

The EU Green Deal from a customs perspective

17.03.2023, Richard J. Albert



The bigger picture | The European Green Deal



Timeline is indicative



EU Fit for 55: the Carbon package

Fit for 55

legislative package

is the EU Commission's proposal to revise the EU climate, energy and transport-related legislation in order to align the current laws with the 2030 and 2050 ambitions announced in **July 2021** with 13 proposals and supplemented in **December 2021** with 4 additional proposal.



Sources: European Commission; Fit for 55

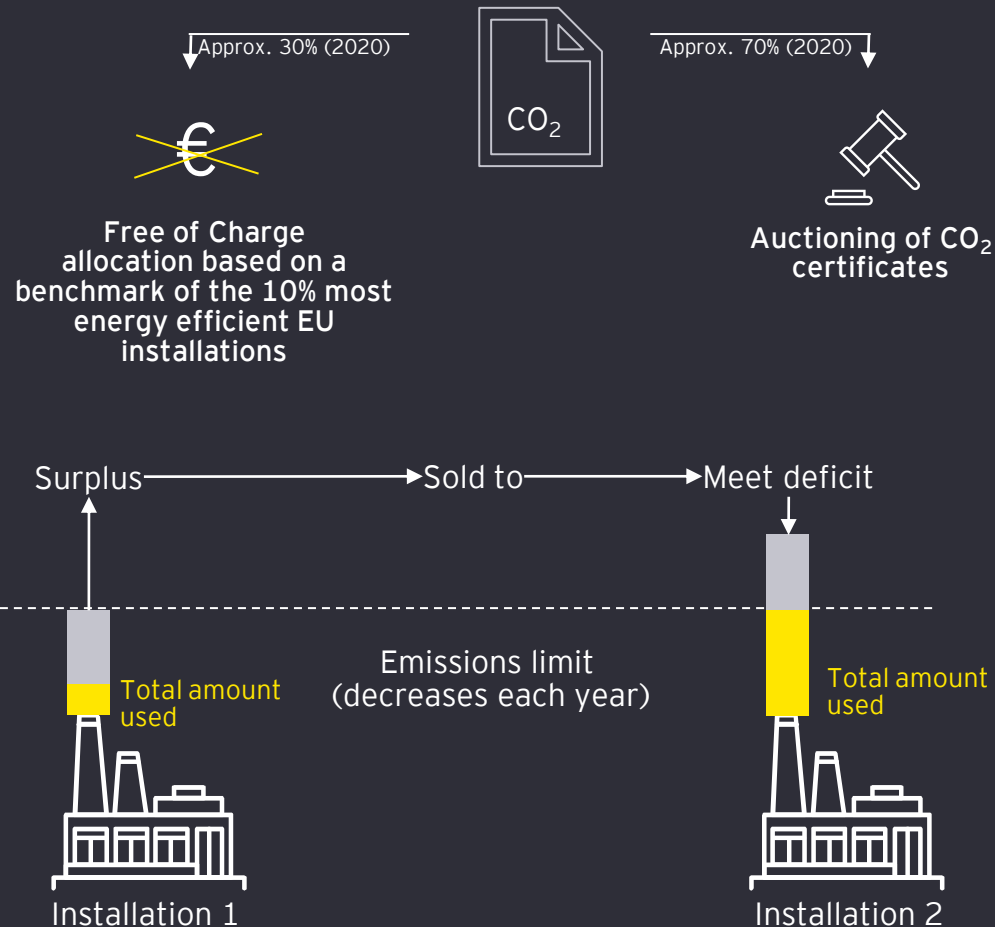
Key



Focus on emission/energy related proposals:

- On 13 December 2022, the European Parliament reached a provisional agreement with the Council of the European Union (EU) to implement an **EU Carbon Border Adjustment Mechanism (CBAM)**, covering product categories of iron and steel, aluminum, fertilizers, hydrogen, and electricity, effective from 1 October 2023.
- On 18 December 2022, the European Parliament and the Council reached a provisional agreement on **EU Emission Trading System (ETS)** reform and phasing out of free allowances, which will start in 2026 and end by 2034. Businesses will therefore be required to purchase CBAM certificates for covered imports from 2027.
- EU ETS reform notably includes extensions of scope to maritime transport and municipal waste incineration.
- A parallel **carbon market** will be established to cover fossil fuels used to power cars and heat buildings.
- Proposal for the revision of the **Energy Taxation Directive (ETD)** yet pending, last proposal from June 2022.

Emission Trading System



Scope of the EU Emission Trading System

Currently:

- ▶ High emission industries (> 20MW), such as e.g., iron and steel, cement, glass, ceramics, paper, chemical, energy and heat sectors as well as the aviation sector

New sectors proposed

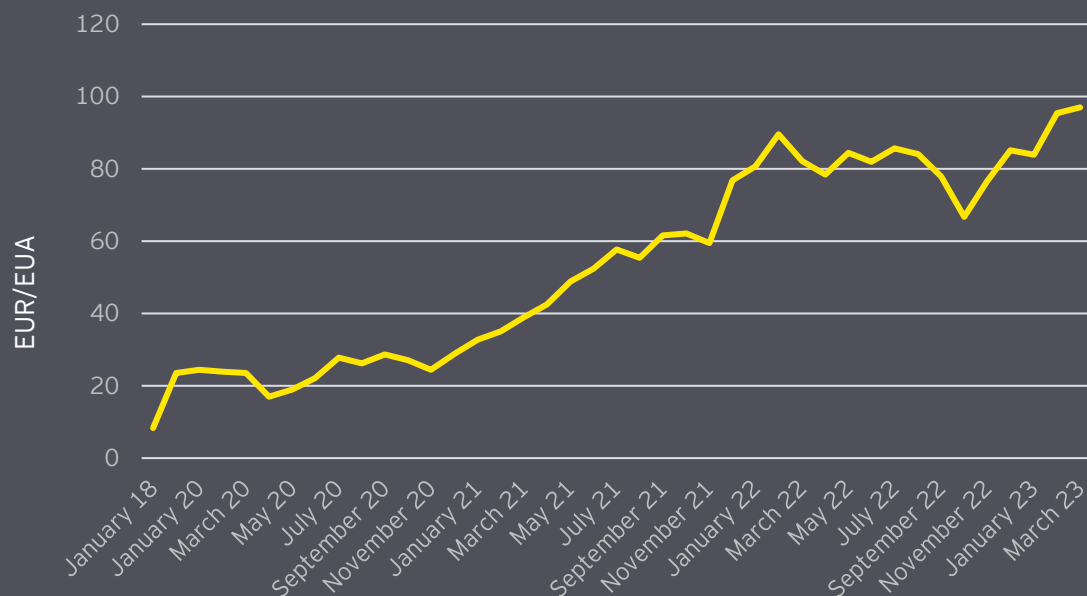
- ▶ Maritime sector (gradually between 2023-2025)
- ▶ Road transport and buildings (from 2026)

Reduction of free allocation

- ▶ 2021 - 2025: free allocation in the maximum amount of 30% of benchmark value
- ▶ 2026 - 2034: free allocation planned to gradually decrease to 0% (TBD)

CO₂ allowance prices on the EU ETS are rising generating increasing pressure to decarbonise the whole economy

EU ETS price trajectory (2018 - March 2023)



EU ETS snapshot

Key carbon pricing mechanism in the EU

- 1 | More than nine-fold increase in the ETS market allowance price between 2018 and 2022
- 2 | Increasing decarbonization pressure towards CO₂ reductions targets in 2030 (55%) and 2050 (climate-neutral)
- 3 | EU allowance (EUA) price increases are due to a number of regulatory and market factors (e.g., Linear Reduction Factor, Market Stability Reserve, financial groups)

Increasing carbon cost effects EU industry loss of competitiveness against products from no or low carbon pricing countries – if EU operators not decarbonize fast enough

A snapshot about the upcoming EU legislation on CBAM

Product categories

- ▶ Cement
- ▶ Fertilizers
- ▶ Iron & Steel
- ▶ Aluminum
- ▶ Electricity
- ▶ Hydrogen

Including raw materials and downstream products.

European Parliament suggestion for additional scope after transitional phase:

- ▶ Organic chemicals
- ▶ Polymers

All products covered by EU-ETS expected to be phased-in, e.g., inorganic chemicals, standard refinery products, others.

Emissions covered



Direct & indirect emissions
related to manufacture + electricity

Footprint calculation may at some point be extended to cover further indirect emissions, e.g., transportation.

Geographic scope



Import from non-EU, except product originating in:

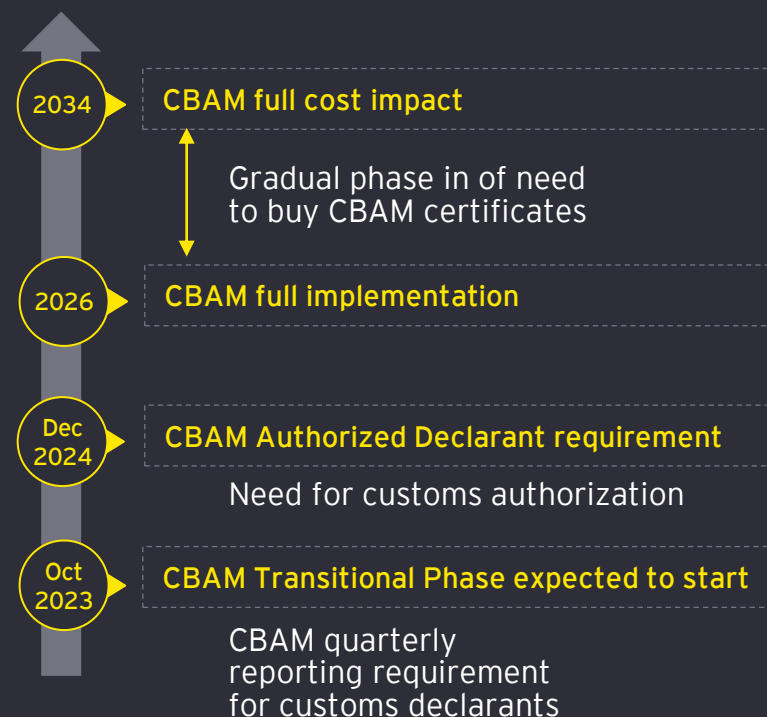
- Switzerland
- Iceland
- Norway
- Lichtenstein

Other jurisdictions may also apply a type of carbon border policy (e.g., ongoing discussions in UK, Switzerland, Japan, Canada and others).

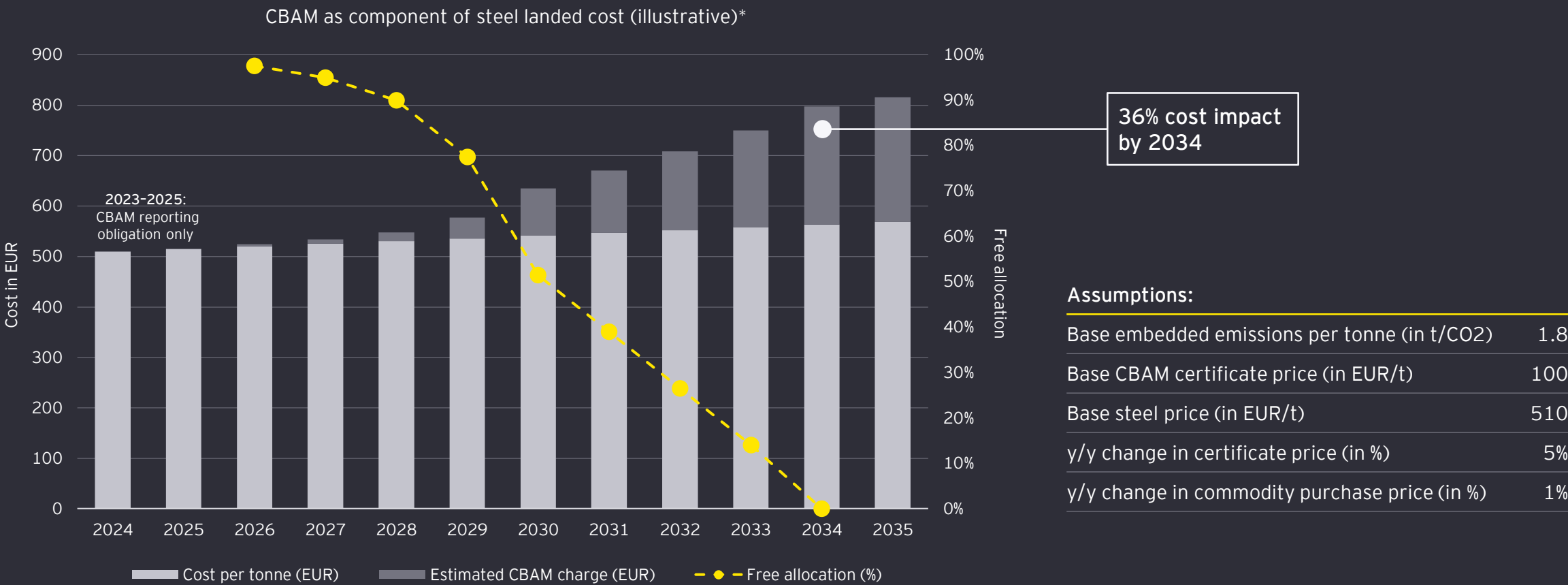
Arising of CBAM

CBAM certificate requirement upon:

- ▶ Release of goods for customs free circulation
- ▶ Irregularities occurring to goods under customs supervision (non-Union goods)



Cost impacts of CBAM can be material to sourcing decisions



Note: the indication reflects current state of the legislative regulations. The figures represent a general base model for illustrative purpose. All aspects may be subject to change.

*Based upon negotiated model for free allocation phase out and EY modelling assumptions (right of page)

Could these products indicate stress to your organization?



A snapshot about the upcoming EU legislation on deforestation



In a nutshell

Permission to place specific goods on the EU market or export from the EU only if all the following conditions are met:

- ▶ they are deforestation-free;
- ▶ they have been produced in accordance with the relevant legislation of the country of production; and
- ▶ they are covered by a due diligence statement

Update:

- ▶ Back to 31 December 2020 (tbc, EU Parliament proposal)
- ▶ Human rights and the rights of indigenous people to be added as requirements



Sanctions under discussion

- ▶ Penalty payments
- ▶ Seizure of the goods in question
- ▶ Confiscation of the revenues from the business in question
- ▶ Temporary exclusion from public procurement procedures



Goods in scope

- ▶ Coffee
- ▶ Palm oil
- ▶ Soy
- ▶ Cocoa
- ▶ Beef
- ▶ Wood

As well as products using those goods as ingredients / parts such as, e.g. chocolate, leather, furniture but also animal feed

Update: EU parliament also wants to include: pigmeat, sheep and goats, poultry, maize, rubber, charcoal and printed paper products



Outlook

- ▶ Extension of the scope to other ecosystems and other raw materials is likely
- ▶ Expected that other jurisdictions outside the EU implement similar regulations



Key obligations

- ▶ Operators shall exercise due diligence prior to placing relevant goods on or prior to their export from the Union market in order to ensure their compliance
- ▶ Documentation of the exercise with a „Due Diligence Statement“
- ▶ Communication of the result to customs authorities (electronically) each time the goods are imported / exported
- ▶ Examination includes:
 - ▶ Collection of information and documents, incl. coordinates for geolocation
 - ▶ Risk assessment
 - ▶ If necessary: risk mitigation
- ▶ Public reporting: annual publication by operators of their „Due Diligence“ procedure

A snapshot about the upcoming revision of the Energy Taxation Directive (ETD)



Inclusion of new “energy products” in the scope of the ETD (e.g. Hydrogen, ethyl alcohol,...)



Increase of the minimum tax rates on non-sustainable energy products to reflect their carbon content. Annual indexation of the minimum levels of taxation (starting from 1 January 2024).



Transitional period of 10 years in which minimum excise rates for some products will increase gradually. Special rules for maritime and aviation sector



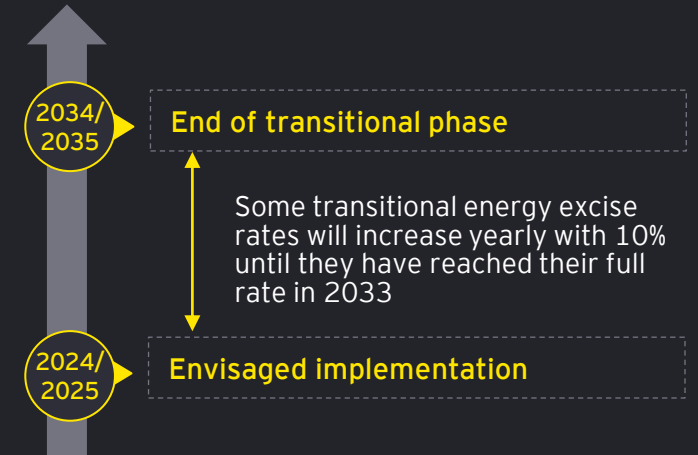
No distinction between **commercial** and **non-commercial** use of gas oil as motor fuel as well as **business and non-business use** for heating fuels and electricity.



Minimum levels of taxation will be set out according to the **energy content** and **environmental performance** of the energy products and electricity.



Withdrawal or reduction of long standing **excise exemptions** for e.g. aviation and marine fuel.



The proposal is in continuous discussion between EU Parliament, EU Commission and EU Council.

- Although no official new consolidated revised version of the proposal has been published yet, various committee groups in the EP have formulated their individual opinions and concerns.
- A general concern that has been raised, is that a **thorough impact assessment should be made of the ETD proposal in combination with other Fit for 55 measures. In addition, the social cost of the ETD proposal should be considered against the background of increasing energy prices / inflation.**
- After the plenary vote, the EP will deliver a non-binding advice to the Council, who will then vote decisively.

A look into the minimum tax rates for fuels

Minimum tax rates for heating fuels

	Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation
Gas oil	0,9	0,9
Heavy fuel oil	0,9	0,9
Kerosene	0,9	0,9
Non-sustainable biofuels	0,9	0,9
Liquefied Petroleum Gas (LPG)	0,6	0,9
Natural gas	0,6	0,9
Non-sustainable biogas	0,6	0,9
Non renewable fuels of non-biological origin	0,6	0,9
Sustainable food and feed crop biofuels	0,45	0,9
Sustainable food and feed crop biogas	0,45	0,9
Sustainable biofuels	0,45	0,45
Sustainable biogas	0,45	0,45
Low-carbon fuels	0,15	0,45
Renewable fuels of non-biological origin	0,15	0,15
Advanced sustainable biofuels and biogas	0,15	0,15

Minimum tax rates for fuels used in accordance with Art. 8 II ETD

	Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation
Gas oil	0,9	0,9
Heavy fuel oil	0,9	0,9
Kerosene	0,9	0,9
Coal and coke	0,9	0,9
Non-sustainable bioliquids	0,9	0,9
Non-sustainable solid products falling within CN codes 4401 and 4402	0,9	0,9
Liquefied Petroleum Gas (LPG)	0,6	0,9
Natural gas	0,6	0,9
Non-sustainable biogas	0,6	0,9
Non renewable fuels of non-biological origin	0,6	0,9
Sustainable food and feed crop bioliquids	0,45	0,9
Sustainable food and feed crop biogas	0,45	0,9
Sustainable bioliquids	0,45	0,45
Sustainable biogas	0,45	0,45
Sustainable solid products falling within CN codes 4401 and 4402	0,45	0,45
Low-carbon fuels	0,15	0,45
Renewable fuels of non-biological origin	0,15	0,15
Advanced sustainable bioliquids, biogas and products falling within CN codes 4401 and 4402	0,15	0,15

Minimum tax rates for fuels used in accordance with Art. 7 ETD

	Start of transitional period (01.01.2023)	Final rate after completion of transitional period (01.01.2033) before indexation
Petrol	10,75	10,75
Gasoil	10,75	10,75
Kerosene	10,75	10,75
Non-sustainable biofuels	10,75	10,75
Liquefied Petroleum Gas (LPG)	7,17	10,75
Natural gas	7,17	10,75
Non-sustainable biogas	7,17	10,75
Non renewable fuels of non-biological origin	7,17	10,75
Sustainable food and feed crop biofuels	5,38	10,75
Sustainable food and feed crop biogas	5,38	10,75
Sustainable biofuels	5,38	5,38
Sustainable biogas	5,38	5,38
Low-carbon fuels	0,15	5,38
Renewable fuels of non-biological origin	0,15	0,15
Advanced sustainable biofuels and biogas	0,15	0,15

Example: Diesel incl. 7% FAME = 35,8 MJ/L = ca. 3,3 Cent Minimum tax rate per Liter

Deviating phase-in measures apply for maritime + aviation fuels

A snapshot into the CS3D

Draft EU Directive



Scope

- ▶ EU companies with activities in the EU internal market:
 - ▶ G1: > 500 employees + 150 million EUR global annual sales
 - ▶ G2: > 250 employees + EUR 40 million global annual sales (risk sectors)
- ▶ Non-EU businesses: turn-over thresholds to be exceeded in the EU



Extension of the due diligence obligations

- ▶ Entire life cycle (incl. use & disposal)
- ▶ Supplier and customer side (unless supplier plays only a subordinate role in the overall view of the supply chain)



Liability

- ▶ Civil liability for damages resulting from failure to comply with due diligence obligations
- ▶ Injured parties from third countries are particularly protected: Courts must apply the rules on liability under the EU Directive in all cases



Climate Plan

- ▶ Ensure, through the establishment of a climate plan, that business model and corporate strategy are in line with the goal of limiting global warming to 1.5°C



Manager Duty of Care

- ▶ Business leaders violate their duties when they fail to consider consequences of their decisions for sustainability, human rights, climate change and the environment
- ▶ Implications to Director's variable remuneration

- ➔ **Effective protection of human rights included in international conventions.**
- ➔ **Mitigate environmental impacts contrary to key environmental conventions.**
- ➔ **Evidence corporate climate policy to combat 1.5° warming**

Operators need to:

- ▶ integrate due diligence into policies,
- ▶ identify actual or potential adverse human rights and environmental impacts,
- ▶ prevent or mitigate potential impacts,
- ▶ bring to an end or minimize actual impacts,
- ▶ establish and maintain a complaints procedure,
- ▶ monitor the effectiveness of the due diligence policy and measures,
- ▶ and publicly communicate on due diligence.

*Risk sectors: textiles, leather, footwear, agriculture, wholesale of agricultural commodities, food, mineral resources - including metals and metal ores, construction materials, fuels, chemicals.

A snapshot in the Digital Product Pass initiative



Excerpt from draft status Annex I to the Ecodesign Directive:

- ▶ (a) information required under Articles 7(2) and 8(2) or by other Union law applicable to the relevant product group;
- ▶ (b) the unique product identifier at the level indicated in the applicable delegated act adopted pursuant to Article 4;
- ▶ (c) the Global Trade Identification Number as provided for in standard ISO/IEC 15459-6 or equivalent of products or their parts;
- ▶ (d) relevant **commodity codes**, such as a TARIC code as defined in Council Regulation (EEC) No 2658/871;
- ▶ (e) compliance documentation and information required under this Regulation or other Union law applicable to the product, such as the declaration of conformity, technical documentation or conformity certificates;
- ▶ (f) user manuals, instructions, warnings or safety information, as required by other Union legislation applicable to the product;
- ▶ (g) information related to the manufacturer, such as its unique operator identifier and the information referred to in Article 21(7);
- ▶ (h) unique operator identifiers other than that of the manufacturer;
- ▶ (i) unique facility identifiers;
- ▶ (j) **information related to the importer**, including the information referred to in Article 23(3) and its **EORI number**;
- ▶ (k) the name, contact details and unique operator identifier code of the economic operator established in the Union responsible for carrying out the tasks set out in Article 4 of Regulation (EU) 2019/1020, or Article 15 of Regulation (EU) [...] on general product safety, or similar tasks pursuant to other EU legislation applicable to the product.

Potentially from
2026/2027

Phase-in of
products in
multiple waves

Multiple formal
requirements for
manufacturers,
authorized
representatives
and importers

A global view on EPR schemes and packaging related reporting

Africa

- ▶ Minimal mandatory packaging related EPR at the moment.
- ▶ Some countries entering into early stages of implementation

Asia

- ▶ Mixed situation. Some countries have no regulations. Others have strict mandatory EPR (some only limited scope) or voluntary schemes
- ▶ Expect number of mandatory EPR and higher fees in countries with existing legislation.

Europe

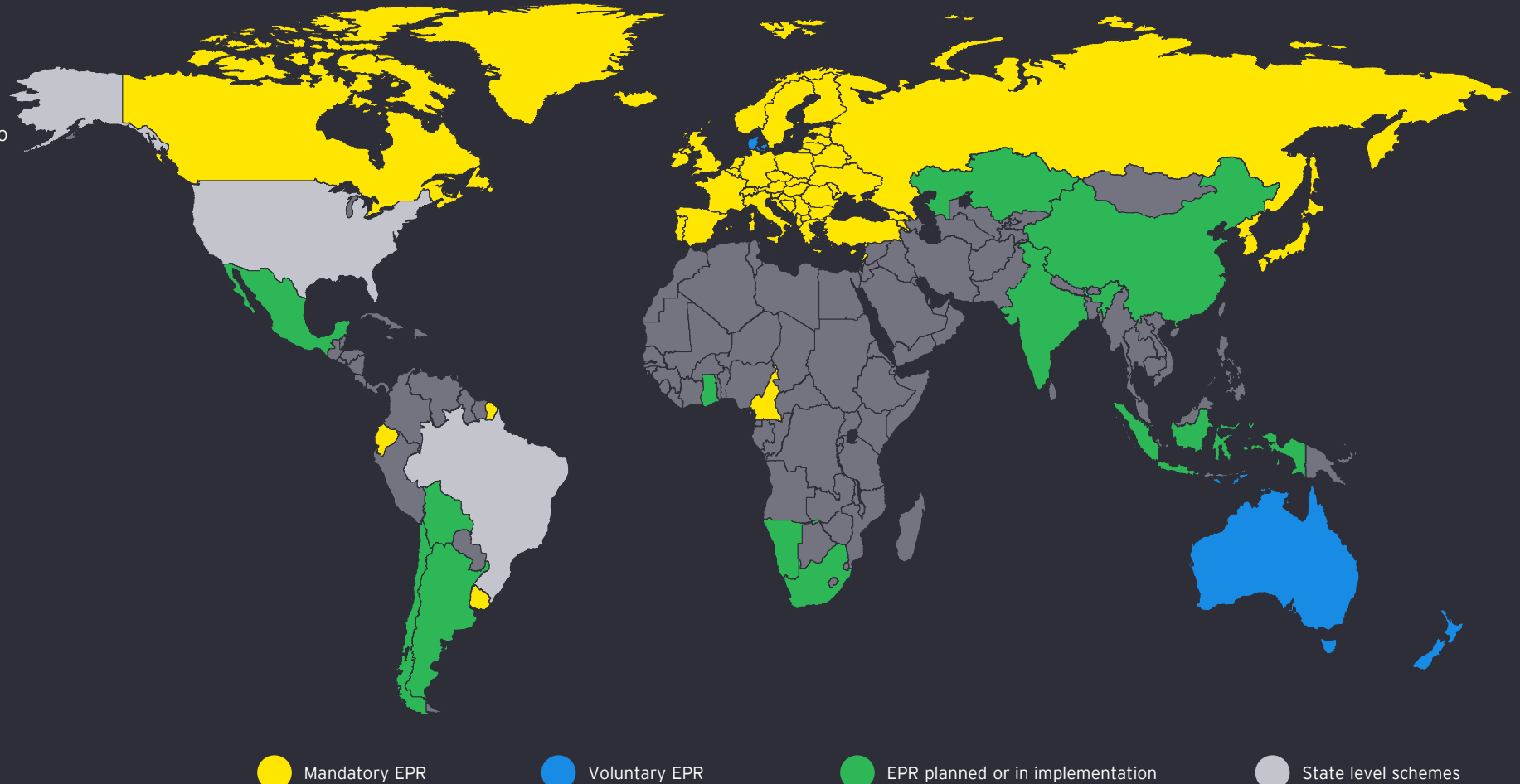
- ▶ EPR implemented across Europe. Comprehensive revision in progress.
- ▶ Additional Plastic Packaging Taxes and SUP levies (on top of EPR)

North America

- ▶ Packaging EPR in place in several Canadian provinces, others publishing draft regulations
- ▶ A number of US states have implemented or published draft legislation. A federal Bill is considered. Expect increasing fees.

South America

- ▶ Some countries have voluntary packaging EPR schemes or limited scope. A number of markets have recently passed EPR legislation, e.g. Colombia



The European view on Plastic Packaging Taxes - a major change data collection, management and reporting

- ▶ Effective as of 1 January 2021, a plastic tax of 0.80 EUR per kg of non-recycled plastic waste ("Plastic Levy") is due by Member States into the EU budget.
- ▶ The Plastic Levy supplements other regulations (e.g., Circular Economy, Single-Use Plastic, Waste) meant to ensure that **all packaging within the EU marker is reusable or recyclable in a cost-effective way by 2030**.
- ▶ Specifically, the Single-Use Plastic Directive establishes the **recycling targets** for plastic beverage bottles at **77% by 2025** and **90% by 2029**
- ▶ The UK & Spain have already introduced plastic packaging taxes. It is expected that more countries will follow.
- ▶ However, other instruments could also be used introduced with similar effects:
 - ▶ Excise duties (similar principle like for energy and electricity)
 - ▶ Or through the Extended Producer Responsibility (EPR; considered by Belgium and France)
 - ▶ A combination of both instruments

Snapshot of plastic packaging taxes legislation in Europe

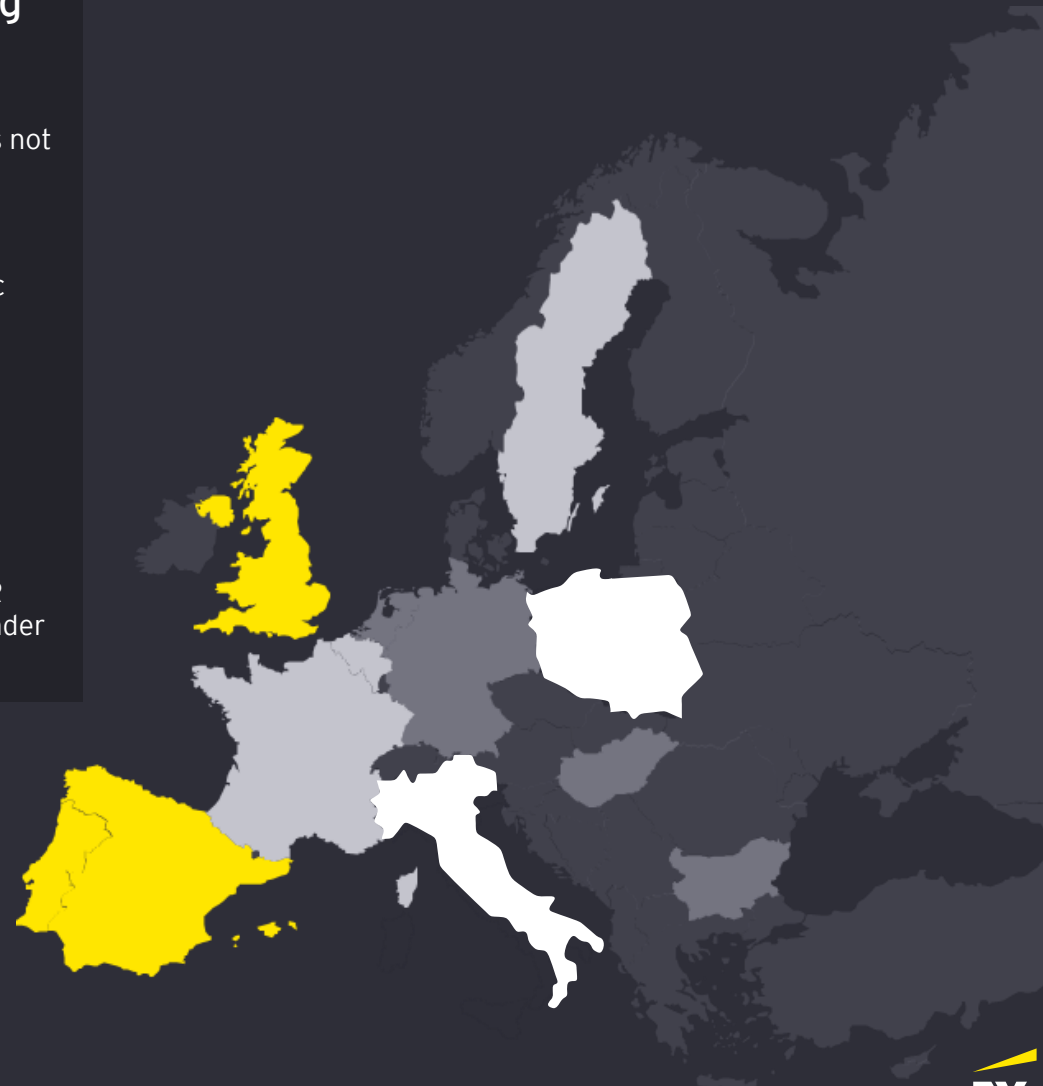
United Kingdom: Plastic packaging that does not contain at least 30% recycled plastic
Effective date: 1 April 2022

Spain: Non-reusable and non-recycled plastic packaging
Effective date: 1 January 2023

Italy: Non-reusable and non-recycled plastic packaging
Effective date: 1 January 2024

Others: Product scope, measure (tax vs. EPR obligation) and actual implementation still under discussion

- New legislation implemented
- Draft legislation/not yet implemented
- Implementation planned (EPR or tax)
- Considerations (EPR or tax)



What EPR + Plastic Packaging Taxes are about

EPR (depends on country)	Plastic Packaging Tax UK	Plastic Packaging Tax Spain	German SUP levy (TBD)
Typical obligations: <ul style="list-style-type: none">▶ Registration▶ Reporting▶ Contribution▶ Contractual requirements▶ Information duties	Product covered: <ul style="list-style-type: none">▶ Packaging designed to be suitable for use in the supply chain or by single use by the consumer	Product covered: <ul style="list-style-type: none">▶ Virgin plastic packaging designed to hold, protect, manipulate, distribute, or present goods▶ Semi-finished plastic products (preforms, thermoplastic sheets) intended for production of non-reusable plastic packaging	Product covered: <ul style="list-style-type: none">▶ Food packaging (boxes for take-away)▶ Bags and foil packaging▶ Beverage container (up to three liters)▶ Lightweight plastic carrier bags▶ Wet wipes (for body and household care)▶ Balloons▶ Tobacco products with filter and filter for combination with tobacco products
Person in charge <ul style="list-style-type: none">▶ Who releases to market, e.g. manufacturer, intra-EU acquisition, import, eCommerce seller	Tax point <ul style="list-style-type: none">▶ Import, manufacture in the UK	Tax point <ul style="list-style-type: none">▶ Import, intra-EU-acquisition, manufacture in Spain	Tax point <ul style="list-style-type: none">▶ Initial release to the market
Typical products subject to EPR regulations: <ul style="list-style-type: none">▶ Packaging of all kinds<ul style="list-style-type: none">▶ Paper, cardboard, metals, glass, plastics, ...▶ Electronics▶ Batteries▶ Tires▶ Harmful products (mineral oils etc.)	Threshold <ul style="list-style-type: none">• Exceeding of 10 tons p.a.	Threshold <ul style="list-style-type: none">▶ 5 Kg per month	
	Person in charge <ul style="list-style-type: none">▶ Importer of record, manufacturer releasing to market	Person in charge <ul style="list-style-type: none">▶ Customs declarant, person doing intra-EU-acquisition, manufacturer releasing to market	Person in charge <ul style="list-style-type: none">▶ Who releases to market, e.g. manufacturer, intra-EU acquisition, import, eCommerce seller
	Tax rate <ul style="list-style-type: none">▶ 200 GBP / ton	Tax rate <ul style="list-style-type: none">0,45 Euro / Kg	
	When does it start <ul style="list-style-type: none">▶ 1 April 2022	When does it start <ul style="list-style-type: none">▶ 1 January 2023	When does it start <ul style="list-style-type: none">▶ Expect 2024, payments from 2025

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