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Non-Majoritarian Instruments and Institutions: Dissensus and Democracy in Europe
***edited by* Chiara Armeni *and* Christina Eckes**

Evaluating the Role of the European Commission as a Non-Majoritarian Actor: EU Climate Policy Between Expert Governance and Democratic Aspirations

Piotr Krajewski[*]

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ABSTRACT: The European Commission can be seen as a non-majoritarian executive actor defined by institutionalised expertise. One of the most tangible expressions of Commission's expertise is the practice of policy evaluation, especially in the form of conducting impact assessments accompanying legislative or treaty-making proposals. Impact assessments can be connected to Commission's commitment to evidence-based policymaking and contribute to its framing and agenda-setting powers in the EU legislative process. Against this backdrop, this article examines the role of the Commission as a non-majoritarian actor in the policymaking processes leading to the adoption of three instruments proposed within the European Green Deal: the EU Deforestation Regulation, the Carbon Border Adjustment Mechanism and the Corporate Sustainability Reporting Directive. The article demonstrates that in all these cases the preferred policy options pertaining to the general design of the legal instrument identified by the Commission in impact assessments found its way into the final legislative texts. Furthermore, the most important elements of the Commission proposals such as their scope and regulatory burden were not meaningfully modified by the legislative institutions. At the same time, the Commission recently proposed to substantially revise all the three instruments without relying on impact assessments, which shows that the Commission's commitment to expertise and evidence-based policymaking is sometimes opportunistic. This article is a contribution to a Special Section that critically analyses the role of non-majoritarian instruments and institutions with

[*] Assistant Professor in EU law, University of Amsterdam, p.krajewski@uva.nl.

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respect to three challenges that shape contemporary democracies in Europe: socio-economic inequality and discrimination, growing authoritarianism, and the pressing climate crisis.

KEYWORDS: EU Green Deal – democratic deficit – democratic legitimacy – expertise – impact assessment – Omnibus.

1. Introduction

The European Commission is the key executive actor in the EU institutional setup. It is mandated to oversee the application of EU law and act as the guardian of the Treaties. As an executive institution, it benefits from departmental specialisation and high-skilled bureaucracy. The Commission arguably enjoys the greatest institutional expertise among the EU institutions.[1] At the same time, it benefits from the exclusive legislative initiative, proposing draft legal acts which are subsequently modified and enacted by legislative institutions, namely the Parliament and the Council. The flip side to the power of initiative is the Commission's lack of legislative competences which can be justified by its weaker democratic legitimacy as compared to the Parliament and the Council.

The Commission arguably meets the criteria of a "non-majoritarian institution" as outlined by Mark Thatcher and Alec Stone Sweet who defined these institutions as 'governmental entities that (a) possess and exercise some grant of specialised public authority, separate from that of other institutions, but (b) are neither directly elected by the people, nor directly managed by elected officials'.[2] The Commission is a governmental entity enjoying a specific role in the EU legal order and it is not directly electable, unlike, for instance, Members of the European Parliament or some members of the European Council. One could debate to what extent the Commission's authority is specialised, considering that the Commission is indispensable to EU action in any policy field. At the same time, one of the key sources of Commission's legitimacy is expertise which plays a critical role in its function as an agenda-setting policymaker which arguably makes the Commission's authority specialised.[3]

[1] See the discussion in: M Morvillo, 'Separation of Powers Failures: The EU Expert−Executive Nexus' in C Eckes, P Leino-Sandberg and AW Ghavanini (eds), *The Dynamics of Powers in the European Union* (1st edn, Hart Publishing 2024) 243; J Christensen, 'The Organization of Professional Expertise in the European Commission' (2015) 3 *Politics and Governance* 13; D Curtin, *Executive Power of the European Union: Law, Practices, and the Living Constitution* (Oxford University Press 2009). Specifically on the legal expertise in EU institutions, with a particular focus on the Commission: P Leino-Sandberg, *The Politics of Legal Expertise in EU Policy-Making* (Cambridge University Press 2021).

[2] M Thatcher and A Stone Sweet, 'Theory and Practice of Delegation to Non-Majoritarian Institutions' (2002) 25 *West European Politics* 1, 2.

[3] C Eckes, C Armeni, 'Non-Majoritarian Instruments and Institutions: Dissensus and Democracy in Europe' (2026) *European Papers* 341.

The Commission's institutional expertise is illustrated by its commitment to evidence-based policymaking codified in the Better Regulation Agenda.[4] One of the most tangible expressions of this commitment is the practice of policy evaluation, especially in the form of conducting impact assessments accompanying legislative or treaty-making proposals. These policy evaluations are supposed to create a regulatory culture where impacts of policy decisions are expected to be backed up by empirical evidence and informed by a comprehensive analysis of costs and benefits of various policy actions.[5] They also contribute to the Commission's accountability vis-à-vis other actors, reinforcing its output legitimacy.[6]

The Commission's expertise is complemented by its framing powers which potentially allow it to present specific decisions in a way that is politically favourable to its broader policy agenda.[7] This expert-executive nexus suggests that the Commission might enjoy some advantage over other actors and, long-term, its institutional preferences could shape the policy agenda in the EU. At the same time, the Commission's democratic legitimacy cannot be compared to that of the Council and the Parliament, which suggests that it is not a suitable institution to single-handedly exercise executive leadership in the EU.[8] Likewise, there might be some tension between policy decisions informed by expertise (for instance, when, according to an impact assessment, a specific policy intervention will likely benefit the economy or effectively address an environmental concern) and democratic preferences (which might be less sympathetic to expertise-driven arguments and focus on emotional or identity-related considerations). This concern can be exacerbated by the relative remoteness of EU politics for the majority of European citizens. In this connection, it is possible to see the potential conflict over expert-driven policy solutions and democratic preferences as one of the dimensions of dissensus over law and policy in the EU.[9]

[4] European Commission, 'Staff Working Document. Better Regulation Guidelines', SWD(2021) 305 final, 10; A Alemanno, 'How Much Better Is Better Regulation? Assessing the Impact of the Better Regulation Package on the European Union – A Research Agenda' (2015) 6 *European Journal of Risk Regulation* 344.

[5] P Ecochard, L Nilsson and J Schmitz, 'Evaluating Trade Policy - The Practice of the European Commission' (2023) 931 *Revista de Economía, Información Comercial Española* 117, 118–119; D Danciu, L Martens and W Marneffe, 'Assessing the Quality of European Impact Assessments' (2024) 15 *European Journal of Risk Regulation* 705.

[6] Ecochard, Nilsson and Schmitz (n 5) 118–119; D Beetham and C Lord, *Legitimacy and the EU* (Routledge 1998); VA Schmidt, 'Democracy and Legitimacy in the European Union Revisited: Input, Output and "Throughput"' (2013) 61 *Political studies* 2; MB Carstensen and VA Schmidt, 'Power through, over and in Ideas: Conceptualizing Ideational Power in Discursive Institutionalism' (2016) 23 *Journal of European Public Policy* 318.

[7] Morvillo (n 1); P Krajewski, 'The European Commission as a Driver of EU Trade Policy: Executive Leadership by Technocratic Means' in Eckes, Leino-Sandberg and Ghavanini (n 1) 97.

[8] P Craig, 'Integration, Democracy and Legitimacy' in P Craig and G De Búrca (eds), *The Evolution of EU Law* (3rd edn, Oxford University Press 2021) 12, 236; P Leino-Sandberg and P Minkkinen, 'From Separated Powers to Consensual Executive Government in the EU' in Eckes, Leino-Sandberg and Ghavanini (n 1) 19.

[9] Dissensus over liberal democracy was defined by R Coman and N Brack "as a conflict between different types of actors, either about the fundamental principles of liberal democracy (its institutions or polity) and rights

Against this backdrop, this article examines the role of the Commission as a non-majoritarian actor in the EU policymaking process in the specific context. It analyses whether in three specific policymaking processes the European Commission's expertise and framing powers translated into tangible results. To this end, this article reviews the process leading to the adoption of three highly consequential pieces of legislation that form part of the European Green Deal programme: the Regulation on Deforestation-free products (EUDR)[10], the Carbon Border Adjustment Mechanism (CBAM),[11] and the Corporate Sustainability Reporting Directive (CSRD).[12] The article demonstrates that in all these three cases the preferred policy options pertaining to the general design of the legal instrument identified by the Commission in impact assessments found its way into the final legislative texts. Furthermore, the most important elements of these pieces of legislation such as their scope and regulatory burden were not meaningfully modified by the legislative institutions. While the analysis of three case studies is by no means exhaustive, it shows that the democratic credentials associated with the Ordinary Legislative Procedure (which was the applicable decision-making procedure in all the three cases) did not translate into significant engagement of the legislative institutions, at least in formal terms.[13] This can be seen as a symptom of the effective use of Commission's agenda-setting and framing powers. However, further research would need to verify the role possibly played by other factors, for instance the strategic use of timing by the Commission with respect to political feasibility of its proposals[14] or the role of the European Council in empowering the Commission or narrowing down the scope of its action.[15]

or about their implementation through specific policies, or both" – see R Coman and N Brack, 'Dissensus over Liberal Democracy: Concept-Building and Typology' (2025) 24 *European Political Science* 417, 424.

[10] 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, 206–247.

[11] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (CBAM) 52–104.

[12] Directive 2022/2464/EU of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (CSRD), 15–80.

[13] S Fabbrini argued that the EU has developed a "supranational constitution" with respect to decision-making in some policy areas (for instance, trade, environment, internal market) and an "intergovernmental constitution" with respect to potentially more sensitive issues such as economic governance, taxation and non-discrimination laws – see S Fabbrini, 'Between Power and Influence: The European Parliament in a Dual Constitutional Regime' (2019) 41 *Journal of European Integration* 417. As a decision-making mode, the Ordinary Legislative Procedure would be more readily associated with the policy areas falling under the "supranational constitution" where the democratic legitimacy of EU action is more balanced, requiring equal participation of the key actors.

[14] C Davies, '"The Need to Be Seen to Be Taking Action": How Legitimacy Drives the European Commission's Behaviour' (2025) *Journal of European Integration* 1.

[15] The constitutional understanding of the division of powers between the Commission and the European Council was outlined by the Court of Justice of the EU in the case: Case C-643/15 *Slovakia and Hungary v Council of the European Union*, EU:C:2017:631.

The choice of the specific case studies is connected to two issues. First, the focus on the European Green Deal instruments stems from the fact that while there is undeniable scientific consensus about the need to pursue ambitious climate action[16], it is by no means obvious what policy choices should be made in order to reduce emissions and, at the same time, preserve social cohesion and economic competitiveness. Climate policies, because of their scope and ambition, are likely to generate winners and losers and entail difficult trade-offs. The fear over the consequences of these trade-offs have generated strong reactions in some Member States and it seems that climate policy instruments are likely to continue to be contentious. In this connection, it is important to examine how much space for democratic debate there is with respect to the adoption of transformational policy instruments and what role expertise-driven arguments play in the legislative process.[17]

Secondly, all the three pieces of legislation have recently came into the spotlight in the context of the deregulatory turn embraced by EU institutions post-2024 elections to the European Parliament. The so-called Omnibus package proposed significant revisions of both the CBAM[18] and the CSRD[19]. In turn, the date of entry into application of the EUDR was postponed by one year and the adopted rules will only start to apply on 30 December 2025.[20] In the recent days, it was speculated that the date of entry into application might pushed even further into the future.[21] It is important to note that the Commission proposals presented within the Omnibus package were not preceded by impact assessments.[22] In this connection, the analysis presented in this article suggests

[16] See for instance: K Calvin and others, 'IPCC, 2023: Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, H. Lee and J. Romero (Eds.)]. H Lee and J Romero (eds), 'IPCC, 2023: Summary for Policymakers. Climate Change 2023: Synthesis Report. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change' (2023) at www.ipcc.ch.

[17] See for instance: A Machin, 'The European Green Deal and the Democratic Imagination' (2025) 47 *Journal of European Integration* 155; J Rosamond and C Dupont, 'Investigating the Politics of Democratic Legitimacy in EU Climate Policymaking: The Special Case of Fit for 55' (2025) 47 *Journal of European Integration* 237; A Buzogány, L Parks and D Torney, 'Democracy and the European Green Deal' (2025) 47 *Journal of European Integration* 135.

[18] Proposal for a Regulation of the European Parliament and of the Council of 26 February 2025 amending Regulation (EU) 2023/956 as regards simplifying and strengthening the carbon border adjustment mechanism, COM(2025) 87 final.

[19] Proposal for a Directive of the European Parliament and of the Council of 26 February 2025 amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements, COM(2025) 81 final.

[20] Regulation (EU) 2024/3234 of the European Parliament and of the Council of 19 December 2024 amending Regulation (EU) 2023/1115 as regards provisions relating to the date of application.

[21] S Sanchez Manzanaro, 'EU Set to Propose New Delay to Anti-deforestation Rules', (Euractiv, 23 September 2025) at www.euractiv.com.

[22] See: European Ombudsman, 'The European Commission's Failure to Comply with its 'Better Regulation Guidelines' in Preparing a Legislative Proposal on Corporate Sustainability Reporting and Due Diligence. Case 983/2025/MAS' (European Ombudsman, 21 May 2025) at www.ombudsman.europa.eu.

that the Commission's commitment to expertise and evidence-based policymaking is sometimes opportunistic. An important factor in this context is the change of the political composition of the European Parliament and the governing majorities in many Member States of the EU that occurred in the meantime. At the same time, the fact that the Commission's commitment to evidence-based policymaking can be overridden by a change of political majorities in the EU and national contexts can be seen as a symptom of shifting dynamics in the EU's institutional balance[23] whereby the relative power of a non-majoritarian actor such as the Commission has been weakened.

The analysis proposed in this article proceeds as follows. Section two reviews the process leading to the adoption of the EUDR. I first review the impact assessment accompanying Commission legislative proposals for the EUDR, reconstructing the reasons for the policy intervention and the policy design that was supposed to serve the identified objectives. Subsequently, I compare the legislative proposal submitted by the Commission with the final legislative text, examining selective aspects thereof, especially the scope of the EUDR (covered commodities), the specifics of due diligence obligations imposed on importers of EUDR commodities, the benchmarking system as well as penalties for non-compliance with the Regulation. Section three dedicated to the CBAM and section four – dealing with the CSRD – follow a similar structure. They first discuss the policy design chosen in the Impact Assessments and proceed to analyse the changes to the selected parts of the CBAM and the CSRD proposals, especially their scope and the potential burdens on economic operators. The discussion does not engage in detail with the substantive issues related to the three examined instruments as the analysis focuses on the policymaking process and the role of Commission's expertise and framing powers. Section five offers concluding remarks.

2 EU Deforestation Regulation

2.1. Impact assessment

The key rationale for the policy intervention identified by Commission services proposing the adoption of the EUDR was deforestation, especially that driven by agriculture and land expansion linked to production of such goods as cocoa, coffee, rubber and palm oil.[24] The concern about deforestation is connected not only to biodiversity

[23] For the discussion around the principle of institutional balance see: M Chamon, 'The Institutional Balance, an Ill-Fated Principle of EU Law?' (2015) 21 *European Public Law* 371; B De Witte, 'The Role of the Court of Justice in Shaping the Institutional Balance in the EU' in J Mendes and I Venzke (eds), *Allocating Authority: Who Should Do What in European and International Law?* (1st edn, Bloomsbury Publishing 2018) 143; K Lenaerts and A Verhoeven, 'Institutional Balance as a Guarantee for Democracy in EU Governance' in C Joerges and R Dehousse (eds), *Good Governance in Europe's Integrated Market* (Oxford University Press 2002) 34.

[24] European Commission, 'Commission Staff Working Document – Executive Summary of the Impact Assessment Report – Minimising the Risk of Deforestation and Degradation Associated with

considerations but also to the fact that forests absorb carbon dioxide and play a crucial role in climate change mitigation. The fundamental premise behind the EUDR boils down to the fact that the EU imports and consumes significant quantities of commodities linked to deforestation.[25] In this context, it seems that its market power could be leveraged to affect the production methods of these commodities, also beyond Europe's borders.[26] In this connection, the EU's global regulatory power[27] could be harnessed to incentivise production methods which are better-aligned with the objectives of the European Green Deal, also outside of EU's borders.[28] In theory, there are several regulatory mechanisms that should make this possible, for instance, prohibiting imports that do not meet specific production standards, requiring importers to submit certificates or other types of evidence demonstrating compliance with the specific standards, or imposing monetary charge accounting for negative sustainability impact.[29] In this connection, the Commission Impact Assessment accompanying the proposal for the EUDR outlined two specific objectives behind the proposed policy intervention: minimising consumption of products coming from supply chains associated with deforestation or forest degradation as well as increasing EU demand for legal and 'deforestation-free' commodities and products.[30]

The Commission services identified five policy options that would make it possible to achieve the objectives behind the policy intervention. The options were described as follows: mandatory due diligence system, relying on a deforestation free definition; a benchmarking system and a list of contravening operators as a basis for a tiered improved mandatory due diligence; mandatory public certification combined

Products Placed on the EU Market, Accompanying the Document. Proposal for a Regulation on the European and of the Council on the Making Available on the Union Market as well as Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation (E) No 995/2010', SWD(2021) 326 final (EUDR) part I, 10-14.

[25] Ibid 10.

[26] AF Trevizan, A Marques Miranda Leal and V Esteves Najjar Valle, 'Forest Trade on the Amazon Frontier and Its Interaction with the EUDR' (2025) 38 *International Journal for the Semiotics of Law - Revue internationale de Sémiotique juridique* 1639.

[27] A Bradford, *The Brussels Effect: How the European Union Rules the World* (1st edn, Oxford University Press 2020).

[28] GM Durán and J Scott, 'Regulating Trade in Forest-Risk Commodities: Two Cheers for the European Union' (2022) 34 *Journal of Environmental Law* 245; GM Durán, 'Curbing the European Union's Global Deforestation Footprint through Trade' (2025) 27 *Journal of Environmental Policy & Planning* 720.

[29] A Lehmen, G Vidigal, 'Trade and Environment in EU-Mercosur Relations: Negotiating in the Shadow of Unilateralism' (2025) 30 *European Foreign Affairs Review* 87, 88.

[30] European Commission, 'Commission Staff Working Document – Executive Summary of the Impact Assessment Report – Minimising the Risk of Deforestation and Degradation Associated with Products Placed on the EU Market, Accompanying the Document. Proposal for a Regulation on the European and of the Council on the Making Available on the Union Market as well as Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation (E) No 995/2010', SWD(2021 326 final part I, 24.

with an improved due diligence requirement, relying on a deforestation free definition; mandatory labelling combined with an improved due diligence requirement, relying on a deforestation free definition; deforestation free requirement for placing on the EU market supported by benchmarking and country card systems.[31] The Commission chose the second option as the preferred policy design, arguing that it would be the most effective in terms of preventing EU-driven deforestation.[32] At the same time, it was claimed that the option would also incentivise the transition to more sustainable production methods in third countries, also due to the fact that the countries would attempt to 'move up' in terms of the risk category allocated to them in the benchmarking system and would be thus motivated to eradicate any occurrences of illegal deforestation.[33] In turn, low risk countries could potentially benefit from higher demand for the relevant products.[34] The effectiveness of the Regulation was supposed to be monitored by reporting from national authorities responsible for its implementation as well as by tracing deforestation rates.[35]

The Commission was sparing in discussing the costs of the identified design for the policy intervention.[36] It underlined the comparable benefits of the benchmarking system in comparison to an option whereby operators would be subject to a uniform mandatory due diligence system, relying on a deforestation free definition.[37] In this context, the possibility to apply simplified due diligence to operators importing relevant commodities from low-risk countries was claimed to bring significant efficiencies.[38] The Commission admitted that the Regulation could be potentially problematic for businesses at the bottom of the supply chain in relatively poor areas, such as West Africa; these producers would potentially need financial and technical assistance.[39] The Commission did not identify any explicit risk related to the process of risk allocation. This seems surprising considering aggressive lobbying on the part of various countries (including EU Member States) aimed at securing a low-risk categorisation or weakening the EUDR.[40] Furthermore, as illustrated by the negotiations

[31] Ibid 31-49.

[32] Ibid 84.

[33] Ibid 73.

[34] Ibid 81.

[35] Ibid 85-86.

[36] Cf. the discussion on the risk of the benchmarking system being challenged on the grounds of possible discrimination and the lack of compliance with provisions of the General Agreement on Trade and Tariffs - GC Leonelli, 'Anti-Deforestation Npr-PPMs and Carbon Border Measures: Thinking About the Chapeau of Article XX GATT in Times of Climate Crisis' (2023) 26 *Journal of International Economic Law* 416; Durán and Scott (n 28).

[37] Commission Staff Working Document – Executive Summary of the Impact Assessment Report SWD(2021 326 final 74.

[38] Ibid.

[39] Ibid 75-76.

[40] K Abnett, 'Eleven Countries Demand EU Weakens Deforestation Law further, Document Shows' (Reuters, 26 May 2025), at www.reuters.com.

of the EU-Mercosur Agreement, in the context of international relations, no policy measure is seen in isolation. The EU, aiming to finalise the negotiations of the association agreement with the Mercosur bloc was faced with demands related to the EUDR, framed as a bargaining chip linked to concessions related to the finalisation of the EU-Mercosur deal.[41] In this connection, the annex to the Trade and Sustainable Development chapter of the agreement with Mercosur includes a provision that can result in a lower risk classification under the EUDR for the Mercosur countries.[42]

2.2 Overall design

The general design of the final Regulation corresponds to Commission's preferences identified in the impact assessment. The Regulation draws on some key pillars, crucially, the definition of what is considered "deforestation-free" based on the prescriptions of the Food and Agriculture Organization (which is a part of the UN system), a targeted product scope which can be modified according to circumstances and changing production trends as well as a prohibition to place commodities and products on the EU market that are associated with deforestation and forest degradation.[43] The Regulation is generally designed according to the preferred policy option, involving a due diligence requirement with a country benchmarking system based on quantitative and qualitative criteria and different risk categories corresponding to differentiated regulatory requirements.

2.3. Commodities covered by the EUDR

The Commission proposal outlined six relevant commodities to which the Regulation would apply: cattle, cocoa, coffee, oil palm, soya and wood.[44] In turn, the final text includes rubber in addition to the commodities proposed by the Commission, making the scope of the Regulation slightly broader.[45] The scope of the relevant commodities directly affects the relevant products defined as have been fed or made using the relevant commodities.[46] This means that, for instance, for cocoa (one of the relevant commodities), relevant products include, among others, cocoa beans, cocoa paste, or cocoa butter, fat and oil.[47]

[41] C Eckes and P Krajewski, 'Legal Analysis: How Sustainable Is the EU-Mercosur Agreement?' (CAN Europe, 17 April 2025), at caneurope.org.

[42] Ibid.

[43] Proposal for a Regulation of the Parliament and of the Council of 17 November 2021 on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 (EUDR Proposal), explanatory memorandum, 9.

[44] EUDR Proposal (n 43), Art 1.

[45] EUDR (n 24), Art 1.

[46] Ibid, Art 2(2).

[47] Ibid, Annex 1.

2.4. Due diligence

The key obligation imposed on operators placing on the market or exporting relevant commodities consists of conducting due diligence aiming to prevent importing relevant commodities from areas affected by illegal deforestation. In this context, due diligence involves specific information requirements, risk assessment and risk mitigation. The content of information requirements was not meaningfully changed vis-à-vis the Commission proposal. Crucially, information requirements in both versions include geo-location data that makes it possible to trace plots of land where the relevant products were produced.[48] It also includes identification of suppliers and buyers, and proof of compliance with local laws.[49]

The second pillar of due diligence consists of risk assessment criteria such as the assignment of risk in accordance with the benchmarking system, the presence of forests in the area concerned, prevalence of deforestation or forest degradation, and others.[50] In this connection, the legislative process led to the addition of new criteria; crucially, it mandates consideration for the presence of indigenous peoples in the areas concerned and the obligation to consult with them.[51] In addition, the criterion related to the history of non-compliance of operators or traders along the relevant supply chain was added alongside a general clause framed as 'any information that would point to a risk that the relevant products are non-compliant'.[52]

Finally, the third pillar of due diligence consists of risk mitigation measures addressed at operators covered by the Regulation. These include, for instance, requiring additional information from their business partners in the supply chain, carrying out independent surveys or audits as well as establishing internal policies such as model risk management practices, reporting, record-keeping and internal control.[53] The final Regulation added an aspirational provision mentioning that operators are encouraged to support compliance with the Regulation among their suppliers, especially small businesses, by capacity building and investment.[54] Both the proposal and the final Regulation set out an obligation to document and review risk mitigation measures annually; national authorities should be able to verify how this obligation is addressed.[55] The Regulation also clarifies how the relevant operators should cooperate with national authorities responsible for enforcing the Regulation, mentioning that they should

[48] EUDR Proposal (n 43) Art 8-9; EUDR (n 24), Art 8-9.
[49] Ibid.
[50] EUDR Proposal (n 43) Art 10; EUDR (n 24), Art 10.
[51] EUDR (n 24), Art 10(2)(d-e).
[52] Ibid, Art 10(2)(l-m).
[53] EUDR Proposal, (n 43) Art 10; EUDR(n 24), Art 11.
[54] EUDR (n 24), Art 11(2).
[55] EUDR Proposal (n 43), Art 11(3), EUDR (n 24), Art 11(3).

be able to demonstrate 'how decisions on risk mitigation procedures and measures were taken'. [56] This addition was not included in the Commission proposal.

2.5. Benchmarking system

The crucial feature of the Regulation is the country benchmarking system which is a key feature of the policy design selected by the Commission, aiming to differentiate the regulatory burden on the basis of objective criteria linked to the risk of illegal deforestation.[57] Crucially, EUDR specifies that operators placing relevant products on the EU market will not have to fulfil all due diligence obligations if they can demonstrate that all relevant products were produced in countries or areas classified as low risk under the benchmarking system.[58] The intensity and frequencies of checks performed by national authorities enforcing the Regulation are also supposed to consider the risk category allocated under the benchmarking system.[59]

The changes introduced to the benchmarking system during the legislative process do not appear to be very consequential. It is noteworthy that the proposal outlined six types of criteria to be taken into consideration when allocating the risk category to specific countries or areas – these included three quantitative criteria (deforestation rates, agricultural expansion rates, and production trends of relevant commodities) and three qualitative ones (the content of nationally determined contributions to the United Nations Framework Convention on Climate Change, the existence of international agreements between the EU and the country concerned and whether or not these agreements address deforestation and, finally, national and subnational laws of the country concerned, especially with regard to prevention and sanctioning illegal deforestation).[60] The final regulation divided these criteria into two subsets, clarifying that that the risk classification 'shall be based primarily' on the quantitative criteria which are identical as in the proposal.[61] In turn, qualitative criteria are now listed under a separate section and include new considerations such as transparency of relevant data, effective enforcement of human rights laws and the existence of international sanctions imposed on the country concerned.[62] The Regulation mentions that the risk assessment 'may also take into account' qualitative criteria alongside the quantitative ones, but there is no more detail as regards the procedure of risk allocation or the greater weight assigned to quantitative criteria over qualitative ones, arguably leaving substantial room for manoeuvre to Commission

[56] Ibid, Art 11(3).
[57] Ibid, Art 29.
[58] Ibid, Art 13(1).
[59] Ibid, Art 16(3).
[60] EUDR Proposal (n 43), Art 27(2).
[61] EUDR (n 24), Art 29(3-4).
[62] Ibid, Art 29(4).

officials responsible for the risk allocation.[63] A fitting illustration of how flexible the process likely is can be found in the annex to the EU-Mercosur agreement where the parties declared that the EU-Mercosur Agreement would be favourably considered for the purposes of risk classification within the framework of domestic laws of one of the parties targeting imported products.[64] This should be seen as a clear reference to the EUDR. This means that the conclusion of the EU-Mercosur Agreement could potentially help Mercosur countries 'move up' in terms of their risk category under EUDR even though the existence of international agreements should be seen as a secondary consideration for the purposes of the risk allocation.[65]

2.6. Non-compliance and penalties

Corrective measures triggered in the event of non-compliance as well as penalties have not been substantially modified over the course of the legislative process. With respect to the former, both the proposal and the final Regulation outline a similar list of corrective action measures, including the rectification of any formal non-compliance, preventing the relevant product from being placed in the market, withdrawing or recalling the relevant product, and destroying the relevant commodity or donating it to charitable or public interest purposes.[66] Institutionalising specific penalties is in principle left to the discretion of Member States as long as these are effective, proportionate, and dissuasive.[67] The final regulation extends the list of specific sanctions that should be included by Member States as penalties, adding to the list temporary prohibition from placing on the market relevant commodities and products as well prohibition from exercising the simplified due diligence under EUDR in the event of a serious infringement.[68] The final Regulation also added a provision mandating Member States to notify the Commission when penalties are imposed so that the Commission can publish the list of operators who have been found non-compliant with the Regulation.[69]

2.7. Concluding remarks

The analysis of selected changes to the EUDR proposal introduced over the course of the legislative process demonstrates that the proposal was not meaningfully modified by the Parliament and the Council. The overall design of the Regulation corre-

[63] Ibid.

[64] EU-Mercosur Agreement in principle, Point 56(a) of the Annex to the Trade and Sustainable Development Chapter.

[65] See the discussion in: Eckes and Krajewski (n 42).

[66] EUDR Proposal (n 43), Art 23, EUDR(n 24), Art 24.

[67] EUDR Proposal (n 43), Art 23(2); EUDR (n 24), Art 25(2).

[68] EUDR (n 24), Art 25(2)(e-f).

[69] Ibid, Art 25(3).

sponds to what according to the Commission was optimal following the impact assessment exercise. No changes were made to the benchmarking system and the risk categories mechanism. Modifying such a fundamental element of the proposal would require substantial work and expertise on the part of legislative institutions.[70] The changes made to the Commission proposal appear to be rather cosmetic and in general make the Regulation slightly more ambitious in terms of its climate and environmental objectives and slightly more burdensome for covered operators and traders. At the same time, these changes do not seem to be very consequential. The legislative institutions seem to have followed the lead of the Commission with respect to the design of the policy intervention, its general scope and regulatory burdens.

3 Carbon Border Adjustment Mechanism

3.1. Impact Assessment

The legislative project of the EU CBAM (Carbon Border Adjustment Mechanism) proposed to impose a carbon price on specific types of products (the so-called CBAM goods: for instance, steel, aluminium, fertilizer) imported to the EU. The price was supposed to account for the carbon emitted in the production of selected goods, according to the price set by the EU for the products' embedded emissions.[71] The CBAM was also meant to ensure a level-playing field between EU producers of CBAM goods who are subject to the Emission Trading Scheme, and non-EU producers of such goods who would otherwise benefit from an unfair advantage.[72] According to the Commission proposal, the cost of CBAM certificates would be reduced if an EU trading partner has in place some regulatory measures that account for the emissions associated with production of CBAM goods.[73] Addressing the so-called carbon leakage (the fact that emissions reduction efforts in the EU could be offset by emissions increases outside the EU[74]) was one of the key objectives behind

[70] In the EU context, the Commission the Commission's legislative initiative and agenda-setting powers are safeguarded by specific limitations imposed on the legislative institutions; The Commission may decide to withdraw its legislative proposal if amendments to the proposal 'distort the proposal for a legislative act in a manner which prevents achievement of the objectives pursued by the proposal and which, therefore, deprives it of its raison d'être – see to that effect, C-409/13 *Council of the European Union v European Commission*, EU:C:2015:217, para 83; C-408/95 *Eurotunnel SA and Others*, EU:C:1997:532, para 39; case 355/87 *Commission v Council,* EU:C:1989:220, para 44.

[71] I Venzke and G Vidigal, 'Are Trade Measures to Tackle the Climate Crisis the End of Differentiated Responsibilities? The Case of the EU Carbon Border Adjustment Mechanism (CBAM)' (Amsterdam Law School Legal Studies Research Paper 02-2022) at papers.ssrn.com.

[72] Ibid 10.

[73] Ibid 8. An example of such a measure would be a similar carbon border adjustment measure – for instance, the United Kingdom is in the process of adopting its own CBAM, see: 'Draft Regulations: Carbon Border Adjustment Mechanism' (CBAM) (GOV.UK, 10 February 2026) at www.gov.uk.

[74] European Commission, 'Commission Staff Working Document – Impact Assessment Report Accompanying the Document: Proposal for a Regulation of the European Parliament and of the Council

the CBAM proposal and one that can be readily associated with the broader ambition behind the EU Green Deal.[75] The design of the CBAM was meant to account for specific emission-reduction targets outlined in the Fit for 55 Package.[76]

The impact assessment preceding the adoption of the CBAM proposal identified several policy options potentially allowing to achieve the objectives behind the policy intervention. The first one would establish an import carbon tax, paid by the importer when products enter the EU; the second one would be based on import certificates for basic materials based on EU average emissions; the third one would introduce import certificates for basic materials based on actual emissions; option 4 envisaged import certificates for basic materials based on actual emissions with parallel continuation of free allowances for a transitional period; option 5 - Import certificates for basic materials also as part of components and finished products based on actual emissions, and finally, Option 6 would introduce an excise duty on carbon-intensive materials covering consumption of both domestic and imported products.[77]

In the end, policy option 4 was selected as the optimal one. According to Commission services, calculating the cost of CBAM certificates on the basis of actual emissions would provide strong incentives to third country producers to move towards cleaner production processes, and 'thereby provide a stronger protection than all other options against the risk of carbon leakage'.[78] The selected option would also be consistent with the EU ETS (Emission Trading Scheme) system[79] and ensure some flexibility as well as the space for adaptation for businesses during the transitional period.[80]

3.2. Overall design

The design corresponding to the preferred policy option identified by the Commission services has found its way to the final text of the Regulation. In line with the polluter-pays principle, the Regulation established a carbon price on selected products (CBAM goods) imported into the customs territory of the EU.[81] The price of CBAM certificates necessary to import CBAM goods is closely linked to embedded

Establishing a Carbon Border Adjustment Mechanism, SWD(2021) 643 final (CBAM Impact Assessment Report), part 1, 6.

[75] J Cammeo, A Ferrari, S Borghesi, T Dokken, 'Understanding and Assessing CBAM: Vulnerability and Impacts in the EU' (SPES Working Paper 7.2-2025), at cadmus.eui.eu; Leonelli (n 37).

[76] Cammeo, Ferrari, Borghesi, Dokken (n 75) 15-16.

[77] CBAM Impact Assessment Report (n 74) 31-36.

[78] Ibid 86-87.

[79] Ibid.

[80] Ibid.

[81] CBAM (n 11), Art 1.

emissions associated with the product[82] and reflects the prices paid for similar products under the EU ETS system.[83] Carbon price paid in third countries would be excluded from the price paid for CBAM certificates[84]; the Regulation also established a transitional period running until the end of 2025 when only selected obligations would apply to importers of CBAM goods.[85]

3.3. Covered sectors and products

The differences in scope of the CBAM between the Commission proposal and the final Regulation are not significant. With respect to the main CBAM goods, the legislative process has resulted in the addition of hydrogen[86] which is likely to have a more prominent role in industrial production in the future than it has right now. Other than that, the final legislative text includes only minor changes, such as the addition of aluminous cement (under the category of cement), screws, bolts, and nuts (under the category of iron and steel) or aluminum structures.[87]

Both the proposal and the final Regulation explicitly mention that the scope of the Regulation might be extended after the end of the transition period (after 2025).[88] Recalling that CBAM should aim to cover the same emissions as those falling under scope of the ETS system, the recitals mention that the scope of the CBAM might cover indirect emissions associated with CBAM goods in the future.[89] Such a change would be much more significant than those made during the legislative process.[90] Electricity is the only CBAM good for which indirect emissions are also covered by the Regulation.[91]

Differently from the proposal, the final Regulation includes a *de minimis* provision, exempting from the scope of the CBAM consignments whose value as defined in the Regulation setting up a Community system of reliefs from customs duty (Article 23) does not exceed 150 EUR.[92] This threshold is set at a very low level and

[82] Ibid, Art 8.

[83] Ibid, Art 21.

[84] Ibid, Art. 6(2)(c).

[85] Ibid, Art. 32-35.

[86] Proposal for a Regulation of the European Parliament and of the Council of 14 July 2021 establishing a carbon border adjustment mechanism, COM(2021) 564 final, (CBAM Proposal) Annex I; CBAM (n 11), Annex I.

[87] CBAM (n 11), Annex I.

[88] CBAM Proposal (n 86), Art 30; CBAM (n 11), Art 30.

[89] CBAM Proposal (n 86), Recital 17, CBAM (n 11), Recital 67.

[90] Direct emissions are emissions taking place as part of a production process on which the producer has direct control. These include emissions from heating and cooling. Indirect emissions refer to emissions from the production of electricity which is consumed in a certain production process. – cf. CBAM Impact Assessment Report (n 74), part I, 17.

[91] CBAM (n 11), Annex I and II.

[92] Ibid, Art 2(3)(a); Regulation (EC) No 1186/2009 of the Council of 16 November 2009 setting up a Community system of reliefs from customs duty, Art 23.

would have limited practical significance. In comparison, the revision of the CBAM outlined as a part of the Omnibus Proposal sets out a *de minimis* threshold at 50 tons mass over the course of one year per importer.[93] The threshold is thus defined in a more flexible way and would result in exempting from the CBAM the importers of CBAM goods operating on a small scale.[94] The Commission claimed that 'this means keeping around 99% of emissions still in the CBAM scope, while exempting around 90% of the importers'.[95]

3.4. Enforcement

Both the proposal and the final Regulation outlined a system where the CBAM would be enforced by designated national authorities whose activities would be coordinated and supported by the Commission.[96] With respect to penalties for non-compliance with the Regulation, the final legislative text expanded the provisions proposed by the Commission. Both texts outline a standard penalty (based on ETS excess emissions penalties) for an authorized CBAM declarant who fails to surrender the number of CBAM certificates that correspond to emissions embedded in imported CBAM goods.[97] The legislative process introduced a new provision that authorises Member States to introduce special penalties that can range between three and five times the amount of the ETS excess emissions penalties for businesses or people who import goods into the EU territory without having the status of an authorized CBAM declarant.[98] Thus, it seems that the legislators wanted to dissuade those business operators who would attempt to circumvent the entire system set up by CBAM as opposed to those who "merely" failed to account for all the emissions embedded in the products imported by them. Both the Proposal and the final Regulation maintain that a potential penalty does not absolve an importer from paying for the outstanding CBAM certificates accounting for the emissions that were not paid for.[99]

3.5. Transitional period and review

An important element of the policy design behind the CBAM is its staged application and an incorporation of the transitional period. The Commission impact assessment already suggested that according to the Policy Option 4 (which ended up being implemented in the proposal) CBAM would be phased in after 2025 and its gradual

[93] European Parliament, 'CBAM: Deal with Council to Simplify EU Carbon Leakage Instrument' (18 June 2025), at www.europarl.europa.eu.

[94] Ibid.

[95] European Commission, 'CBAM: New Commission Proposal Will Simplify and Strengthen' (26 February 2025), at taxation-customs.ec.europa.eu.

[96] CBAM Proposal (n 86), Art 11-15; CBAM (n 11), Art 11-15.

[97] CBAM Proposal (n 86), Art 26(1), CBAM (n 11), Art 26(1).

[98] CBAM (n 11), Art 26(2).

[99] CBAM Proposal (n 86), Art 26(3), CBAM (n 11), Art 26(3).

application would correspond to the phasing out of free emission allowances under the EU ETS.[100] During the transitional period, CBAM was meant to be applied merely as a reporting mechanism, not a fiscal one.[101] The Commission proposal did not specify the time window for the partial application of the CBAM; in turn, the final text clarifies that the transitional period would run from 1 October 2023 until 31 December 2025.[102] However, the scope of obligations imposed by the Regulation during the transitional period was not modified by the legislative institutions.[103]

3.6. Concluding remarks

The comparison of selected elements of the legislative proposal and the final text of the CBAM yields similar results as that related to the EUDR. It appears that the crucial elements of the policy design selected by the Commission in the impact assessment and implemented in the legislative proposal found their way to the final text of the CBAM. The CBAM attempts to reduce global greenhouse gas emissions while balancing the playing field for businesses and preventing carbon leakage; the price of CBAM certificates is supposed to be linked to real emissions and is structurally connected to the EU ETS system. The scope of the CBAM was cosmetically modified by the legislative institutions which added hydrogen to the CBAM goods as well as a few specific types of goods under the general categories (identified by their customs codes). The legislative proposal introduced a *de minimis* threshold, however, its low value means that it would be practically insignificant. This element has already been revised pursuant to the provisional agreement between the Parliament and the Council, following the Commission proposal outlined in the Omnibus package.[104] When it comes to enforcement the legislative process added a provision that authorizes Member States to introduce dissuasive penalties for importers of CBAM goods who are not registered and attempt to circumvent the entire system established by the Regulation. Finally, the legislative institutions clarified the length of the transitional period while preserving the general idea behind it whereby only reporting obligations would initially apply to importers of the CBAM goods. There are similarities between the process leading to the adoption of the EUDR and the CBAM inasmuch as it appears that neither the Parliament nor the Council attempted to redesign the Commission proposal or modify it in a way that would significantly change its scope. The highly technical nature of the CBAM was likely to complicate the task of the legislative institutions who did not seem to contest the key elements behind the Commission proposal.

[100] CBAM Impact Assessment Report (n 74), part I, 34.
[101] CBAM (n 11), Art 32.
[102] Ibid.
[103] CBAM Proposal (n 86), Art 35, CBAM (n 11), Art 35.
[104] Proposal for a Regulation COM(2025) 87 final (n 18).

4. Corporate Sustainability Reporting Directive

4.1. Impact Assessment

The Corporate Sustainability Reporting Directive is de facto a set of tailored amendments to the several existing legal instruments such as Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings[105], Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market[106], Directive 2006/43/EC on statutory audits of annual accounts[107] and Regulation on specific requirements regarding statutory audit of public-interest entities.[108] CSRD sets out the obligation for companies above a certain size to disclose information related to risks and opportunities arising from social and environmental issues connected to their activity. In this context, investors, consumers and civil society actors would benefit from increased transparency with respect to sustainability-related information. This would hopefully incentivise private actors to consider sustainability objectives in their business operations for reputational reasons, and also commercial reasons.[109]

According to Commission services, the Directive was supposed to address several policy challenges. The legislation addressing the disclosure of non-financial information by companies had limited coverage and scope, including such topics as human rights concerns pertaining to the activities of the covered companies.[110] In addition, because of the lack of wide-ranging mandatory standards, information disclosed by the companies was not comparable.[111] These deficiencies made it more difficult for investors and consumers alike to make informed decision and, more

[105] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, 19–76.

[106] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, 38–57.

[107] Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC, 87–107.

[108] Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, 77–112.

[109] T Pantazi, 'The Introduction of Mandatory Corporate Sustainability Reporting in the EU and the Question of Enforcement' (2024) 25 *European Business Organization Law Review* 509.

[110] European Commission, 'Commission Staff Working Document – Impact Assessment Report Accompanying the Document: Proposal for a Regulation of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting', SWD(2021) 150 final (CSRD Impact Assessment), 7-10.

[111] CSRD Impact Assessment (n 110), 7-10.

broadly, hindered social accountability of powerful private actors.[112] The proposed CSRD was meant to rectify these deficiencies, offering a set of mandatory standards binding the majority of companies and assuring a fair degree of control over the reliability of the disclosed information.[113] More broadly, the adoption of mandatory sustainability reporting standards was aligned with the objectives of the European Green Deal, potentially making sustainable companies more attractive for consumers and investors. It was also meant to contribute to the EU internal market by harmonizing a set of rules pertaining to the transparency of doing business in the EU.

In order to achieve the identified policy objectives, Commission services examined several options for the design of the CSRD, comparing their costs and effectiveness. These options differed on three specific dimensions: standardisation (mandatory vs. voluntary reporting), assurance level (reasonable vs. limited assurance) and scope (four options differing with respect to the size of the companies that would be obliged to submit sustainability reporting).[114] Having compared all these options, the Commission identified the following "package" of regulatory variants as the optimal one: mandatory reporting matching the standard of limited assurance (potentially expanding to reasonable assurance in the future) covering all Public Interest Entities as well as all limited liability companies and listed Small and Medium Enterprises (SMEs).[115] The mandatory reporting option was selected due to efficiency considerations; in turn, only limited assurance for reported non-financial information was required in order to avoid incurring high costs for companies which would otherwise need to rely on high quality and expensive auditing services to meet the reasonable assurance standard.[116] Finally, when it comes to the scope, the Commission argued that the preferred option offers the best trade-off between the policy objectives and regulatory burdens that might be unpalatable for smaller business operators. The Commission did not provide the details of how specific costs were calculated but the analysis presented in the Impact Assessment suggests that combined annual costs of the CSRD in the optimal variant would amount to roughly 3.5 billion euros of recurring costs for EU companies and more than one billion euros of one-off costs linked to the need to adjust to new regulatory obligations.[117] The Commission claimed that these costs were proportionate and would be offset by the benefits related to harmonisation as well as the preferential treatment afforded to sustainability-sensitive companies by investors and consumers.[118] The proposed reduction of

[112] Ibid.

[113] J Baumüller and SO Grbenic, 'Moving from Non-financial to Sustainability Reporting: Analyzing the EU Commission's Proposal for a Corporate Sustainability Reporting Directive (CSRD)' (2021) 18 *Facta Universitatis* 369; Pantazi (n 109), 509.

[114] CSRD Impact Assessment (n 110) 21-27.

[115] Ibid, 52-55.

[116] Ibid, 52.

[117] Ibid, 43-47.

[118] Ibid, 47-48.

the scope of the CSRD within the Omnibus package suggests that the Commission services no longer subscribed to these arguments as of 2025.[119]

4.2. Overall design

The CSRD incorporates the key elements of the optimal design identified and proposed by the Commission services. It sets out mandatory reporting obligations covering a similar range of companies as originally proposed. Sustainability reporting must abide by limited assurance standards, and the Commission is mandated to adopt delegated acts that would outline reasonable assurance standards no later than October 2028.

4.3. Covered entities

With respect to the entities covered by sustainability reporting obligations, the Commission proposal included large undertakings and SMEs which are public interest entities (for instance those who are listed on a stock market or offering credit and insurance services)[120] while the final legislative text excluded from this definition micro undertakings, even if they fulfil the criteria of public interest entities.[121] Both the proposal[122] and the final legislative text stipulate that subsidiary undertakings are exempt from sustainability reporting obligations as long as a parent undertaking and a subsidiary are included in the consolidated sustainability report of the parent undertaking. Contrary to the Commission proposal[123], the final text of the CSRD sets out a staged schedule for the entry into application of the sustainability reporting obligations for different types of undertakings – these obligations would first affect large undertakings falling under the definition of public interest entities (1st January 2024), subsequently other large undertakings (1st January 2025) and eventually SMEs as well (1st January 2026).[124] For comparison, the recent Omnibus proposal revising the CSRD includes in the scope of sustainability reporting obligations only companies having above 1,000 employees and 50 million euros turnover.[125]

4.4. Assurance standards

The final text of the CSRD provides that sustainability reporting needs to match a limited assurance standard[126], following the preferred option identified in the Impact

[119] CSRD Omnibus Proposal (n 19), Art 2(2).
[120] CSRD Omnibus Proposal (n 19), Art 1(3); Directive 2013/34/EU (n 105), Art 2(1).
[121] CSRD (n 12), Art 1(4).
[122] CSRD Omnibus Proposal (n 19), Art 1(3) amending Art 19a(7) of Directive 2013/34/EU (n 105); CSRD (n 12), CSRD Omnibus Proposal (n 19) Art(4).
[123] CSRD Omnibus Proposal (n 19), Art 5.
[124] CSRD (n 12), Art 5.
[125] CSRD Omnibus Proposal (n 19), Art 2(2).
[126] CSRD (n 12), Art 3(12).

Assessment and included in its Proposal by the Commission.[127] The final text clarifies the timing with respect to the adoption of delegated acts by the Commission which would outline the specific standards for limited assurance (no later than 1 October 2026) and reasonable assurance (no later than 1 October 2028).[128] This demonstrates some caution on the parts of the legislative institutions which ensured a scheduled and delayed application of reasonable assurance standards which are more demanding and entail more costly and comprehensive scrutiny of submitted sustainability reports by auditors than limited assurance.[129] The proposed Omnibus revision of the CSRD removed altogether the possibility of adopting reasonable assurance standards for sustainability reporting.[130]

4.5 Scope of sustainability reporting obligations

The content of the required sustainability reporting is broad and covers various topics that would ideally make it easier for consumers, investors and civil society to scrutinise the behaviour of companies against specific sustainability objectives. Both the Commission proposal and the final text of the CSRD include here such elements as business model and strategy, the opportunities related to sustainability matters, the plans for implementing actions and investment connected to limiting global warming, a description of time-bound targets related to sustainability matters and others.[131] While the final legislative text slightly expanded and elaborated on the proposed content of the sustainability reporting, it did not modify it in a meaningful way. For instance, the final text of the CSRD added an obligation for the covered companies to disclose its exposure to oil- and gas-related activities as well as implementing actions and investments that are compatible with the EU objective to achieve climate neutrality by 2050.[132] In a similar vein, while the proposal obliged covered companies to report the targets related to sustainability matters[133], the final text of the CSRD specifies that these targets need to be time-bound and, where applicable, include greenhouse gas emissions targets at least for 2030 and 2050.[134] The final text adds an obligation for the covered companies to disclose information about incentive schemes linked to sustainability matters that are offered to its personnel.[135] Finally, the final text of the CSRD slightly expands the scope of due diligence obligations connected to operations in the supply chain of the covered companies, requiring them

[127] CSRD Omnibus Proposal (n 19), Art 3(12) amending Directive 2006/43/EC (n 107), Art 26(a).
[128] CSRD (n 12), Art 3(12) amending Art 26(a) of the Directive 2006/43/EC.
[129] Pantazi (n 109) 516–519.
[130] Cf. CSRD Omnibus Proposal (n 19), Art 1(1) amending Art 26(a) of the Directive 2006/43/EC.
[131] CSRD (n 12), Art 1(4) amending Art 19a of Directive 2013/34/EU.
[132] CSRD (n 12), Art 1(4) amending Art 19a(2)(a)(iii) of Directive 2013/34/EU.
[133] CSRD Omnibus Proposal (n 19), Art 1(3) amending Art 19a)(2)(b) of Directive 2013/34/EU.
[134] CSRD (n 12), Art1(4) amending Art 19a(2)(b) of Directive 2013/34/EU.
[135] CSRD (n 12), Art 1(4) amending Art 19a(2)(e).

to disclose specific actions taken to identify and monitor sustainability-related risks.[136]

4.6. Concluding remarks

As was the case with the EUDR and CBAM, the legislative proposal leading to the adoption of the CSRD did not result in meaningful changes to the Commission proposal. The key elements of the optimal design identified in the Impact Assessments, including the covered entities, assurance standards and the scope of sustainability obligations were hardly modified by the legislative institutions. The examined modifications tend to elaborate on the provisions proposed by the Commission, adding some details or extending the timeline for application, but do not demonstrate a comprehensive attempt to challenge the Commission's regulatory vision behind the CSRD.

5. Conclusion

The review of the policymaking processes behind the EUDR, CBAM and the CSRD demonstrates that the preferred policy options identified in the impact assessments by Commission services were not challenged by the legislative institutions. The key elements of the policy design deemed optimal by the Commission found their way into the final legislative texts. The changes reviewed in this article suggest that the legislative institutions tend to expand and elaborate on the provisions proposed by the Commission, for instance by slightly extending the reporting obligations outlined in the proposed instruments, adding new penalties for non-compliance with them, or proposing staged transitionary periods for implementation. At the same time, the structural provisions related to the scope and the content of new (or updated) regulatory obligations were only cosmetically modified by the Parliament and the Council. Arguably, more comprehensive changes (for instance, removing or replacing the benchmarking system from the EUDR) would require resource- and expertise-intensive legislative work, but, in my opinion, would not exceed the scope of what the legislative institutions could do without distorting the intent behind the Commission proposal.

The analysis presented in this article should be seen against the backdrop of the current policy developments whereby the Commission proposed to substantially revise (or postpone their entry into application) all the three examined policy instruments in the name of reducing regulatory burdens on EU businesses and strengthening the competitiveness of EU economy. Crucially, it puts into question the Commission's commitment to evidence-based policymaking considering that the Omnibus proposals were not backed up by findings from impact assessments. On one

[136] CSRD Omnibus Proposal (n 19), Art 1(3) amending Art 19a)(2)(e); CSRD (n 12), Art 1(4) amending Art 19a(2)(f).

hand, this demonstrates that seemingly depoliticised language of impact assessments can be harnessed to support different political narratives where the merits of policy evaluation play secondary role to political considerations. Alternatively, the quality of scientific analysis included in the reviewed impact assessments can be called into question if, for instance, regulatory costs on business operators were originally underestimated, as the political intention behind the Omnibus proposals would suggest. At the same time, the fact that the Commission, at least as illustrated by the three case studies analysed in this article, appears willing to backtrack on its policy preferences informed by impact assessments can be seen as a symptom of its weakening role as a non-majoritarian institution deriving its legitimacy from expertise. While the Commission's U-turn can be traced to shifting political majorities and thus can benefit from some level of democratic legitimacy, it is submitted that the Commission's authority in the broader EU institutional setup would be undermined if its commitment to expertise turned out to be short-lived.