

# 14. Greening the EU and the rule of law: reflections on opportunities and limits of the EU's legal powers

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## 1. INTRODUCTION

This concluding chapter analyses the linkages between the European Green Deal<sup>1</sup> and the rule of law, drawing on chapters included in this edited collection.<sup>2</sup> The chapters discuss developments under the Green Deal, including new environmental measures, governance modes and procedural rights, particularly those to access to justice. Furthermore, the chapters explore both emerging approaches to improving the legal framework of the internal market and potential measures that may be adopted by institutions such as the European Central Bank (ECB), with a view to contributing to the realisation of the environmental objectives set out in the Green Deal.

The fact that the first von der Leyen Commission launched the 'European Green Deal' as a central initiative – after more than 40 years of EU environmental lawmaking – suggests that the EU still faces significant challenges in ensuring a high level of environmental protection. Indeed, the Green Deal Communication set out an ambitious roadmap to transform the European economy and society with key environmental objectives, such as achieving climate neutrality and zero pollution by 2050 and halting biodiversity loss, all

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<sup>1</sup> As set forth by the first von der Leyen Commission (201924) with the Communication from the Commission, 'The European Green Deal' COM (2019) 640 final.

<sup>2</sup> Mariolina Eliantonio, Kati Kulovesi, Marjan Peeters and Annalisa Savaresi (eds), *Greening Europe and the Rule of Law – Opportunities for and Limits to the EU's Legal Powers* (Edward Elgar 2025).

while ensuring that ‘no one is left behind’ in the process of deep transformation of the EU economy.

The Green Deal and its implementation have been shaped by both political momentum and public pressure. The elections held between 23 and 26 May 2019 resulted in a European Parliament with a strong presence of voices advocating for ambitious environmental protection, although support was unevenly distributed across EU Member States.<sup>3</sup> Hence, the extensive law-making efforts under the Green Deal followed calls from the European Parliament to raise environmental ambition, in response to mounting scientific evidence on problems including the triple planetary crisis of climate change, biodiversity loss and pollution, and the risks of crossing planetary boundaries. This led Ursula von der Leyen, then candidate for President of the European Commission, to promise a comprehensive agenda for stronger environmental action.<sup>4</sup> Protests and other forms of direct action across Europe demanding stronger environmental protection reached their peak in 2019, just before the outbreak of the Covid-19 pandemic.<sup>5</sup> However, given its transformative ambitions and the inherent tension between environmental protection and economic growth, the negotiation and implementation of the Green Deal’s legal instruments have been marked by heated debates, on issues such as nature restoration, the social impact of more ambitious climate policies and the extraterritorial reach of measures aimed at halting global deforestation. As the implementation of the Green Deal progressed, opposition intensified and the prominence of the environmental agenda gradually declined due to a range of internal and external challenges, including the pandemic and the war in Ukraine. Towards the end of the first von der Leyen Commission’s term, farmers and workers took to the streets to voice their concerns about the adverse effects on their livelihoods

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<sup>3</sup> The distribution of votes in individual member states shows that while in Germany the ‘Greens’ saw an increase of seats, they did not win any seats at all in Bulgaria, Cyprus, Slovenia and Poland. For more information, see European Parliament, ‘2024 European Election Results’ <<https://results.elections.europa.eu/en/>> accessed 7 May 2025.

<sup>4</sup> See European Parliament Multimedia Centre, ‘Election of the President of the European Commission: extracts from the statement by Ursula von der LEYEN, candidate for President of the EC’ <[https://multimedia.europarl.europa.eu/en/video/election-of-the-president-of-the-european-commission-extracts-from-the-statement-by-ursula-von-der-leyen-candidate-for-president-of-the-ec\\_I1175890](https://multimedia.europarl.europa.eu/en/video/election-of-the-president-of-the-european-commission-extracts-from-the-statement-by-ursula-von-der-leyen-candidate-for-president-of-the-ec_I1175890)> accessed 19 March 2025.

<sup>5</sup> Endre Borbáth and Swen Hutteer, ‘Environmental Protests in Europe’ (2023) *European Journal of Public Policy* 1, 20.

of measures proposed and adopted under the Green Deal.<sup>6</sup> Subsequently, the 2024 elections signalled a move to the right in the European Parliament, reflecting a shift in voters' priorities from environmental concerns to issues such as economic stability and security.<sup>7</sup>

Despite this complicated and turbulent political and societal context, the Green Deal has generated an impressive array of new regulatory instruments and approaches.<sup>8</sup> This extensive use of regulatory power warrants critical scrutiny through the lens of the rule of law. Enshrined in Article 2 of the Treaty on the European Union (TEU), the rule of law is a fundamental EU value, ensuring that everyone, including the co-legislators and the executive, is subject to the law and accountable before independent and impartial courts. The Venice Commission defines the rule of law as encompassing legality, legal certainty, the prevention of power misuse, non-discrimination and access to justice.<sup>9</sup> Particularly in the field of EU environmental law, key elements of rule of law include – but are not limited to – the requirement that EU environmental policies and actions comply with EU law and are enacted within the limits of EU competences. Closely related are the questions of access to justice and compliance with the law, both of which are essential to ensure effective environmental protection.

Against this backdrop, this volume has analysed the Green Deal through the lens of the rule of law. The volume is structured along three themes: (a) constitutional challenges to transformative environmental decision-making; (b) the steering force of finance and markets; and (c) access to justice, enforcement and liability. Drawing on the contributions to this book, this concluding chapter offers overarching reflections on how the Green Deal's objectives and related legislative instruments challenge various dimensions

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<sup>6</sup> Alan Matthews, 'Farmer Protests and the 2024 European Parliamentary Elections' (2024) 59 *Intereconomics: Review of European Economic Policy* 83, explains that in addition to opposing the agricultural elements of the Green Deal, the protests were also driven by a number of country-specific issues, such as low supermarket prices in France, water restrictions in Spain and German plans to phase out tax breaks to agricultural diesel in response to a ruling by the Constitutional Court.

<sup>7</sup> Dave Keating, 'EU Election Shift to Right Signals Green Industrial Deal Validation' (EurActive, 5 July 2024) <[www.euractiv.com/section/economy-jobs/news/eu-elections-shift-to-right-signals-green-industrial-deal-validation/](https://www.euractiv.com/section/economy-jobs/news/eu-elections-shift-to-right-signals-green-industrial-deal-validation/)> accessed 20 May 2025.

<sup>8</sup> Introductory chapter by Peeters, Eliantonio, Savaresi and Kulovesi.

<sup>9</sup> Council of Europe Venice Commission, 'Report on the rule of law – Adopted by the Venice Commission at its 86th plenary session' (Venice, 25–26 March 2011).

of the rule of law. Section 2 examines the use of EU competences under the Green Deal to steer behaviour towards enhanced environmental protection, and the rule of law concerns arising from the exercise of those competences. Section 3 addresses the tension between maintaining legal certainty while adapting the EU environmental *acquis* to achieve the objectives of the Green Deal. Section 4 explores enforcement and access to justice as essential prerequisites for upholding the rule of law and ensuring effective environmental protection. Section 5 concludes by outlining challenges and identifying areas for further research.

## 2. THE EXERCISE OF EU COMPETENCES UNDER THE GREEN DEAL

### 2.1 The Green Deal and the Expansion of the Environmental Acquis

The Green Deal launched an unprecedented regulatory agenda, encompassing a wide array of issues, including climate change, biodiversity, renewable energy, the circular economy, sustainable and smart mobility, zero pollution and the Common Agricultural Policy. The resulting policies and legislation address areas such as plastics and packaging, food waste, net-zero industry, batteries, sustainable aviation and maritime transport, land and soil, industrial pollution and air and water quality.<sup>10</sup> The Green Deal also sought to integrate environmental considerations into public spending, private investment and business practices through measures such as the Taxonomy Regulation<sup>11</sup> and the Corporate Sustainability Due Diligence Directive (CSDDD).<sup>12</sup>

The measures adopted under the Green Deal relied on a range of EU competences, including those relating to energy, transport, the internal market and budgetary and financial regulation. However, the Green Deal is most prominently linked to the EU's environmental competence. Pursuant to Article 191(2) of the Treaty on the Functioning of the European Union (TFEU), the

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<sup>10</sup> For a comprehensive overview, translating the Green Deal into 154 targets and tracking progress on each, see Luisa Marelli et al, 'Delivering the European Green Deal: Progress toward Targets' (European Commission Joint Research Center 2025) 6.

<sup>11</sup> 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 [2020] OJ L198/13 ('Taxonomy Regulation').

<sup>12</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 [2024] OJ L1760/1 ('CSDDD').

power conferred by the Member States upon the EU legislator is defined in clear and broad terms, requiring the EU institutions to ensure 'a high level of environmental protection'. This wording highlights the instrumental nature of the competence: regulatory and other legal measures serve as a means to achieve a specific level of environmental quality. In pursuit of this objective, over the decades the EU legislator has enacted a wide array of sectoral laws covering matters such as biodiversity, climate change, water and air quality.

The Green Deal set out to fill important gaps in the EU environmental *acquis*.<sup>13</sup> Despite its broad scope, the *acquis* had significant gaps, and certain areas were not aligned with the latest scientific findings on crucial subject matters, such as climate change, biodiversity loss and pollution. As Cliquet, Cittadino and Gantioler explain in the chapter, existing EU law on nature protection lacked quantitative restoration targets and clear deadlines. To address this gap, a new Nature Restoration Law<sup>14</sup> was introduced to complement existing biodiversity legislation, imposing additional obligations on Member States.<sup>15</sup> Similarly, the European Climate Law<sup>16</sup> strengthened the EU's ambition on climate change by making the 2050 climate neutrality target legally binding and by increasing the 2030 target to at least a 55 per cent net reduction in greenhouse gas emissions compared to 1990 levels, up from the previous target of 40 per cent. The related Fit for 55 package introduced or reformed 19 pieces of legislation aimed at achieving the 2030 emission reduction target.<sup>17</sup> These developments were linked to international developments, including those occurring under the Paris Agreement.<sup>18</sup> They also responded to the scientific

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<sup>13</sup> The European Environment Agency (EEA) has identified 12 key environmental problems of European concern. See EEA, 'Europe's Environment: The Dobris Assessment – An Overview' (2020) <[www.eea.europa.eu/publications/92-827-5122-8/page014.html](http://www.eea.europa.eu/publications/92-827-5122-8/page014.html)> accessed 20 May 2025.

<sup>14</sup> Regulation (EU) 2024/1991 of the European Parliament and of the Council of 24 June 2024 on nature restoration and amending Regulation (EU) 2022/869 [2024] OJ L1991/1 ('Nature Restoration Law').

<sup>15</sup> Chapter by An Cliquet, Federica Cittadino and Sonja Gantioler, 'The Bumpy Landing of the EU Nature Restoration Law and the Rule of Law: Process and Substance'.

<sup>16</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') [2021] OJ L243/1.

<sup>17</sup> Sebastian Oberthür and Kati Kulovesi, 'Accelerating the EU's Climate Transformation: The European Green Deal's Fit for 55 Package Unpacked' (2025) 34 *Review of European, Comparative and International Environmental Law* 7.

<sup>18</sup> UNFCCC 'Decision 1/CMA.3, Glasgow Climate Pact' UN Doc FCCC/PA/CMA/2021/10/Add.1 (8 March 2022).

findings from the Intergovernmental Panel on Climate Change, which show that limiting global warming to 1.5°C – rather than just ‘well below 2°C’ – is crucial to avoiding the most severe impacts of climate change.<sup>19</sup> The expansion of the regulatory efforts to reduce greenhouse gases has strengthened the EU’s reliance on market-based approaches.<sup>20</sup> The cap-and-trade mechanism under the EU Emissions Trading System – previously limited to energy production, energy-intensive industries and intra-EU flights – has been expanded to include greenhouse gas emissions from maritime transport, including 50 per cent of emissions from journeys between EU and non-EU ports.<sup>21</sup> Moreover, a Carbon Border Adjustment Mechanism (CBAM) has been introduced, requiring importers to purchase allowances to cover greenhouse gas emissions embedded in their products,<sup>22</sup> as well as a separate emissions trading scheme for suppliers of fuel used in transport, buildings and small industries (so-called ETS 2).<sup>23</sup> As a result of these reforms, the greenhouse gas emissions of a large part of the EU economy, including fuel used by households for transport and

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<sup>19</sup> Ibid. See also IPCC, ‘Summary for Policymakers’ in Valérie Masson-Delmotte et al (eds), ‘Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty’ (Cambridge University Press 2018).

<sup>20</sup> For analysis, see Oberthür and Kulovesi (n 17).

<sup>21</sup> Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of market stability reserve for the Union greenhouse gas emission trading system [2023] OJ L130/134 (‘2023 ETS Directive’). A cap ‘sets the maximum absolute volume of emissions that regulated entities can emit over a trading phase’: European Commission, ‘Report on the functioning of the European carbon market in 2022 pursuant to Articles 10(5) and 21(2) of Directive 2003/87/EC’ COM (2023) 654 final, 8.

<sup>22</sup> Regulation 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism [2023] OJ L130/52 (‘CBAM Regulation’), see recitals 9 and 10 on carbon leakage, and recital 12 on the phasing out of free allocation of allowances to EU industries that compete on the international market: ‘CBAM should be progressively phased in while free allowances in sectors covered by the CBAM are phased out.’ See for the specific competences for the European Commission under CBAM the chapter by Merijn Chamon and Thomas Verellen, ‘Empowering the Green Deal: Significant Delegation and Constitutional Limits in CBAM and CRMA’.

<sup>23</sup> 2023 ETS Directive, Chapter IVa. This is called an upstream approach, given the fact that the fuel suppliers bear the obligation to surrender allowances.

heating, will be subject to decreasing emissions caps. By 2027, carbon pricing is expected to cover three quarters of the EU economy.<sup>24</sup>

The expansion of emissions trading has however raised concerns, particularly regarding how carbon pricing under ETS 2 will affect households and other entities facing projected increases in the cost of heating and transport fuels. The Green Deal includes measures to address this specific concern, most prominently through the establishment of the Social Climate Fund.<sup>25</sup> This Fund aims to support moving away from fossil fuels and reduce the cost of emission reductions in road transport and building sectors for vulnerable households, microenterprises and transport users. However, questions remain regarding the effectiveness of these measures and future carbon prices under ETS 2. Here, it can be expected that legislative reforms might be considered, particularly in response to perverse outcomes emerging in the application of the law.

In addition to strengthening and expanding of existing mechanisms, such as the EU ETS, the Green Deal has introduced several new regulatory approaches. As discussed by Dermine and Vander Putten in their chapter, one example is the so-called governance through spending approach established as a result of the pandemic.<sup>26</sup> This approach was embodied in the NextGeneration EU recovery plan,<sup>27</sup> designed to stimulate economic activity through substantive public spending and investment facilitated by the Recovery and Resilience Facility.<sup>28</sup> Although grounded on cohesion policy under Article 175(3) of the TFEU, this new approach also reflects the principle of external integration – which entails the integration of environmental objectives in other policy sectors – as codified in Article 11 of the TFEU and Article 37 of the Charter of Fundamental Rights. The Recovery and Resilience Facility is designed to ensure that the funds support the European Green Deal's environmental objectives. The approach rests on novel governance mechanisms involving

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<sup>24</sup> European Commission report on the functioning of the European carbon market in 2022 (n 21) 38.

<sup>25</sup> Regulation (EU) 2023/955 of the European Parliament and of the Council of 10 May 2023 establishing the Social Climate Fund [2023] OJ L130/1, recitals 9–11 and art 3.

<sup>26</sup> Chapter by Paul Dermine and Norman Vander Putten, 'Governing EU's Environmental Transition Through Spending? Loopholes and Rule of Law Concerns in the Recovery Funds'.

<sup>27</sup> See for an explanation European Commission, 'Recovery Plan for Europe' <[https://commission.europa.eu/strategy-and-policy/recovery-plan-europe\\_en](https://commission.europa.eu/strategy-and-policy/recovery-plan-europe_en)> accessed 22 April 2025.

<sup>28</sup> Regulation 2021/241 of 12 February 2021 establishing the Recovery and Resilience Facility [2021] OJ L57/17.

Member States' plans, Commission approvals, indicators and ex-post evaluations. While this approach presents distinctive features, it also raises rule of law concerns, most notably related to access to justice, public participation, democratic scrutiny and transparency.

Other noteworthy expansions of the environmental *acquis* discussed in this book include the reference to the 'do no harm' approach in the European Green Deal communication and its subsequent codification as 'do no significant harm' (DNSH) in select pieces of secondary EU legislation,<sup>29</sup> and the introduction of the Critical Raw Materials Act,<sup>30</sup> the Corporate Sustainability Due Diligence Directive<sup>31</sup> and the Deforestation-Free Products Regulation.<sup>32</sup> Other existing EU law instruments were also revised, including the Air Quality Directive<sup>33</sup> and, following pressure from the European Parliament, the Environmental Crimes Directive.<sup>34</sup> Some legislative instruments adopted under the Green Deal require Member States to improve their efforts to uphold core rule of law values, including the procedural environmental rights protected by the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention).<sup>35</sup>

In addition to legislative instruments, such as regulations and directives, the Green Deal relies heavily on executive rule-making – especially in the form of delegated acts, which contain numerous detailed requirements, and demand significant expertise and administrative capacity for effective implementation.

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<sup>29</sup> Chapter by Maurizia de Bellis, 'The Different Forms and Content of "Do No Significant Harm" in EU Law: In Search of Legal Certainty'.

<sup>30</sup> Chapter by Merijn Chamon and Thomas Verellen, 'Empowering the Green Deal: Significant Delegation and Constitutional Limits in CBAM and CRMA'.

<sup>31</sup> Chapter by Marta Paricio Montesinos, 'Tempering or Legitimising Corporate Power? The Rule of Law and the EU Corporate Sustainability Due Diligence Directive'.

<sup>32</sup> Chapter by Giovanni Dall'Agnola, 'Protecting Forests and Ensuring Policy Coherence: (In)coherence in the EU's Approach to Forest Protection within Preferential Trade Agreements and the Deforestation Regulation'.

<sup>33</sup> Chapter by Maxime Tecqmenne, 'An Individual Right to Breathe Clean Air, At Last? The Promises and Perils of State Liability for Air Pollution'.

<sup>34</sup> Chapter by Giulia Giardi, Kim Geurtjens and Michael Faure, 'The Green Deal and the Criminal Enforcement of European Environmental Law'.

<sup>35</sup> United Nations Economic Commission for Europe (UNECE), Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (adopted 25 June 1998, entered into force 30 October 2001) 447 UNTS 2161 (Aarhus Convention). See chapter by Stefano Porfido and Federica Montanaro, 'How Green is the Rule of Law? Access to Justice within the European Green Deal Legislation'.

This practice could be regarded as potentially dangerous from a rule of law perspective: when legal obligations are difficult to interpret, or when authorities, individuals and businesses lack the resources to comply, legal certainty and the effectiveness of the law may be jeopardised. This creates a potential disconnect between the legal framework on paper and its implementation in practice.

Moreover, the Green Deal challenges the instrumentalist view of law, that is, the notion that law operates as a neutral and straightforward tool for achieving policy objectives. While the Green Deal is premised on goals such as climate neutrality and large-scale biodiversity restoration, the effectiveness of the legislation adopted, including the use of innovative regulatory mechanisms, remains to be tested. From this perspective, the risk arises of creating unrealistic expectations about the extent to which the Green Deal objectives can be achieved through law, especially given the socio-economic disruptions, administrative complexity and political contestation they entail. That this risk is likely to materialise in practice is shown by the fact that, based on a 2024 assessment by the EU Joint Research Centre, only 32 of the 154 Green Deal targets were 'on track', while acceleration was needed with respect to 64 targets and 15 targets were either not progressing or regressing.<sup>36</sup> This example illustrates that, even when based on robust scientific evidence, legal measures may prove difficult to implement in practice due to high economic costs, lack of capacity or shifting political priorities. This potential disconnect between ambition and implementation raises deep questions about the limits of law, and of the Green Deal itself, as instruments of transformative change.

## 2.2 The Exercise of Regulatory Power beyond the EU's Territory

The European Green Deal highlights the EU's commitment to integrating environmental objectives into its external relations and international diplomacy. Against this background, the Green Deal has expanded the external reach of EU environmental law, particularly with respect to climate policy. This, as such, is not a new trend: the EU has sought to play a global leadership role in climate policy since the early 1990s.<sup>37</sup> Since the Treaty of Lisbon, this ambition has been reflected in Article 191(1) TFEU, which states that EU policy shall contribute to 'promoting measures at the international level to deal

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<sup>36</sup> Marelli et al (n 10) 1.

<sup>37</sup> Kati Kulovesi and Harro van Asselt, 'Three Decades of Learning by Doing: The Evolving Climate Change Mitigation Policy of the European Union' in Stefan E Weishaar et al (eds), *Climate and Energy Law and Policy in the EU and East Asia* (Edward Elgar Publishing 2023) 47.

with regional or worldwide environmental problems, and in particular combating climate change’.

As noted above, the introduction of a carbon price for certain imports via the CBAM is a key development introduced under the Green Deal to strengthen the EU’s global climate leadership.<sup>38</sup> Additionally, the EU ETS has been extended to cover international maritime transport, including voyages between EU and non-EU ports. Another recent example of the territorial extension of EU jurisdiction is the Methane Regulation, which is designed to cover emissions from fossil-fuel imports into the EU.<sup>39</sup> Initially fossil-fuel importers will only be required to collect data on the methane intensity of the production of fossil fuels they place on the Union market. Subsequently, the EU will restrict methane emissions from fossil-fuel production, extending these requirements also to imported goods.<sup>40</sup> Through measures such as these, the EU has continued to leverage its economic influence to shape global environmental policies, with the aim to ensure that its trading partners contribute to international climate goals.

Another extraterritorial exercise of the EU’s regulatory powers introduced under the Green Deal is the imposition of due diligence and information-gathering obligations on EU companies and importers. These measures are aimed at ensuring the sustainability of value chains beyond the EU’s borders. This approach reflects a recognition of the EU’s contribution to environmental degradation and human rights violations beyond its borders. Regulating global value chains is therefore aimed at preventing or addressing the outsourcing of unsustainable production practices to third countries. Examples include the Deforestation Regulation<sup>41</sup> and the CSDDD, which hold EU companies accountable for the sustainability of their global supply chains. The CSDDD also strengthens access to justice by allowing victims, including individuals

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<sup>38</sup> For a discussion, see Gracia Marín Duran, ‘Securing Compatibility of Carbon Border Adjustments with the Multilateral Climate and Trade Regimes’ (2023) 72 *International & Comparative Law Quarterly* 73; and Erkan Erdogan, ‘The Carbon Border Adjustment Mechanism: Opportunities and Challenges for Non-EU Countries’ (2025) 14 *Wires Energy and Environment* e70000.

<sup>39</sup> Regulation (EU) 2024/1787 of the European Parliament and of the Council of 13 June 2024 on the reduction of methane emissions in the energy sector and amending Regulation (EU) 2019/942 [2024] OJ L1787/1.

<sup>40</sup> Oberthür and Kulovesi (n 17) 11.

<sup>41</sup> Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 [2023] OJ L150/206.

and organisations, to bring legal claims against EU companies, even when the harm occurred outside the EU's territory.

In their respective chapters, Paricio Montesinos and Dall'Agnola evidence the rule of law challenges related to regulating value chains in third countries. According to Paricio Montesinos, the due diligence obligations of the CSDDD may be seen as 'imposing EU-centric standards on countries without sufficiently accounting for local contexts or respecting their sovereignty'.<sup>42</sup> She also suggests that the CSDDD is problematic in that it strengthens the power of companies to regulate matters of public interest, such as human rights and environmental protection.<sup>43</sup> Dall'Agnola, in turn, highlights the lack of tools and venues to promote intergovernmental cooperation and dialogue with civil society concerning the implementation of due diligence obligations included in the Deforestation Regulation.<sup>44</sup> He emphasises that, with respect to EU external efforts to avoid deforestation, the territorial extension of EU environmental law raises important questions of consistency and coherence.

Also relevant to the rule of law is the question of whether the EU's exercise of its competences for the purposes of environmental protection is compatible with international law. At the heart of the controversy is the principle of international law that prohibits states from exercising legislative jurisdiction within the territory of other states without a sufficiently close connecting factor.<sup>45</sup> The permissibility of EU environmental law measures with an extraterritorial reach has been widely debated – particularly since a trade law panel in the early 1990s found similar measures by the United States to be in violation of international law.<sup>46</sup> Since then, judicial practice and scholarly opinion in this area have continued to evolve.<sup>47</sup> Notably, in the *Air Transport Association of America* case, the Court of Justice of the European Union

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<sup>42</sup> Chapter by Marta Paricio Montesinos, 'Tempering or Legitimising Corporate Power? The Rule of Law and the EU Corporate Sustainability Due Diligence Directive'.

<sup>43</sup> *Ibid.*

<sup>44</sup> Chapter by Giovanni Dall'Agnola, 'Protecting Forests and Ensuring Policy Coherence: (In)coherence in the EU's Approach to Forest Protection within Preferential Trade Agreements and the Deforestation Regulation'.

<sup>45</sup> James Crawford, *Brownlie's Principles of Public International Law* (7th edn, Oxford University Press 2008), referencing the 1927 *Lotus* decision by the Permanent Court of International Justice.

<sup>46</sup> For an overview in the EU context, see Kati Kulovesi, 'Unilateral Extraterritorial Action or "Minilateralism" within Territorial Jurisdiction? The EU Emissions Trading Scheme for Aviation Emissions and International Law' (2015) 2 Questions of International Law Journal 71.

<sup>47</sup> *Ibid.* See also Joanne Scott, 'Extraterritoriality and Territorial Extension in EU Law' (2014) 62 The American Journal of Comparative Law 87.

(CJEU) upheld the inclusion of aviation emissions in the EU ETS as compatible with international law, framing it as a regulation of market access rather than an extraterritorial exercise of legislative jurisdiction.<sup>48</sup> Although the ETS covered entire flight routes, including segments outside EU airspace, the Court ruled that it did not violate the sovereignty of other states or the territoriality principle, as it applied only to airlines using EU airports.<sup>49</sup> The Green Deal measures discussed in this book align with this interpretation. They extend the EU's regulatory reach beyond its borders to target companies and actors in third countries. This extension is justified by the need to regulate market access for entities with a sufficient territorial nexus to the EU. The CSDDD and Deforestation Regulation represent a novel application of this approach, as they create legal frameworks that hold European companies accountable for their global supply chains. While these measures are grounded in legal arguments concerning access to the EU market and the EU's legitimate exercise of its competences, they continue to fuel legal and political debates both within the EU and internationally.

The second von der Leyen Commission has already proposed to delay or weaken some of these measures through the so-called Omnibus initiative. More specifically, the Commission has proposed postponing the application of the CSDDD<sup>50</sup> and simplifying while – according to the title – also ‘strengthening’ the enforcement provisions of the CBAM.<sup>51</sup> In seeking to address concerns about the EU's competitiveness and the costs associated with complying with instruments adopted under the Green Deal, these proposals raise concerns related to the rule of law, as they create uncertainty regarding legal clarity and the predictability of the regulatory framework.

### 2.3 The Challenges for Coherence in the Exercise of EU Environmental Competences

Coherence in policymaking is fundamental to upholding the rule of law, particularly the principle of legal certainty, which requires laws to be clear,

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<sup>48</sup> Case C-366/10 *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change* [2011] ECR I-13755, para 151.

<sup>49</sup> *Ibid.*

<sup>50</sup> European Commission, ‘Proposal for 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 final.

<sup>51</sup> European Commission, ‘Proposal for a Regulation amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism’ COM (2025) 87 final.

predictable and consistently applied.<sup>52</sup> The sizeable expansion of the EU environmental *acquis* under the Green Deal raises questions concerning the internal coherence of numerous EU environmental instruments. The European Commission was apparently aware of potential coherence challenges, as it called for 'stakeholders to identify and remedy incoherent legislation that reduces the effectiveness in delivering the European Green Deal'.<sup>53</sup> Indeed, incoherent reforms can undermine the effectiveness of the law, and give rise to conflicts that should be avoided from a rule of law perspective.

The Green Deal Communication introduced the 'do no harm' approach with the aim that all other EU instruments adhere to the oath to 'do no harm'.<sup>54</sup> De Bellis explains how the concept has been incorporated into EU law through the 'do no *significant* harm' provision in Article 17 of the Taxonomy Regulation. This 'principle' serves the specific purpose of ensuring that any economic activity classified as sustainable under the EU taxonomy not only makes a positive contribution towards advancing one of the six environmental objectives listed in the Regulation, but also does not significantly harm any of the others. In this way, the 'do no significant harm' approach has the potential to enhance coherence within the EU's environmental *acquis*. The importance of this new approach is further illustrated by its application within an increasingly wide range of contexts, including the Recovery and Resilience Facility, Innovation and Modernisation Funds under the EU Emissions Trading Scheme,<sup>55</sup> as well as the Just Transition Fund<sup>56</sup> and Social Climate Fund.<sup>57</sup> However, as is often

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<sup>52</sup> On coherence (a consistent and coherent structure) as an important element of successful regulation and as a legal principle of EU environmental law, see Joachim Sanden, 'Coherence in European Environmental Law with Particular Regard to the Industrial Emissions Directive' (2012) 21 *European Energy and Environmental Law Review* 220; and reflections on the coherence of the EU environmental legislative package, Marjan Peeters and Rosa Uijlenburg, 'Concluding Observations: Three Core Themes' in Marjan Peeters and Rosa Uijlenburg (eds), *EU Environmental Legislation: Legal Perspectives on Regulatory Strategies* (Edward Elgar Publishing 2014) 242.

<sup>53</sup> The European Green Deal (n 1) Annex, 2.

<sup>54</sup> *Ibid* 19.

<sup>55</sup> 2023 ETS Directive, art 10f.

<sup>56</sup> Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund [2021] OJ L231/1.

<sup>57</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 [2023] OJ L130/1.

the case with new, innovative approaches, it remains to be seen how coherence will be achieved in practice.<sup>58</sup>

Another means to ensure coherence is the use of alignment provisions. In the Nature Restoration Law, for example, the EU legislator has tried to align new provisions in the domain of nature protection and restoration with other areas of the EU environmental *acquis*, such as that concerning renewable energy.<sup>59</sup> Similarly, the veritable regulatory jigsaw that emerged from the Green Deal has markedly broadened the scope and sophistication of EU law instruments in matters of land uses, seeking to engender greater coherence. Adopted instruments deal with disparate matters such as the accounting and reduction of greenhouse gas emissions from land use, land-use change and forestry,<sup>60</sup> the certification of carbon removals<sup>61</sup> and the regulation of biomass.<sup>62</sup> The complex interaction between these and other new and existing EU law instruments, such as the Common Agricultural Policy and the Nature Restoration Law, however, highlights the difficulties in reconciling the diverse cultural, economic, social, political and scientific factors that converge in land use governance.<sup>63</sup>

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<sup>58</sup> For detailed analysis of the principle's application under the RFF and beyond, see Rosalba Fama, 'Beyond "Fit for 55": The Emergence of the "Do No Significant Harm" Principle in EU Law and EU Funding Mechanisms' (2025) 34 *Review of European, Comparative & International Environmental Law* 62.

<sup>59</sup> Chapter by An Cliquet, Federica Cittadino and Sonja Gantioler, 'The Bumpy Landing of the EU Nature Restoration Law and the Rule of Law: Process and Substance'.

<sup>60</sup> Regulation (EU) 2018/841 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) 525/2013 and Decision 529/2013/EU [2018] OJ L156/1 ('2018 LULUCF Regulation').

<sup>61</sup> Regulation (EU) 2024/3012 of the European Parliament and of the Council of 27 November 2024 establishing a Union certification framework for permanent carbon removals, carbon farming and carbon storage in products [2024] OJ L3012/1.

<sup>62</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 [2018] OJ L328/82 ('2018 Renewable Energy Directive'). The 2018 Renewable Energy Directive has been amended twice. The latest revision is Directive (EU) 2023/2413 of the European Parliament and of the Council 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 [2023] OJ L2413/1 ('2023 Renewable Energy Directive').

<sup>63</sup> Caterina Sasso, Annalisa Savaresi and Seita Vesa, 'Piecing Together the LULUCF Jigsaw: Forests in the EU's Fit For 55 Package' (2025) 34 *Review of*

In addition to ensuring coherence among the various laws within the environmental *acquis*, coherence is also important in the EU's external relations. Policy coherence necessitates aligning the Deforestation Regulation and Preferential Trade Agreements to prevent conflicts and ensure regulatory stability.<sup>64</sup> As the chapter by Dall'Agnola shows, the current lack of synergy between these instruments has led to fragmentation, creating uncertainty for businesses and stakeholders, including those in third countries. Addressing this issue will require reforming existing agreements, and the inclusion of coherence considerations in future negotiations.

### 3. THE BALANCE BETWEEN LEGAL CERTAINTY, STABILITY AND DYNAMIC DEVELOPMENT OF THE LAW

#### 3.1 The Quality of the Law-making Process

A core function of the rule of law is to uphold stability of the legal systems, by ensuring legal certainty and preventing arbitrary decision-making. As Soininen, Huhta and Vesa note in their chapter, the rule of law has different connotations and functions.<sup>65</sup> While the substantive rule of law encompasses elements that support environmental protection and law's effectiveness, the formal rule of law places emphasis on upholding stability and legal certainty, which may at times hinder transformation. At its core, the Green Deal challenges legal stability. It embodies the ambition to pursue far-reaching interventions and reforms in order to achieve transformative environmental objectives. The extensive and rapid renewal and expansion of the EU's environmental *acquis* presents a challenge to maintaining stability and certainty within the legal system. Moreover, the imperative to transform the economies and societies in support of environmental policy goals has prompted calls to reform core areas of EU law, such as the EU internal market and monetary policy.<sup>66</sup>

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<sup>64</sup> Chapter by Giovanni Dall'Agnola, 'Protecting Forests and Ensuring Policy Coherence: (In)coherence in the EU's Approach to Forest Protection within Preferential Trade Agreements and the Deforestation Regulation'.

<sup>65</sup> Chapter by Niko Soininen, Kaisa Huhta and Seita Vesa, 'The Rule of Law and the EU Green Deal – Uneasy Interactions between Legal Instruments and the Legal Systemic Landscape'.

<sup>66</sup> Chapter by Sybe A de Vries and Ulla Neergaard, 'Recalibration of EU Internal Market Law Paradigms in Light of the EU Green Deal'; and chapter by Alessandro Cuomo, 'Green Monetary Policy and the Scope of the ECB's Mandate: Maintaining the Right (Institutional) Balance'.

Accordingly, the question arises: how can the rule of law, as enshrined in the EU legal order, safeguard the principles of stability, legal certainty and accountability in the use of public power, while also supporting the transformative ambitions and effectiveness of the Green Deal's environmental agenda?

The EU's procedures, underpinned by constitutional law principles such as that of institutional balance codified in Article 13(2) TEU, provide a key guarantee for preventing arbitrary law- and decision-making. The principle of institutional balance entails that EU institutions must act within the limits of the powers conferred to them in the Treaties, exercising mutual sincere cooperation and respect for the powers of other institutions, and in conformity with the procedures, conditions and objectives set out in the Treaties. EU environmental law is usually adopted through the ordinary legislative procedure,<sup>67</sup> which entails a proposal by the Commission, followed by deliberation in the Council and the European Parliament, after consultation with the Committee of the Regions and the Economic and Social Committee. An additional, albeit formally non-binding, constitutional safeguard is the Interinstitutional Agreement on Better Law-making,<sup>68</sup> through which the three institutions have committed to uphold general principles of EU law in the law-making process. These principles include democratic legitimacy, subsidiarity and proportionality and legal certainty, as well as a commitment to ensuring maximum transparency in the legislative process, including through comprehensive impact assessments to support informed decision-making.

However, some legislative instruments adopted under the Green Deal, particularly the procedure for adopting the Nature Restoration Law, have put the credibility of the ordinary legislative procedure to the test. As noted by Cliquet, Cittadino and Gantioler, the conduct of both co-legislators during the legislative process raised concerns regarding adherence to established rules of procedure and practice. While the law-making processes formally remained within the boundaries of the Treaties, interinstitutional agreement and the rules of procedure, doubt was nevertheless cast on the trustworthiness of the institutions involved.<sup>69</sup> Furthermore, scientifically unfounded arguments put forward by opponents of the law contributed to the sidelining of scientific evidence, influencing the positions of the co-legislators and ultimately shaping

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<sup>67</sup> Art 192(1) TFEU.

<sup>68</sup> Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making [2016] OJ L123/1.

<sup>69</sup> Chapter by An Cliquet, Federica Cittadino and Sonja Gantioler, 'The Bumpy Landing of the EU Nature Restoration Law and the Rule of Law: Process and Substance'.

the outcome of the legislative process.<sup>70</sup> This stands in clear contradiction to Article 191(3) TFEU, which requires that EU environmental policy be prepared taking into account available scientific and technical data, as well as the obligation under Article 5(7) of the Aarhus Convention, which requires parties to publish the facts and analyses deemed relevant and important in shaping major environmental policy proposals.<sup>71</sup> The legislative process thus reveals concerning shortcomings in upholding formal rule of law guarantees and in safeguarding the substantive quality of the legislation adopted, both of which appear to have been motivated by political pressure.<sup>72</sup>

The Nature Restoration Law is not the only legal instrument adopted under the Green Deal whose legislative process has raised concerns regarding adherence to the rule of law. The Commission's legislative proposals have at times been criticised for insufficiently assessing the tensions between the pursuit of environmental objectives and the principles of the rule of law.<sup>73</sup> As Soininen, Huhta and Vesa argue, if tensions between the rule of law and interventionist environmental measures are not adequately addressed in the Commission's legislative proposals, the burden may shift to the national level, where Member States may attempt to uphold the rule of law in line with their own constitutional traditions.<sup>74</sup> This also implies that the ex post review of the compatibility of EU law instruments with the rule of law is left to national and EU courts.<sup>75</sup> While judicial oversight of the legislature is a cornerstone of the rule of law, it also implies that uncertainty regarding a legal instrument's compatibility with rule of law principles may persist well beyond its adoption – undermining

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<sup>70</sup> Ibid. Problems of transparency and legitimacy of the EU legislative procedures, including transparency on what evidence and data has informed fundamental policy choices, are not new and they transcend beyond environmental law and Green Deal legislative measures. See eg, Charlotte Burns, Anne Rasmussen and Christine Reh, 'Legislative Codecision and Its Impact on the Political System of the European Union' (2013) 20 *Journal of European Public Policy* 941; and Deirdre Curtin and Päivi Leino, 'In Search of Transparency for EU Law-making: Trilogues on the Cusp of Dawn' (2017) 54 *Common Market Law Review* 1673.

<sup>71</sup> Chapter by An Cliquet, Federica Cittadino and Sonja Gantioler, 'The Bumpy Landing of the EU Nature Restoration Law and the Rule of Law: Process and Substance'.

<sup>72</sup> Ibid.

<sup>73</sup> Chapter by Niko Soininen, Kaisa Huhta and Seitä Vesa, 'The Rule of Law and the EU Green Deal – Uneasy Interactions between Legal Instruments and the Legal Systemic Landscape'.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

legal certainty and potentially hindering effective implementation.<sup>76</sup> A particular risk stems from the primacy of EU law over national law, including constitutions and the values and principles that underpin the rule of law within domestic legal systems.<sup>77</sup> As demonstrated by the instruments adopted under the Green Deal, there is a clear need for the EU to systematically incorporate rule of law considerations across all its policies, in order to actively promote, realise and sustain the rule of law throughout the *acquis*.<sup>78</sup>

### 3.2 Legal Certainty and Executive Powers

At the heart of the rule of law lies the establishment of a comprehensive system of norms and institutions to regulate the use of public power to ensure accountability.<sup>79</sup> Hence, alongside the guarantees pertaining to law-making, the rule of law also requires exercising control over the executive powers, an idea which is also encapsulated in the above mentioned principle of institutional balance, as well as by the principles of conferral<sup>80</sup> and legality.

The Green Deal has not only marked an expansion of the environmental *acquis* but also engendered an evolution in the executive powers of EU institutions, such as the Commission and the ECB. As Chamon and Verellen explain, the EU legislator often delegates powers to the executive branch under Articles 290 or 291 TFEU in order to provide further details to the legislation and ensure its uniform implementation. Many legislative instruments adopted under the Green Deal reflect a trend towards delegation, with their functioning and implementation increasingly reliant on the Commission.<sup>81</sup> This trend presents a challenge to the legal framework governing delegation, testing its capacity to strike a balance between enabling the effective use of delegated

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<sup>76</sup> See eg, in the context of EU water law, Suvi-Tuuli Puharinen, 'Free Rivers or Legal Certainty? Review of Hydropower Permits Under EU Water Law' (2022) 31 European Energy and Environmental Law Review 54.

<sup>77</sup> See eg, cases 11/70 *Internationale Handelsgesellschaft mvH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* ECLI:EU:C:1970:114, para 3; C-473/93 *Commission v Luxemburg* [1996] ECR I-3207, para 38; C-273/15 *ZS Ezernieki* ECLI:EU:C:2016:364, para 53; C-516/17 *Spiegel* ECLI:EU:C:2019:625, para 19; and C-476/17 *Pelham* ECLI:EU:C:2019:624, para 78.

<sup>78</sup> Werner Schroeder, 'The Rule of Law as a Constitutional Mandate for the EU' (2023) 15 Hague Journal on the Rule of Law 1.

<sup>79</sup> See Koen Lenaerts, 'New Horizons for the Rule of Law Within the EU' (2020) 21 German Law Journal 29.

<sup>80</sup> Art 5 TEU.

<sup>81</sup> Chapter by Merijn Chamon and Thomas Verellen, 'Empowering the Green Deal: Significant Delegation and Constitutional Limits in CBAM and CRMA'.

powers and maintaining oversight of the executive, as required by the rule of law. After analysing the Carbon Border Adjustment Mechanism Regulation and the Critical Raw Materials Act, Chamon and Verellen suggest that the EU constitutional framework leaves ample flexibility for delegation. Furthermore, they note that the CJEU exercises limited oversight over the practice of delegation, thereby granting the legislator broad discretion not only to delegate powers but also to establish new bodies entrusted with executive powers.<sup>82</sup> Chamon and Verellen conclude that delegation appears to be guided more by political considerations than by legal constraints rooted in the rule of law.

The evolution in the use of executive powers under the Green Deal has also been marked by institutions reinterpreting their mandates to develop new policies and agendas. A notable example of this, discussed in Cuomo's chapter, is the ECB's Green Monetary Policy.<sup>83</sup> While the new policy carries potential to accelerate the uptake of sustainable finance in support of the Green Deal's objectives, it invites fundamental questions about the ECB's mandate and its relationship with the powers of EU legislature. According to Article 127(1) TFEU, the ECB's mandate is to ensure price stability and, without prejudice to it, support the EU economic policies. However, the institution has started to incorporate consideration for the implications of climate change and the transition into its monetary policy operations.<sup>84</sup> According to Cuomo, the ECB has deliberately balanced self-empowerment – through a redefinition of its mandate – with self-restraint, to avoid overstepping its constitutional boundaries and infringing upon the rule of law.

Yet, like Chamon and Verellen, Cuomo suggests that principles of the rule of law and the Court's jurisprudence afford the ECB ample flexibility in defining its policy. Thus, while the rule of law does not impose strict limits on the EU executive, EU institutions – or at least the ECB – appear to have internalised its constraints to some extent. Nevertheless, the EU constitutional framework allows for a degree of executive self-empowerment, which has drawn criticism for weakening democratic accountability and adherence to the rule of law.<sup>85</sup> This concern is compounded by the fact that the CJEU has harnessed the rule of law as a tool to safeguard the autonomy of EU law, rather than as a strong system of checks and balances to constrain the actions of EU institutions. This pattern seems to have played out under the Green Deal as well.

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<sup>82</sup> *Ibid.*

<sup>83</sup> Chapter by Alessandro Cuomo, 'Green Monetary Policy and the Scope of the ECB's Mandate: Maintaining the Right (Institutional) Balance'.

<sup>84</sup> *Ibid.*

<sup>85</sup> Nicole Scicluna and Stefan Auer, 'From the Rule of Law to the Rule of Rules: Technocracy and the Crisis of EU Governance' (2019) 42 *West European Politics* 1420.

### 3.3 Gradual Developments or Radical Reforms?

As mentioned above, achieving a high level of environmental protection, alongside the specific objectives of the Green Deal, necessitate transformational and wide-ranging changes to the EU *acquis*, with a view to mainstream environmental considerations and reshape different sectors of societies and economies. As Soininen, Huhta and Vesa write, the rule of law can be seen as supporting the transformation agenda, yet its formal aspects resist significant and rapid changes to the legal system.<sup>86</sup> Thus, the rule of law presents the challenge of balancing the need for transformative change with the preservation of the status quo, raising the question of whether to pursue dynamic and radical reforms, or opt for more gradual developments.

The idea of the rule of law in the EU has been significantly shaped by the need to protect the functioning of the internal market and the four freedoms.<sup>87</sup> Yet, the internal market, along with the four freedoms, has come under pressure for radical transformation in response to the EU's environmental policy. As de Vries and Neergaard explain, the Green Deal has prompted growing calls to reconsider the role of the internal market in transforming the EU into an environmentally sustainable and resource-efficient economy. While arguably the internal market has so far proven sufficiently flexible to accommodate societal change, the scale of transformation demanded by the green transition calls for a paradigm shift in the EU's economic constitution. De Vries and Neergaard suggest that merely developing the internal market, retaining its core constitutional elements and principles, will not be sufficient. Instead, they suggest a more radical, fundamental shift is needed, involving shared efforts by the EU institutions, Member States and the CJEU and a reinterpretation of the Treaties.<sup>88</sup> However, the rule of law embedded in the EU legal system safeguards the stability of the internal market, as legal certainty and clarity are essential for individuals and economic actors to fully benefit from it.<sup>89</sup>

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<sup>86</sup> Chapter by Niko Soininen, Kaisa Huhta and Seita Vesa, 'The Rule of Law and the EU Green Deal – Uneasy Interactions between Legal Instruments and the Legal Systemic Landscape'.

<sup>87</sup> Niamh N Shuibhne, 'The Resilience of EU Market Citizenship' (2010) 47 *Common Market Law Review* 1597; and J Larik, 'From Speciality to a Constitutional Sense of Purpose: On the Changing Role of the Objectives of the European Union' (2014) 63 *The International and Comparative Law Quarterly* 935.

<sup>88</sup> Chapter by Sybe A de Vries and Ulla Neergaard, 'Recalibration of EU Internal Market Law Paradigms in Light of the EU Green Deal'.

<sup>89</sup> Chapter by Niko Soininen, Kaisa Huhta and Seita Vesa, 'The Rule of Law and the EU Green Deal – Uneasy Interactions between Legal Instruments and the

Hence, the rule of law sets limits on the extent to which the Treaties can be recalibrated through interpretation, marking the point at which radical shifts require formal constitutional revision.

The transformation envisaged in the Green Deal necessitates not only a rethinking of the EU internal market, but also a shift in how economic operators are held accountable for their environmental and human rights impacts. Schoukens suggests that, going forward, instruments such as Environmental Impact Assessments (EIAs) will play a crucial role in the implementation of the Green Deal instruments and in achieving carbon neutrality, in line with the principles of environmental integration and environmental democracy.<sup>90</sup> Paricio Montesinos notes how corporations increasingly exert influence over the environment, individuals and communities across the globe, both through direct impacts from their operations and value chains and by shaping regulatory frameworks.<sup>91</sup> This raises the question of whether the constraints imposed by the rule of law should apply also to corporate decision-making, with a view to ensuring accountability and curbing the arbitrary exercise of corporate powers.<sup>92</sup> In the EU, the CSDDD imposes mandatory human rights and environmental due diligence obligations on covered companies. The directive was initially seen as having the potential to shift the operational principles and responsibilities of corporate action towards greater accountability for human rights and environmental impacts.<sup>93</sup> However, instead of driving this shift, the principles of the rule of law – especially that of legal certainty – were successfully invoked to limit the scope of application of the CSDDD and dilute corporate responsibilities.<sup>94</sup> Paricio Montesinos argues that in the EU *acquis* the rule of law is deeply intertwined with the modern liberal paradigm and the functioning of capitalist economic systems, underpinned by principles of

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#### Legal Systemic Landscape'

<sup>90</sup> Chapter by Hendrik Schoukens, 'The EU Green Deal, EIA and Global Warming: Balancing the Rule of Law with the Quest for Climate Neutrality'.

<sup>91</sup> Chapter by Marta Paricio Montesinos, 'Tempering or Legitimising Corporate Power? The Rule of Law and the EU Corporate Sustainability Due Diligence Directive'.

<sup>92</sup> Martin Krygier, 'The Rule of Law: Pasts, Presents, and Two Possible Futures' (2016) 12 Annual Review of Law and Social Science 199; Martin Krygier, 'The Ideal of the Rule of Law and Private Power' (Central European University and Democracy Institute Working Paper 2023/09); and the chapter by Marta Paricio Montesinos, 'Tempering or Legitimising Corporate Power? The Rule of Law and the EU Corporate Sustainability Due Diligence Directive'.

<sup>93</sup> Chapter by Marta Paricio Montesinos, 'Tempering or Legitimising Corporate Power? The Rule of Law and the EU Corporate Sustainability Due Diligence Directive'.

<sup>94</sup> *Ibid.*

efficiency, predictability and exclusionary property rights.<sup>95</sup> In the context of the Green Deal, the rule of law has often been resorted to in order to resist transformation and to protect the status quo.<sup>96</sup>

The Green Deal has been more successful in facilitating legal developments that do not fundamentally challenge the existing economic order and that are primarily intended to apply at the margins of the economy.<sup>97</sup> One example is the above-mentioned ‘do not significant harm’ principle, particularly in terms of its potential to enhance coherence within the EU environmental *acquis*. However, De Bellis notes that the content and the function of the principle appear to vary across legal instruments, with significant uncertainty regarding the obligations it entails.<sup>98</sup>

To address complex and inherently dynamic environmental challenges and their socio-economic impacts, it is essential that legal systems remain adaptable – not only to these challenges, but also to technical developments and evolving knowledge.<sup>99</sup> The contributions in this edited collection show how the rule of law provides several avenues for dynamic development. As Chamon and Verellen show, delegation has enabled EU law to maintain a relatively dynamic character, enabling it to respond to societal and environmental as well as technological developments.<sup>100</sup> Another mechanism to increase dynamism in regulatory design is the use of review clauses, which subject certain elements of legislation to regular review and updates. For instance, both the Taxonomy Regulation and its technical screening criteria are to be reviewed and updated at least every three years to respond to progress, assess the

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<sup>95</sup> Ibid.

<sup>96</sup> See chapter by Niko Soininen, Kaisa Huhta and Seita Vesa, ‘The Rule of Law and the EU Green Deal – Uneasy Interactions between Legal Instruments and the Legal Systemic Landscape’.

<sup>97</sup> See eg, UNEP, ‘Decoupling Natural Resource Use and Environmental Impacts from Economic Growth. A Report of the Working Group on Decoupling to the International Resource Panel’ (2011); and Jason Hickel and Giorgos Kallis, ‘Is Green Growth Possible?’ (2020) 25 *New Political Economy* 469.

<sup>98</sup> Chapter by Maurizia De Bellis, ‘The Different Forms and Content of ‘Do No Significant Harm’ in EU Law: In Search of Legal Certainty’.

<sup>99</sup> See eg, Robin K Craig, ‘“Stationarity Is Dead” – Long Live Transformation: Five Principles for Climate Change Adaptation Law’ (2010) 34 *Harvard Environmental Law Review* 9; and JB Ruhl, ‘General Design Principles for Resilience and Adaptive Capacity in Legal Systems – With Applications to Climate Change Adaptation’ (2011) 89 *North Carolina Law Review* 1373.

<sup>100</sup> Chapter by Merijn Chamon and Thomas Verellen, ‘Empowering the Green Deal: Significant Delegation and Constitutional Limits in CBAM and CRMA’.

effectiveness of the classification system and ensure alignment with scientific and technological developments.<sup>101</sup>

Dynamism can also be achieved through the reinterpretation of the Treaties and secondary law in light of environmental challenges and their broader societal and economic impacts. As explained by Cuomo, the ECB has reinterpreted its constitutional mandate to maintain price stability and support the EU's general economic policies to include climate considerations. As noted above, this has enabled the ECB to develop policies aimed at supporting decarbonisation, even without Treaty amendments or explicit authorisation to do so. One possible explanation is that promoting decarbonisation by fostering investment in new technologies and economic activities aligns with the broader paradigm of the capitalist market economy underpinning the EU's economic constitution, and can thus be seen as compatible with the ECB's mandate.<sup>102</sup> Interestingly, however, the ECB has not developed its policies to explicitly address the EU's environmental quality and biodiversity objectives, despite these being core components of the Green Deal.

Alongside the adoption of new legislative and governance instruments, harnessing the potential of existing legislation is essential for advancing environmental objectives. As Schoukens explains, the EIA Directive is an important tool to ensure more 'environmentally sensitive' decision-making and promote transparency and environmental democracy through participatory procedures.<sup>103</sup> With the Green Deal, the Directive has gained particular importance, as some new instruments rely on EIAs for their operationalisation.<sup>104</sup> A crucial question is whether the impacts of economic activities related to climate mitigation and adaptation – particularly so-called scope 3 emissions occurring upstream and downstream in value chains – are comprehensively captured within the scope of EIAs.<sup>105</sup> Schoukens suggests that EIAs can be used to accommodate the full breadth of the environmental and societal concerns

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<sup>101</sup> Chapter by Maurizia De Bellis, 'The Different Forms and Content of "Do No Significant Harm" in EU Law: In Search of Legal Certainty'.

<sup>102</sup> Chapter by Alessandro Cuomo, 'Green Monetary Policy and the Scope of the ECB's Mandate: Maintaining the Right (Institutional) Balance'.

<sup>103</sup> Chapter by Hendrik Schoukens, 'The EU Green Deal, EIA and Global Warming: Balancing the Rule of Law with the Quest for Climate Neutrality'.

<sup>104</sup> On how the technical screening criteria in the Taxonomy Delegated Acts connect the Do No Significant Harm Approach with EIAs, see the chapter by Maurizia De Bellis, 'The Different Forms and Content of "Do No Significant Harm" in EU Law: In Search of Legal Certainty'.

<sup>105</sup> *Ibid.*

within decision-making processes, thus contributing to the legitimacy of the transformations envisioned with the Green Deal.<sup>106</sup>

In conclusion, within the EU environmental *acquis*, the rule of law functions as a constraint on the most radical shifts, tempering dynamism, and balancing the need for change with the requirements of stability and legal certainty. However, many recent developments and interpretative questions emerged with the Green Deal have yet to be assessed by the CJEU, leaving their ultimate compatibility with the EU's rule of law to be determined.

#### 4. ENFORCEMENT AND ACCESS TO JUSTICE

The shortcomings of the EU environmental *acquis* are well documented, with successive environmental review reports highlighting significant gaps in areas such as nature protection, air and water pollution, urban wastewater treatment and waste management.<sup>107</sup> From a rule of law perspective, the question of how to ensure compliance with EU law is a crucial one. The Green Deal has made this challenge much more complex, due to the many and numerous reforms introduced within a short period of time.

As noted above, the EU is a party to the Aarhus Convention, which provides obligations ensuring access to information, participation and access to justice in relation to environmental matters, including development of environmental policy and law-making.<sup>108</sup> The obligations enshrined in the Convention apply both to the EU Member States and to the EU institutions. The European Commission has explicitly recognised the connection between the rule of law and the Aarhus Convention, guaranteeing access to justice in environmental matters.<sup>109</sup> Implementation of the Convention has however faced numerous

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<sup>106</sup> Chapter by Hendrik Schoukens, 'The EU Green Deal, EIA and Global Warming: Balancing the Rule of Law with the Quest for Climate Neutrality'.

<sup>107</sup> European Commission, 'Environmental Implementation Review' < [https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review\\_en](https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review_en) > accessed 10 June 2024.

<sup>108</sup> Aarhus Convention, arts 4–5; 6-8; and 9, respectively. On the access to justice provisions of the Convention and their transposition at the EU level, see Mariolina Eliantonio and Justine Richelle, 'Article 9 of the Aarhus Convention, its Transposition in the EU and its Interpretation by the Aarhus Convention Compliance Committee and the Court of Justice of the European Union: In Search of an "EU Effect"?' in Bojana Todorovic and Roberto Caranta (eds), *Europeanisation of Access to Justice in Environmental Matters: The Aarhus Convention in the Balkans* (Hart Publishing 2025).

<sup>109</sup> European Commission, 'Improving access to justice in environmental matters in the EU and its Member States' (Communication) COM (2020) 643 final, para 7.

challenges, especially with respect to securing access to justice. In the environmental field, this translates in enabling and facilitating especially NGOs' access to judicial mechanisms to hold public and private actors accountable for violations of EU environmental law. While Article 9(3) of the Convention requires access to administrative *or* judicial review mechanisms, in the EU legal system, and in as far as the EU Member States are concerned, this obligation has been translated into efforts to ensure *judicial* review of national measures. Related efforts also include a failed proposal for a Directive on access to justice, as well as several soft law instruments. As Porfido and Montanaro note, the European Green Deal has not delivered a full and coherent pathway for access to justice in environmental matters.<sup>110</sup> With a horizontal transposition of Article 9(3) of the Convention no longer on the table, the Commission changed its strategy, opting for a sectoral approach to access to justice within national jurisdictions. Access to justice provisions feature only in a handful of instruments adopted to further the objectives of the Green Deal, rendering them insufficient to bridge the gap left by the absence of a general legislative instrument implementing Article 9(3) of the Convention. Yet, the dedicated provisions on access to justice introduced under the Green Deal could and should be viewed as a step in the right direction towards acknowledging the role of courts in the application and enforcement of EU environmental law. This conclusion is also shared by Tecqmenne, who emphasises the distinctive nature of environmental law in protecting collective interests and the challenges of aligning environmental provisions with the notion of 'rights'.<sup>111</sup>

While 'rights' and their violations usually represent the 'gateway' for gaining access to the corresponding 'remedies', in environmental law this approach has glaring limitations, since many provisions protect the general interest as opposed to individual rights. From biodiversity to air, water or soil quality, a large portion of EU environmental law provisions cannot be easily construed as conferring rights on individuals. As Tecqmenne shows, the CJEU has been reluctant to create environmental remedies for the protection of individual rights, and has rather sought to empower individuals to have access to a court in order to act on behalf of the environment. The remedies required by the CJEU's case law, such as the right to access a court to challenge alleged violations of EU environmental law, have therefore been conceived to ensure compliance with EU environmental law, rather than to protect individual interests.

More recently the Court has been more proactive in identifying individual rights, for example, to clean air or water. Nevertheless, the Court has not

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<sup>110</sup> Chapter by Stefano Porfido and Federica Montanaro, 'How Green Is the Rule of Law? Access to Justice within the European Green Deal Legislation'.

<sup>111</sup> Chapter by Maxime Tecqmenne, 'An Individual Right to Breathe Clean Air, At Last? The Promises and Perils of State Liability for Air Pollution'.

equipped those rights with individualised remedies, especially in the form of monetary compensation. This task has been taken up by the EU legislator, through the recast Air Quality Directive. While this is certainly a step in the right direction, as Tecqmenne explains, the procedural hurdles to gain compensation are quite significant.

From a rule of law perspective – and particularly in terms of maintaining the appropriate institutional balance – the outcome is mixed. On the one hand, it is commendable that the right to compensation has been established through the front door (that is, by the EU legislator), rather than through the back door (that is, through judicial intervention). On the other hand, this approach remains inherently piecemeal. From this perspective, the democratic dimension of the rule of law has been upheld, at the expense of coherence and legal certainty.

Another example of this phenomenon is the introduction of a fault-based civil liability mechanism under the CSDDD, with the objective of enhancing access to justice for victims of corporate human rights and environmental harm. This mechanism requires that claimants prove harm, a negligent or intentional failure to meet due diligence obligations and a direct causal link between this failure and the harm. Paricio Montesinos criticises this new mechanism for excluding liability for purely environmental damage and certain collective rights, despite their inclusion in the Directive's scope.<sup>112</sup> She argues that this creates significant ambiguities concerning rule of law principles, particularly legal certainty and clarity, which are ostensibly upheld in the Directive. She suggests that the limitations in the Directive's scope, selective human rights considerations and the exclusion of multilateral environmental agreements reflect a balancing act skewed towards legal and corporate interests. The lack of detailed guidance on due diligence and a restrictive civil liability regime potentially undermine the Directive's primary objectives. Moreover, Paricio Montesinos points out that effective oversight by strong, independent supervisory authorities and accessible redress avenues are crucial to ensure that corporate practices align with public interests. She concludes that, while the CSDDD establishes a legal framework for victims to seek redress, it inadequately addresses the multifaceted legal, procedural, cultural, financial and linguistic barriers that hinder effective access to justice, especially for communities in the Global South. The Directive's approach may inadvertently reinforce power imbalances and enable mere nominal compliance, undermining its potential to meaningfully transform corporate accountability.

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<sup>112</sup> Chapter by Marta Paricio Montesinos, 'Tempering or Legitimising Corporate Power? The Rule of Law and the EU Corporate Sustainability Due Diligence Directive'.

The Green Deal included also more general measures to step up and strengthen monitoring and enforcement systems. The recast Environmental Crimes Directive<sup>113</sup> was meant to facilitate the prevention of and response to illegality within Member States. Giardi, Geurtjens and Faure<sup>114</sup> note how the Directive has taken important steps towards more effective, evidence-based 'smart' enforcement.<sup>115</sup> They however caution that a 'race to the bottom' is still possible, especially in areas such as waste management, where there is significant potential to shift environmental externalities between Member States. They also highlight a gap between the formal provision of policy and monitoring documents and actual enforcement practices, stemming from the difficulty of capturing the complex day-to-day operations of various criminal and administrative law enforcement actors. Consequently, they conclude that to ensure effective enforcement across the EU, it is necessary to bolster law enforcement practices within Member States.

Despite these limitations, it seems clear that legislation introduced under the Green Deal has improved access to justice in environmental matters at the national level. Access to the EU courts, meanwhile, has remained largely unchanged. The well-known limitations faced by private parties in annulment actions – due to a restrictive interpretation of 'individual concern' under Article 263(4) TFEU and of 'direct concern' – pose formidable barriers to access to justice before the EU courts. As de Bellis notes, these constraints effectively bar environmental NGOs from challenging measures allegedly adopted in breach of EU environmental law before the CJEU.<sup>116</sup>

Admittedly, the administrative review avenue offered by the Aarhus Regulation can be used to overcome the obstacles linked to direct access to the CJEU.<sup>117</sup> However, as Porfido and Montanaro note, from a rule of law

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<sup>113</sup> Directive 2024/1203 on the protection of the environment through criminal law and replacing Directives 2008/99/EC and 2009/123/EC [2024] OJ L1203/1 was adopted on 11 April 2024 and published in the Official Journal on 20 April 2024.

<sup>114</sup> Chapter by Giulia Giardi, Kim Geurtjens and Michael Faure, 'The Green Deal and the Enforcement of Environmental Criminal Law'.

<sup>115</sup> On smart enforcement, see Florentin Blanc and Michael G Faure, 'Smart Enforcement. Theory and Practice' (2018) 20 *European Journal of Law Reform* 78.

<sup>116</sup> Chapter by Maurizia de Bellis, 'The Different Forms and Content of "Do No Significant Harm" in EU Law: In Search of Legal Certainty'.

<sup>117</sup> Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

perspective, access to the internal review procedure cannot be regarded as a substitute for judicial review.<sup>118</sup> While access to a court is guaranteed after an unsuccessful internal review request, the claim will only concern the request itself and its conclusions, and not the underlying measures at stake. From an access to justice and rule of law perspective, this is highly problematic, especially in light of the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights.

Another barrier to access to justice – and a concern from a rule of law perspective – lies in the emergence of regulatory instruments that deviate from established practice under EU environmental law. This is exemplified by Dermine and Vander Putten with regard to the use of plans.<sup>119</sup> While such plans are formally prepared by EU Member States, they are the product of intense negotiations with the Commission. Given that these plans combine binding and non-legally binding measures, along with funding commitments, key questions arise: Who can claim that the plans produce concrete legal effects sufficient to justify judicial intervention, and under what circumstances? And which court has jurisdiction over such plans?

Cliquet, Cittadino and Gantioler<sup>120</sup> are similarly critical of exemptions and deviation from established EU law practice found in the Nature Restoration Law. Provisions on the expansion of renewables and supporting energy infrastructure,<sup>121</sup> together with the requirement that renewable energy projects and their grid connections be considered of overriding public interest,<sup>122</sup> prescribe simplified assessments and permit exemptions from the obligation to consider less harmful alternatives.<sup>123</sup> These deviations from extant practice raise concerns over how Member States handle EIAs and strategic environmental assessments (SEAs), and the related access to justice requirements. Cliquet, Cittadino and Gantioler caution that inadequate implementation, coupled with

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to Community institutions and bodies. PE/63/2021/REV/1 2021 OJ L 356, 8.10.2021 ('Aarhus Regulation').

<sup>118</sup> Chapter by Stefano Porfido and Federica Montanaro, 'How Green Is the Rule of Law? Access to Justice within the European Green Deal Legislation'.

<sup>119</sup> Chapter by Paul Dermine and Norman Vander Putten, 'Governing the EU's Environmental Transition through Spending? Loopholes and Rule of Law Concerns in the Recovery Funds'.

<sup>120</sup> Chapter by An Cliquet, Federica Cittadino and Sonja Gantioler, 'The Bumpy Landing of the EU Nature Restoration Law and the Rule of Law: Process and Substance'.

<sup>121</sup> Nature Restoration Law, preamble, paras 67 and 68; and arts 3(24) and 14(13).

<sup>122</sup> *Ibid* art 6(1).

<sup>123</sup> *Ibid* preamble, para 38; and art 6.

insufficient judicial oversight, could undermine the Nature Restoration Law's objectives amidst the push for rapid renewable energy expansion. The focus on overriding public interest in this context appears more driven by energy security and independence than by environmental goals.

Cliquet, Cittadino and Gantioler furthermore note that the Nature Restoration Law requires Member States to ensure that the development of national restoration plans is conducted in an open, transparent, inclusive and effective manner, providing meaningful opportunities for public and stakeholder participation. This approach is intended to secure a fair process and outcome. Nevertheless, they question whether extensive public participation, even when well facilitated, can adequately address the need to respect and restore nature, particularly if it coincides with the weakening of extant procedures such as EIAs. In this connection, they emphasise the critical role of judicial oversight in ensuring compliance and legitimising environmental measures.<sup>124</sup>

In conclusion, the rule of law is closely tied to the notion of checks and balances, which in the EU legal system are embodied in the principle of institutional balance, as discussed in Cuomo's chapter with regard to jurisprudence of the CJEU.<sup>125</sup> While the principle prevents the CJEU from engaging in overly intensive, quasi-merits review of the EU institutions' exercise of their discretion, it can be equally questioned whether an excessively 'light touch' review might conflict with the notion of institutional balance. Given the CJEU's reluctance to scrutinise complex scientific and technical assessments, it is legitimate to question whether the considerable discretion often granted to the EU legislator – including the Commission's power to adopt delegated acts – does not effectively result in 'free rein'.<sup>126</sup> Rule of law-related concerns can be raised also in this respect.

## 5. CONCLUDING REFLECTIONS

### 5.1 An Expanded Role for Learning by Doing?

As we noted from the outset, the transformative nature of the Green Deal – aimed at bringing about profound changes in the EU's economy and society

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<sup>124</sup> See also Maiju Mähönen, 'Access to Justice in the EU's Procedural Climate Governance Framework: A Case Study of NECPs' (D5.2: 4i-TRACTION case study report, University of Eastern Finland 2024).

<sup>125</sup> Chapter by Alessandro Cuomo, 'Green Monetary Policy and the Scope of the ECB's Mandate: Maintaining the Right (Institutional) Balance'.

<sup>126</sup> On the empowerment of the Commission by the EU legislator, see the chapter by Merijn Chamon and Thomas Verellen, 'Empowering the Green Deal: Significant Delegation and Constitutional Limits in CBAM and CRMA'.

– puts the rule of law to the test. Core principles, such as legal certainty and the obligation to respect the limits of the EU’s competences, must be upheld.

Given its complexity, the secondary legislation adopted under the Green Deal is likely to require interpretation and generate new case law from the CJEU, particularly through the preliminary reference procedure. In the unique institutional structure of the EU – where significant powers are delegated to the EU institutions, but subject to judicial scrutiny – it is ultimately the CJEU that has the final say on legal interpretation. However, in the field of EU environmental law, structural deficiencies persist concerning the scope and intensity of the CJEU’s review. This includes the scrutiny of whether legal decisions – ranging from delegated acts of the Commission to the national implementation of EU directives, or actions for annulment of internal review decisions under the Aarhus Regulation – have been taken in accordance with the rule of law.

Within the EU, restrictions on *environmental* public interest litigation – and particularly on legal challenges brought by environmental NGOs – are especially concerning, given that the environment itself has no voice and that economic interests may be pursued at its expense.<sup>127</sup> Even if formal access to justice in environmental matters is improved through broader standing, lower costs and adequate remedies, the broad discretion afforded to the EU institutions by the CJEU supports the view that most EU environmental measures are likely to withstand judicial scrutiny. In this context, legal scholarship can play a crucial role: where judicial scrutiny remains limited, scholars can critically engage with and comment on actions that threaten or even violate core rule of law values. Moreover, the Green Deal’s effectiveness in strengthening the EU’s environmental *acquis* must be evaluated against actual implementation and enforcement practice. Reports by the Commission and Member States, as well as the evaluations by the European Court of Auditors, are essential tools to gauge lessons from the Green Deal’s impact on the ground.

While some learning by doing has already taken place in relation to emission trading,<sup>128</sup> the underlying concept, which recognises that laws may need to be

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<sup>127</sup> Matthijs van Wolferen and Mariolina Eliantonio, ‘Access to Justice in Environmental Matters in the EU: The EU’s Difficult Road Towards Non-compliance with the Aarhus Convention’ in Marjan Peeters and Mariolina Eliantonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020) 148.

<sup>128</sup> See eg, Marjan Peeters and Stefan E Weishaar, ‘Exploring Uncertainties in the EU ETS: “Learning by Doing” Continues Beyond 2012’ (2009) 3 *Carbon & Climate Law Review* 88; and more generally, Mariolina Eliantonio and Marjan Peeters, ‘On Regulatory Power, Compliance, and the Role of the Court of Justice in EU Environmental Law’ in Marjan Peeters and Mariolina Eliantonio (eds),

amended when their implementation proves problematic or fails to achieve the intended environmental outcomes, offers a valuable lens for researching and assessing the output of the Green Deal in the coming years. In this sense legal developments will themselves generate lessons, including for the EU legislator, which should in turn inform the continued improvement of the EU's environmental *acquis*.<sup>129</sup> A telling example is the codification of the CJEU's ruling in the 'Pigs in Danger' case, which confirmed that standing in the review procedure should not depend on the role played by the member of the public during the participatory phase of the decision-making process.<sup>130</sup>

From an environmental perspective – particularly given the urgent need for transformative action in response to the deteriorating state of the environment – one could argue that attempting to steer change is preferable to inaction. From a rule of law perspective, a key risk lies in the paralysis of governmental action: will new legal measures withstand judicial scrutiny when challenged by industries and other private actors? Rule of law arguments are invoked by EU and national authorities as a pretext to avoid taking politically contentious decisions. Yet, the rise of strategic litigation before national courts, including the use of newly introduced access to justice provisions in the EU environmental *acquis*, may help counteract efforts to limit the EU's environmental ambition.

## 5.2 Beyond the Green Deal

As noted at the beginning of this chapter, the EU's political priorities have clearly shifted following the European Parliament elections in June 2024. Growing concerns over economic stability and security fuelled by the pandemic, the war in Ukraine, and the global trade tensions ignited by the second Trump administration in 2025 have weakened the momentum of the environmental activism that helped bring about the Green Deal. As a result, the focus of EU lawmaking has moved away from strengthening environmental

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*Research Handbook on EU Environmental Law* (Edward Elgar Publishing 2020) 482.

<sup>129</sup> See Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (Recast) [2010] OJ L334/17, art 25; and case C–826/18 *LB and Others v College van burgemeester en wethouders van de gemeente Echt-Susteren* ECLI:EU:C:2021:7.

<sup>130</sup> *LB and Others v College van burgemeester en wethouders van de gemeente Echt-Susteren* (n 129).

protection toward prioritising competitiveness and security.<sup>131</sup> Key examples of this new focus include the Net-Zero Industry Act,<sup>132</sup> which aims to scale up clean technology manufacturing in the EU, and the Critical Raw Materials Act, designed to secure a sustainable and resilient supply of essential raw materials.<sup>133</sup> The implementation of the Fit for 55 package is already facing challenges. For instance, the Commission has proposed relaxing carbon dioxide standards for passenger cars and vans in an effort to preserve the competitiveness of the European automotive industry.<sup>134</sup> As noted above, the Omnibus initiative introduced by the second von der Leyen Commission aims to revisit key pieces of Green Deal legislation, including the CSDDD, CBAM and Taxonomy Regulation, with the objective of reducing administrative burdens and compliance costs for businesses.<sup>135</sup> The European Parliament has generally supported the Omnibus initiative, casting uncertainty over the implementation and long-term durability of legislation adopted under the Green Deal between 2020 and 2024.<sup>136</sup>

From a rule of law perspective, these developments raise several questions for future research. The reopening of controversial pieces of legislation – sometimes just months after their adoption – undermines legal certainty and predictability, both of which are essential for informed investment decisions and meaningful progress towards more sustainable practices. At the same time, scientific evidence on the triple planetary crisis continues to grow,<sup>137</sup>

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<sup>131</sup> European Commission, ‘A Green Deal Industrial Plan for the Net-Zero Age’ (Communication) COM (2023) 62 final, 1.

<sup>132</sup> Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 on establishing a framework of measures for strengthening Europe’s net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724 [2024] OJ L1735/1.

<sup>133</sup> See for the precise formulation of its objective Article 1 of this Regulation.

<sup>134</sup> European Commission, ‘Commission Boosts European Automotive Industry’s Global Competitiveness’ (Press release, 5 March 2025) <[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_25\\_635](https://ec.europa.eu/commission/presscorner/detail/en/ip_25_635)> accessed 20 May 2025.

<sup>135</sup> European Commission, ‘Omnibus Package – Commission Launched Simplification Package in February as Part of Increased Focus on EU Competitiveness’ (Newsletter, 1 April 2025) <[https://finance.ec.europa.eu/news/omnibus-package-2025-04-01\\_en](https://finance.ec.europa.eu/news/omnibus-package-2025-04-01_en)> accessed 1 May 2025.

<sup>136</sup> Magnus Lund Nielsen, ‘Broad Centrist Coalition in Parliament Agrees Plan to Roll Back EU Red Tape’ (EurActive, 3 April 2025) <[www.euractiv.com/section/politics/news/broad-centrist-coalition-in-parliament-agrees-plan-to-roll-back-eu-red-tape/](http://www.euractiv.com/section/politics/news/broad-centrist-coalition-in-parliament-agrees-plan-to-roll-back-eu-red-tape/)> accessed 20 May 2025.

<sup>137</sup> See eg, Michael Le Page, ‘The World’s Climate is in Uncharted Territory, Warns Major Report’ (NewScientist, 19 March 2025) <[www.newscientist.com](http://www.newscientist.com)>

alongside mounting concerns about crossing critical planetary tipping points that could trigger abrupt, irreversible and potentially catastrophic changes.<sup>138</sup> The shifting balance between long- and short-term priorities, and between economic and environmental interests, also raises significant questions about the protection of the human rights of present and future generations. From this perspective, the Green Deal is clearly not the endpoint but rather a step along the EU's long path towards achieving a high level of environmental protection.

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[/article/2472785-the-worlds-climate-is-in-uncharted-territory-warns-major-report/>](#) accessed 20 May 2025.

<sup>138</sup> Manjana Milkoreit et al, 'Governance for Earth System Tipping Points – A Research Agenda' (2024) 21 *Earth System Governance* 100216.