



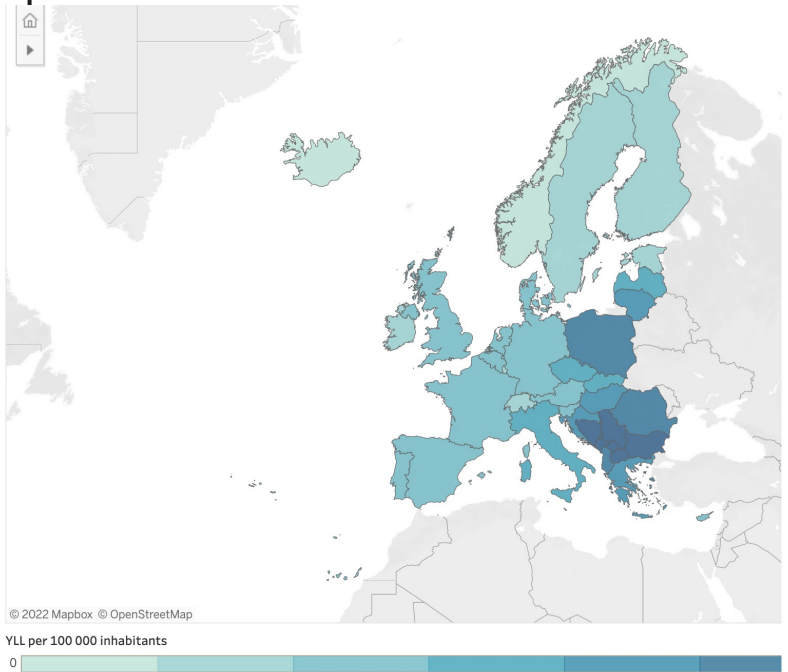
# The right to clean air and Member States action against climate change in the EU

ClimLaw PhD Workshop on Climate Law and Litigation  
26.5.2022

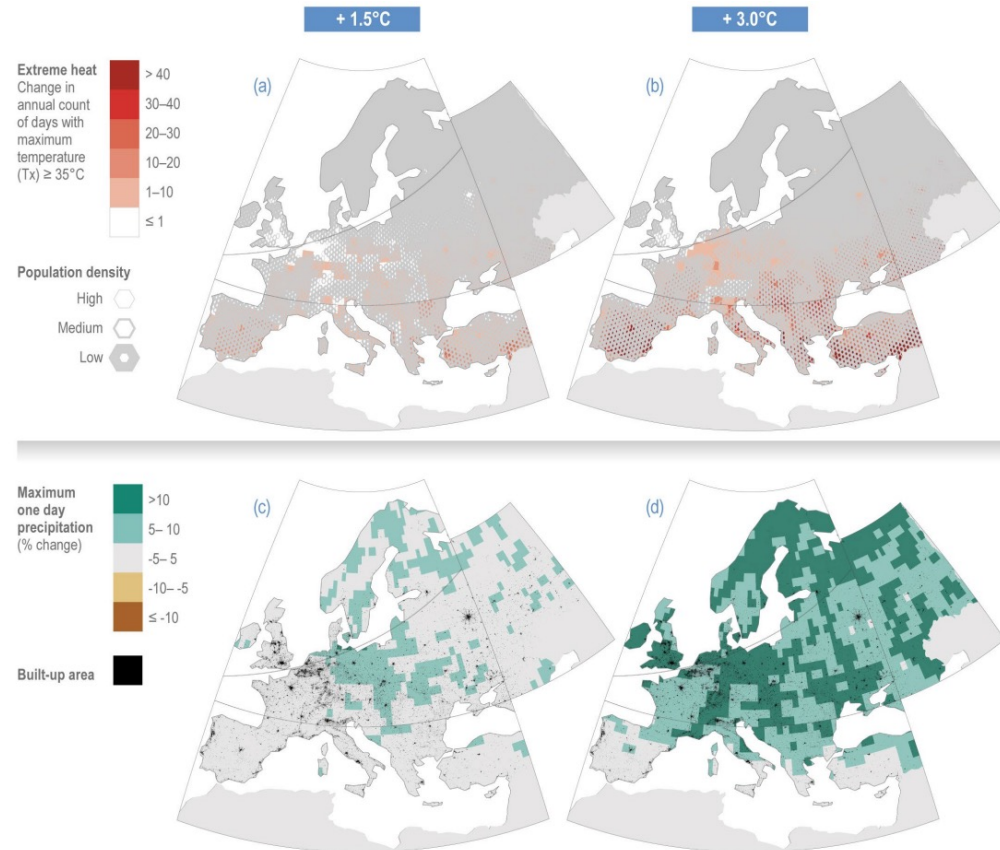
# A geometrical perspective of the matter



# 1. Major regulatory failures and health threats



Source: EEA (2021)



Source: IPCC (2022)

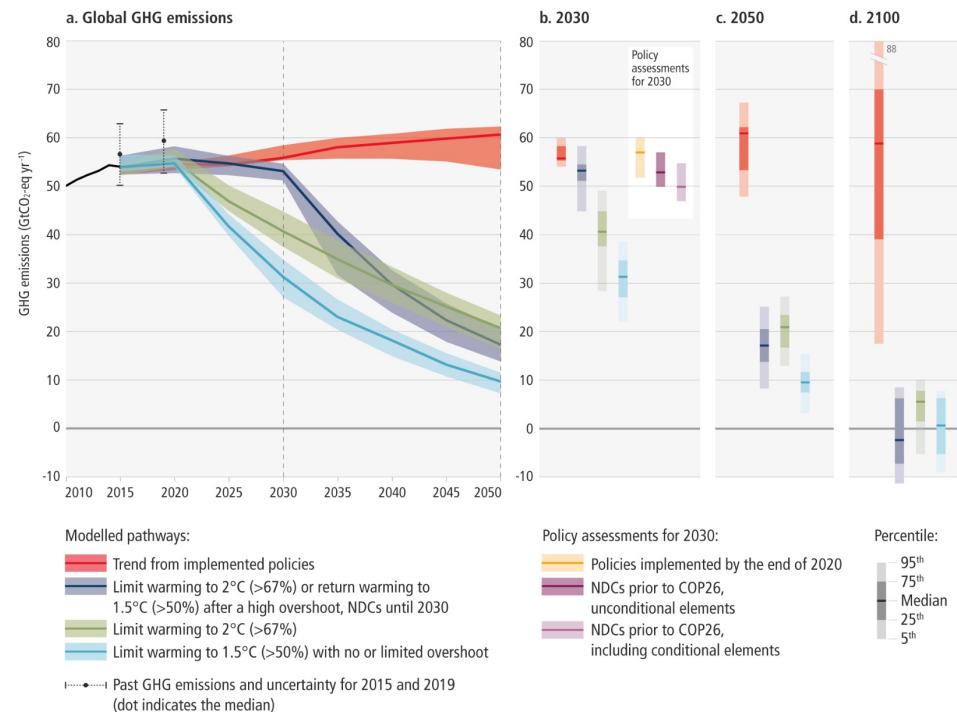
## 2. Long-standing scientific consensus

Pollutant	Averaging time	Interim target				AQG level
		1	2	3	4	
PM <sub>2.5</sub> , µg/m <sup>3</sup>	Annual	35	25	15	10	5
	24-hour <sup>a</sup>	75	50	37.5	25	15
PM <sub>10</sub> , µg/m <sup>3</sup>	Annual	70	50	30	20	15
	24-hour <sup>a</sup>	150	100	75	50	45
O <sub>3</sub> , µg/m <sup>3</sup>	Peak season <sup>b</sup>	100	70	-	-	60
	8-hour <sup>a</sup>	160	120	-	-	100
NO <sub>2</sub> , µg/m <sup>3</sup>	Annual	40	30	20	-	10
	24-hour <sup>a</sup>	120	50	-	-	25
SO <sub>2</sub> , µg/m <sup>3</sup>	24-hour <sup>a</sup>	125	50	-	-	40
CO, mg/m <sup>3</sup>	24-hour <sup>a</sup>	7	-	-	-	4

<sup>a</sup> 99th percentile (i.e. 3–4 exceedance days per year).

<sup>b</sup> Average of daily maximum 8-hour mean O<sub>3</sub> concentration in the six consecutive months with the highest six-month running-average O<sub>3</sub> concentration.

Projected global GHG emissions from NDCs announced prior to COP26 would make it likely that warming will exceed 1.5°C and also make it harder after 2030 to limit warming to below 2°C.

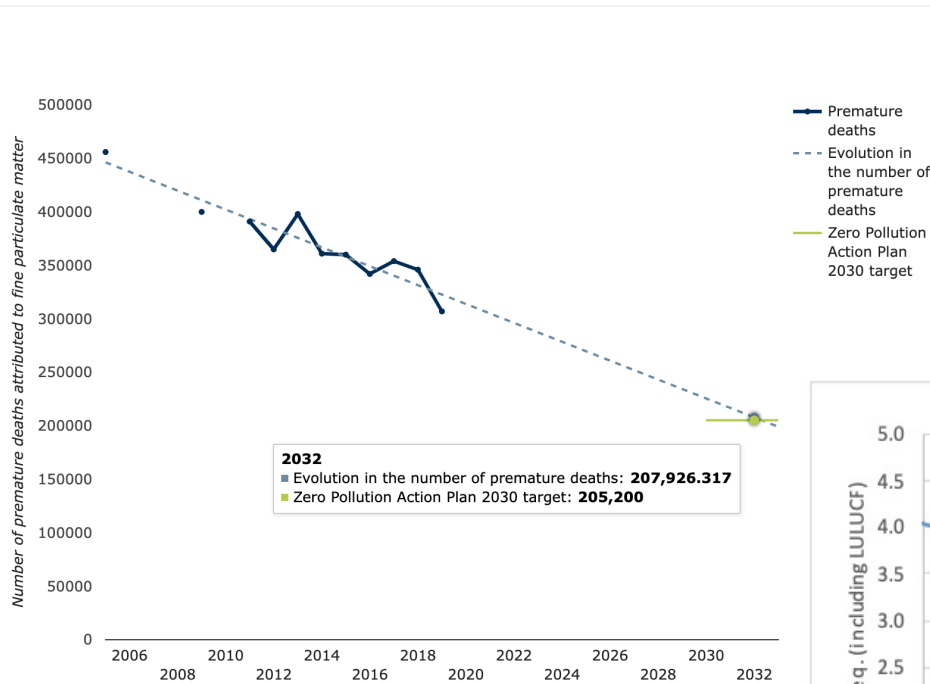


Source: WHO (2021)

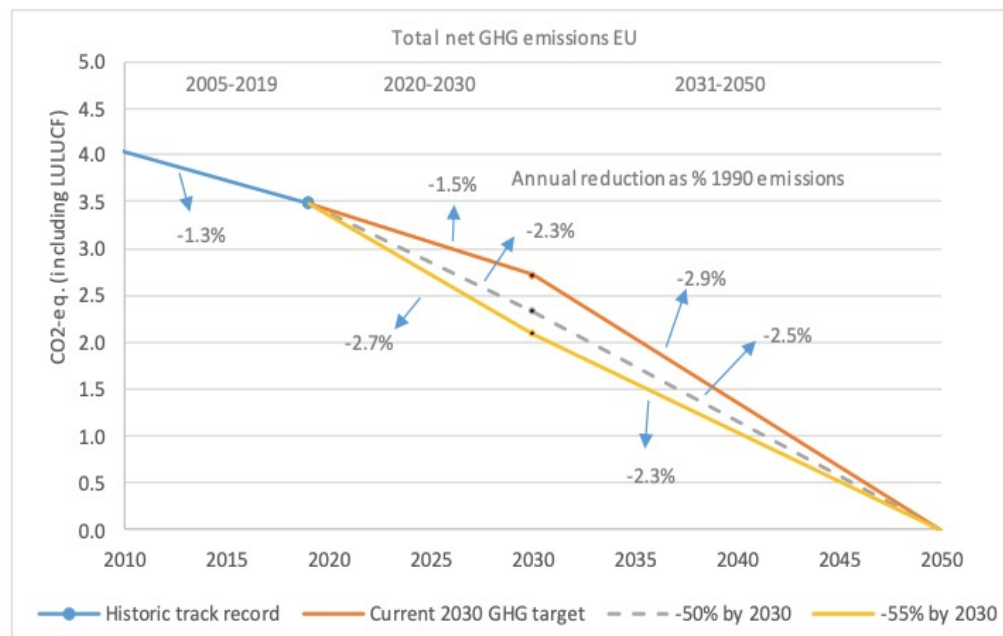
Source: IPCC (2022)

Forthcoming new WHO Global Air Quality Guidelines to strengthen health argument for climate action

# 3. Clear-cut trajectories for EU MS action



Source: EEA (2021)



Source: EC (COM (2020) 562 final)

# 4. Consolidated fundamental rights framework

## European Convention of Human Rights

- Articles 2 + 8 (+ 13)
- Protocol on human right to healthy environment (?)
- Evolutionary and expansive ECtHR case law
  - Bacila v Romania (19234/04); Cordella and others v. Italy (54414/13); Ardimento and others v. Italy (4642/17)

## EU Charter of Fundamental Rights

- Article 37 + Article 2(1)
  - High level of protection of the environment → proportionality (Jacobs)  
“... improvement of the quality of the environment ... In accordance with the principle of sustainable development”
- AG Kokott opinion in Craeynest (CJEU, case C-723/17)
  - Link with art. 3(3) TEU, Art. 11 + 191 TFEU
  - CJEU, Case C-444/15, Associazione Italia Nostra Onlus

# 5. Existence of direct obligations upon Member States

Ambient Air Quality Directive (2008/50/EU) + National Emission reduction Directive (2016/2284/EU)

Air quality plans (Article 23 AAQD)

Air pollutants limit values (Article 13 AAQD)

Air quality targets (NECD)

Reporting obligations

EU Governance Regulation (2018/1999/EU) + EU Climate Law (2021/1119/EU)

CO<sub>2</sub> emissions reduction targets

National Energy and Climate Plans

Reporting obligations

Implementation and enforcement

Infringement procedures (Art. 258 TFEU, for art. 13 and 23 AAQD)

Judicial review (Janecek case, C-237/07 + ClientEarth, C-404/13) → risk reduction

Criminal sanctions (Case C-752/18, Deutsche Umwelthilfe v Freistaat Bayern)

COMPLIANCE-SOLVING V. PROBLEM SOLVING (Misonne)

Where the parallel lines (could) meet...

- Air quality regimes and climate change regimes are converging in terms of
  - Established health effect of air pollutants concentrations and GHG concentrations
  - Scientific consensus as to actions to be take to prevent and mitigate health risks
  - Planning and measures obligations on MS stemming from EU Law
  - Oversight and enforcement by the EC



**JUSTICIABILITY → ACCOUNTABILITY?**



So...

Is there an infinite point?

# The infinite point: Case C-61/21, JP v Ministre de la Transition écologique, Premier ministre

## **Cour administrative d'appel de Versailles**

Decision by which the préfet du Val-d'Oise (Prefect of Val-d'Oise) refused to take measures to resolve JP's health problems linked to environmental pollution

The plaintiff considers that this deterioration is itself the result of a breach by the French authorities of their obligations arising from the provisions of Directive 2008/50 [...] cited in paragraphs 2 [...] and 3 [...] above and, on this basis, puts the State's liability in issue in order to obtain compensation for the alleged damage to his health.

# The infinite point: Case C-61/21, JP v Ministre de la Transition écologique, Premier ministre

(1) Must the applicable rules of EU law resulting from the provisions of Article 13(1) [...] and of Article 23(1) [...] of Directive 2008/50/EC be interpreted as entitling individuals, in the event of a sufficiently serious breach by an EU Member State of the obligations resulting from those rules, to claim compensation from the Member State concerned for damage to their health in cases where there is a direct and certain causal link with the deterioration in air quality?

(2) On the assumption that the provisions referred to above may indeed give rise to such an entitlement to compensation for damage to health, to what conditions is that entitlement subject, in particular with regard to the date on which the existence of the failure attributable to the Member State concerned must be assessed.



Does Directive 2008/50/EU establish non-contractual liability of States and right to individuals to compensation for violation of air quality limit values?

## Case C-61/21, AG Kokott opinion

- Reparation of EU citizens rights is necessary to ensure effectiveness of EU law (para. 30)
  
- Three conditions/questions:
  1. EU law shall confer citizens rights
  2. Infringement sufficiently serious
  3. Direct causal link btw. infringement and damage

# Case C-61/21, AG Kokott opinion – First question

## Conferral of rights to individuals/groups

- Art. 7+8 Dir. 96/62/EEC → Obligations to set agglomerations and zones for air pollution + plans and programmes
- Janecek case → flexibility (balancing of interests, but «Member states could justify exceedances of the limit values only by means of concrete evidence of insurmountable difficulties or *force majeure*»
- Art. 13 AAQD → Obligation to comply with limit values set in Annex XI → «Sufficiently precise» (para. 58)
- Art. 23 AAQD → Direct link btw exceedance of limit values and obligation to draft air quality plans (para. 62) → Independent obligation
  - Mere establishment of air quality plans not enough!

# Case C-61/21, AG Kokott opinion – First question

The interest in health is highly personal and thus individual in nature (para. 77)

Member States would have to expect a large number of claims for compensation for infringements of air quality standards if those standards were to confer such rights. Quite apart from the ensuing financial risks, disputes concerning such claims could place a considerable burden on the courts of the Member States (para. 97).

However, those considerations do not militate against the recognition of rights that can establish entitlement to compensation, because the large number of persons potentially affected shows, above all, the importance of adequate air quality (para. 98)

The expense associated with claims for compensation is also not manifestly disproportionate to the weight of that problem. The limit values for ambient air quality do not relate to minor nuisances, but rather to significant adverse effects on health that can go as far as premature death (para. 99)

**Exceedance of the limit values burdens, above all, certain groups who live or work in particularly polluted areas. Those groups often consist of people of low socio-economic status, who are particularly reliant on judicial protection (para. 99)**

# Case C-61/21, AG Kokott opinion – Second question

## **Exceedance of limit values as serious infringement**

I infer that, both under the previously applicable directives and under Directive 2008/50, an exceedance of the limit values for ambient air quality without a corresponding plan to remedy the exceedance constitutes a serious infringement of EU law which may establish entitlement to compensation (para. 112).

However, even if all formal requirements have been complied with, an infringement of the limit values may be sufficiently serious if the plan manifestly does not meet the substantive requirements because the competent bodies have breached the limits of their discretion (para. 115)

... “expected duration of the exceedance is clearly not ‘as short as possible’ or in the fact that the remedies are demonstrably inappropriate. It is also conceivable that the plans might be based on obviously incorrectly positioned sampling points (91) or grossly incorrect modelling techniques” (para 115)

The Commission, when considering deadline extensions under Article 22 of Directive 2008/50, has already rejected the plans submitted by the French Republic for, inter alia, the Paris agglomeration...

# Case C-61/21, AG Kokott opinion – Third question

## Direct causal link between the serious infringement of air quality rules and concrete damage to health

... limit values for PM10 and nitrogen dioxide are based on the assumption of significant damage, in particular premature deaths, due to air pollution. However, that does not prove that the suffering of certain people is due to exceedances of the limit values and to deficient air quality plans. This is because such suffering can also be caused by other factors, such as predisposition or personal behaviour, such as smoking. Since the World Health Organisation now recommends stricter limit values, it also cannot be ruled out that the air is sufficiently polluted to cause such illnesses despite compliance with Directive 2008/50 (para. 130)

Three-steps test:

1. Prove that he or she **has stayed, for a sufficiently long period of time, in an environment in which limit values for ambient air quality** under EU law have been seriously infringed
  2. prove the **existence of damage** that can be linked to the relevant air pollution in the first place
  3. prove a **direct causal link** between the abovementioned stay at a place where a limit value for ambient air quality was seriously infringed and the damage claimed
- + rebuttable presumption? (*Fadeyeva v. Russia*, ECHR, 55723/00)



# Case C-61/21, AG Kokott opinion - Conclusions

- The limit values for pollutants in ambient air and the obligations to improve ambient air quality ... are intended to confer rights on individuals.
- Entitlement to compensation for adverse effects to health resulting from an established exceedance of the limit values for PM10 or nitrogen dioxide ... requires that the injured party proves a direct link between that adverse effect and his or her stay at a place where the respective applicable limit values were exceeded



## Effectiveness of EU Law

Right to an effective remedy (art. 47 EU CFR)

High level of protection of the environment

- Art. 3(3) TEU
- Art. 191 TFEU
- Art. 2, 3, 37 EU CFR

# Thank you for your attention!

## Questions?

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**ClimLaw: Graz 1<sup>st</sup> Annual PhD Workshop**  
**on Climate Law**

***From Brown to Green Investments:  
Rethinking International Investment Law  
for Climate Action***

***27<sup>th</sup> May 2022***

**Alessandro Monti**

Postdoctoral Researcher

Faculty of Law

UNIVERSITY OF COPENHAGEN



# Investment law and climate change



PA – Art. 2.1(a)



PA – Art. 2.1(c)

***How can international investment law contribute to the achievement of climate goals?***

# Agenda

- International investment law and climate change: overview
- Investment law and climate change: current challenges
- Rethinking investment law for climate action

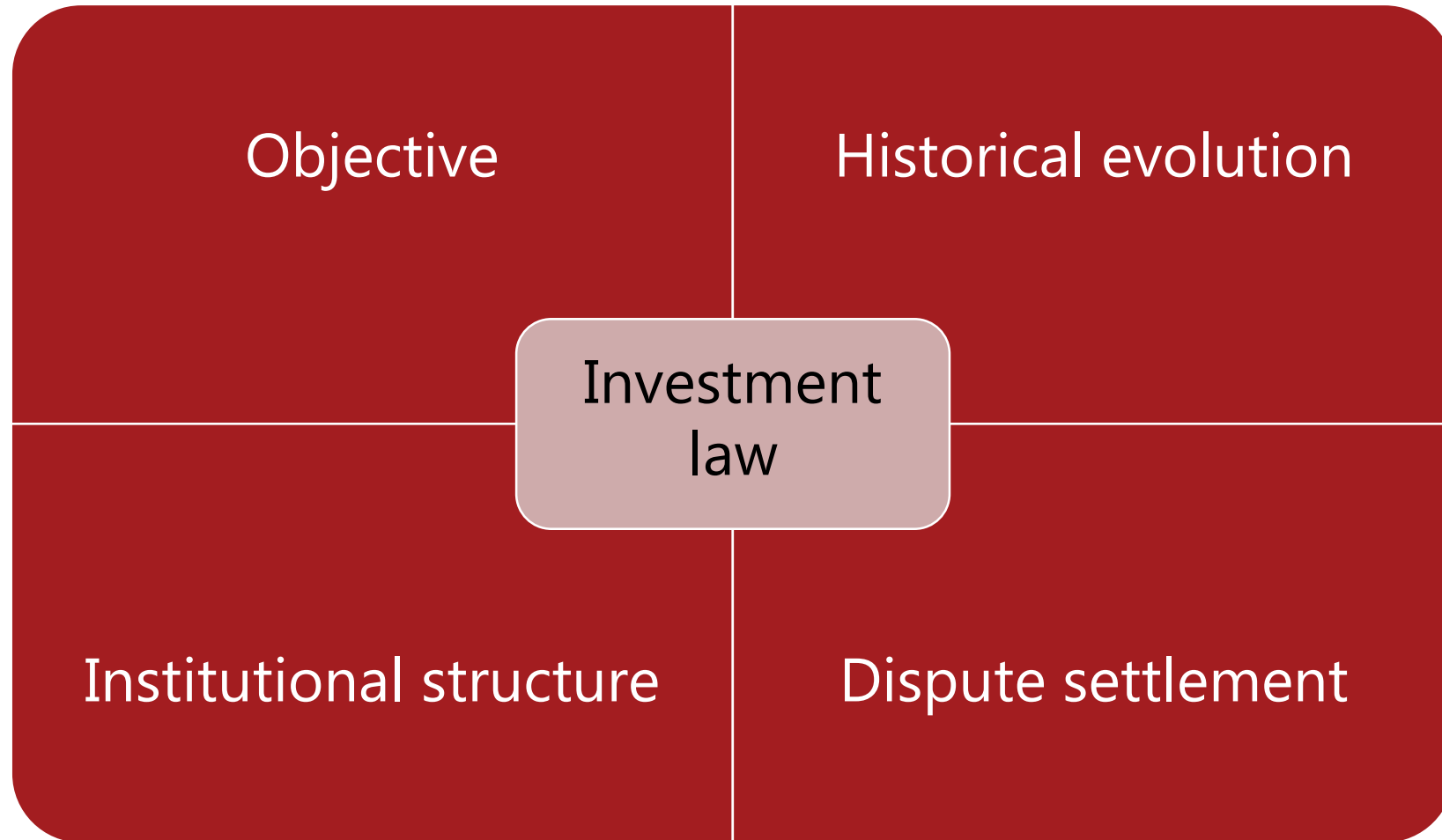
# Agenda

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# International investment law: overview





# Investment Law: overview

## Objective:

Protection and legal certainty to foreign investors

## Historical evolution:

Customary law

1965: ICSID

1990s: NAFTA, ECT



## Institutional structure:

Decentralized – over 3,200 BITs and treaties with investment provisions

## Dispute settlement:

Investment arbitration (ICSID, UNCITRAL, SCC, etc.)

# Investment Law: standards of protection

- National treatment
  - Equal treatment of foreign and national investors in like situations by a host state
- Most-favoured-nation treatment
  - Extension of the scope of an agreement to benefits accorded between one of the contracting States and third countries
- Fair and equitable treatment
  - Protection of legitimate expectations of investors, prohibition of arbitrariness in decision-making by domestic authorities
- Protection against direct and indirect expropriation
  - Direct: formal transfer of title
  - Indirect: no formal measures, but significant reduction of investment value

# Investment law and sustainable development



- Economic prosperity for long time exclusive purpose of investment treaties

- From 1959 Germany – Pakistan BIT...

*'Recognizing that the encouragement and protection of investments can stimulate private business initiative and increase the prosperity of both Contracting States (...)'*

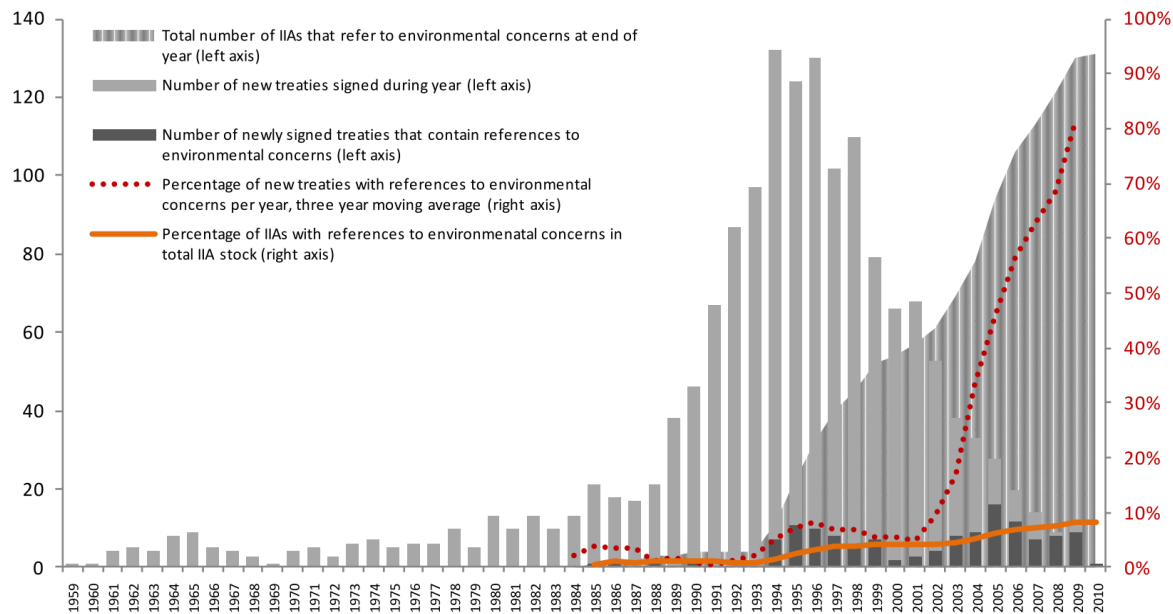
- ... to 2012 Canada – China BIT:

*'Recognizing the need to promote investment based on the principles of sustainable development'*

# Environment in IIAs



Figure 1. Prevalence of environmental language in IIAs



- **Preamble**
  - Majority of IIAs that mention 'environment'
- **Policy space** for environmental regulation
  - Right to regulate – e.g. NAFTA, Art 1114
- Maintaining **environmental standards**
  - E.g. Canada Model BIT, Art 11

# Investment law as a framework for climate action

## Promotion of investments

- Low-carbon investments
- Carbon-intensive investments

## Standards of protection

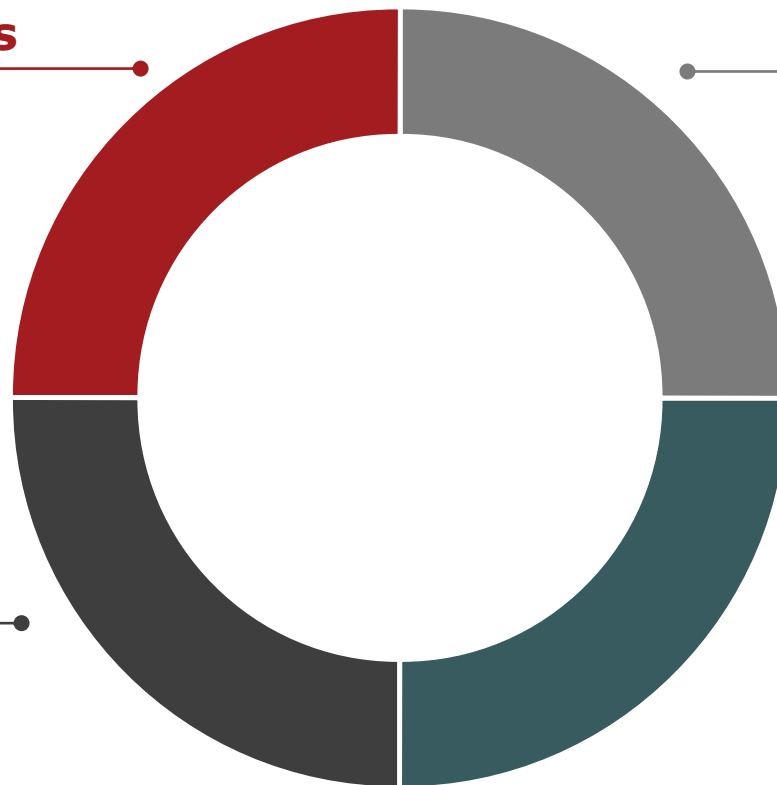
- Fair and equitable treatment
  - National treatment
    - Expropriation

## Limiting policy space

- Protection of *status quo*
- Right to regulate

## Dispute settlement

- Lack of binding dispute settlement in CCL
  - Investment law: ISDS



# Regulatory chill



- Regulatory chill: indirect effect of IIAs – due to risk of claims by investors, States might refrain from passing policy reforms
- IIAs as ‘free political risk insurance’
- Impact for climate policies
  - Positive → ensures that incentives for climate investments are not revoked
  - Negative → transition to a low-carbon economy requires policy changes

# IIL standards & enforcement → challenges for climate action

**1**

## Protection for stranded assets

- Potential obstacle to fossil fuel phase-out
- Risk of compensation to non-sustainable investments

**2**

## Opaque dispute settlement mechanisms

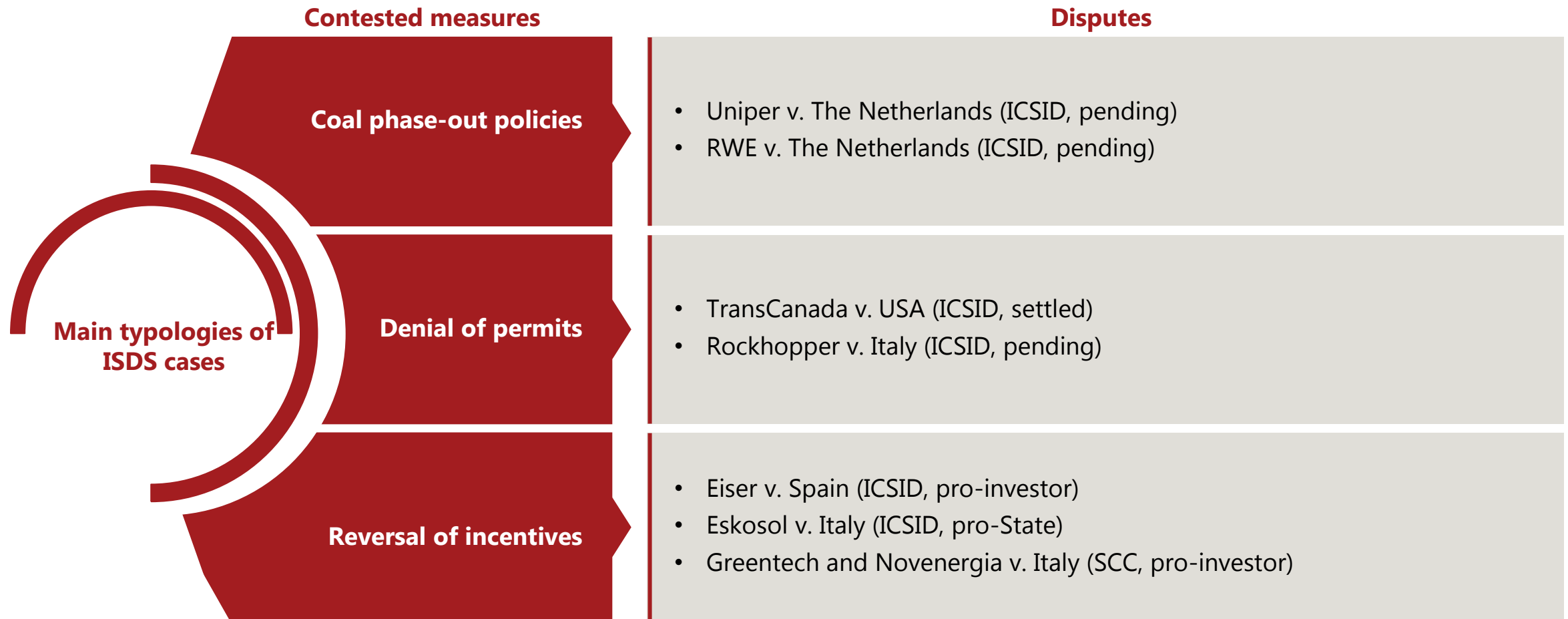
- Private appointment of arbitrators
- Lack of transparency for hearings and documents

**3**

## North-South divide

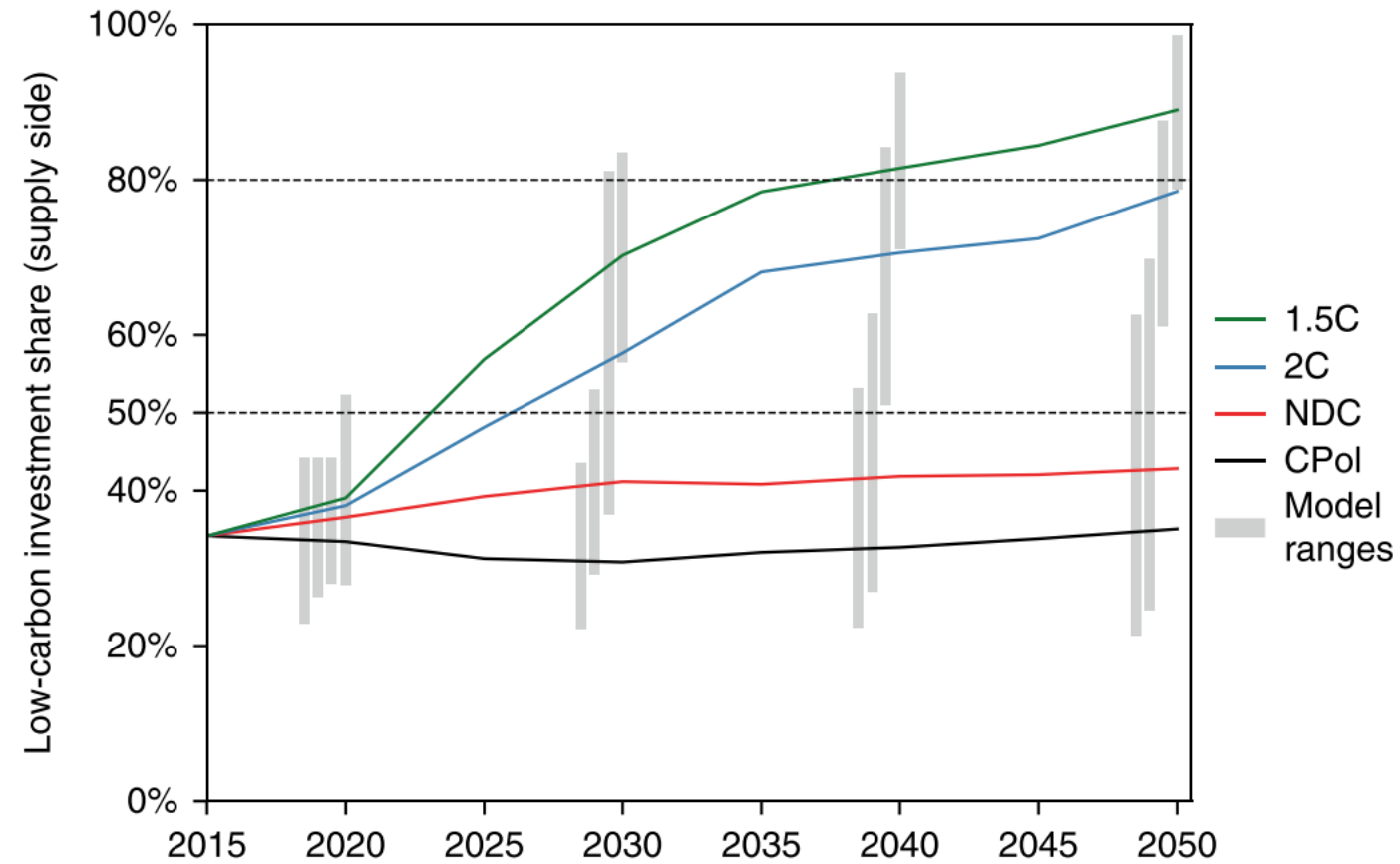
- Potential bias toward developed countries
- Risk to support relocation of carbon-intensive businesses in developing countries

# Climate-related investment law disputes





# The need for low-carbon investments



# Positive impact of investment law

## Key features

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- Regulatory stability and certainty
- Adaptability to new societal challenges
- Rules-based and impartial dispute settlement



## Potential impact

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### **Climate finance**

Mobilization of capitals for climate action –  
For low-carbon energy alone, up to USD 3.8 trillion per year needed (IPCC)

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### **Technology transfer**

Promotion of investments in developing countries

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### **Accountability**

Holding States accountable for climate pledges

# Rethinking investment law for climate action

## Issues

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### IIAs

## Conservative solutions

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- Reform of BITs
- Modernization of ECT
- Climate provisions in FTAs

## Disruptive solutions

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- Termination
- Unilateral withdrawal

### Dispute settlement

- Climate-oriented interpretation of general provisions
- Introduction of environmental/climate exceptions

- Phase-out of ISDS
- Establishment of multilateral investment court
- Adjudication under the climate regime

# Aligning climate and investment policies

- Proposals for 'greening' of BITs
  
- Distinction between sustainable and unsustainable investments (Brauch et al.)
  - **Unsustainable Investment** means, for each Party, an investment in one of the sectors or sub-sectors listed in that Party's Schedule to Annex II. **Unsustainable Investor** means an investor who has made an Unsustainable Investment in the territory of the host State.
  - [...] **exclude** Unsustainable Investors and their investments **from the scope of application** of that treaty and to **deny them access to the investor – State dispute settlement procedures** under that treaty.

# The Energy Charter Treaty (ECT): options for reform

- Termination/withdrawal
- Termination requires consensus – politically challenging
  - Withdrawal: Russia (2009), Italy (2016)
  - Collective withdrawal supported by several environmental groups (e.g. ClientEarth)
  - BUT → Sunset clause: ECT continues to apply to existing investment for 20 years!
- Modernization of the ECT
  - New draft article 'Sustainable development – Climate change and clean energy transition'
  - Right to regulate for sustainable development, including environment and climate change
  - Recognition of urgent need of pursuing Paris Agreement's goals



# The Energy Charter Treaty (ECT): modernization proposal

## [New article/placement to be decided]

### Sustainable development - Context and objectives

- (1) The Contracting Parties recall the Rio Declaration and Agenda 21 on Environment and Development of 1992, the ILO Declaration on Fundamental Principles and Rights at Work of 1998, the Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work of 2006, the ILO Declaration on Social Justice for a Fair Globalisation of 2008, the UN 2030 Agenda for Sustainable Development of 2015 with its Sustainable Development Goals.
- (2) The Contracting Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development. The Contracting Parties affirm their commitment to promote the development of international trade and investment in energy-related sectors in such a way as to contribute to the objective of sustainable development.

## [New article/placement to be decided]

### Sustainable development - Right to regulate and levels of protection

- (1) The Contracting Parties recognise the right of each Contracting Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental and labour protection it deems appropriate, and to adopt or modify its relevant laws and policies. Such levels, laws and policies shall be consistent with each Contracting Party's commitment to the internationally recognised agreements and standards referred to in Article X.3.

## [New article/placement to be decided]

### Sustainable development - Climate change and clean energy transition

Recognising the urgent need of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC) and the purpose and goals of the Paris Agreement in order to effectively combat climate change and its impacts, and committed to enhancing the contribution of trade and investment to climate change mitigation and adaptation, each Contracting Party shall:

- a. effectively implement the UNFCCC and the Paris Agreement adopted thereunder, including its commitments with regard to its Nationally Determined Contribution;
- b. promote and enhance the mutual supportiveness of investment and climate policies and measures, thereby accelerating ~~to~~ the transition towards a low emission, clean energy and resource efficient economy, as well as to climate-resilient development;
- c. promote and facilitate trade and investment of relevance for climate change mitigation and adaptation, including, inter alia, by removing obstacles to trade and investment concerning low carbon energy technologies and services such as renewable energy production capacity, and by adopting policy frameworks conducive to this objective;
- d. cooperate, as appropriate, with the other Contracting Parties on investment-related aspects of climate change policies and measures bilaterally and in international fora, as appropriate.

# EU – China Comprehensive Agreement on Investment (CAI)

- Agreement in principle between EU and China (January 2021)
  
- Objectives: market opening, level playing field and sustainability in EU – China investment relationships
  
- Investment and sustainable development (section IV)
  - Right to regulate
  - Investment favouring green growth
  - Investment and climate change

# EU – China CAI – investment and environment

- **Article 1 – right to regulate**
- *The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish its own levels of domestic labour and environmental protection, and to adopt or **modify its relevant laws and policies accordingly**, consistently with its multilateral commitments in the fields of labour and environment.*
  
- **Article 5 – investment favouring green growth**
- *In accordance with their commitment to enhance the contribution of investment to the goal of sustainable development, including its environmental aspects, the Parties: a. shall facilitate and **encourage investment in environmental goods and services**, b. agree to **co-operate** by exchanging experiences and good practices related to **environmental impact assessments** in respect of investments which are likely to have significant impact on the environment*



# EU – China CAI – investment and environment

- **Article 6 – investment and climate change**
- a. effectively **implement the UNFCCC and the Paris Agreement** adopted thereunder, **including** its commitments with regard to its **Nationally Determined Contributions**;
- b. **promote and facilitate investment of relevance for climate change mitigation and adaptation**; including investment concerning climate friendly goods and services, **such as renewable energy**, low-carbon technologies and energy efficient products and services, and by adopting policy frameworks conducive to deployment of climate-friendly technologies;
- c. cooperate with the other Party on investment-related aspects of climate change policies and measures bilaterally and in international fora, as appropriate.

# Climate and renewable energy in EU – UK FTA



- Preamble
  - Commitment to fight against climate change
  - Recognition of benefits of sustainable and renewable energy, in particular offshore generation in the North Sea, and energy efficiency
  
- Services and investment
  - Right to regulate on climate change
  
- Trade in energy
  - Objectives: consistency between trade and investment in energy and raw materials and fight against climate change
  - Facilitate the development of international standards for energy efficiency and renewable energy
  
- Competition
  - Subsidies to support and incentivize secure, affordable and sustainable energy system

# Climate and renewable energy in EU – UK FTA

- Environment and climate
  - Non-regression from levels of protection
  - Carbon pricing: obligation for both parties to maintain effective system and cooperate
  - Cooperation on enforcement
  - Mutual supportiveness of climate and trade policies → removal of tariffs and non-tariff barriers to trade in goods and services of relevance for climate change mitigation and adaptation
  
- Essential role of climate change provisions
  - Article COMPROV.12: provisions on fight against climate change as **essential elements**
  - Article INST.35: **suspension or termination** of the FTA in case of 'serious and substantial failure'

## To recap...

- Climate change as 'new' element in international investment law
- Several areas of friction between climate goals and investment law
- Yet, investment protection can also be supportive of climate goals
- Wide-ranging reform needed to ensure better alignment climate-investment
- Work in progress – but time is running out!



**Thanks for your attention!**

27. May 2022

## Workshop on Climate Law and Litigation

	INSTITUTE
OF	STATE
AND	LAW

Centre for Climate Law  
and Sustainability Studies  
(CLASS)



# Rita Simon: Consumption, sustainability and climate change

	INSTITUTE
OF	STATE
AND	LAW

Centre for Climate Law  
and Sustainability Studies  
(CLASS)

# What is Sustainable development?

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- Sustainable development is a convincing concept from 1987

**“Sustainable development is a development that meets the needs of the present without compromising the ability of future generations to meet their own needs.** It contains within it two key concepts:

- The concept of **needs** (in particular the essential needs of the world’s poor, to which overriding priority should be given;
- The idea of **limitation** imposed by the state of technology and the social organization on the environment’s ability to meet present and future needs.”

(Brundtland definition of Sustainable Development – WCED, 1987)

- 17 Sustainable Development Goals were adopted **only in 2015** by the United Nations as a universal call to protect the planet

# Content:

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- How to structurize the SDG´s?
- Why final consumption matters?
- How European legislation tackles sustainable production?
- Why sustainable consumption is under-regulated?
- Recommendation



# SDG 12 – responsible consumption and production

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## Responsible consumption

- Economic aim
- Part of the Twin-goals
- Alone not achievable



Figure 1: The SDG 'Wedding cake' shows the biosphere as the foundation of economies and societies and as the basis of all SDGs. Such a conceptualization adopts an integrated view of social, economic, and ecological development. 5 (Source: Azote Images for Stockholm Resilience Centre, Stockholm University)

# Issues, which relativize consumers responsibility on climate change

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- Consumers do not build a homogeny group



the individual carbon footprint increases with income

- The current capitalist market economy



mere "greening" of production processes does not lead to sustainability

- Small Influence of consumers on production



80% of the product's impact on the environment - at the design stage

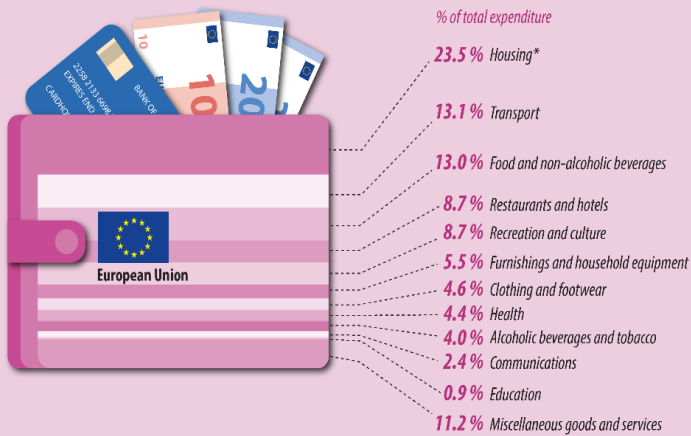
- Information asymmetry and lack of transparent indicators



Consumer rights strike back against sustainable development

# Why final consumption matters in market economies?

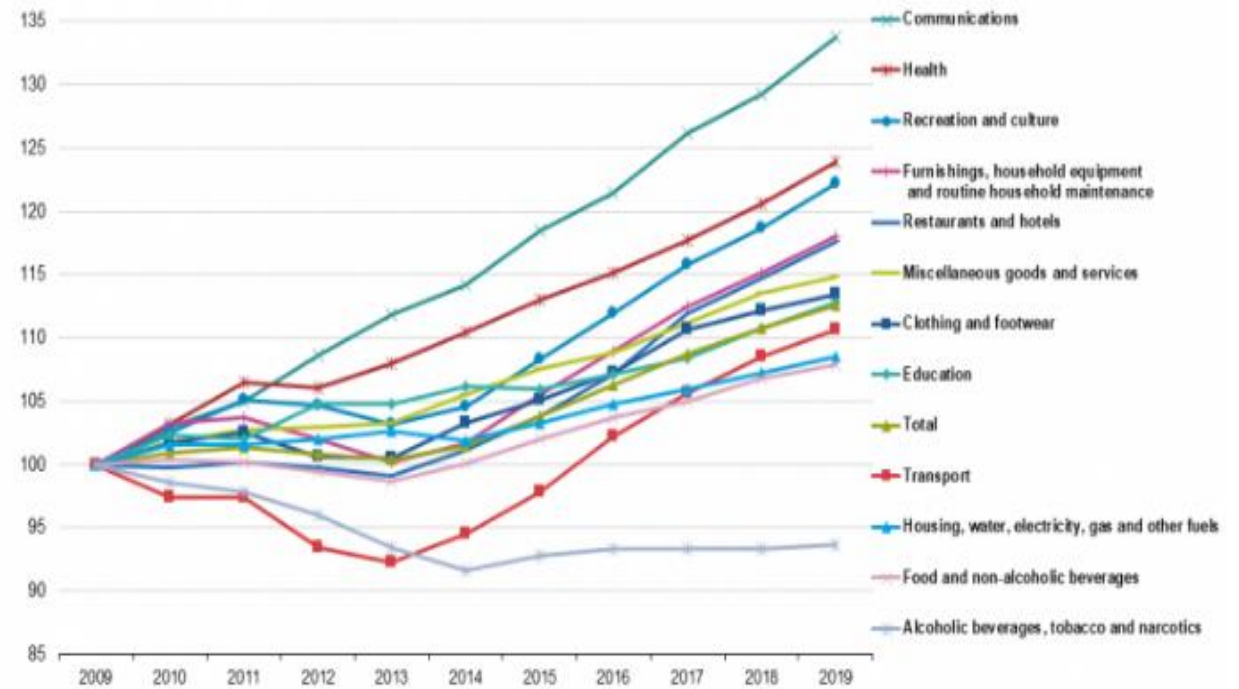
## Household expenditure by consumption purpose in the EU (2019)



\*Housing, water, electricity, gas and other fuels

[ec.europa.eu/eurostat](http://ec.europa.eu/eurostat)

## Evolution of chain linked volumes, Index 2009=100 of household expenditure by consumption purpose - COICOP, EU-27, 2009-2019

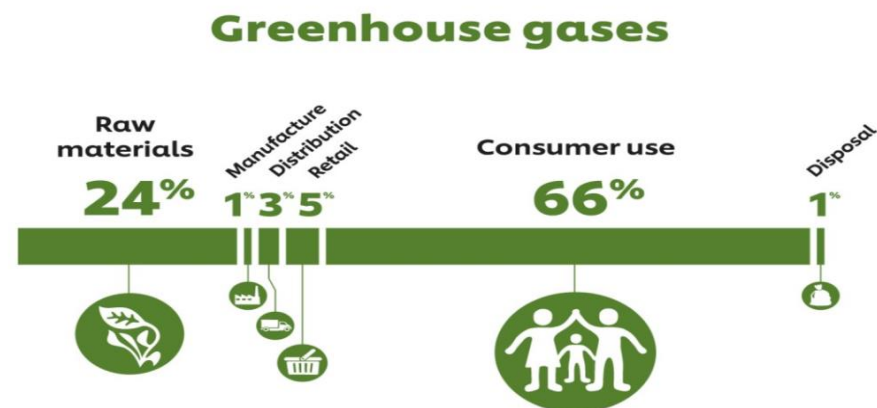


Source: Eurostat (online data code: nama\_10\_co3\_p3)

eurostat

? Zero growth theory?

# Consumption based carbon footprint



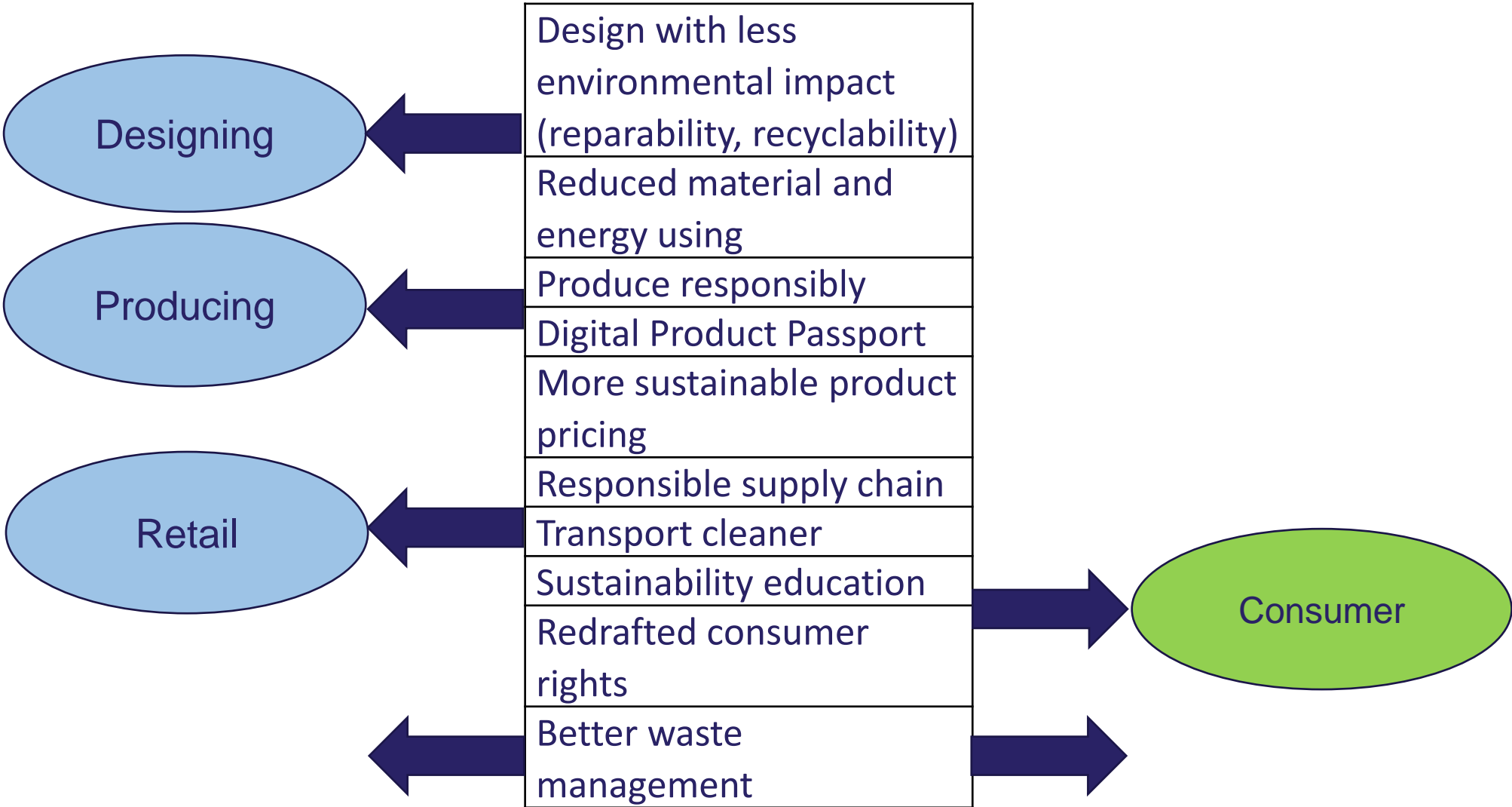
Unilever GHG footprint - Measured 1 July 2018 - 30 June 2019

**Table 4.1: Relative role (%) of final demand categories in causing different environmental pressures in Finland, 1999**

	Monetary flow	Total Material Requirement (TMR)	Primary Energy	Final waste	Greenhouse gases (GHG)	Acidification	Photochemical Oxidant formation (POCP)	Eutrophication
Household consumption	39	21	39	17	40	42	45	55
Government consumption	17	6	6	4	7	6	5	7
Expenditure on capital goods	15	23	9	15	11	9	9	8
Exports	29	50	46	64	42	43	41	31

(Mäenpää, 2005).

# How to promote sustainable production/consumption?



# Sustainable production

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- **Eco-Design Directive** (2005/32/EC, Directive 2009/125/EC on energy-related products and Regulation (EU) 2019/2021) on ecodesign requirements for electronic displays (in force since 1.3.2021)
- **Energy labelling** of household appliances (92/75/EEC, Directive 2010/30/EU, Regulation (EU) 2017/1369, Regulation (EU) 2019/2013 on energy labelling of electronic displays)
- **Eco-labelling** – voluntary (Regulation (EC) No 66/2010 on the EU Ecolabel)

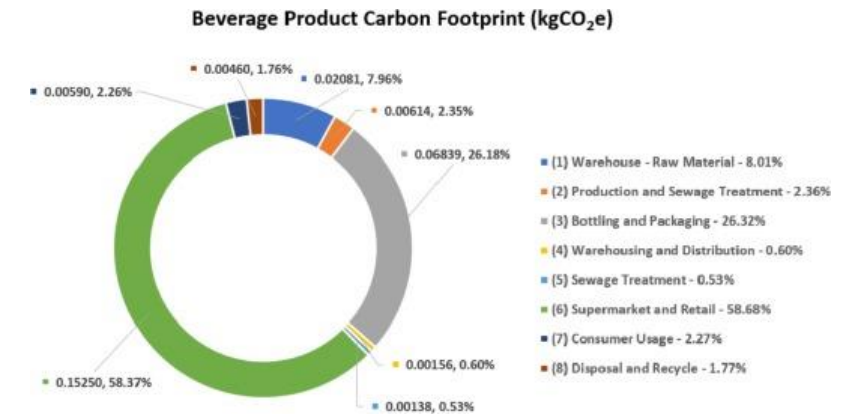
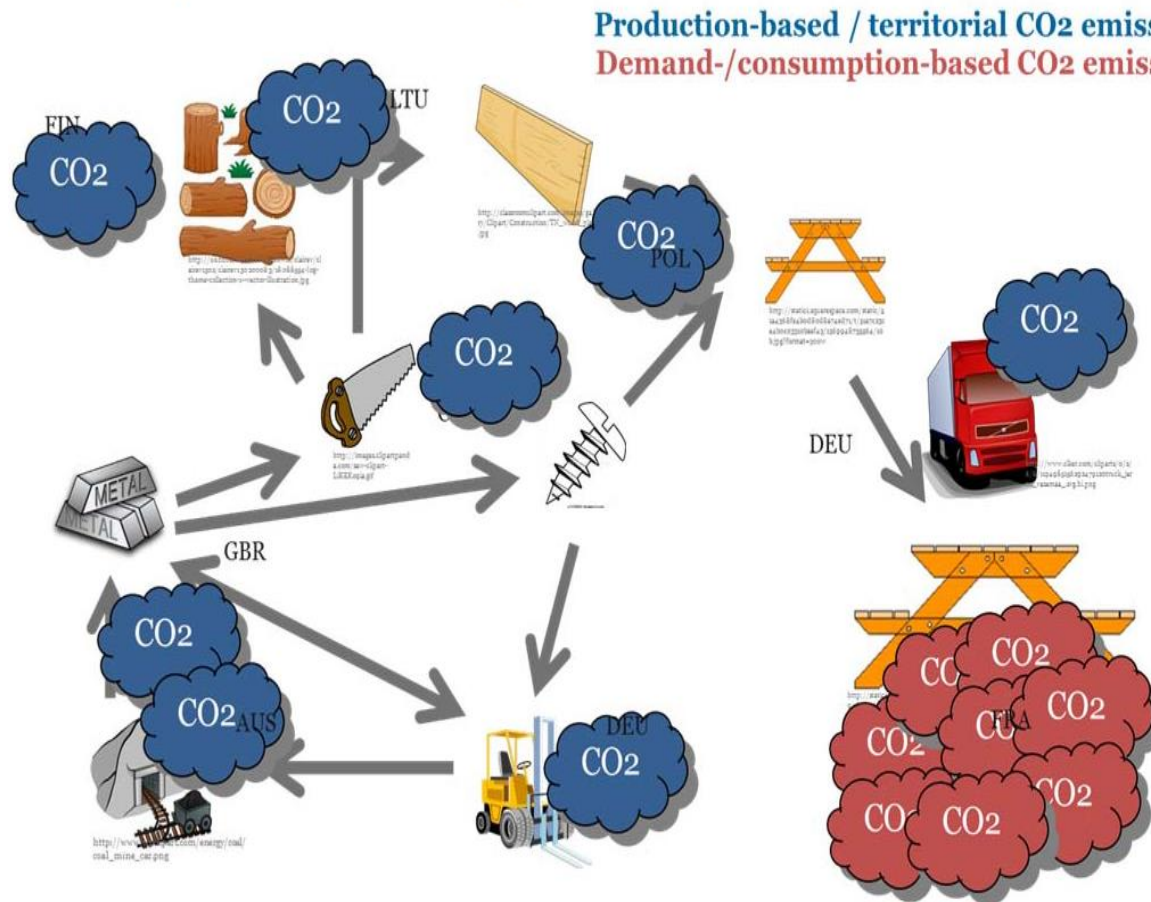


## Sustainable products proposal package:

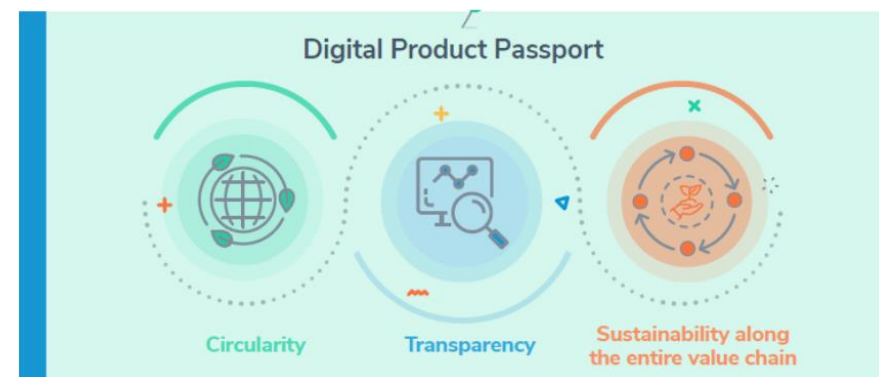
1. Strategy for Sustainable and Circular Textiles
2. Revision of the Construction Products Regulation
3. Circular Economy Action Plan
4. Proposal for a Regulation on Ecodesign for Sustainable Products
  - a) rules for textiles, and footwear
  - b) broaden the scope of the rules
  - c) new rules for consumer electronics

# Production in our globalized world

Figure 1: The origins of emissions in the production of a wooden table (for illustrative purposes)



# Clear environmental information??



- ? UN Guiding Principles on Business and Human Rights (-)
- ? Proposal for a Directive on corporate sustainability due diligence (-)
- ? Digital Product Passport (+)



trustworthy carbon labelling information hampers consumers from making sustainable choices



# Consumption? UNREGULATED

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Side-effects of the consumption:

- Growing traffic
- Failed deliveries
- Oversized packaging
- Growing waste
- Replacement for a new product instead of repair



# Biggest climate relevant consumer issues

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- **Missing transparent and comprehensive information requirements**
- **14 days to withdraw from a distance or off-premises contract**, without giving any reason (acc. to Art. 9 of Consumer Rights Directive)
  - the consumer shall only bear the **direct cost of returning the goods**, if the trader did not agree to bear them (But, the trader should bear the returning costs for the case, if he failed to inform the consumer about these costs)
- in the event of a lack of conformity of products, the consumer is entitled to choose between replacement or repair (acc. to Art 10 of Sale of Goods Directive (EU) 2019/771) – **insufficient hierarchy in case of defective performance**

# Main issues: delivery and withdrawal right

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POLICY BRIEF

## E-commerce and the trade-off between consumer protection and sustainability

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CHRISTA LIEDTKE / PETER KENNING /  
LOUISA SPECHT-RIEMENSCHNEIDER / NINA BAUR

**SVRV**  
SACHVERSTÄNDIGENRAT  
FÜR VERBRAUCHERFRAGEN

- in 2018, approximately at 16 % of delivered packages (ca. 280 million packages) German consumer used their withdrawal right.
- every 6.th package travels at least 2-3 times unfounded
- highest return rate belongs to textil and footwear (45%!) and the lowest to electronics (5%).
- only 15% of sellers charge the consumer for returning businesses' shipping costs
- 4 % of returns, (ca. 20 million items), were disposed



businesses, but mainly the environment bear the cost of returning the goods waste!!

# Recommendation

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However, consumers cannot sufficient influence production processes and the whole market system

- **more aware, reduced consumption is necessary** (Rather use, then buy)
- **comprehensive, transparent and trustworthy information** on product sustainability is elementary
- climate relation should be visible also on **product pricing (polluter pays principle)**
- **redrafting the existing consumer law**
  - withdrawal right without extra fees,
  - or right to repair as first remedy

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# Thank you for your attention!

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