

External EU Energy Sovereignty

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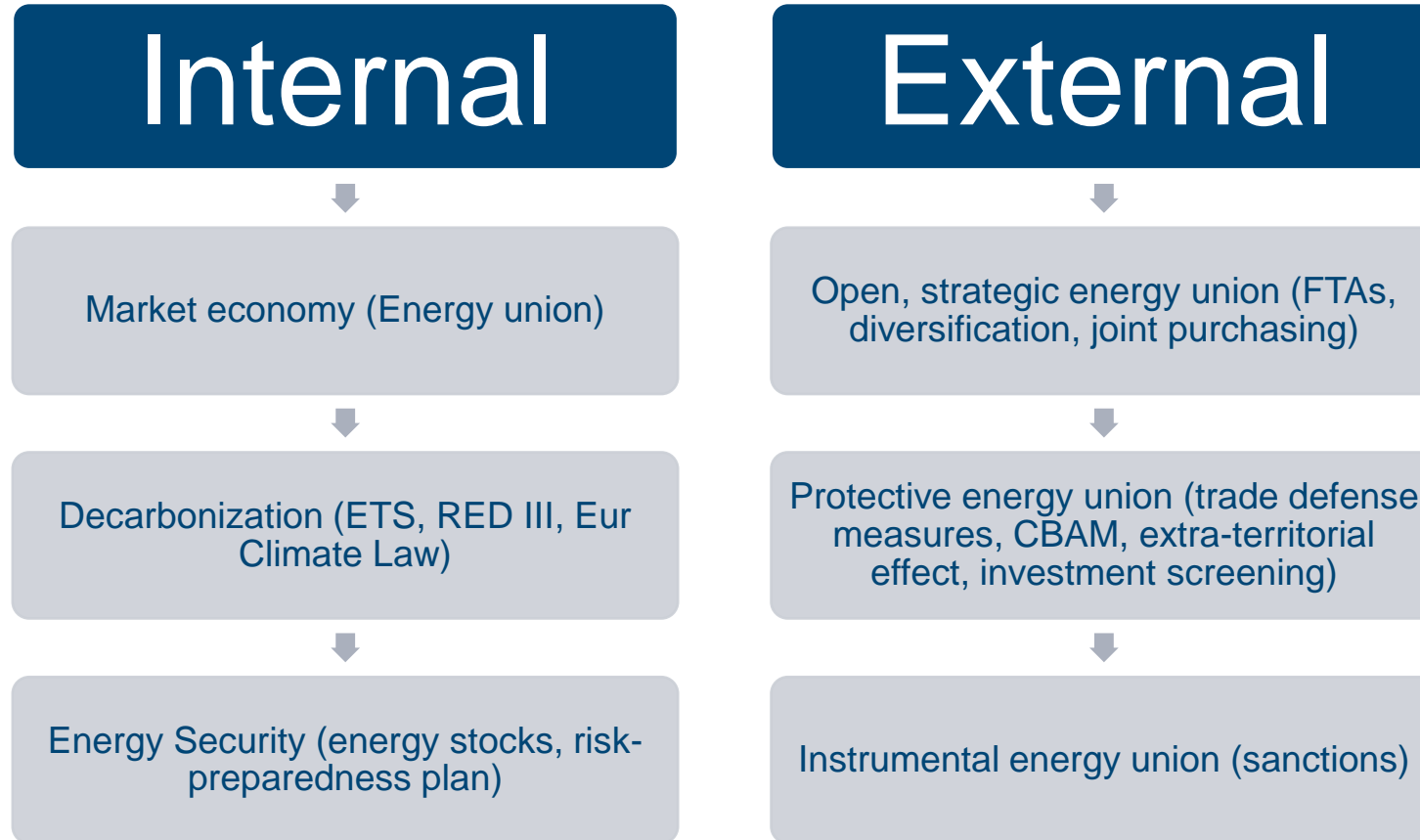
Structure of this seminar

 1 Overview: external sovereignty instruments

 2 Open, strategic energy union

 3 Protective energy union

1 Overview: Aspects of an EU Energy Sovereignty



2 Open, strategic energy union

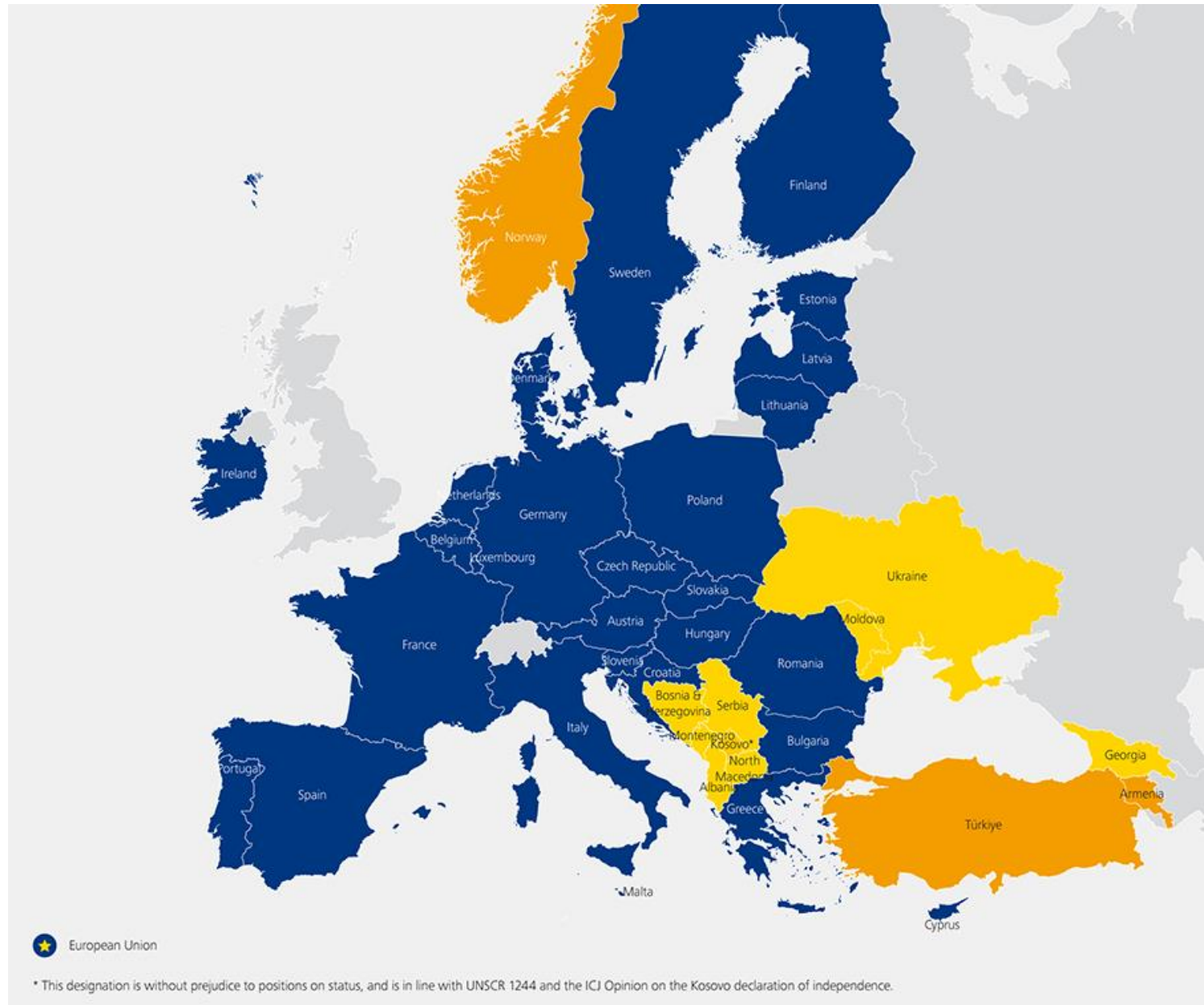
- Multilateralism (Art. 21 para. 1 subpara. 2, para. 2 lit. e and h TEU)
- 2021: Open, strategic autonomy as a general trade policy
- Comparative economic advantages should generate welfare gains
- Increasing tensions between US and China, crisis of multilateralism in practice (e.g. paralysis of WTO dispute settlement since 2019)

2 Open, strategic energy union

- EU tries to deepen ties with like-minded partners
- Energy Community
 - International organization created by the 2005 Treaty Establishing the Energy Community, entered into force in 2006
 - Members: EU, Albania, Bosnia and Herzegovina, Georgia, Kosovo, Moldova, Montenegro, Serbia, the Republic of North Macedonia and Ukraine
 - Obligation: Adhere to core provisions of EU energy law (*acquis communautaire on energy, on environment, on competition, for renewables*) to allow for cross-border energy and gas networks



2 Open, strategic energy union



2 Open, strategic energy union

- EU Free Trade Agreements
 - Provisions and chapters on trade and investment in energy
 - Sustainability and environmental protection chapters
 - For example concluded with Singapore, Vietnam, Japan, Canada (provisionally applied), New Zealand

2 Open, strategic energy union

- Diversification
 - Prevent dependancy from a few or one third state
 - 2021: 41 % of EU gas imports from Russia, down to 9 % in Sept. 2022 (LNG instead)
 - Diversification as a new aspect of EU legislation
 - Governance Regulation (EU) 2018/1999: National energy and climate plans must describe national goals must explain measures “increasing the diversification of energy sources and supply from third countries, the purpose of which may be to reduce energy import dependency” (Art. 4 lit. c)
 - Trans-European Networks Regulation (EU) 2022/869: Diversification is a relevant criterion to determine projects of mutual interest” with third states which EU law prioritizes over other projects (Art. 4 para. 2 lit. e no ii)

2 Open, strategic energy union

- Joint Purchasing
 - Traditionally, member states (or rather: their companies) buy energy on the markets, sometimes in competition with another
 - New approach: Joint EU purchasing
 - Regulation (EU) 2022/2576 of 19 December 2022: Joint Purchasing Scheme
 - At first on a provisional basis and voluntarily
 - Coordination to pool demand for gas (demand aggregation) as part of the new EU Energy Platform
 - Extension for another 12 months, Council Regulation (EU) 2023/2919
 - Mid term tenders for the period of 2024-2029, introduced early 2024 as part of “AggregateEU”

3 Protective energy union

- Idea of claiming non-intervention by third states in EU energy affairs
- Protect against shocks caused by natural catastrophes and actions by third states, e.g. the Russia's act of aggression against the Ukraine
- Actively pursue EU energy interests abroad
- Example 1: Trade defence measures against Chinese over-subsidized and dumping products forming part of renewable technology
 - Counterveiling and anti-dumping duties, e.g. against Chinese solar panels
- Example 2: Carbon Border Adjustment Mechanism

3
Protective
energy
union



3 Protective energy union

- Carbon Leakage: Emissions-heavy industry may relocate to a non-EU country so that it is not subject to the EU ETS, and then import products into the EU
 - For example: Steel and cement
 - So far prevented because these industries get free ETS allowances
- Idea: EU importers must pay a charge that is equal to what they would have paid if they had produced in the EU (and had bought EU ETS allowances)
 - At the same time, the emissions-heavy industries in the EU must start buying EU ETS allowances as well (level playing field)
- Becomes fully operational in 2026

3 Protective energy union

- CBAM is an instrument of a protective energy union because
 - It is a unilateral measure
 - That uses the EU single market as leverage
 - To enforce climate change standards for production that happens abroad
 - EU even provides incentives for third states to introduce climate change policies similar to the EU's
 - You get exempted if you have an ETS that is linked with the EU's (Switzerland)
 - If you apply carbon pricing (either with an ETS, or for example a carbon tax), you get partial exemption (and you can thus keep the money raised from the companies)
- But: Compliance with international law, esp. WTO and climate change law?

Conclusion

- Internal and external energy law is intertwined
- The EU increasingly uses its competences to shape external energy policy
- It aims at becoming autonomous as far as necessary, which we may understand as an approach for an external EU energy sovereignty
- There are open-strategic, protective and instrumental instruments of external EU energy law

Thank you for your attention!