal is thus surrounded by heated debates, not only in the European Parliament but also in society.<sup>23</sup>

Nevertheless, the Green Deal holds significant importance not only for EU Member States but also for states that share political, economic, and geographical ties with the EU, as it governs the EU's relations with external states, institutions, and organisations. The inability of companies to meet the requisite criteria may effectively preclude their entry into the EU market, while paying additional taxes may also render their business unprofitable. Consequently, companies exporting primarily to EU countries may be compelled to cease or reduce their export activities if they fail to implement the necessary measures. As this situation will have a negative impact on the trade volumes and GDPs of non-EU countries, it has become a somewhat *de facto* necessity for developing countries to make arrangements in line or consideration with the Green Deal and to protect their national interests.<sup>24</sup>

It is important to note that mimicking or following the EU's arrangements is clearly not the only course of action for the third countries, as the EU policies does not always align with a country's national interests, which can vary in different contexts. They may, for example, divert their trades by seeking alternative markets or regulatory frameworks.<sup>25</sup> Yet, due to the strong position and ties of the EU in the global market, as well as its indirect normative power, developing and least developed countries, to a large extent,

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<sup>23</sup> Marc Ringel, Nils Bruch, and Michèle Knodt, "Is Clean Energy Contested? Exploring Which Issues Matter to Stakeholders in the European Green Deal," *Energy Research & Social Science* 77 (July 2021): 102083, <https://doi.org/10.1016/j.erss.2021.102083>; Katarzyna Płonka-Bielenin and Anna Staszewska, "Assumptions and Consequences of the Introduction of the European Green Deal," in *Interaction of Law and Economics: Sustainable Development*, ed. Wojtech Bartos (Sciend, 2024), 158–66, <https://doi.org/10.2478/9788367405331-018>.

<sup>24</sup> See, in general, Biresselioğlu et. al., "Framing the Impacts of the European Green Deal: Reflections on the EU as a 'Normative Power' and Beyond,"

<sup>25</sup> Samuel Pleeck and Ian Mitchell, "The EU's Carbon Border Tax: How Can Developing Countries Respond?," Center For Global Development | Ideas to Action, November 15, 2023, <https://www.cgdev.org/blog/eus-carbon-border-tax-how-can-developing-countries-respond>.



opt-in for building on the EU's legislative framework and then tailor according to their local interest.<sup>26</sup>

In this context, three elements of the Green Deal are likely to have a major impact on non-EU actors, namely (i) green taxonomy and sustainable finance, (ii) Carbon Border Adjustment Mechanism and (iii) Corporate Sustainability Due Diligence. The following sub-sections will briefly present these and the way in which they will affect non-EU countries. It is important to acknowledge that these are not the only elements of the Green Deal influencing non-EU parties. However, the rationale behind emphasising them is that they will exert the most direct and comprehensive influence on the normative frameworks and operations of non-EU countries and market actors. Consequently, they possess a distinctive value within the context of the objective of this article.

### **A. Green Taxonomy and Sustainable Finance**

The EU Taxonomy<sup>27</sup> constitutes a classification system and set of criteria to ensure that economic activities (in particular investments) evolve in a way that achieves the objectives of the Green Deal and that resources are channelled to sustainable projects and activities.<sup>28</sup> Its primary objective is to facilitate informed decision-making processes for the public, investors and companies regarding the sustainability of investments and products. It serves as a dynamic instrument that will undergo continuous updates to align with technological and policy advancements. Activities that are not deemed to be green under the EU Taxonomy are not automatically categorised as polluting activities in the 'brown' category. The primary rationale for excluding certain 'non-polluting' activities is that the EU Taxonomy is centred on identifying

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<sup>26</sup> Ibid. See also Deborah Thür, "Green Taxonomies Around the World: Where Do We Stand?", ECO:FACT, available at <https://www.ecofact.com/blog/green-taxonomies-around-the-world-where-do-we-stand/#>; EU Commission, "Sustainable development in EU trade agreements", available at [https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements\\_en#:~:text=EU%20trade%20agreements%20in%20force,Vietnam%20-%20Chapter%2013](https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements_en#:~:text=EU%20trade%20agreements%20in%20force,Vietnam%20-%20Chapter%2013)

<sup>27</sup> Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020, OJ L 198, 22.6.2020, p. 13-43. (Hereinafter 'Taxonomy Regulation')

<sup>28</sup> EU Commission, "EU taxonomy for sustainable activities", available at [https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities\\_en](https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/eu-taxonomy-sustainable-activities_en).

activities that can contribute most significantly to the achievement of its stated objectives.<sup>29</sup>

The taxonomy defines an environmentally sustainable economic activity as an economic activity that makes a significant contribution to at least one of the six following environmental objectives that the EU seeks to achieve:

- (a) climate change mitigation;
- (b) climate change adaptation;
- (c) the sustainable use and protection of water and marine resources;
- (d) the transition to a circular economy;
- (e) pollution prevention and control;
- (f) the protection and restoration of biodiversity and ecosystems.<sup>30</sup>

In order to be considered environmentally sustainable, such an economic activity must not cause significant harm to another of these objectives and must respect the social interests pursued at a minimum level determined in the light of the standards set by the EU Commission's 'Technical Screening Criteria'.<sup>31</sup> The overarching objective of the EU Taxonomy is to achieve a Taxonomy-aligned classification of all activities deemed to be integral to sustainability and climate.

The primary obligation incumbent upon market actors under the EU Taxonomy is the reporting of compliance. The Taxonomy stipulates the disclosure of information regarding the degree to which the activities and investments of specific companies and organisations comply with the principles of the Taxonomy. In this context, three directives are directly associated with the Taxonomy. First, Article 8 of the Taxonomy Regulation refers to the Non-Financial Reporting Directive (NFRD) and requires any company subject to the NFRD to disclose how and to what extent its activities relate to activities that are considered environmentally sustainable.<sup>32</sup> It should

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<sup>29</sup> Sikora, "European Green Deal – Legal and Financial Challenges of the Climate Change", p. 693.

<sup>30</sup> Taxonomy Regulation, Art. 9.

<sup>31</sup> Ibid. Art. 4.

<sup>32</sup> European Parliament and of the Council, "Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 Amending Directive 2013/34/EU as regards Disclosure of Non-Financial and Diversity Information by

be noted, however, that the impact and importance of the NFRD in relation to financial sustainability and taxonomy will diminish with the gradual introduction of reporting requirements under the Corporate Sustainability Reporting Directive (CSRD),<sup>33</sup> which is designed to strengthen and broaden the existing regulatory framework of the NFRD by gradually replacing it.<sup>34</sup>

Second, actors subject to the Sustainable Finance Disclosure Regulation (SFDR) are obligated to disclose pertaining to the Taxonomy compliance of their products.<sup>35</sup> The pertinent disclosure encompasses products classified as sustainable investment, as delineated in Article 9 of the SFDR, and products characterised by an environmental or social dimension, as defined in Article 8 of the SFDR.<sup>36</sup> The relevant disclosure will encompass the manner in which the investments constituting the financial product are engaged in economic activities that are regarded as environmentally sustainable, as delineated in the Taxonomy Regulation.

Finally, the CSRD, which entered into force on 5 January 2023,<sup>37</sup> imposes broader reporting obligations on companies' non-financial economic activity data. Companies covered by the CSRD will be obligated to disclose the proportion of their revenue, capital expenditure (CapEx) and operating

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Certain Large Undertakings and Groups Text with EEA Relevance,” October 22, 2014, <https://eur-lex.europa.eu/eli/dir/2014/95/oj/eng>.

<sup>33</sup> European Parliament and of the Council, “Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards Corporate Sustainability Reporting,” December 14, 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464>.

<sup>34</sup> For a detailed explanation of how CSRD replaces NFRD see Camille Branquart, “Understanding the NFRD and Its Evolution to the CSRD”, Greenomy (28 October 2024), available at: <https://www.greenomy.io/blog/evolution-nfrd-csrd#:~:text=The%20CSRD%20as%20Replacement%20for%20the%20NFRD,-In%20response%20to&text=The%20new%20directive%20was%20created,phase%20implementation%20in%20January%202024>.

<sup>35</sup> European Parliament and of the Council, “Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on Sustainability-Related Disclosures in the Financial Services Sector,” November 27, 2019, <https://eur-lex.europa.eu/eli/reg/2019/2088/oj/eng>.

<sup>36</sup> Ibid.

<sup>37</sup> European Parliament and of the Council, “Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 Amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards Corporate Sustainability Reporting.”

expenditure (OpEx) generated by their economic activities that are in line with the Taxonomy. Furthermore, the number of organisations subject to CSRD reporting requirements is expected to increase by approximately fourfold.<sup>38</sup>

At this point, it seems imperative to elucidate the concrete impact of the Taxonomy system for non-EU actors. The EU taxonomy is designed to accommodate the diverse circumstances and obligations of various economic stakeholders. The initial phase of reporting obligations was applicable to large companies. From 2024 onwards, the scope has been expanded to encompass all large companies that are not currently subject to the NFRD and that meet two of the three CSRD criteria.<sup>39</sup> In contrast, non-EU actors will be subject to different requirements. Financial market participants who offer and distribute financial products in the EU, including those from outside the EU, will be required to report their taxonomy alignment. Third-country entities from outside the EU, with a net turnover of more than €150 million in the EU, if they have at least one subsidiary or branch in the EU exceeding certain thresholds, will be subject to this requirement from 2028.<sup>40</sup>

The reporting obligation is particularly significant due to an interrelated goal of the Green Deal: establish a sustainable finance system. Sustainable finance primarily entails the assurance that environmentally beneficial activities continue to receive financial support, whilst also prioritising investments that facilitate the transition to environmentally sustainable practices for those activities that are not yet environmentally friendly. Thus, the EU Taxonomy, in conjunction with the SFDR and the CSRD, represents one of the EU's prevailing regulatory endeavours to establish a sustainable finance system.

This leads to the 'indirect' impact of the Taxonomy and related reporting requirements. When taking into account the cost of the green transition process, the need for innovative sustainable financing instruments,

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<sup>38</sup> EU Parliament, "Sustainable economy: Parliament adopts new reporting rules for multinationals (press release)", available at: <https://www.europarl.europa.eu/news/en/press-room/20221107IPR49611/sustainable-economy-parliament-adopts-new-reporting-rules-for-multinationals>

<sup>39</sup> European Parliament and of the Council, "Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the Establishment of a Framework to Facilitate Sustainable Investment, and Amending Regulation (EU) 2019/2088," art. 6-7-8.

<sup>40</sup> Ibid.

particularly green bonds and loans, has become even greater. To enhance the efficiency, transparency and credibility of the green bond market and to encourage market participants to issue and invest in European green bonds, the EU established the ‘EU Green Bond Standard’. “The Standard, which is voluntary, relies on the detailed criteria of the EU Taxonomy to define green economic activities, (...) establishes supervision of companies carrying out pre- and post-issuance reviews at European level”.<sup>41</sup> This means that the Green Bond Standards will become a voluntary but highly influential standard available to all green bond issuers, inside and outside the EU, to facilitate the financing of sustainable investments. Given the beneficial nature of the bonds for both issuers and holders, the impact is likely to be significant. That is, actors will be ‘willing’ to follow the Taxonomy standards to access bonds and loans.

### **B. Carbon Border Adjustment Mechanism (CBAM)**

The legal framework for the Carbon Border Adjustment Mechanism (CBAM) was adopted in May 2023, with the transitional phase.<sup>42</sup> This phase

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<sup>41</sup> Directorate-General for Financial Stability, Financial Services and Capital Markets Union, “The European Green Bond Standard – Supporting the Transition,” European Commission, accessed January 29, 2025, [https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/european-green-bond-standard-supporting-transition\\_en](https://finance.ec.europa.eu/sustainable-finance/tools-and-standards/european-green-bond-standard-supporting-transition_en).

<sup>42</sup> European Parliament and of the Council, “Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism,” May 10, 2023, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L\\_.2023.130.01.0052.01.ENG&toc=OJ%3AL%3A2023%3A130%3ATOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2023.130.01.0052.01.ENG&toc=OJ%3AL%3A2023%3A130%3ATOC). (Hereinafter ‘CBAM Regulation’); It should be noted that on February 2025, the EU Commission proposed amendments to CBAM, aiming to simplify compliance, reduce burdens, and align it better with the EU Emissions Trading System (ETS). (EU Commission, “Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism”, Feb 26, 2025, CELEX 52025PC0087, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025PC0087>). Although the fate of the proposal is not yet clear and will not be elaborated further as it goes beyond the physical boundaries of this article, it should be noted that if the proposal is adopted, it is expected that there will be a substantial reduction in

marked the initiation of the initial reporting period for importers.<sup>43</sup> The CBAM imposes an emissions levy on imports of goods deemed to be at high risk of carbon leakage from countries outside the ambit of the EU Emissions Trading Scheme (ETS). The CBAM introduces an emissions tariff on imports of goods with a high risk of carbon leakage from countries outside the ETS, with the EU aiming to equalise the carbon price of domestic and imported products in the following sectors: cement, iron and steel, aluminium, fertilisers, hydrogen and electricity.<sup>44</sup>

The CBAM directly applies to goods produced in non-EU countries. This includes goods that are entirely produced outside the EU, as well as those that underwent their last substantial production phase outside the EU, provided that production involves more than one country. The CBAM requires importing companies to purchase CBAM certificates to offset the difference between the carbon price in the country of production and in the EU. The introduction of CBAM allowances ensures that importers are required to pay the same amount per tonne of CO<sub>2</sub> emitted as if the goods had been produced in the EU. The price of the certificate will be determined by the average weekly cost of auctioning allowances under the ETS. However, if the importer can prove that the producer paid an equivalent price in a non-EU country, the costs will not apply.<sup>45</sup>

The CBAM imposes a number of obligations on non-EU importers. They must register with the national authorities prior to importing the goods. The application should include information such as a certificate from a tax authority, a declaration of honour and the volume of goods to be imported. They are also under the obligation to declare the number of imported goods and their embedded emissions on an annual basis, and to obtain the necessary amount of CBAM allowances. Given that the CBAM system requires the reporting of carbon dioxide emissions embedded in their production,

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the number of companies that will be affected by CBAM. For a further explanation see. Bart Le Blanc, “New CBAM legislative proposal: Major reduction of CBAM scope and burden”, Norton Rose Fulbright, March 2025, available at. <https://www.nortonrosefulbright.com/en-seg/knowledge/publications/00216f5d/new-cbam-legislative-proposal-major-reduction-of-cbam-scope-and-burden>

<sup>43</sup> CBAM Regulation.

<sup>44</sup> Ibid. Annex III.

<sup>45</sup> Ibid.

importers will have to bear not only the emission levy but also reporting costs.<sup>46</sup>

As is evident, the EU Taxonomy and reporting schemes, in conjunction with the CBAM, will exert a substantial influence on entities outside the EU.<sup>47</sup> The CBAM and the EU Taxonomy have prompted developing countries with high trade volumes with the EU to establish domestic regulations that align with the EU's standards.<sup>48</sup> Given the EU's status as a primary market, the extent of this impact is significant. First, these countries have been indirectly affected to establish EU-compliant domestic taxonomies, recognising that their companies of a given size could face a impairment to their commercial capabilities, as well as could not access green bonds and loans, if they fail to align with the EU Taxonomy.<sup>49</sup> It is noteworthy that countries such as South Africa, Indonesia, Mexico and South Korea<sup>50</sup> have already issued their

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<sup>46</sup> Guilherme Magacho, Etienne Espagne, and Antoine Godin, "Impacts of the CBAM on EU Trade Partners: Consequences for Developing Countries," *Climate Policy* 24, no. 2 (April 13, 2023): 243–59, <https://doi.org/10.1080/14693062.2023.2200758>.

<sup>47</sup> Nicole Krämer, "The Global Impact of EU Taxonomy on Non-EU Green Taxonomies," Greenomy, April 28, 2022, <https://www.greenomy.io/blog/eu-taxonomy-global-impact>; Magacho et. al., "Impacts of the CBAM on EU Trade Partners: Consequences for Developing Countries".

<sup>48</sup> While, due to the physical constraints of the article, it is not possible to provide detailed individual examples, one may see the following reports on how the EU Taxonomy functions as a benchmark, NATIXIS, "The New Geography of Taxonomies A Global Standard-setting Race", 22ff. available at [https://gsh.cib.natixis.com/site/T\\_rFifiaz6SK8y7TKR4rw/api-website-feature/files/download/12776/the\\_new\\_geography\\_of\\_taxonomies\\_updated\\_july\\_2023.pdf?file\\_type=media\\_files](https://gsh.cib.natixis.com/site/T_rFifiaz6SK8y7TKR4rw/api-website-feature/files/download/12776/the_new_geography_of_taxonomies_updated_july_2023.pdf?file_type=media_files); See also, Climate Bonds Initiative, "Global green taxonomy development, alignment, and implementation", 3, available at [https://www.climatebonds.net/files/reports/cbi\\_taxonomy\\_ukpact\\_2022\\_01f.pdf](https://www.climatebonds.net/files/reports/cbi_taxonomy_ukpact_2022_01f.pdf).

<sup>49</sup> See. Lin, Boqiang, and Hengsong Zhao. "Threatening the Poor? The economic impacts of carbon border adjustment mechanism on developing countries." *Structural Change and Economic Dynamics* 71 (2024): 582-593.

<sup>50</sup> In order to see the potential impact of the CBAM on these countries see the data in Magacho et. al., "Impacts of the CBAM on EU Trade Partners: Consequences for Developing Countries," 247ff. See also Bui, Uyen Phuong, Linh Thi Mai Tran, Ngoc Thi Bich Do, and Linh Dieu Doan Nguyen. "Adjustment Mechanism (CBAM) in Developing Countries." In *Economic and Political Aspects of EU-Asian Relations: Selected Papers from The Vietnam-EU Economic and Trade Forum 2023*, p. 243. Springer Nature, 2024.

national taxonomies,<sup>51</sup> while others like Türkiye are planning to do so in due course.<sup>52</sup>

Secondly, CBAM will impose additional costs on importers in developing and least developed countries. The EU does not provide for an exemption or phased implementation for such countries, which places them in a challenging position. As Pleeck and Mitchell commented,

“CBAM could result in a decrease in exports from Africa to the EU in aluminium by up to 13.9%, iron and steel by 8.2%, fertiliser by 3.9% and cement by 3.1%, although some of these exports would be diverted to other destinations including China and India. GDP and income across the continent could be reduced by 0.5% (this may sound small but its four times as large as the EU GDP benefits of its Japan trade deal). Some countries (and sectors) which export high volumes of the affected products to the EU will be more impacted than others.. (...) The EU is already taking steps to increase the sectors covered by its own carbon market, and an expanded CBAM could have very significant trade impacts across the globe. In a scenario where all exports to the EU would be covered by CBAM and at a carbon price of €87 per tonne, African exports to the EU could be reduced by 5.72% and the region’s GDP by 1.12%. In Asia as well, such expansion could result in significant losses. If plastic products whose production is highly-carbon intensive were to be included in CBAM, Vietnam and Thailand, two major exporters would see their GDP decrease respectively by 0.6% and 0.2%.”<sup>53</sup>

Within the scope of CBAM, the EU anticipates that other countries will establish their own carbon pricing mechanisms. However, an exemption or a reduction of the CBAM is only possible if a ‘carbon price’, defined as “the monetary amount, under a carbon emissions reduction scheme, in the form of a tax, levy or fee in the form of emission allowances under a greenhouse gas emissions trading scheme, calculated on greenhouse gases covered by such a measure, and released during the production of goods”<sup>54</sup> has already been paid

<sup>51</sup> See International Finance Corporation. “SBFN Toolkit: Sustainable Finance Taxonomies.” Sustainable Banking and Finance Network, 2024. [https://www.sbfnetwork.org/wp-content/uploads/2024/05/SBFN-Toolkit\\_Sustainable-Finance-Taxonomies.pdf](https://www.sbfnetwork.org/wp-content/uploads/2024/05/SBFN-Toolkit_Sustainable-Finance-Taxonomies.pdf).

<sup>52</sup> T.C. Çevre, Şehircilik ve İklim Değişikliği Bakanlığı, “Türkiye Yeşil Taksonomi Yönetmeliği Taslağı,” *T.C. Çevre, Şehircilik ve İklim Değişikliği Bakanlığı*, accessed January 29, 2025, <https://iklim.gov.tr/taslaklar-i-2124>.

<sup>53</sup> Pleeck and Mitchell, “The EU’s Carbon Border Tax: How Can Developing Countries Respond?”.

<sup>54</sup> Ibid.



in the country of origin.<sup>55</sup> Yet, the data presented by Pleeck and Mitchell indicates that middle and low-income countries are not adequately prepared to adopt such measures in a rapid manner. Furthermore, they have highlighted that several countries are planning to challenge the measure at the World Trade Organization (WTO), as they believe it constitutes a discriminatory trade barrier.<sup>56</sup>

### C. Corporate Sustainability Due Diligence

The most recent major legal instrument introduced in the context of the EU Green Deal is the Directive on Corporate Sustainability Due Diligence (CSDDD), which entered into force on 25 July 2024.<sup>57</sup> The object of the CSDDD is to “foster sustainable and responsible corporate behaviour in companies’ operations and across their global value chains. The new rules will ensure that companies in scope identify and address adverse human rights and environmental impacts of their actions inside and outside Europe.”<sup>58</sup> The CSDDD aims to achieve this goal by imposing corporate due diligence duty for large companies to “identify and assess actual and potential adverse impacts arising from their own operations or those of their subsidiaries and,

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<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> “Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859,” June 13, 2024, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L\\_202401760](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401760) (Hereinafter ‘CSDDD Directive’). It should be noted that at the time of the finalisation of this article, two amending directives on the CSDDD have been proposed by the EU Commission and their fate remains to be seen. These proposals envisage to postpone the CSDDD timeline by one year and to ease and simplify the requirements. (“Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements” (COM 2025/80), Feb 26, 2025, CELEX 52025PC0080 and “Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements” (COM 2025/81), Feb 26, 2025, CELEX 52025PC0081)

<sup>58</sup> Directorate-General for Communication, “Corporate Sustainability Due Diligence,” European Commission, 2024, [https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en).

where related to their chains of activities, those of their business partners”.<sup>59</sup> Furthermore, the CSDDD also imposes a requirement on large companies to develop and implement a climate transition plan, that is intended to align their business model and strategy with the shift to a sustainable economy.

The EU Member States are obligated to transpose the directive into their national laws by 26 July 2026.<sup>60</sup> Precisely one year later, on 26 July 2027, the legislations will become applicable for certain companies, with a gradual phase-in until 2029.<sup>61</sup> The CSDDD will ultimately apply to the EU limited liability companies and partnerships with over 1000 employees and a global net turnover of more than 450 million, as well as to large non-EU companies with a turnover of over 450 million in the EU.<sup>62</sup> The Directive offers guidance on measures companies can take to fulfil these obligations, such as obtaining contractual assurances or providing support to SME business partners.

In terms of enforcement, the CSDDD prescribes administrative enforcement and civil liability regimes for the EU Companies. The former contains bans and sanctions by the competent national supervisory authorities.<sup>63</sup> Regarding the latter, companies may be held liable for harm if they neglect or fail, either intentionally or through negligence, to take necessary actions to prevent, minimise, address, or mitigate adverse impacts, and this failure results in or contributes to damage.<sup>64</sup> Moreover, the company in violation will also have to provide full compensation for the victims who suffered any damage as a result.

For non-EU companies without a subsidiary or branch in any EU Member State, the supervisory authority of the Member State where the company generates the highest net turnover within the EU will have jurisdiction. Supervisory authorities are empowered to enforce compliance, including imposing fines and utilizing measures available under national law for enforcement. If a company disregards a fining decision, the authority may publicly disclose its responsibility. Additionally, non-compliance with the Directive’s obligations may be considered an environmental or social factor

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<sup>59</sup> CSDDD Directive, Article 8.

<sup>60</sup> Ibid., Article 37. Note that if the proposed amendments are adopted this date will be 26 July 2027. (See. supra note 49)

<sup>61</sup> Ibid. Note that if the proposed amendments are adopted these dates will also be deferred a year. (See. supra note 49)

<sup>62</sup> Ibid. Article 2.

<sup>63</sup> CSDDD Directive, Article 25.

<sup>64</sup> Ibid. Article 29.

by contracting authorities when evaluating bids for public and concession contracts.<sup>65</sup>

As is rather evident, the CSDDD imposes direct obligations and consequences on a number of large companies based outside the EU. The EU Commission anticipates that approximately around 900 non-EU companies will be subject to the provision of the CSDDD.<sup>66</sup> It is important to note that many of the non-EU companies subject to the regulation, which by its nature targets the very large companies, are logically central to their countries' economies.<sup>67</sup> Consequently, the CSDDD will also have an indirect effect on non-EU countries, 'encouraging' them to follow the EU's regulatory initiatives and concerns.

Therefore, both the policy and regulatory arrangements of the EU put pressure on non-EU developing or least developed countries to implement similar policies and legislations. Although at first glance, taking these steps and the pressure they create, which serve the noble purpose of protecting the environment, may be considered reasonable, these steps of the EU may have a 'darker' side. This is because the EU largely lost its competitive edge against many developing countries and one of the main reasons for this is that energy, labour and other production costs are higher in the EU than in developing countries. Coincidentally, one of the main implications of the EU's Green Deal for other countries is that it will raise at least some of these costs for competing countries and producers may find it cheaper to produce in the EU in the face of this regulatory and additional financial burden. Regardless of the validity of this speculative proposition, it is evident that the EU, by virtue of its predominant economic and political influence in the international arena, indirectly imposes a compliance burden on third countries regarding its legislative framework. This phenomenon highlights a well-documented vulnerability inherent in the interstate system, which, in principle, is founded on the principle of mutual consent among sovereign states, particularly in the context of hegemonic powers.

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<sup>65</sup> Ibid. Article 2(7).

<sup>66</sup> Directorate-General for Communication, "Corporate Sustainability Due Diligence."

<sup>67</sup> Tatjana Jevremović Petrović, "Extraterritoriality Effect Of The Csddd On Non-Eu Companies." *InterEULawEast: Journal for the international and european law, economics and market integrations* 11, no. 2 (2024): 204ff. ;

## II. The Green Deal as an Instrument of Legal Hegemony?

As was highlighted in the opening section, the CLS focuses on unveiling the underlying power dynamics that often lie concealed behind a neutral facade of law. It demonstrates that law frequently serves to perpetuate hierarchies and inequalities. From this perspective, the international legal order is seen to favour powerful actors, and to be employed, either directly or indirectly, as a means of constantly restructuring relations with 'others' in a manner that favours hegemonies. The preceding sections have sought to demonstrate how the legal instruments of the EU Green Deal, whether directly or indirectly, compel developing and least developed countries to adjust their legal systems or relations, one way or another. This section seeks to situate this phenomenon within the framework of the CLS, thereby elucidating its character as a hegemonic relationship.

Mastanduno defines hegemony as “dominance or authority exercised by one state or group of states over others.”<sup>68</sup> Hegemony encompasses multiple dimensions, including material, ideational and relational aspects. Dominant states, often characterised by superior military and economic capabilities, play a central role in shaping the international order, whether regional or global, in accordance with their own values and interests. Not only do they establish the norms and rules governing international relations, but they also secure a degree of consent from other key actors in the system. This consent reflects a recognition of the authority exercised by the hegemonic state, albeit to different degrees in different states. The success of hegemony depends on the acceptance and endorsement of the leadership of the leading state and the perception of the established order as beneficial and desirable by other actors.<sup>69</sup> This conceptualisation of hegemony draws from the theoretical framework of Gramsci, who posited that hegemony constitutes strategies employed by the ruling class to establish and perpetuate cultural hegemony, presenting them as inherent and unavoidable, in order to exert dominance. Rather than relying solely on coercion, Gramsci emphasised the securing of consent from the populace.<sup>70</sup>

<sup>68</sup> Michael Mastanduno, “Hegemony in International Law,” *Oxford Bibliographies Online Datasets*, August 30, 2016, <https://doi.org/10.1093/obo/9780199796953-0141>.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.; see also Günseli Durmaz, “European Green Deal from a Neo-Gramscian Perspective: A Case of Green Trasformismo” (PhD Thesis, 2024), <https://open.metu.edu.tr/handle/11511/109116>.

The role of international law in this form of relationship is of particular significance. As Kirsch observes, contrary to the idea that hegemony and international law cannot coexist due to the idealised contrast drawn between international relations and international law, "international law is at once instrumental and resistant to the pursuit of power. International law is important for powerful states as a source of legitimacy, but, in order to provide legitimacy, it must distance itself from power and resist its mere translation into law".<sup>71</sup> Building on this analysis, he contends that the unique value of multilateral institutions for dominant states goes beyond mere regulation, pacification and stabilisation. The rationale behind state behaviour, when reduced to mere instrumentalist rationality, gives rise to the problematic proposition that "systems of rule in international affairs can only be based on coercion or self-interest: weak states follow powerful states either because they are forced to do so by threats or because they hope to derive overall benefits from following."<sup>72</sup> According to Kirsch, this approach gives rise to a number of costly consequences. Firstly, the threat of coercion engenders resistance, thus necessitating a high level of enforcement force. Secondly, the pursuit of self-interest is contingent on the provision of incentives and the resolution of the issue of free-riding. For Kirsch, a stable system of rule is based on authority. Accordingly,

"Once dominance is regarded as legitimate – and thus turns into authority – obedience is no longer based on calculation, but on a conviction that it is necessary and right. On a rationalist basis, this is difficult to capture, as it depends on a central role of ideas that are socially constructed rather than fixed. Conceptions of legitimacy are formed not in an isolated way within one state, but through interaction with other states in international society, and they in turn shape the interests and identities of the states. (...) For dominant states, this role of legitimacy and authority has consequences in two ways. On the one hand, we have to regard the interests and identities of dominant powers themselves as socially constructed. Their policies will not, then, be merely instrumental but embedded in the web of normative expectations that prevails in international society at a given time."<sup>73</sup>

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<sup>71</sup> Nico Krisch, "International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order," *European Journal of International Law* 16, no. 3 (June 1, 2005): 369–408, <https://doi.org/10.1093/ejil/chi123>.

<sup>72</sup> *Ibid.*, p. 374.

<sup>73</sup> *Ibid.*, p. 374.

Although Kirsch's explanations here focus on why hegemonic states need international organisations in the classical sense, if, as he later puts it,<sup>74</sup> international law as such can be considered as a multilateral institution, environmental law, and in particular green transition, can also be considered from this perspective. By adopting these lenses, it becomes feasible to re-evaluate the established relations and legal interactions between the EU and developing and least developed countries as a hegemonic relationship. The EU employs the environmentalist discourse to legitimise a policy that may primarily benefit itself, effectively stifling any significant resistance from developing and least developed countries and compelling them to voluntarily adhere to the prescribed path of transformation.

In sharing this view, Almeida et al. described the Green Deal as “a historical continuum of colonial and neo-colonial relations” and a novel discursive strategy for “the greening of empire”.<sup>75</sup> For the authors,

“the Green Deal is not limited to Europe. It is also officially accompanied by climate diplomacy and the redefinition of international trade and carbon tariffs, and transnational investment relationships. The ‘global turn’ of the EGD (Green Deal) allows the EU to reinvent itself, amidst competition from global actors, and deploy an ‘eco-friendly’ narrative. Much in line with its foreign relations more generally, this allows the EU to inject “a sense of moral responsibility and ethical concern in all areas of its international relations as well as in the domestic affairs” of the countries it intervenes in.”<sup>76</sup>

From this standpoint, this relationship appears to contradict the prevailing international legal system, which is predicated on the assumption of sovereign equality. Indeed, developing and least developed countries, despite their economies are likely to be adversely impacted by the implementation of the Green Deal norms as is vividly demonstrated by Leonard et al.,<sup>77</sup> felt the urge and compulsion to mimic the Green Deal or adjust accordingly. It would not be an unreasonable prediction to foresee that developing or undeveloped countries will plan to ensure their green

<sup>74</sup> Ibid., p. 375.

<sup>75</sup> Diana Vela Almeida et al., “The ‘Greening’ of Empire: The European Green Deal as the EU First Agenda,” *Political Geography* 105 (August 1, 2023): 102925, <https://doi.org/10.1016/j.polgeo.2023.102925>, p. 1.

<sup>76</sup> Ibid., p.2

<sup>77</sup> Mark Leonard et al., “The Geopolitics of the European Green Deal,” *Policy Contribution*, no. 4 (February 2021), <https://www.bruegel.org/policy-brief/geopolitics-european-green-deal>.

transformation at a different pace and in a different manner in a scenario where there is no EU Green Deal.

Consequently, the EU Green Deal has been criticised from many different angles by Critical Scholars and scholars from Global South.<sup>78</sup> It has, for example, been argued that the Green Deal lacks significant initiatives aimed at tackling the colonial origins of the climate crisis, particularly in prioritising the liberation of formerly colonised populations.<sup>79</sup> This is particularly salient given that the Global South nations bear the brunt of the climate crisis and environmental degradation, thereby exacerbating the prevailing Western hegemony perpetuated by the neo-colonial structure of global capitalism. In a similar vein, it can be argued that the Green Deal adopts a neo-colonial approach by distributing the burden of the climate crisis, for which capitalist states are mostly responsible, which they have benefited from while rapidly increasing their level of development, and which has unfolded over a relatively long historical period, much more evenly than would be expected.

Another frequent criticism has been that the ‘West’ has implemented the green transition by once again exploiting the mineral resources of the global south, especially Africa.<sup>80</sup> Critical raw materials to achieve climate naturality are situated in Africa. However, it is pointed out that the mining of these materials may give rise “to polycentric conflicts, some involving colonial legacies, that are not fully considered in the regulatory framework; nor is the complexity of these consequences much debated in the EU legal scholarship”.<sup>81</sup> In other words, then, the EU Green Deal not only gives very little flexibility to remedy developmental and historical injustices but still relies on these injustices in order to secure the necessary resources for the

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<sup>78</sup> See for example Simone Claar, “Green Colonialism in the European Green Deal: Continuities of Dependency and the Relationship of Forces between Europe and Africa,” *Culture, Practice & Europeanization* 7, no. 2 (2022): 262–74, <https://doi.org/10.5771/2566-7742-2022-2-262>; Camilla Sandström, “Green Transformation or Green Colonialism – Contrasting Perspectives on How to Address the Climate and Nature Crisis,” *Tidsskriftet Utmark*, 2024.

<sup>79</sup> Sanja Bogojević, “The European Green Deal, the Rush for Critical Raw Materials, and Colonialism,” *Transnational Legal Theory* 15, no. 4 (September 16, 2024): 600–615, <https://doi.org/10.1080/20414005.2024.2399408>.

<sup>80</sup> Peter Albrecht et al., “Green Exploitation Is Still Exploitation,” Danish Institute for International Studies, November 16, 2023, <https://www.diis.dk/en/research/green-exploitation-is-still-exploitation>;

<sup>81</sup> Bogojević, “The European Green Deal, the Rush for Critical Raw Materials, and Colonialism.”

desired transition.<sup>82</sup> From a similar perspective, Neusteurer questions the feasibility of realising a green economy within the framework of neoliberal capitalism, asserting that “Green Economy, which operates within a capitalistic mode of production, will produce other forms of exclusion and exploitation and is not likely to overcome the inherent contradictions.”<sup>83</sup>

A final critical concept that must be referred to in this very context is “hegemonic contestation”. This term is employed by Koskenniemi to refer “the process by which international actors routinely challenge each other by invoking legal rules and principles on which they have projected meanings that support their preferences and counteract those of their opponents”.<sup>84</sup> In the context of the EU Green Deal, the concept manifests in the pronounced divergence between the EU's uncompromising stance towards developing and least developed countries, juxtaposed with China.<sup>85</sup>

While China, like the EU, stands to benefit from the green transition as an energy-hungry country with the necessary minerals and resources, they have a divergence of opinion on the fundamental principles of the taxonomy. However, given the interdependence of two hegemonic powers, the only way to move forward was to maintain the openness of the taxonomy regulation and to recognise each other's positions to a certain extent. As a result, the Common Ground Taxonomy (CGT) between China and the European Union is created as a collaborative initiative to identify areas of alignment in their respective taxonomies for sustainable finance.<sup>86</sup>

The CGT aimed to create a shared framework for classifying green and environmentally sustainable activities, fostering consistency and transparency in global green finance. While the CGT is not legally binding but serves as a reference tool for financial institutions, investors, and policymakers to better understand and coordinate their sustainable finance efforts, the particular

<sup>82</sup> Vela Almeida et al., “The ‘Greening’ of Empire: The European Green Deal as the EU First Agenda.”

<sup>83</sup> Neusteurer, “The Concept of Green Economy and Its Role in Hegemonic Neoliberal Capitalism.”

<sup>84</sup> Martti Koskenniemi, “International Law and Hegemony: A Reconfiguration,” *Cambridge Review of International Affairs* 17, no. 2 (July 2004): 197–218, <https://doi.org/10.1080/0955757042000245852>, p. 199.

<sup>85</sup> IPSF Taxonomy Working Group, “Common Ground Taxonomy – Climate Change Mitigation,” *European Commission*, November 2021, [https://finance.ec.europa.eu/system/files/2021-12/211104-ipsf-common-ground-taxonomy-instruction-report-2021\\_en.pdf](https://finance.ec.europa.eu/system/files/2021-12/211104-ipsf-common-ground-taxonomy-instruction-report-2021_en.pdf).

<sup>86</sup> Ibid.



effort put forward to create the CGT lends further credence to the argument that concerns surrounding the Green Transition extend beyond purely environmental objectives, with the concept serving as a strategic instrument for hegemonic powers to shape the future economic landscape and their respective roles in it.

### **Conclusion**

The purpose of this article is not to provide a blanket critique of the Green Deal; however, it is important to note that the EU's approach to the formulation and implementation of the principles and norms of the Green Deal, which in essence serves as a form of indirect governance, carries a neo-colonial and neo-imperialist undercurrents and may function as hegemonic international legal instruments. This has the potential to hinder the Green Transition's prospects for success and, in the long term, may result in a backlash against the EU. The findings of this study emerged from the CSL perspective endorsed may be grouped under three. It must be acknowledged that identifying comprehensive solutions within the confines of this article is a rather arduous task. However, in relation to the following three findings of the article, some general recommendations will be put forward for a more 'equitable' and less 'hegemonic' implementation in concluding the article.

First, the Green Deal's focus on setting environmental standards, fostering technological innovation, and integrating sustainability into governance frameworks is commendable. However, these objectives are often pursued without sufficient recognition of the unique challenges faced by the Global South. Most of the developing and least developed countries, burdened by the historical legacies of colonial exploitation and systemic economic dependencies, are indirectly 'required' to align with EU standards or change their trade partnerships that often exceed their institutional capacities and financial resources. In doing so, the Green Deal risks perpetuating a form of 'climate colonialism', whereby the Global South disproportionately bears the costs of a green transition driven largely by the industrialized economies of the Global North.

Needless to say, from a positivistic standpoint, it is not feasible to assert an 'obligation' for EU legislations to take into account the perspective of other actors. Ultimately, the EU will be regarded as having the inherent right to act in accordance with its own realities and necessities. However, the Green Deal's tangible impacts and historical connotations extend well beyond the regional level. It would be imprudent for the EU to disregard the situation and positions

of other actors. Indeed, the EU has already taken steps in this direction, seeking common ground with other actors, for example, through initiatives such as the International Platform on Sustainable Finance.<sup>87</sup> The question remains, however, as to the extent to which these initiatives bring the realities of developing and least developed states into the equation. It appears that the EU's initiatives are predominantly aimed at accelerating the adaptation of these actors to the EU normative order, with relatively little consideration given to their historical and current realities. Concurrently, the EU seeks to establish common ground with select 'indispensable' partners by offering compromises that meet their needs.

As far as observed, the EU is well-positioned to establish multifaceted global partnerships that acknowledge the unique circumstances of diverse stakeholders. Such an initiative could encompass a range of dimensions, including extending the EU's implementation of the Just Transition Mechanism (JTM),<sup>88</sup> which offering financial and social assistance for EU regions, industries, and workers confronting substantial challenges, to the partner states, given that “small producers in partner countries, such as increased production costs or lack of support for policy implementation.”<sup>89</sup>

The EU may also consider aiding its partner oil and gas-exporting countries in order to help them manage the repercussions of the European Green Deal. “The EU should engage with these countries to foster their economic diversification, including into renewable energy and green hydrogen that could in the future be exported to Europe”.<sup>90</sup> Another potential course of action is to establish different and/or longer timeframes in respect of the CBAM and CSDDD for the various types of actors based on their

<sup>87</sup> General information available at European Commission, “International Platform on Sustainable Finance”, available at. [https://finance.ec.europa.eu/sustainable-finance/international-platform-sustainable-finance\\_en](https://finance.ec.europa.eu/sustainable-finance/international-platform-sustainable-finance_en)

<sup>88</sup> General information available at European Commission, “The Just Transition Mechanism: making sure no one is left behind” available at. [https://finance.ec.europa.eu/sustainable-finance/international-platform-sustainable-finance\\_en](https://finance.ec.europa.eu/sustainable-finance/international-platform-sustainable-finance_en); See also “Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund”, CELEX 32021R1056, available at. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R1056>

<sup>89</sup> “Global Green Deal: How Can the EU Lead a Fair and Just Transition Worldwide?,” Solidar, December 19, 2024, <https://www.solidar.org/news-and-statements/global-green-deal-how-can-the-eu-lead-a-fair-and-just-transition-worldwide/>.

<sup>90</sup> Leonard et al., “The Geopolitics of the European Green Deal.”

geographical location and the particularities of their respective developmental stages, as these may have a bearing on the duration of their respective adaptation phases.

Second, the EU's reliance on critical raw materials from resource-rich but economically disadvantaged regions underscores the persistence of extractive practices within the Green Deal's framework. While this dependency is framed as essential for achieving global sustainability goals, it often exacerbates existing inequalities, deepens socio-economic vulnerabilities, and overlooks the complex developmental needs of these regions. These dynamics highlight the Green Deal's potential to reinforce rather than dismantle the inequities embedded in the global economic system.

The EU must combat climate colonialism and consider the global impact of its policies. Prior to the increased focus on transitioning to greener energy sources, particularly in the Global North, there was a significant surge in demand for metals such as nickel, cobalt, and lithium. However, workers in mining communities responsible for extracting these vital resources frequently face hazardous and exploitative labour conditions. Systems of Indigenous land dispossession, resource exploitation, labour abuses, and wealth transfer established during European colonial rule remain active, perpetuating inequalities across the Global South. The Green Deal's apolitical narrative—framing climate change as a universal challenge—ignores the Global North's outsized role in driving environmental destruction. European governments and corporations have not only exploited local environments and communities, but also caused greater harm on a global scale, normalising hyper-extraction and overconsumption under capitalist systems.<sup>91</sup>

The Green Deal is found wanting in its provision of a comprehensive plan to address historical injustices, particularly because CSDDD may easily be circumvented by non-EU actors and does not consider historical injustices. Additionally, the strategy disregards the disproportionate impacts of climate change on marginalised communities. By placing reliance on technological fixes and market-driven solutions, the EU risks perpetuating 'climate colonialism'. A just transition requires the dismantling of exploitative systems, the recognition of historical responsibility, and the assurance of

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<sup>91</sup> Serag Heiba, "How the EU Green Deal Perpetuates Climate Colonialism," Earth.Org, February 3, 2021, <https://earth.org/eu-green-deal-perpetuates-climate-colonialism/>.

accountability for harm caused abroad. In the absence of these measures, the Green Deal's sustainability claims remain fundamentally flawed.<sup>92</sup>

Third, the Green Deal's narrative of environmental leadership is accompanied by a strategic use of normative and legal frameworks to consolidate the EU's influence on the global stage. Initiatives such as the CGT with China illustrate how environmental objectives can serve as instruments of geopolitical strategy, shaping global economic and legal norms to align with hegemonic interests. While these efforts facilitate cooperation among major powers, they often marginalize smaller states and developing nations, whose participation is constrained by asymmetrical power dynamics.

The EU may give full consideration to the establishment of more comprehensive cooperation mechanisms with a wider range of actors and on an equal footing. Through such cooperation, the EU may collaborate with third countries to create green jobs and sustainable industries that align with local needs and priorities. A more comprehensive cooperation mechanism may also expand funding mechanisms for climate adaptation and mitigation in developing and least developed nations, prioritising grants over loans to avoid deepening debt burdens. Furthermore, such a mechanism could more systematically support technology transfer initiatives.

Undoubtedly, all these suggestions accompanied to the articles findings need to be studied and evaluated in much more detail, but the scope of this article is not suitable for such an evaluation. Nevertheless, it would be advisable for the EU to acknowledge its hegemonic position and promote change based on a global consensus and shared values. This approach would be more conducive to the success and purpose of the green transformation, particularly given the historical and developmental injustices experienced by developing and least developed countries. Failure to do so will result in the EU Green Deal being perceived as a tool of hegemony rather than a 'green revolution' in the long term.

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<sup>92</sup> Ibid.

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