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STRESS TESTING THE EUROPEAN GREEN DEAL:

THE 'SECURITISATION' OF ENERGY, FOOD AND CLIMATE



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Stress testing the European Green Deal: The ‘securitisation’ of energy, food and climate

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The European Commission’s Green Deal – adopted in December 2019 – proposes and will require profound changes to the EU’s economy. Notwithstanding the Commission’s commitment to maintaining quality of life, Europeans’ way of life will be profoundly affected by these changes.

In many ways, the Green Deal – and the vitally important environmental and climate goals that it represents – is a ‘stress test’ for the European Union. It pushes the boundaries of European integration and policymaking in order to safeguard its ability to deal with the climate change related challenges that are rapidly becoming more visible. The scale and scope of the Green Deal’s agenda are likely to reveal potential breaking points in the Commission’s capacity, and solidarity between Member States.

There has been little time to reflect on the early results of this stress test; the SARS-CoV-2 pandemic and the war in the Ukraine have presented additional, and extreme, stress tests. The humanitarian crises that both these events represent are daunting and heartbreaking. Sadly, they are not dissimilar to those that will follow the impact on the climate that will emerge if the Green Deal should fail under the pressure of these additional tests.

In this short piece, we want to draw attention to a particular policy narrative that has come to the fore in relation to these three interlinked stress tests: the perceived clash between, and therefore inevitable prioritisation of, security interests over environmental goals. Most notably, when framed as matters – national and/or European – of ‘security’, policy objectives, such as energy or food supply (Ukraine) and/or the viability of the healthcare system (pandemic), are seen as legitimately overriding, or even voiding, environmental or climate objectives.

Categorising issues as matters of security is a powerful and purposeful tool in the hands of governments, national and European. This categorisation expands the power of the executive, forces the legislature to take a backseat, and reduces the power of judges to hold the other branches to account. Budgetary problems vanish and individual freedoms can (sometimes justifiably) be trumped by the common good.

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For the Green Deal, the security issues raised by the pandemic and Russian aggression have laid bare one clear truth: to many political leaders, the environmental ambitions of the Green Deal remain additional, not fundamental. Moreover, they are not (yet) considered matters of national security. In some cases – as illustrated by the effect of the Russia-Ukraine war on EU energy policy – security and environmental concerns can be mutually reinforcing by, among other things, accelerating EU energy policy in previously unprecedented ways. In other cases, as with the EU’s Farm to Fork Strategy, the redesign of our food system, with a view to making it more resilient and sustainable, is viewed as incompatible with ensuring food security in the short term in the shadow of armed conflict.

These interacting test cases have laid bare different modes of failure in terms of: lack of adoption, implementation and enforcement; operational challenges; questions of competence; and the accountability of actors. In addition, and perhaps most importantly, they (should) highlight the presence of the dying elephant in the room: the environmental and climate crisis that continues to be underestimated in terms of the systemic security threat that it poses to the EU and its people.

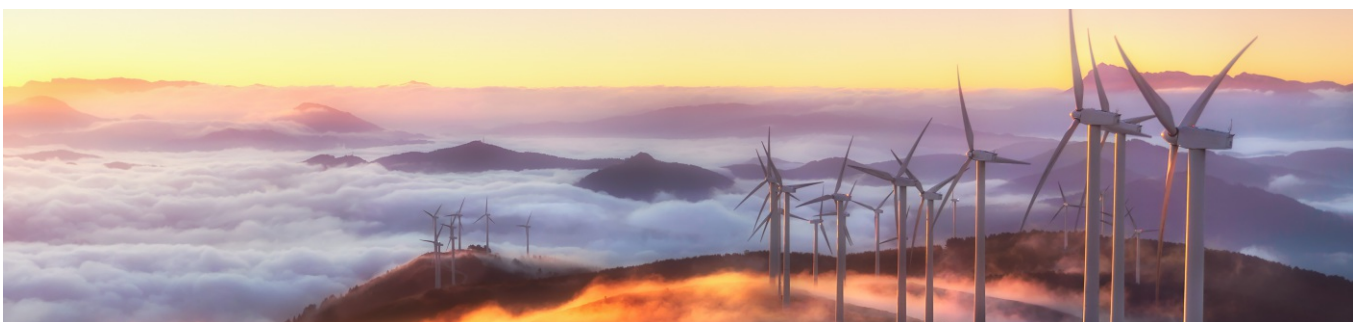
In this short piece, we distil lessons from these humanitarian crises – the war in Ukraine and the pandemic – and their impact on two important Green Deal areas – energy and food. We show how these lessons underline the need to recognise climate change as an equally important matter of national security, as well as the importance of having a more democratic and inclusive approach to imposing the appropriate measures to tackle such threats.

Energy security within the energy transition

Industrial energy production and use account for more than 75% of EU GHG emissions (4). The speed and pace at which the energy transition can take place are therefore determinative for the EU's climate change mitigation goals (5). In the EU, the shift from fossil-based energy to a more sustainable energy system is complicated by, among other things, the complexity of the EU multi-level governance system and shared competences; the differences in Member State financial capacity to bear the costs of the energy transition; and the dependence of several Member States on imported gas, oil and coal in their energy mix.

The political commitment to the energy transition has always varied between Member States. The recent crises have made these divisions resurface, partly due to pressures on Member State budgets (aggravated by the pandemic) and partly through exposing the vulnerability of the EU energy supply, which still relies heavily on foreign fossil fuels. While the current geopolitical situation has highlighted these tensions, they are not the only ones. The EU's growing competence in the area of energy policy and its new position as the driver of EU energy policy, as confirmed in the Green Deal, is another point of tension.

The Lisbon Treaty establishes energy policy as an area of shared competence between the EU and its Member States. This means that, when the principle of subsidiarity is fulfilled, the EU can legislate in this area. Specifically, the EU's energy policy should promote, among other policy goals, energy efficiency, energy-saving and the development of new and renewable forms of energy (6), while ensuring energy security of supply (7). Ensuring energy security and promoting energy transition have long been seen as conflicting policy goals. The rapid replacement of fossil fuels with renewable energy sources can put security of supply at risk. Intermittent wind and solar power does not provide the same reliability to the energy system of supply as fossil fuel sources, which means a gradual energy transition through a diverse energy mix is necessary (8).



4. European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - [The European Green Deal](#), COM(2019) 640 final, p. 6 (EU Green Deal).

5. Sovacool, Benjamin K. 'How Long Will It Take? Conceptualizing the Temporal Dynamics of Energy Transitions.' *Energy Research & Social Science, Energy Transitions in Europe: Emerging Challenges, Innovative Approaches, and Possible Solutions*, 13 (March 1, 2016): pp. 202–15.

6. Article 194(1)(c) of TFEU.

7. Article 194(1)(b) of TFEU.

8. Liebensteiner, Mario, and Matthias Wrienz. 'Do Intermittent Renewables Threaten the Electricity Supply Security?' *Energy Economics* 87 (March 1, 2020): 104499.

Apart from the subsidiarity criteria, the Lisbon Treaty sets additional limits on the EU's decision-making power in relation to energy policy. Most importantly, the EU's ability to set energy policy is limited by the Member States' continued sovereignty over their mix of energy sources (9). This sovereignty can only be curtailed by a unanimous decision of the Council (10). Until recently, these provisions of the Lisbon Treaty were viewed as an application/interpretation of the international law principle of permanent sovereignty over natural resources, where States maintain independent policy control over sectors with a solid connection to national security (11).

However, the Court of Justice of the European Union has limited the scope of this sovereignty through its interpretation of the EU's energy competence, specifically its ability to interfere with a Member State's energy mix for environmental reasons. In *Commission v Poland* (12), the Court dismissed Poland's claim that the EU greenhouse gas emission allowance market violated Poland's sovereign decision-making powers over the energy mix, and that any interference with this power should have been approved by the Council (13). The Court justified its reasoning through a restrictive interpretation of Member States' sovereignty over its energy mix, which should be read in conjunction with the EU's role in the preservation of the environment and the fight against climate change (14). This suggests that the EU is empowered to take decisions promoting renewable and low-carbon energy sources unless the primary outcome of the measures is to significantly affect Member States' choice's between different energy resources (15).

This judgment of the Court of Justice of the European Union has empowered the EU to set the pace and paths of the energy transition, as reflected in the EU's regulatory framework on renewables in the European Green Deal. In this respect, the Green Deal is a notable departure from the past, when the EU could only promote the energy transition by setting targets to increase the overall consumption of renewable energy sources at Union level, leaving the Member States free to determine which type of renewable source and non-renewable energy source to include in their energy mix.

The Green Deal is a notable departure from the past, when the EU could only promote the energy transition by setting targets to increase the overall consumption of renewable energy sources at Union level

9. Article 194(2) of TFEU.

10. Article 192(2)(c) of TFEU.

11. A. Johnston and E. van der Marel, 'Ad Lucem? Interpreting the New EU Energy Provision, and in Particular the Meaning of Article 194(2) TFEU' (2013) 22(5) *EEELR* 181, 183–4; K Haraldsdóttir, 'The Limits of EU Competence to Regulate Conditions for Exploitation of Energy Resources: Analysis of Article 194(2) TFEU' (2014) 23(6) *EEELR* 208; L Hancher and FM Salerno, 'Energy Policy after Lisbon' in P Beekhout and S Ripley (eds), *EU Law after Lisbon* (Oxford Scholarship Online 2012); A. Johnston and G. Block, *EU Energy Law* (Oxford University Press 2012) 5.

12. [Judgment of 21 June 2018, Poland v Parliament and Council, C-5/16 EU:C:2017:925](#),

13. *Ibid.*, para 32.

14. *Ibid.*, para 43.

15. *Ibid.*, para 46.

The Green Deal promotes the energy transition by relying on more ambitious production and consumption targets of renewable energy sources and energy efficiency. Moreover, this increase of renewable resources is foreseen to take place alongside ‘the rapid phasing out of coal and decarbonising gas’ by ‘enhancing support for the development of decarbonised gases’ for the first time (16). Decarbonising the gas sector means replacing natural (fossil) gases with biogas, biomethane, renewable and low carbon hydrogen, and synthetic methane, all of which are renewable and low-carbon gases. Therefore, the Green Deal marks a change in the Commission’s strategy in setting the path of the energy transition through determining the EU and Member States’ energy mix, specifically the reduction of fossil gas as an energy source. The Commission justifies this policy choice by reference to climate mitigation goals only, making no reference to the security of supply.

Gaseous fuels account for roughly 22% of total EU energy consumption. Fossil gases constitute around 95% of this. According to scenarios of the Climate Target Plan Impact Assessment released in 2020 (17), the share of gaseous fuels in the EU’s total energy consumption would be around 20% by 2050. Under the decarbonisation of the gas sector scenario, renewable and low-carbon gases would represent 66% of the gaseous fuels.

Important steps in the Green Deal’s energy plans implementation have been the legislative proposals within the so-called Fit for 55 Package (July 2021) (18), and the Gas Sector Decarbonisation Strategy (December 2021). The Fit for 55 Package included the refitted Renewable Energy Directive, which proposes to raise the binding target for the share of renewables in the EU energy mix to 40% by 2030 but makes no explicit reference to the decarbonisation of gas sector. However, the Gas Sector Decarbonisation Strategy proposes to reform the key EU legislative acts on the common rules for the internal market in natural gas, recasting them as a Directive on common rules for the internal markets for renewable and natural gases and for hydrogen, and a Regulation on the internal markets for renewable and natural gases and for hydrogen (19). The Commission’s proposals for this Directive and Regulation represent a complex reform aimed at removing barriers to access of renewable and low-carbon gases into the gas infrastructure, including for example discounts of entry tariffs and the elimination of cross-border tariffs, and equal access to the wholesale markets.

These legislative reforms were put forward during the ongoing energy crisis, after the sudden increase of gas prices in the second half of 2021 exposed the vulnerability of the EU’s energy system. Nevertheless, neither the ‘Exploratory memorandum’ nor the recitals of proposed reforms refer to the EU’s need to reduce its dependence on imported fossil fuels. On the contrary, the justification of the proposed reform remained consistent with the

16. EU Green Deal, *supra* n 1, p 6.

17. European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - [Stepping up Europe’s 2030 climate ambition Investing in a climate-neutral future for the benefit of our people](#), SWD(2020) 176 final.

18. European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - [‘Fit for 55’: delivering the EU’s 2030 Climate Target on the way to climate neutrality](#), COM(2021) 550 final.

19. European Commission. Proposal for a Directive of the European Parliament and of the Council [on common rules for the internal markets for renewable and natural gases and in hydrogen \(recast\)](#), COM(2021) 803 final; European Commission. Proposal for a Regulation of the European Parliament and of the Council [on internal markets for renewable and natural gases and in hydrogen \(recast\)](#), COM(2021) 804 final.



The REPowerEU represents an unprecedented acceleration of the transition to a low-carbon intensity energy market, facilitated through the combined pressures of the climate crisis and security of supply-crisis

political discourse of the European Green Deal; namely, that decarbonising the gas sector's policy is an important tool in mitigating climate change. Though generally very consistent, there have been some signs of a conflicting narrative. For example, the Commission's Delegated Regulation regarding the EU Taxonomy of environmentally sustainable economic activities (proposed in February 2022) argues that 'fossil gas [...] can contribute to the decarbonisation of the Union's economy' (20). This statement stands in stark contrast with the language and policies of the Green Deal, which speaks of the rapid decarbonisation of gas.

Since the war in Ukraine, the EU has embraced decarbonisation of the gas market as a tool to fight its energy security crisis, as well as the climate crisis. Shortly after Russia's invasion of Ukraine, the European Commission released the REPowerEU Communication (21), which was later consolidated as the REPowerEU Plan (22). The Communication stresses the feasibility of removing at least 155 bcm of fossil gas use – equivalent to the amount of gas currently imported from Russia in 2021 – by 2022, through additional gas diversification and more renewable gases, frontloaded energy savings and electrification. At the moment, the EU imports 90% of its gas consumption, with Russia providing more than 40% of the EU's total gas consumption. The REPowerEU represents an unprecedented acceleration of the transition to a low-carbon intensity energy market, facilitated through the combined pressures of the climate crisis and security of supply-crisis.

20. Recital 3, [Commission Delegated Regulation \(EU\) ... of 9.3.2022](#) amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities

21. European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - [REPowerEU: Joint European Action for more affordable, secure and sustainable energy](#), COM(2022) 108 final, p. 5 (REPowerEU).

22. European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions – [REPowerEU Plan](#), COM(2022) 230 final.

On 11 March 2022, there was an Informal meeting of the Heads of State or Government in Versailles, which confirmed this combined narrative of climate and energy crises. The war in Ukraine accelerated the EU's ambition levels, and its ability to implement these, consolidating its competence in this area. However, it is important to contextualise these developments by considering the historic division of power between the EU and the Member States in this area. Without, for example, the Court of Justice's interpretation of the Member State's discretion and sovereignty regarding its energy mix, the current situation could have had the opposite result; rather than Europeanisation, renationalisation of energy policy, with a high level of national protectionism would have been entirely possible, as we can see in the case of agricultural and food policy below. The legal groundwork laid by the Treaties, EU secondary law, and jurisprudence, provided the EU with the option to harness concerns of European energy security to push forward its energy and climate agenda.

Food security within the Farm to Fork Strategy

Our current food production and distribution system accounts for nearly one-third of global greenhouse gas emissions, contributes to biodiversity loss, and the depletion of natural resources (23). The consequences of under-, over-, and malnutrition on human health, and the negative socio-economic effects of our food system, further undermine its sustainability. The redesign of our food systems, so as to reconcile the latter with the needs of humans and the planet, has become a top priority of the European Commission, as set out in the Farm to Fork Strategy (F2F Strategy) (24).

The F2F policy aims to ensure access to healthy, sustainable and affordable food, while increasing the competitiveness of EU primary producers and improving the environmental impact of food production. A reduction of dependency on pesticides and antimicrobials, a decrease of nutrient loss, and the promotion of organic farming by 2030 are the focal points of this strategy.

Comparable to energy policy, agriculture and environment are shared competences between the EU and its Member States (25). The EU is empowered to act on matters in these policy areas, specifically in order to achieve the objectives of the common agricultural policy (CAP), as listed in the Treaties. Notably, the objectives of the CAP include increased agricultural production, a fair standard of living for the agricultural community, stabilisation of markets, ensuring availability of supplies and reasonable consumer prices, but there is no mention of environmental protection (26).

23. European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - [The European Green Deal](#), COM(2019) 640 final, p. 12 (EU Green Deal).

24. European Commission. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - [A Farm to Fork Strategy for a fair, healthy and environmentally-friendly food system](#), COM(2020) 381 final.

25. Article 4(2)(d) TFEU.

26. Article 39 TFEU.

Despite the EU's formative influence on the CAP, a 'renationalisation' process of the Common Agricultural Policy (CAP) started a few decades ago. The most recent iteration of the CAP, which will operate from 2023 onwards (27), represents a new step in this process with Member States required to submit national strategic plans to deliver on the CAP targets. Moreover, they are given considerable discretion in terms of decision-making, financing and implementation of agri-environmental measures.

This shift of competences from EU institutions back to the Member States poses coordination challenges both at the EU and national levels (28). Not every Member State is capable, or willing, to meet the ambitious targets set out by the Farm to Fork Strategy, which led to a number of national plans diverging from the environmental and climate commitments of the Farm to Fork Strategy and the EU Green Deal.

This implied criticism, or lack of support, of the F2F strategy has been mirrored by explicit critiques based on the Impact Assessment by the Joint Research Centre (JRC) of the Commission (29). On the one hand, the report shows that the F2F strategy, coupled with the new CAP and the Biodiversity Strategy (30), could help to deliver a significant reduction of agricultural GHG emissions by 2030. On the other hand, the report suggests there could



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27. [Regulation \(EU\) 2021/2115](#) of the European Parliament and of the Council of 2 December 2021 establishing rules on support for strategic plans to be drawn up by Member States under the common agricultural policy (CAP Strategic Plans) and financed by the European Agricultural Guarantee Fund (EAGF) and by the European Agricultural Fund for Rural Development (EAFRD) and repealing Regulations (EU) No 1305/2013 and (EU) No 1307/2013, OJL 435.

28. Schebesta H. and Candel J. J. L. *Game-changing potential of the EU's Farm to Fork Strategy*. *Nature Food* 1, pp. 586–588 (2020).

29. JRC. *Modelling environmental and climate ambition in the agricultural sector with the CAPRI model* (JRC Technical Report, 2021).

30. European Commission. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - [EU Biodiversity Strategy for 2030 Bringing nature back into our lives](#), COM(2020) 380 final.

To prevent a new food crisis, Member States are asking for an adjustment of the forthcoming legislative framework to loosen these rules and a redesign of the Farm to Fork Strategy according to the post-Ukraine war world

be trade-offs between environmental protection and agricultural production, leading to uncertainty when it comes to the strategy's ability to deliver its food security goal. Specifically, the JRC predicts that achieving the F2F's environmental goals would only be possible by outsourcing some of the EU's agricultural production, leading to an undesired reduction of the EU production capacity and of farmers' incomes (31). In parallel, the USDA's impact assessment shows that the F2F targets could leave 22 million people in food insecurity, as well as result in price increases, reduction of EU competitiveness in domestic and export markets, and make the EU more dependent on imports to feed its population (32).

These reports underline the tension between two key focus points of the F2F strategy: a more sustainable food system and a food secure system. For example, the F2F encourages the transition to more environmentally friendly but less productive practices, such as organic farming. Food inflation seems to be entrenched in the structure of the policy and the consequences of that have not been sufficiently investigated, especially in light of interactions between the F2F Strategy and the new CAP. Notably, ensuring food security and increasing productivity are still the main goals of the CAP, resulting in additional tensions.

The war in Ukraine has brought food security back into the arena for public debate. The stringent requirements expected from the implementation of the F2F Strategy would not allow for the easy extension of arable land, or a complete diversification of the sources of supply for several raw materials, such as wheat and corn. However, reduction in production does not have to result in food insecurity. Legal actions aimed at, for instance, food waste reduction, changes on the demand side, and special crisis management plans can counterbalance production problems.

To prevent a new food crisis, Member States are asking for an adjustment of the forthcoming legislative framework to loosen these rules and a redesign of the Farm to Fork Strategy according to the post-Ukraine war world, with the risk of prioritising productivity over al-

31. Ibid (21).

32. Beckman J., Ivanic M., Jelliffe J. L., Baquedano F. G., and Scott S. G..Economic and Food Security Impacts of Agricultural Input Reduction Under the European Union Green Deal's Farm to Fork and Biodiversity Strategies (USDA, 2020).

ready existing and grave environmental issues. As a response to pressure from the Member States, the Commission has proposed a package of 500 million euros – distributed through national allocations – to support EU farmers hardest hit by the crisis, particularly those engaged in more environmentally friendly practices, and allows them to temporarily grow crops on the almost 6% of agricultural land that should have been set aside to improve soil chemistry and increase biodiversity (33).

The Commission has also adopted a self-standing Temporary Crisis Framework (34) to complement the existing State aid toolbox and to remedy any serious disturbance in national economies. In case of emergency, the new CAP also empowers the Commission to adopt implementing acts that may derogate from the CAP provisions insofar as this is strictly necessary and justifiable to resolve specific and urgent problems, including food security (35).

At the same time, Member States are urged (and expected) to revise – within limits – their national CAP strategy plans and reinforce those elements necessary to maintain food security. As set out by the Lisbon Treaty, Member States can exercise their legal powers in the agro-food sector only when the EU has not (fully) exercised its competence. However, the political sensitivity and prominence of the perceived threat of food shortages may undermine this rule. Despite the EU's control over the F2F Strategy's implementation process, Member States may (be tempted to) reflect more national interests when adjusting their national strategic plans. This would undercut the EU's influence in this area and create tension regarding the relative competence of the EU and the Member States in this area. To prevent such a situation, these changes should be made in consultation with the Commission. Moreover, they should focus on supporting farmers in adopting practices that optimise the efficiency of fertilisers – and therefore our need to import them – and on implementing the new conditionality mechanism included in the CAP given the current circumstances.

The narrative that has developed through these measures, and the discussions preceding them, is that the F2F Strategy's environmental goals would be incompatible with ensuring food security. This issue was already raised before the war in Ukraine and has now moved centre-stage. However, this view ignored the intended position of the F2F Strategy as a bridging policy between, inter alia, the CAP and the Green Deal, aimed at addressing the interrelationship between climate change, agricultural production and biodiversity losses, and ensuring long-term sustainability. Notably, the F2F Strategy already includes a Contingency plan for ensuring food supply and food security in case of a potential food crisis (36).

33. European Commission. [Commission acts for global food security and for supporting EU farmers and consumers](#) (Press release, 2022).

34. European Commission. [Communication from the Commission - Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia](#), COM(2022) 1890 final.

35. Art. 148, Regulation 2021/2115.

36. European Commission. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - [Contingency plan for ensuring food supply and food security in times of crisis](#), COM(2021) 689 final.

The Contingency plan builds on existing national and EU policies – such as, for instance, national strategic reserves, direct payments to farmers and the Fund for European Aid to the Most Deprived (FEAD). The plan requires the establishment of a permanent European Food Security Crisis preparedness and response Mechanism (EFSCM), which relies on an appointed group of experts composed of the Commission, Member States, private food suppliers, and non-EU countries. The EFSCM adopts a collaborative and horizontal approach to anticipate food crises, identify the nature of their potential impacts *from farm to fork*, and coordinate the response at all levels, by monitoring market imbalances and trade flows, and mapping risks and vulnerabilities of the EU food supply chain. This group of experts is convened in case of exceptional, unpredictable and large-scale events threatening or potentially undermining EU food security.

The mechanism is not limited to pandemics but can also be triggered by armed conflicts, such as the war in Ukraine. Several legal instruments can be activated in this or similar cases. The Common Market Organisation (CMO) Regulation (37) has been already amended in line with this new approach to risk management and contingency planning, improving rules on the agricultural reserve and strengthening the EU's ability to be more flexible when responding to food crises.

Similarly, a legislative proposal on a Single Market Emergency Instrument, as part of the New Industrial Strategy (38), is expected. The proposal, which aims to limit unjustified restrictions to the free movement of goods, will curtail Member States' measures that limit exports for the protection of domestic food supply – a measure which would distort the Single Market and have a negative impact on food security in the medium and long-term.

Notwithstanding these developments, the legal roadmap of the F2F Strategy is expected to move forward as planned. While flexibility is possible in case of a crisis, the Member States' adherence to the F2F Strategy and Green Deal's aims, as well as the national CAP strategy, will still be required.

Frictions between the (limited) environmental scope of the new CAP and the (ambitious) targets of the Strategy cannot be ignored. Under the 2023 CAP, the achievement of climate targets set out by the F2F Strategy is heavily linked to voluntary measures while direct payments still reward a considerable number of farmers engaging in conventional agricultural practices, where weak or non-existent 'green' conditions are attached. Moreover, the environmentally-friendly voluntary measures are mostly related to the agricultural sector, disregarding environmental impacts from the remainder of the food supply chain. Despite the F2F Strategy's aspiring bridging role between the CAP and the Green Deal, the distance between them remains considerable.

37. [Regulation \(EU\) No 1308/2013](#) of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, OJ (2013) L 347.

38. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - [Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery](#), COM(2021) 350 final.

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The ‘securitisation’ of energy, food and climate

Securitisation, a term inspired by the Copenhagen School of Security’s securitisation theory (39), refers to the elevation of ‘normal’ policy matters into the security realm. There are, as mentioned, important consequences of such a change. The use of extraordinary (often military) measures becomes possible, and normal processes of democratic deliberation are curtailed, or entirely removed (40).

In the context of the EU, there are two important consequences of securitisation of policy issues. First, the existing division of competence between the EU and the Member States may be questioned. The Treaties state clearly that ‘national security remains the sole responsibility of each Member State’ (41). The Treaties do not define ‘national security’, though one may interpret the reference to ‘territorial integrity’ and ‘law and order’ as indications that national security continues to have a heavy military slant. This reading begs the question: what to do with threats that are increasingly seen as matters of national security, such as threats to our energy supply, food security, and climate?

39. O. Waever, ‘Securitization and Desecuritization’, in R.D. Lipschutz (ed.), *On Security* (Columbia University Press, 1995), pp. 46-86, at 56.

40. Ibid.

41. Article 4(2) of the Treaty on European Union.

The impacts of the pandemic and the war in Ukraine provide a mixed answer to this question. In some cases, such a security threat can be used to consolidate EU competences and to elevate the policy matter even higher, to a matter of European security – as we have seen with respect to energy security. In other situations, the result is less clear. The EU holds clear competence in the area of agriculture and food but this has not prevented some degree of renationalisation of these issues. The EU continues to play an important role through providing budgets and coordination but national interests are more prominent than European ones. Joint actions such as the EU’s agreement on the supply of natural gas with the US, have not materialised in the area of food security.

Securitisation of non-traditional security threats (such as climate) does not only affect how we treat this specific policy issue – for example through assigning more funding and a sense of urgency to the issue – but it has also affected the concept of securitisation itself. The latter is no longer intrinsically linked to militarisation, but instead reflects more broadly the severity of certain threats to society (42). This brings us to the second consequence of securitisation, which comes to the fore in the EU context, though is not limited to this context: the explicit and implicit hierarchy between policy goals.

As discussed in this piece, the categorisation of energy and food security as matters of national security trigger certain processes in terms of division of competence, and regulatory processes. A common denominator between these processes is that the democratic institutions of the EU, notably the European Parliament, often play a much more limited part. It also allows for the (temporary) suspension of other requirements, such as environmental requirements, in the implementation of certain measures and/or their results. Even if we accept, as many have suggested, that climate change and biodiversity loss are also matters of national security, acting in the interest of all these threats may be (perceived) as impossible or impractical. With respect to our two case studies, this is particularly noticeable in relation to the goals of the EU’s long-term Farm to Fork Strategy (and the Green Deal) and the desired measures related to food security. Ironically, however, food sustainability is a prerequisite of food security. Without this transition, food security will be severely at risk in the medium and long-term, with irreversible global impacts.

Even if we accept that climate change and biodiversity loss are also matters of national security, acting in the interest of all these threats may be (perceived) as impossible or impractical

The securitisation of climate change and other environmental problems is therefore not an easy fix to the type of situations described in this piece. As demonstrated by these latest ‘stress tests’, the need to consider the short, medium and long term effects of these and other threats remains and requires continuous democratic debate about our societal priorities, the risks that we are willing to accept, and the costs that different groups (now and in the future) can and should bear.

42. M.J. Trombetta, ‘Environmental Security and Climate Change: Analysing the Discourse’ (2008) 21(4) *Cambridge Review of International Affairs*, pp. 585-602, at 585-6.

News Highlights

27 June to 1 July 2022

Regulation on sustainability and gas emissions saving criteria published

Monday 27 June

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Commission Implementing Regulation 2022/996 on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land-use change-risk criteria was officially published.

Council adopts regulation on underground gas storage

Monday 27 June

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The Council definitively adopted a Regulation aiming to ensure that gas storage capacities in the EU are filled before winter and can be shared between Member States in a spirit of solidarity.

Interested parties invited to submit feedback on revisions to State aid de minimis regulation

Monday 27 June

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The European Commission launched a Call for Evidence inviting all interested parties to provide feedback on the proposed review of the *de minimis* State aid Regulation (1998/2006), which is set to expire on 31 December 2023.

Contracting parties agree to modernise Energy Charter Treaty framework and strip observer status from Russia and Belarus

Monday 27 June

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The negotiations on the modernisation of the Energy Charter Treaty finalised, resulting in a tentative agreement. The modernised ECT will facilitate sustainable investments by creating an up-to-date framework, in line with Paris Agreement.

EU Agenda on International Ocean Governance presented by Commission and High Representation

Monday 27 June

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An updated EU agenda on International Ocean Governance to manage the oceans in light of climate change, biodiversity loss, and pollution was presented in a Joint Communication of the European Commission and the High Representative.

Council proposes climate transition measures on further use of renewables and energy efficiency

Tuesday 28 June

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The Council adopted its general approaches on two legislative proposals that tackle the energy aspects of the EU's climate transition under the 'Fit for 55' package: the Renewable Energies Directive and the Energy Efficiency Directive.

Several actions challenging Council sanction-measures in context of Russia-Ukraine war published

Tuesday 28 June

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Several individuals brought actions before the General Court against the Council of the European Union for imposing sanctions in the context of the Russia-Ukraine war, six rounds of sanctions now having been put into place.

Grand Chamber hearings concerning judicial independence in Poland to be streamed by Court of Justice

Tuesday 28 June

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From 30 June the Court broadcasted several hearings concerning Poland's rules on the creation, composition, and powers conferred to the Polish Disciplinary Chamber of the Supreme Court, considered by the Commission as not constituting an independent judicial body.

EDPS raises concerns about data protection rights under the amended Europol Regulation

Tuesday 28 June

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The European Data Protection Supervisor expressed its concerns that the amendments to Europol Regulation weaken the fundamental right to data protection and do not ensure an appropriate oversight of Europol.

Court of Justice to clarify if national financial authorities can supervise and impose restrictions on car leasing

Tuesday 28 June

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Official publication was made of a request for a preliminary ruling submitted by the court in Croatia seeking clarification on limits of national supervision of car leasing activities.

Court of Justice: Spanish legislation on State liability for breaches of EU law infringes principle of effectiveness

Tuesday 28 June

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The Court of Justice ruled in *Commission v Spain* that Spain failed to fulfil its obligations under the principle of effectiveness by imposing stricter conditions governing State liability for damages caused to individuals by acts of the legislature in breach of EU law.

Commission's Annual Report on Taxation for 2022 proposes reform of tax framework

Wednesday 29 June

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The Commission analysed the design and performance of Member States' tax systems, and observed a decrease in Member States' tax revenue – for the first time since the 2009 financial crisis – in its Annual Report on Taxation for 2022.

Council and European Parliament agree to strengthen resilience of critical entities

Wednesday 29 June

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The Council and the European Parliament have reached a political agreement on the directive on the resilience of critical entities. The proposal aims to reduce vulnerabilities and strengthen physical resilience of critical entities.

European Court of Human Rights publishes new guide on its case law concerning EU law

Wednesday 29 June

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A guide analysing and summarising the case law of the European Court of Human Rights on EU law was published on the ECtHR's website. The aim of the guide is to inform legal practitioners about the ECtHR's key judgments and decisions that reference EU law.

ECtHR: drawing up and leaking police report on judges who signed Catalan-independence manifesto violates Article 8 ECHR

Wednesday 29 June

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The European Court of Human Rights held that the right to privacy was violated by the drawing up of a police report extracting the applicants' personal data and the leaking of photographs, in a case brought by 20 judges who had signed a manifesto on the Catalan people's 'right to decide'.

Towards climate neutrality: Council adopts general approaches on various proposals in Fit for 55 package

Wednesday 29 June

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The Council adopted its negotiation positions on several important legislative proposals in the 'Fit for 55' package, which places the Council now in a position to start negotiations with the European Parliament to conclude the package.

Ombudsman's reply: maladministration over Commission's handling of von der Leyen's text messages with Pfizer CEO

Wednesday 29 June

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The EU's Ombudsman found that the Commission committed maladministration by not providing access to text messages between its President and the CEO of Pfizer relating to COVID-19 vaccine purchases, and issued a Recommendation to provide access.

Appointments of Judges to the General Court of the Court of Justice of the European Union

Thursday 30 June

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As the end of the mandate approaches for 26 judges at the General Court, on 31 August 2022, new appointments and reappointments were announced, and the draft Decision of the representatives of the governments of EU Member States putting the appointments into effect has been published.

EU co-legislators reach provisional agreement on crypto asset transfers

Thursday 30 June

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The Council and the European Parliament reached a provisional agreement on updating rules on information accompanying the transfers of funds by extending the scope of those rules to transfers of crypto assets.

Council adopts its mandate on EU's secure connectivity programme

Thursday 30 June

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Member States agreed on a mandate for negotiations with the European Parliament on the proposal for a Regulation on the EU secure connectivity programme for the period 2023-2027.

Commission investigates Czech support for new nuclear power plant in Dukovany

Thursday 30 June

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The European Commission opened an in-depth investigation to assess whether public support that Czechia plans to grant for the construction of a new nuclear power plant in Dukovany is in line with EU State aid rules.

Council agrees on creating a new authority for anti-money laundering

Thursday 30 June

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The Council agreed its partial position on the proposal to create a new EU body to help fight against money laundering.

Lithuanian emergency migration law restricting access to international protection and extending grounds for detention is unlawful: Court of Justice

Thursday 30 June

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The Court of Justice ruled that Lithuanian law, adopted in the state of emergency as a response to mass influx of immigrants from Belarus, is contrary to EU asylum law since it significantly restricts access to international protection and allows the detention on the ground that migrants have crossed the national border illegally.

Court of Justice admits Danish trade association's action against Commission's State aid decision and clarifies 'direct concern' notion

Thursday 30 June

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In *Danske Slagtermestre v Commission* (C-99/21P), the Court of Justice annulled the General Court's order declaring the action against a State aid decision inadmissible after finding that the applicant was directly concerned by the decision.

ECtHR orders Russia to stop execution of death penalties imposed on two prisoners of war in Donetsk

Thursday 30 June

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The European Court of Human Rights granted interim measures ordering Russia to ensure that (i) the death penalty imposed on two British prisoners was not carried out, (ii) ensure appropriate conditions of their detention, and (iii) provide them with any necessary medical assistance.

Court of Justice confirms judgment dismissing Fakro's abuse of dominance complaint against its competitor

Thursday 30 June

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In *Fakro v Commission* (C-149/21 P), the Court of Justice upheld the judgment of the General Court, by which it dismissed the action lodged by Fakro against the Commission's decision that rejected Fakro's complaint alleging infringements of Article 102 TFEU in the market for roof windows and flashings.

New Digital Strategy adopted by the Commission

Thursday 30 June

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The European Commission adopted a new Digital Strategy under the theme 'Next Generation Digital Commission', which provides a corporate approach to further streamline IT initiatives, promote digital modernisation, and guarantee innovative service provision.

Court of Justice: preventing the reception of two benefits under the same social security scheme is incompatible with EU law

Thursday 30 June

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The Court of Justice ruled that the Spanish Social Security system is discriminatory on grounds of sex when it deems that two benefits awarded under different social security schemes are compatible but prohibits the receipt of two benefits under a single scheme.

Court of Justice clarifies conditions under which EAWs may be issued

Thursday 30 June

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The Court of Justice clarified whether issuing judicial authorities must inform requested persons of the grounds on which a national arrest warrant has been issued and the possibility to challenge it when issuing a European Arrest Warrant (C-105/21).

EU and New Zealand conclude Trade Agreement with a goal to boost new sustainable export opportunities

Friday 1 July

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The European Union and New Zealand concluded an ambitious trade agreement, which is set to open significant economic opportunities for companies and consumers on both sides, achieve the Paris Climate Agreement's goals and ensure the respect for core labour rights.

EU co-legislators provisionally agree on Regulation on Foreign Subsidies distorting the Internal Market

Friday 1 July

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The Council of the European Union and the European Parliament reached a provisional political agreement on harmonising legislation to address the economic effects of subsidies granted by third countries to companies operating in the EU's Single Market.

EU co-legislators provisionally agree on first ever EU-harmonising rules to regulate European crypto-assets

Friday 1 July

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Addressing the largely unregulated digital finance field in which crypto-assets are traded, the EU's co-legislators reached provisional agreement on a harmonising Regulation that would impose obligations on crypto-assets service providers and crypto-assets insurers.

EU and US agree to continue cooperating to face Ukrainian war and other transnational challenges

Friday 1 July

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The European Union and the United States adopted a joint statement following the EU-US Justice and Home Affairs Ministerial Meeting on 23 June 2022, in Paris, focusing mainly on the war in Ukraine and security issues.

Council requests Parliament's consent to include violation of restrictive measures to 'EU crimes' list

Friday 1 July

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The Council of the European Union requested the European Parliament's consent to include the violation of restrictive measures to the list of EU crimes enshrined in the TFEU, in the context of sanctions imposed on Russia for its war against Ukraine.

AG Pitruzzella Opinion on processing of genetic and biometric data for criminal investigation purposes

Friday 1 July

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Advocate General Pitruzzella adopted his Opinion in *Ministerstvo na vatreshnite raboti () and génétiques par la police* (C-205/21), advising the Court on the right balance to be struck regarding the processing of genetic and biometric data during criminal proceedings against the data subject.

Insights, Analyses & Op-Eds

The devil is in the detail: Ryanair's challenge to the recapitalisation of Finnair – *Finnair II* (T-657/20)

by Małgorzata Cyndecka

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Analysis of the General Court's judgment in case *Ryanair v Commission (Finnair II; Covid-19)*, in which the General Court dismissed an action filed by Ryanair against the European Commission's decision in State aid case SA.57410. The author indicates that Ryanair's willingness to challenge State aid that has been granted in favour of its competitors has contributed to interesting clarifications in the field of State aid law.

Is There Discretion to Contest the Legality of Alert in the Schengen Information System (SIS): Exploring *Nachalnik na Rayonno upravlenie Silistra* (C-520/20)

by Niovi Vavoula

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Op-Ed on the Court of Justice's judgment in *Nachalnik na Rayonno upravlenie Silistra* regarding the interpretation of Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System. The author believes that the Court clearly favours automaticity at the expense of procedural safeguards and fundamental rights protection, even in cases where the criminal alert clearly did not meet the requirements and objectives of the Council's Decision.

Clarifying the notion of 'Single and Continuous Infringement': the optical disc drivers cartel cases

by Stavros Makris

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Op-Ed on the Court of Justice's judgments on the optical disc drivers cartel cases, setting aside the General Court's decisions, but upholding the amounts of the fines imposed (116 million euros). The author considers that the Court clearly articulated the relationship between single and continuous infringement and separate infringements, and as a result it set clear evidentiary requirements that the Commission would have to satisfy to make out its claims.

Will the national courts get lost in the Court of Justice's maze? The *Volvo and DAF Trucks* judgment

by Guilherme Oliveira e Costa

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Analysis of the Court of Justice's judgment in the *Volvo and DAF Trucks* case, interpreting Articles 10, 17(1), 17(2) and 22 of the competition law damages Directive 2014/104/EU. The author considers that the judgment is clear on the differentiation between substantive and procedural provisions of the Directive. Nonetheless, it also raises several questions that could lead national courts to get lost in the Directive's *ratione temporis* application.

Filling the Gaps: Recognition of Qualifications of Young Professionals Case C-577/20

by Lavinia Kortese

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Analysis of the Court of Justice's ruling in the case *Sosiaalija terveysalan lupa- ja valvontavirasto (Psychotherapeutes)*, which clarifies the scope of application of EU law in relation to regulated professions. The author concludes that the specifications made in terms of the evidence used in a comparative examination of the home and host Member States' qualifications balances freedom of movement with the protection of public health.

The Court of Justice strikes down Austrian attempt to indirectly discriminate against migrant families due to budgetary considerations – Commission v Austria (C-328/20)

by Yvette Lind

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Op-Ed on the Court of Justice's ruling in case *Commission v Austria*, concerning the connection between tax liability and entitlements to state benefits. The author considers that in this case the Court has, once again, underlined the importance of not allowing discrimination of migrants through national tax and/or social security systems which, in the present political climate in Europe, makes it a highly relevant ruling.

EU environmental objectives: constricting 'flexibilities' in the Energy Charter Treaty?

by Tine Deschuytere

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Op-Ed on the agreement on a reform of the Energy Charter Treaty (ECT) reached by the Contracting Parties of the ECT. The author argues that if the EU wants to alter its 'credible example' and 'convince and support' others in realising more stringent changes in economic measures, it will have to drastically reinterpret these objectives or utilise the ratification process to negotiate less 'flexible' outcomes.

As strict as you like – the data protection officers protection against dismissal according to the GDPR

by Daniel Wasser,
Nardin Maarouf-Wasser and
Vagelis Papakonstantinou

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Op-Ed on the Court of Justice's ruling in *Leistritz AG* that concluded that the German legislature can lawfully provide for a higher level of protection for DPO's against dismissal than is set out in the EU's GDPR. The authors argue that the decision is to be welcomed but nonetheless causes practical difficulties since employers will face problems in ending employment relationships with a Data Protection Officer.

Ligue des droits humains: The Court of Justice confirms the validity of the Passenger Name Records Directive... and redrafts it

by Alberto Miglio

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Op-Ed on the judgment of the Court of justice (C-817/19), which confirmed the validity of the Passenger Name Records (PNR) Directive, and also significantly restricted what constitutes lawful processing of PNR data by Member States' authorities. The author argues that it is hard to assess the extent to which the judgment effectively enhances the protection of fundamental rights since the processing of PNR data practically entails a significant margin of error.

Playing in the sand with AI – a way forward for participation in Risk Regulation?

by Danai Petropoulou Ionescu

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Analysis of the pilot of the first regulatory sandbox on Artificial Intelligence (AI) presented on 27 June 2022 by Spain and the European Commission. The sandbox aims to bring together regulators and practitioners to define and share best practices and produce post-legislative guidance for the eventual implementation of the AI Act. In the author's view, it can enable participation without creating an undue burden on the regulatory authorities to conduct wide and time-consuming consultations while still maintaining a participatory quality.



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