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UNIVERSITÀ DEGLI STUDI DI ROMA "FORO ITALICO"

Rivista scientifica trimestrale di diritto amministrativo (Classe A)

Pubblicata in internet all'indirizzo www.amministrativamente.com

Rivista di Ateneo dell'Università degli Studi di Roma "Foro Italico"

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Redazione
Giuseppe Egidio Iacovino, Carlo Rizzo

FASCICOLO N. 1/2022
Estratto

Iscritta nel registro della stampa del Tribunale di Roma al n. 16/2009

ISSN 2036-7821

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Rivista scientifica trimestrale di diritto amministrativo
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ISSN 2036-7821

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A Carbon Tax to Regulate CO2 Emissions: the EU´s Road to an Environmental Taxation System*

di Laura Letizia

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Summary

1. Introduction. 2. ¬Overview of the relationship between environmental taxation and the principle referred to in article 53, paragraph 1, of the Italian Constitution. 3. ¬The areas of environmental taxation. 4. Changes on the "Emissions Trading Scheme" (ETS-EU). 5. A new framework for energy and electricity taxation. 6. ¬The complexity of introducing a carbon tax at European borders. 7. Carbon taxation not only at the "borders". 8. The remote prospect of a minimum global tax on environmentally harmful emissions.

Abstract

Among the proposals of the European Commission, expressed in the "Fit for 55", in addition to the extension of the ETS-EU to other highly energy-intensive sectors and the rewriting of the ETD Directive, one aims at setting a "price" on carbon through a tax to be levied on imports of products incorporating it, embarking on a far-reaching reform of the EU's public finances with actions to promote ecological transition, and at the same time, limit negative externalities due to the use of fossil fuels. An alternative to this measure could be the introduction of a carbon tax not only at the borders but this, just like the previous one, brings out more application complications. With regard to a global tax on CO2 emissions, this is a proposal which appears at the moment unrealistic.

* *Il presente lavoro è stato sottoposto al preventivo referaggio secondo i parametri della double blinde peer review.*

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1. *Introduction.*

The European Commission between the end of 2019 and the beginning of last year approved the (new) *Green Deal*[1] – a strategy for growth based on the paradigms of the circular economy and ecological transition[2] – with the purpose of introducing a set of resilient activities, also related to the production, distribution and consumption of goods and services with low emissions of greenhouse gases, in order to improve the living conditions of humankind and the planet while preserving the UE from significant environmental shortcomings and emergencies.

In truth, the theme for an economic reconversion in an ecological sense had emerged globally since the previous economic-financial crisis[3], but the growing negative effects of climate change, especially due to intense industrial activity with correlated quantities of net carbon emissions (and associated pollutants), has accelerated the process also in Europe due to the severity of the "pandemic" health, social and economic shock in the increased awareness of a collective responsibility in this direction cannot be further postponed[4].

Everything, must be done on the basis of regulated timing and through interconnected actions[5], preparing "Recovery and Resilience Plans"[6] so that the Member States receive the funding to be funneled, among other things, into the energy and climate goals[7] i.e. developing eco-innovative solutions to make their

* The essay reproduces, with additions, the report entitled "The complicated prediction of a Carbon Border Adjustament Mechanism among the fiscal measures of the Fit for 55", carried out at the Summer School in "Circular Economy and Environmental Taxation", Department of Law, University of Bari "Aldo Moro", 21 September 2021

[1] COM(2019) 640; COM(2020) 80 final.

[2] A.F. URICCHIO, *I tributi ambientali e la fiscalità circolare*, in *Diritto e pratica tributaria*, 5/2017, 1849.

[3] See E.B. BARBIER *Rethinking the Economic Recovery: A Global Green New Deal*, Report commissioned by United Nations Environment Programme, April 2009; E.B. BARBIER, *Greening the Post-pandemic Recovery in the G20*, in *Environ Resource Economy*, 76/2020, 685 - 703.

[4] EUROPEAN COMMISSION, *Reflection paper on the deepening of the Economic and Monetary Union*, 3 May 2017; COM(2020) 456 final.

[5] COM 2020) 456 final.

[6] After approval on 27 April 2021, the Italian PNRR was sent to the Commission, providing in its second mission the green "revolution" and ecological transition plus areas of intervention, including: circular economy and sustainable agriculture; energy transition and sustainable mobility; energy efficiency and renovation of buildings; protection of land and water resources. For a critical view of the new tax revenues, see G. BERETTA - G. BIZIOLI, *Covid 19 and Fiscal Policies: Italian's Tax and Fiscal Policy Measures at Time of Covid-19 Crisis: 'Tax Peanuts' Without a New Deal*, in *Intertax*, 8/2020, 761 - 764. For an general reading, see A. COMELLI, *Riflessioni sulla tassazione ambientale, all'epoca della pandemia innescata dal COVID-19, nella prospettiva di un'ampia riforma tributaria*, in *Diritto e pratica tributaria*, 1/2021, 44 - 67; P. SELICATO, *Accordi europei e fiscalità nazionale: le ricadute dell'emergenza COVID-19*, in *federalismi.it*, 7/2021, 205 - 247.

[7] Additional environmental objectives to be pursued include adaptation to sustainable use, protection of water and marine resources, protection and restoration of biodiversity and ecosystems. See, COM 2021) 188 final. At international level, see OECD, *Overview of Sustainable Finance Definitions and Taxonomies*". *Developing Sustainable Finance Definitions and Taxonomies*, Paris 2020.

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production models sustainable[8], that is, aimed at the correct use of natural resources[9] to contain global warming below 1 and a half degrees in relation to pre-industrial levels, as recently defined by the "Glasgow Climate Pact"[10] in "COP26".
In any case, the proximate intent being intervening with a mix of additional and complementary policy actions limiting harmful net emissions in order to reduce them, by 2030, to 55 % of those relative to 1990 levels.
Ultimate goal is, instead, set for 2050, therefore overcoming the ambitions of "Europe 2020 Strategy" and those of "Agenda for Sustainable Development"[11], with the (almost) total decarbonization of our continent.
This measure was presented on July 14, 2021 in the communication "Fit for 55"[12] to implement the (new) Green Deal, where the sustainability outlook of the "Climate Act"[13] has become binding: interventions for the transformation of the economy, even in "blue", will require additional tax proceeds that favor a redistributive approach[14].
Consequently, the 2021 - 2027 long-term EU budget and the own resources decision[15] have been modified by «reversing the financial flows»[16], to secure new funding for the following initiatives: Social Climate Fund, Regional Development and Cohesion Funds, European Social Plus and the Just Transition Fund[17].
The latter, consisting of territorial plans, specific areas of intervention and resources to be allocated to the Euro-States, is aimed at facilitating the transition of the traceable production of carbon emissions to a low-emission energy sources model that needs to be implemented «at equal speed»[18].

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[8] On the concept of sustainable development using a green economy, see D.W. PEARCE - A. MARKANDYA - E.B. BARBIER, *Environmental Sustainably and Cost-Benefit Analysis*, in *Environment and Planning A*, 22/1988, 1259 - 1266.

[9] COM(2020) 457 final; previously, see resolution 2018/2279 (INI), strategic relationship P8 TA(2019) 0220 and EESC, *Reflection Paper Towards a sustainable Europe by 2030*, referral: COM(2019) 22 final.

[10] In the final text of 13 November 2021.

[11] COM(2018) 773 final; COM(2020) 80 final; COM(2020) 562; SWD(2020) 176 final – Investing in a climate-neutral future for the benefit of our people. Differently, European Parliament intends to reach a more ambitious goal, namely to eliminate 60% of harmful emissions by 2020, while the Glasgow Conference, in the final document, indicated the "cut" to 45% by 2030 (compared to 2010). See, respectively, resolutions 2019/2582, 2020/20423, decision/CP.26.

[12] COM(2021) 550 final.

[13] Regulation (EU) 2021/1119 of the European Parliament and the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) 401/2009 and (EU) 2018/1999.

[14] F. GALLO, *Il tributo quale indispensabile strumento di politiche ridistributive*, in *Rassegna tributaria*, 2/2021, 273.

[15] Council Decision (EU, Euratom) 2020/2053, December 14, 2020.

[16] UNFCCC, article 2, (b) - (c), of the Paris Agreement, December 12, 2015.

[17] COM(2020) 0022.

[18] Regulations (EU) 2021/1058, 2021/1057, 2021/1056, June 24, 2021. For companies already focused on environmentally friendly activities, the Green Deal represents a great opportunity for development; for others, in particular for those operating in the carbon intensive sectors, the ecological transition implies a wide review of their business models and huge investments while entailing, in the short term, an increase in costs. See ASSONIME, *Innovare per la crescita sostenibile: strategia d'impresa e politica pubblica*", Note e Studi, 5/2021. On the origin of the

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The Commission has also proposed several corrections to the directives on promotion and use of renewable energies, energy efficiency, taxation of the European framework on energy products and electricity, emissions trading scheme (and related laws), international air transport and infrastructure for alternative fuels[19].
Other intentions are to review the regulations on the standards of carbon emissions of new cars and light commercial vehicles, on the sharing of efforts to reduce them annually (2021-2030), on the use and change of use of land and forestry[20].
Furthermore, there is a determined effort to change the decision on the Market Stabilizing Reserve for greenhouse gas emission trading quotas[21] and to establish a carbon adjustment mechanism at the borders aimed at setting a price, through a tax, to the imports of the most polluting products in relation to the referable levels[22].
In practice, the *mission* of environmental taxation[23] presents[24] the usual traits in the ability to guide taxpayers in their choices[25], correct the ineffective market results, increase the profit of companies[26], facilitate general welfare purposes[27].
The Institution has, indeed, (re)considered the indirect effects that the new expressions of green taxation could determine by reducing public spending associated with *health risks*[28] and, in the long term, provide unprecedented

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term "sustainability", see K. BOSELMANN, *The Principle of Sustainability. Transforming law and governance*, Ashgate, Aldershot 2008, 9.

[19] See the directives 2018/2001/EC (RED II), of 11 December 2018; 2018/2002/UE (EED), on the same date, amending 2012/27/ EU; 2003/96/ EC (DTE), of 27 October 2003; 2003/87/EC (ETS-EU), of 13 October 2003; 2003/87/EC (CORSIA), on the same date; 2014/94/EC (AFID), of 22 October 2014; EU Regulations 2019/631 (RfG), of 17 April 2019; 2018/842 (ESR), of 20 May 2018; 2018/841 (LULUCF), of 30 May 2018.

[20] Regulation (EU) 2019/631 (RfG), April 24, 2019; 2018/842 (ESR), May 20, 2018; 2018/841 (LULUCF), May 30, 2018.

[21] Decision 2015/1814/EU (MSR), of October 6, 2015.

[22] COM(2021) 564 final - 2021/0214 (COD), July 14, 2021. In fact, the idea of providing carbon pricing was re-launched by E. MACRON, *Initiative pour l'Europe. Discours pour une Europe souveraine, unie, dèmotratique*, Sorbonne University, September 26, 2017.

[23] For a definition of environmental taxation, see C. SACCHETTO, ***Tassa, in Enciclopedia del Diritto***, XLIV, 1992, 306; A.F. URICCHIO, *Prelievo fiscale ed emergenze ambientali*, in M. PENNASILICO (ed.), *Studi in onore di Lelio Barbiera*, Naples 2012, 1487.

[24] For European guidelines on eco-tax, see A. BUCCISANO, *Fiscalità ambientale tra principi comunitari e costituzionali*, in *Diritto e pratica tributaria*, 2/2016, 590 - 652; A.E. LA SCALA, *La dimensione europea dell'ambiente e della fiscalità ambientale*, in V. FICARI (ed.), *I nuovi elementi di capacità contributiva. L'ambiente*, ***Canterano, Rome 2018***, 13 - 21. For an exam of international enviromental indications, see G. PUOTI, *Presentation of the inter-university scientific research program Fisco e ambiente: l'evoluzione dei sistemi impositivi tra politiche di sostegno del territorio e tassazione di nuove espressioni di ricchezza*, in *International Tax Law Review*, 2-3/2004, XIII - XX; F. PICCIAREDDA, *Le politiche internazionali in materia di fiscalità ambientale*, in F. PICCIAREDDA - P. SELICATO (eds.), *I tributi e l'ambiente. Profili ricostruttivi*, Milan 2016, 31; M. MAURO, *Fiscalità ambientale e principi europei: spunti critici*, in *Revista de Estudios Jurìdicos*, 17/2017, 1 - 16.

[25] See C. SCIANCALEPORE *Cambiamenti climatici e green taxes*, Bari 2016, 81 - 84.

[26] M.E. PORTER - C. VAN DER LINDE, *Toward a New Conception of the Environment - Competitiveness Relationship*, in *Journal of Economic Perspectives*, 4/2019, 97 - 118.

[27] For this profile, see S.A. PARENTE, *Strumenti di fiscalità ambientale e solidarietà intergenerazionale*, in R. PAGANO and A. SCHIEDI (eds.), *Identità, pluralità, diversità. Il riconoscimento, ovvero essere per l'altro*, Bari 2019, 254-277.

[28] A.F. URICCHIO, *Valutazione economica degli effetti sanitari dell'inquinamento atmosferico: la metodologia dell'EEA.*

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employment opportunities, especially for the new generations. The purpose will be twofold with the critical environmental conditions improving with greater limitations to harmful behaviors and benefits of virtuous ones and, at the same time, new tax revenues flows will reduce, subject to national reforms, taxation on labor and business (*double dividend*)[29].

Through additional taxes, tax benefits and disincentives in the sector[30], the European budget will, in concrete terms, have a wider dimension and will be called "Budgetary instrument for convergence and competitiveness" (BIIC)[31], involving the European Stability Mechanism (ESM) in the revised governance framework.

In this way, the euro area's production processes can be more competitive than others, and increased revenues will support post-pandemic recovery, with a view to a future development plan that also covers standard social protection expenditure, to the point of creating the embryo of a real federal budget[32].

To this end, it is necessary to move towards effective harmonization of the taxation of energy, electricity and transport markets.

In fact, the mere regulatory, administrative and legislative measures that normally identify the rules on harmful emissions or efficiency criteria are not sufficient to de-pollute the activities that separate them between economic operators and production areas[33] and this must be done in compliance with the Treaties and, in particular, with the principles of subsidiarity and proportionality, while respecting proximity.

The new taxes with an environmental assumption or function, characterized by a taxable base compared to a physical quantity of a natural resource (possibly replaced by its proxy) with a negative and validated impact on the environment[34], shall be aimed at the satisfaction of collective interests and their revenue shall be directed

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Inquadramento giuridico-normativo, in G. ASSENNATO (ed.), *Valutazione economica degli effetti sanitari dell'inquinamento atmosferico: la metodologia dell'EEA*, Milan 2015, 15 - 32.

[29] L.H. GOUDLER, *Environmental Taxation and the Double Dividend: A Reader's Guide*, in *International Tax and Public Finance*, 2/1999, 157-183; A.L. BOVENBERG, *Green Tax Reforms and the Double Dividend: an Updated Reader's Guide*, in *International Tax and Public Finance*, 3/1999, 421- 443.

[30] According to regulation (EU) 691/2011 and considering, for the classification, the corresponding units: economic activities; households; non-residents. On the theoretical and practical aspects of the rules, generically indicated in the tax benefits category, see S. FIORENTINO, *L'agevolazione fiscale*, in A. CARINCI - T. THASSANI (eds.), *I diritti del Contribuente*, Milan (in press),

[31] Proposal for a regulation the European Parliament and of the Council on a governance framework for the budgetary instrument for convergence and competitiveness for the euro area - COM(2019) 354.

[32] F. GALLO, *Quali interventi post-pandemia da attuare in materia fiscale e di riparto di competenze fra Stato e Regioni?*, in *Quaderni CNEL*, 2020, 83 - 102.

[33] For a comparison between taxes and command and control mechanisms, see G. D'AGOSTINO, *Normativa ambientale e competitività delle imprese*, in *International Tax Law Review*, 2-3/2004, 377 - 397. On the need for an economic policy to protect the enviroment with new forms of taxation, see R. PERRONE CAPANO, *L'imposizione e l'ambiente*, in A. AMATUCCI (ed.), *Trattato di diritto tributario*, Padua 1994, 449 - 514, A. AMATUCCI, *Autonomia finanziaria e tributaria*, in *Enciclopedia del Diritto Treccani*, IV, 2002.

[34] COM(97) 9 final, March 26, 1997.

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towards the invariance or desirable reduction of the overall tax impact[35]. Furthermore, ecotaxes cannot go beyond the foundations of preventive action, precaution, primary correction at the source of the damage caused to the eco-systemic balance [36] and the polluter pays principle[37], which must be associated with the prohibition of State aid[38] e the principle of non-discrimination in European tax law[39].

However, it will be necessary to observe the legislative process governing decisions in the field of taxation, since these are measures which affect in particular the choices of Member States «with regard to the different sources of energy and the general structure of energy supply», making it is difficult to overcome possible State "vetoes" – in addition to requiring coordination at a global level – unless "passerelle clauses" are activated[40].

On the basis of these comments, before paying particular attention to the latest European proposals concerning (or closely related to) energy taxation so that it becomes prospectively low carbon, we refer to the relationship between green taxes and contribution capacity, referring to the indispensable insights and interpretations of the authors who treated with it in detail.

2. *Overview of the relationship between environmental taxation and the principle referred to in art. 53, paragraph 1, of the Italian Constitution.*

The majority position of the Italian doctrine is – as is well known – that environmental taxation is an expression of the ability-to-pay principle: green taxes show an attitude to contribute to public spending on the basis of art. 53, paragraph 1, of the Constitution, coming in large part from economic activities that determine negative externalities towards the ecosystem or the use or production of pollutants as

[35] EUROPEAN COMMISSION, *Future Financing of the EU: Final Report and Recommendations of the Higt Level Group on Own Resources*, December 2016.

[36] M. LUCIANI, *Generazioni future, distribuzione temporale della spesa pubblica e vincoli costituzionali*, in *Diritto e Società*, 2008, 145 - 167.

[37] Provided since 2000 in the *White Paper on environmental liability* – COM (2000)66 final, February 9, 2000. See P. SELICATO, *Imposizione fiscale e principio chi inquina paga*, in *Rassegna tributaria*, 4/2005, 1161; V. FICARI - G SCANU, *Tourism Taxation. Sostenibilità ambientale e turismo fra fiscalità locale e competitività*, Turin 2013, 129.

[38] For futher information, R. PIGNATONE, *Agevolazioni su imposte ambientali ed aiuti di Stato*, in M. INGROSSO - G. TESAURO (eds.), *Aiuti di Stato e agevolazioni fiscali*, Naples 2009, 747-754.

[39] These are the hypotheses, among other things, of the prohibition of customs duties for imported products and taxes with equivalent effect. For this aspects, P. PISTONE - E. IÑAKI BILBAO, *Tax incentives in the EU Energy Sector. General versus selective measures*, in M. VILLAR (ed.), *State aid, taxation and the energy sector*, Pamplona 2017, 209 - 259.

[40] See G. SELICATO, *Incentivi fiscali e governo del territorio*, in *Ionicae Disputationes. Uomo e ambiente. Dissertationes*, Taranto 2008, 112-142. Lately, the Commission in *A More Efficient and Democratic Decision Making in EU Energy and Climate Policy* - COM(2019) 177, suggested "passerelle clauses" could be used for energy taxation measures, such as carbon pricing.

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referable assumptions[41].

The taxation in question, therefore and, above all, aims to correct false price signals for specific products, even at the time of their importation, adding the costs of pollution[42], operating essentially through indirect taxes on production or consumption (excise duties) paid by the person producing them and normally transferred to the buyer who, in turn, transfers them forward (from an economic point of view), to the end user in this way, identifying the *right entity* to facilitate the internalization of external costs[43].

However, it is not always possible to identify an immediate link between environmental taxes and the damages/prejudices caused by the author to the ecosystem but, rather, to trace a *relationship* it is necessary to consider the *values* that, in a given historical period are considered particularly significant even if not related to primary economic reasons.

The polluter pays principle is implemented, in this case, through an extra-fiscal use taking in particular value the environmental protection objective as a political-social purpose external to the assumption of the tax levy[44] that deviates from the traditional notion of ability to pay that provides that a tax must coincide with goods, situations and activities that identify with goods, consumption or income[45].

Ultimately, the concept of tax expands and the ability to pay is brought back for the purpose of equality or justice, not only in the presence of a fact indicative of the ability to contribute, which expresses the economic strength, with a view to future protection[46] for assessments aimed at meeting compensation needs or reducing

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[41] See F. GALLO - F. MARCHETTI, *I presupposti della tassazione ambientale*, in *Rassegna tributaria*, 1/1999, 115-148; P. SELICATO, *La tassazione ambientale: nuovi indici di ricchezza, razionalità del prelievo e principi dell'ordinamento comunitario*, in *International Tax Law Review*, 2-3/2004, 257 - 304; F. MARCHETTI, *Tassa, imposta, corrispettivo o tributo ambientale?*, in *La finanza locale*, 3/2004, 31 - 54; A. DADONE and R. LUPI, *I tributi ambientali come collegamento tra "esternalità negative" e manifestazioni di ricchezza*, in *Dialoghi tributari*, 2/2013, 132-144; L. PEVERINI, *I tributi ambientali*, in L. SALVINI - G. MELIS (eds.), *L'evoluzione del sistema fiscale e il principio di capacità contributiva*, Padua 2014, 719 - 761.

[42] UNITED NATION CONFERENCE ON ENVIRONMENTAL AND DEVELOPMENT, Resolution adopted, Rio de Janeiro, June 3 -14, 1992.

[43] As is known, A.C. PIGOU, *Economics of Welfare*, London 1920, was the first economist to consider that the solution to negative environmental externalities for the use of fossil fuels had to be a tax on goods, whose production generated them (*external costs*), equal to the marginal damage caused when operating at optimal level of pollution to compensate "undesirable" social costs. In essence, it had to be proportional to the pollutant source units used, with a consequent increase in the production costs of energy services, inducing the producer to contain them at pre-established levels. For a different interpretation, see R.H. COASE, *The problem of social cost*, in *Journal of Law and Economics*, 3/1960, 1 - 44.

[44] F. GALLO - F. MARCHETTI, *I presupposti della tassazione ambientale*, 118.

[45] G. FALSITTA, *Giustizia tributaria e tirannia fiscale*, Milan 2008, 217 - 223.

[46] T. ROSEMBUJ, *La capacità contributiva del 'non fare'. Il concetto di imposta a proposito di un'importante sentenza della Corte Suprema degli Usa*, in *Diritto e pratica tributaria*, 6/2012, 1295 - 1300; F. GALLO, *Ancora in tema di eguaglianza tributaria*, in *Rivista di diritto finanziario e scienza delle finanze*, 4/2013, 321-353; A. FEDELE, *La funzione fiscale e la capacità contributiva nella Costituzione italiana*, in C. BERLIRI - L. PERRONE (eds.), *Diritto tributario e Corte costituzionale*, Naples 2007, 1 - 40. Among the Authors who identify the "qualified" contribution capacity, see G. FALSITTA, *Il*

general diseconomies[47].

3. *The areas of environmental taxation.*

Green taxes concern various areas and the largest part of their revenue as a percentage of the GDP of the State of European Union comes from the energy sector, including energy products for transport purposes (**including transport fuel)**[48], stationary purpose and greenhouse gases (also proceeds from emission permits recorded as taxes in national accounts), qualified with regard to the tax base in relation to the impact they have on the costs and prices of polluting products, as classified in the Eurostat environmental codes and from which derive additional categories, namely the taxation on: transport; pollution; use of natural resources[49].

In particular, and among other things, the first category concerns the import, construction and sale of motor vehicles, including the specific taxes to be borne by the latter, as well as motorway, urban and *traffic* tolls. The second area concerns the taxation of harmful emissions into the atmosphere or the reduction of the ozone layer, of water sources, of waste management or the intervention in case of exceedance of predetermined acoustic or vibration parameters. The last one, finally, concerns taxes on water, on the collection of biological resources[50], on the extraction and use of raw materials and on landscape *changes*.

Furthermore, environmental taxation, in addition to that relating to *assets* readily identified or equated to them by the legislator *for equivalence*, is characterized by having tax bases relating to each source and destination[51].

In the Italian legal system, these are *indirect* manufacturing and consumption taxes, expressed in several forms characterized by the nature of the attributable assumption, defined by the Court of Cassation as «a legal fact with progressive formation», since what determines the tax is the production or import of the product, while the collection of the same occurs at the time of its release for consumption in the national territory[52].

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doppio concetto di capacità contributiva, in *Rivista di diritto tributario*, 7-8/2004, 889 - 906; G. GAFFURI, *Il senso della capacità contributiva*, in L. PERRONE - C. BERLIRI, 31 - 38; E. MARELLO, *Contributo allo studio delle imposte sul patrimonio*, Milan 2006, 195-199. For a reconstruction of doctrinal positions, A. GIOVANNINI, *Capacità contributiva*, *Enciclopedia giuridica Treccani on-line*, 2013.

[47] See P. BORIA, *Diritto tributario*, Turin 2016, 212.

[48] See A. PERRONE, *Fiscalità ambientale per l'Europa. Profili di diritto dell'Unione europea*, in A.F. URICCHIO (ed.), *La fiscalità ambientale in Europa e per l'Europa*, Bari 2016, 39 - 44.

[49] EUROSTAt, *Environmental tax revenues (ESA 2010*), 2013, which follows the classification according to national accounts identifying: taxes on production and imports; current taxes on income, wealth, etc.; capital taxes.

[50] EUROPEAN COMMISSION, *Manual: Statistics on Environmental Taxes*, Brussels 1996, 7.

[51] A. ELIA, *Il rimborso dell'accisa sull'energia elettrica*, in *Diritto e praticata tributaria*, 4/2020, 1671.

[52] Court of Cassation, sentence n. 7080/2004. In doctrine, among the authors opposed to this approach, see P. BORIA, *Le accise*, in A. FANTOZZI (ed.), *Il diritto tributario*, Turin 2003, 971. There is also mention Constitutional Court, decision n. 185/2010 of the which, intervening on the consumption tax on electricity, affirmed its unity although it is a «progressive and comprehensive tax, strongly connected to the production cycle, as well as

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The regulation of excise duties is contained in Legislative Decree no. 504/1995[53]; for the determination of the rate to be applied, temporarily deferred (but not in case of self-consumption), it is necessary to take into account the quantity and quality of the *good* according to the classifications indicated in annex no. 1 of the TUA.

4. *Changes on the "Emissions Trading Scheme" (ETS-EU*).

Among the new EU budget resources that the Commission intends to introduce is a consequence of the establishment of a carbon pricing, whose dividend will have to support the green transition to achieve carbon neutrality objectives.

Revenues from effective carbon rates will allow the creation of a stabilization fund for any negative economic and financial events of the euro-states, whether general or asymmetric, that will assist European competitiveness at global level, will finance – by revising the Euratom Treaty – energy and environmental objectives with financial capacity to achieve a carbon neutral economy, promote investments in renewable energy sources and support countries that reduce energy-intensive production[54]. Part of these revenues will therefore be able to avoid the regressive impacts of energy taxation by reducing the income tax rates of the less wealthy taxpayers, until national reforms are implemented that shift the tax burden from labour and business to production and consumption of environmentally harmful goods or sectors that do not properly exploit natural resources.

Looking carefully, however, these are not only extremely ambitious intentions, but they go back to the past, as they are already contained in the distant "White Paper" by J. Delors[55], which proposed taxing the energy and CO2 content of fossil fuels in order to limit pollution and relaunch European production, while strengthening the financial stability of the Community and international competition.

In any case, in order to set a common and shared price on emissions, it is necessary to identify the instrument: is a carbon tax sufficient and, if so, how should it be structured?

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harmonized for many constituent elements, and single-phase». For comments, see L. PEVERINI, *Presupposto, soggettività passiva e capacità contributiva nelle accise: riflessioni a margine di una recente sentenza della Corte costituzionale*, in *Rivista di diritto tributario*, 5/2011, 449. As regards the index of the ability to pay excise duties, in the sense that the release for consumption of products is a mere condition for the tax administration to claim the amount due, M. TRIMELONI, *Abbuono e sgravio sulle imposte di fabbricazione: una terminologia legislativa ambigua*, in *Diritto e pratica tributaria*, I, 1976, 1102; A. FANTOZZI, *Diritto tributario*, Turin 1992, 871.

[53] The decree, in fact, has been modified over time by several directives, such as 2003/96/EC, 2008/118/EC and 92/82/EEC, 92/83/EEC and 92/84/EEC, referring to concessions for individual products and their use, as well as collection and "control" systems. For a reconstruction of the interventions made to the system and related problems, see S. Fiorentino, Cessione in regime di sospensione di accisa e implicazioni nel procedimento tributario, in Rivista trimestrale di diritto tributario, 3/2015, 597 - 622; M. Logozzo, Le accise: inquadramento sistematico e questioni applicative, in Rivista di diritto tributario, 2/2018, 129 - 174.

[54] A. MAJOCCHI, *European Budget and Sustainable Growth. The Role of a Carbon Tax*, Turin 2018, 25.

[55] COMMISSION OF EUROPEAN COMMUNITIES, *Growth, competitiveness, employment. The challenges and ways forward into the 21st century*: *White paper*, 1993.

Is it also necessary to take measures on carbon emission rights on the market for their trading?

For the European Commission, it is necessary to amend the Energy and Electricity Taxation Directive and the Emissions Trading Scheme in order to establish a tax that can avoid further distortions of the energy market and is suitable for combining with other revenues of the EU-ETS.

The *Scheme* – referred to by the Kyoto Protocol with a top-down strategy but revisited after the Paris Agreement with the bottom-up approach – was introduced by Directive 2003/87/EC[56] and the "***Green Paper*** on ***greenhouse gas emissions*** trading"[57] within the "European Climate Change Program", identified it to provide, in addition to command and control tools, incentive and disincentive devices to protect the environment.

Lastly, the Directive 2018/410 of the European Parliament and of the Council, preceded by 2009/29/EC due to the revised targets of the "Climate-energy package 20-20-20", made changes to the ETS for the period 2020-30, amending both the founding directive and the decision on the functioning of the "Market stabilizing reserve in the European system for trading greenhouse gas emission quotas"[58] to achieve, inter alia, the objective of their decrease due to the commitments of the "Climate-Energy Framework 2030", as well as those made in the "COP21"[59].

ETS is based on the principle of limiting and trading emissions, which briefly provides for the setting of a cap, or annual maximum, on the total of those produced by carbon dioxide or equivalent amounts of nitrogen oxide and hyper fluorocarbons, in particular by the energy-intensive installations which capture, transport and store them (steelworks, cement factories, electricity generation, aluminum, *etc.*), located not only in the EU, but also in Great Britain, Iceland, Liechtenstein and Norway, and even those related to commercial aviation (until 2023 only for airports located in the European Economic Area).

In concrete terms, the principle applies to the exchange of permits for the *right to pollute* and, within a predetermined threshold (European Unit Allowance), it's possible to buy and sell them at a price related to the dynamics of the reference market.

The available emission allowances, classified as financial instruments by the "MiFID II Directive", are auctioned and therefore have a *value*: one corresponds to the emission of one ton of CO_2 per year by the installations or corresponding quantities

[56] See P. DE' CAPITANI DI VIMERCATE, *L'Emissions Trading Scheme: aspetti contabili e fiscali*, in *Diritto e pratica tributaria*, 1/2010, 15 - 40.

[57] COM(2000) 87.

[58] Decision 2015/1814 of the European Parliament and of the Council of 6 October 2015.

[59] That is, a 43% reduction in emissions quotas compared to 2005 levels through a lower distribution of the total amount of "permits" starting this year.

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of the other gases identified.
At the end of the period of validity of the *right*, that is to say by April 30 of each year, the owner must surrender the allowances with which he *covered* his emissions in the previous year and, if he was able to reduce them, may keep for himself those not used for future needs or resell them to other operators who need them.
However, the quotas mentioned, are also allocated free of charge to energy-intensive industries at risk of "relocating" their emissions outside the EU, or to territories that do not meet European environmental requirements[60].
Well, the latest ETS reform, as stated, is of 2018 and provides for the inclusion of the carbon footprint produced by maritime and road transport[61], as well as by the construction sector[62] with simultaneous interventions on the ETD Directive, as well as the provision of a carbon border adjustment mechanism, the increase in the annual net decrease in emission allowances, the provision of financing for low-emission investments, and the phasing out of free allowances for sectors least exposed to direct and indirect risk of carbon leakage[63].
We are now in phase four (years 2021-2030), during which the sectors concerned will have to further reduce their emissions (- 43 % compared to 2005 levels), and the aforementioned Market Stability Reserve (MSR), an additional mechanism, in force since 2019[64], aimed at reducing excess market shares in the energy market, as well as improving the resilience of the ETS from possible future shocks[65].
The system of permits to pollute, in fact, must be reviewed because of its low-effectiveness at promoting the reduction of emissions and the boosting of environmentally friendly, innovative and competitive production by the most energy intensive industries. With the pandemic crisis, however, EU quotas have shown prices that, for many companies operating in this market, have proved

[60] See M. CECCHETTI - F. GRASSI, *Le quote di emissione*, in R. FERRARA - M.A. SANDULLI, *Trattato di diritto dell'ambiente*, II, Milan 2014, 303-337.

[61] For them, the ETS would only apply to 7.5 percent of global emissions produced and, according to the International Chamber of Shipping, a mandatory Market-Based Measures based on a global tax would be preferable.

[62] EP LEGISLATIVE OBSERVATORY, *EU Emission Trading System, including Maritime and Operation of a Market Stability Reserve*; EUROPEAN COMMISSION, *Fit for 55 Package - 2021/0211*; EUROPEAN COMMISSION, *Stepping up Europe's 2030 climate ambition. Investing in a climate neutral future for the benefit of our people* – COM (2020) 562.

[63] In the first case, the risk relates to European companies forced to relocate production due to high carbon prices; in the second case, there would be an increase in prices, in particular of electricity, for those who use it, only because the price of emissions is high, recalling that art. 10a, paragraph 6, of the ETS-EU Directive provides that Member States may adopt «financial measures in favor of sectors or sub-sectors deemed to be exposed to a high risk of relocation [...] due to the costs associated with emissions [...] transferred to electricity prices, in order to compensate for such costs and where such financial measures comply with the applicable State aid rules and to be adopted in this context».

[64] Decision (EU) 2015/1814 of the European Parliament and the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending directive 2003/87/EC.

[65] EUROPEAN COMMISSION, *EU-ETS*, in *ec.europa.eu/clima*.

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unsustainable and will most likely increase even more as a result of the new climate targets while increasing the carbon leakage risk[66].

5. *A new framework for energy and electricity taxation.*

Among the legislative initiatives of "Fit for 55", complementary to this just examined, there is that of amending directive 2003/96/EC on the European framework of energy products and electricity subject to excise duties.

The DTE, introduced in 2004, has already been the subject, among other things[67], of a revision proposal in 2011[68], which has not materialized due to the opposition of some Eastern European States. Nonetheless, its aim was to ensure the proper functioning of the market in electricity sector and in those of products used as transport fuels or heating fuels[69] to avoid distortions of trade and competition between EU economic operators due to differences in tax systems that were and are high in taxation systems and, therefore, to avoid production relocations to low taxation countries.

The objective of the proposal, more specifically, was to tax products taking into account their energy content and emissions of climate-altering substances in order to achieve them, indicating the minimum levels of taxation for which each State should have identified uniform rates, irrespective of the source of production (*i.e.*: the energy product used).

This would be achieved gradually, taking into account national specificities[70].

The objective, as mentioned, has not been achieved and the current emissions rates in question are set by each country and linked, for the most part, to the *volume* of products, not to the relationship between relative energy content and resulting environmental impact, as underlined by the Commission in the explanatory statement of the last revision proposal[71].

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[66] COM(2021) 551 final.

[67] Among other proposals reference is made to COM (1992) 226 to introduce a harmonized tax on carbon dioxide emissions and energy in relation to the energy value of products, and to COM (97)30 which, rather than widening and improving the fiscal framework for mineral oils, set only minimum levels of taxation for energy products and electricity and introduced further exemptions.

[68] COM (2011) 169 2011/0092 (CNS) to reconcile economic and environmental objectives set out in European Parliament resolution P7 TA (2011) 0080. In this communication, the Commission, in assessing the impact of the proposal, indicated that tax leverage on energy is essential to enable Member States to achieve the revised climate targets (at that time). Further measures include those relating to Council Directives 92/81/EEC and 92/82/EEC of 19 October 1992 on the harmonization of the structures of excise duties on mineral oils and on the approximation of rates, as well as COM (1992) 226 – Proposal for a council directive introducing a tax on carbon dioxide emissions and on energy.

[69] See, also, Council directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty (repealing directive 92/12/EEC), replaced by directive 220/262/EU of 19 December 2019.

[70] S. SUPINO, *Tassazione dei prodotti energetici e politiche ambientali dell'Unione europea: le recenti proposte di modifica della Direttiva 2003/96/CE avanzate dalla Commissione e approvate dal Consiglio UE, sono in linea con le ultime indicazioni dell'OCSE in materia di fiscalità energetica*, in *fiscalitàdellenergia.it*, 2020.

[71] COM(2021) 563 def.

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It should also be noted that not only excise duties but also tax exemptions and reductions (for example, for international air and maritime transport), as well as being different between states, are unjustified and now outdated by the new climate objectives. This leads to hypotheses of fiscal dumping between energy sources and selective tax exemptions which, inevitably, are passed on to taxpayers as final consumers of energy-intensive products. To all this it must be added that the current legislation does not consider, among other things, that the industries use more and more alternative fuels, but are still anchored to a taxation system incapable of promoting technologies and investments in terms of environmental sustainability.
From all this, the intention is to introduce in the EU market a common tax system on the products in question with minimum rates in EUR/GJ related to the referable *use*. In addition, those rates should be automatically adjusted each year to Eurostat consumer price data[72].

6. *The complexity of introducing a carbon tax at European borders.*
Another proposal from the European Commission is to introduce a carbon border adjustment mechanism to align the price of some imported products with the amount of emissions incorporated in them[73].
The instrument, defined as «a question of survival» for European companies and the internal market due to the tightening of climate targets and the increase in price of emissions in the ETS-EU System, is aimed at curbing competition from third countries that are excluded and have less stringent environmental regulations.
In practice, and here again, the aim is to avoid, on the one hand, companies moving their production abroad because the environmental provisions are stricter and, in this regard, the presentation of environmental certificates compliant with the *Scheme* is also foreseen for imported products and, on the other hand, there is an increase in global harmful emissions due to the replacement of EU products by non-EU products with higher CO_2 footprint[74].
The fundamental issues remain, however, that of being able to allocate a "price" to carbon and if this were to be done through a tax on imports, or to be applied to European borders, it should concern, at least initially, only the most polluting sectors. This is the carbon border tax that the Commission proposes to introduce as a complementary or alternative measure to the extension of the ETS on imported products, thus forcing foreign companies to buy their allowances so that they can sell

[72] For example, conventional fossil fuels and unsustainable biofuels will be subject to the highest minimum rate (€ 10.75/GJ) if used as fuel; for others, facilitating decarbonization and for a decade, a minimum rate (€ 7.1/GJ) will be applied. The lowest rate (€ 0.15/GJ) was found for the electricity tariff.
[73] See, also, EUROPEAN PARLIAMENT, *A WTO-compatible EU Carbon Border Adjustment Mechanism*, procedure 2020/2043(INI), texts adopted on March 10, 2021.
[74] G. THOMAS, *Il carbonio, frontiere e sfide globali per l'Europa*, in *Il Sole 24 ore*, August 27, 2021.

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them on our market.
The tax, which the International Monetary Fund has defined as the «most powerful and efficient» among the various instruments to be instituted to reduce harmful emissions[75], would have the tax base calculated on the excess carbon content of said products to be compared to a reference benchmark on the European correspondents, after aligning the emission quotas already subjected to the (to be reformed) cap and trade system.
Therefore, the tax would be based on a *process* and correspond to the carbon content produced by the emitting energy source. As regards revenues, at least in part, they should be allocated to the *compensatory rights* levied on imports to be allocated, immediately, to the EU[76]. The carbon border tax would, in fact, be part of the traditional own resources collected by the States, as it is a customs duty on non-EU products[77].
The need for a *fiscal adjustment at borders* would also be based on the principle of payment of excise duty in the state of release for consumption and would be in line with EU harmonization regulations.
In essence, the tax would intervene in the place of goods consumption[78] and, moreover, already in article 49 of the European Coal and Steel Community (ESC)[79] – the Institution that preceded the Treaty of Rome constituted the European Economic Community, then the European Union – authorized a levy on the production of carbon (and steel), with a rate not exceeding 1% of the average value of each product and whose revenues were intended to finance the "restructuring" of activities in the area. This, however, would pose significant and difficult problems to overcome due to the possible violation of the rules of the Word Trade Organization.
In fact, article II.2 of the General Agreement on Tariffs and Trade requires any border tax
to be implemented on *similar* products to those taxed at national level and that,

[75] INTERNATIONAL MONETARY FUND, *Fiscal monitor: How to Mitigate Climate Change*, October 2019.
[76] D. GROS - C. EGENHOFER, *Climate Change and Trade. Taxing Carbon at the Border?*, in *CEPS Paperbacks*, Maj 27, 2010.
[77] As is well known, customs duties have very ancient origins and have long been the fundamental element of State sovereignty, where the crossing of goods within their borders was a prerequisite for the application of taxes and customs duties even within Europe before the creation of the customs union. See M. MICCINESI, ***Diritto doganale, delle accise e dei tributi ambientali***, Milan 2014.
[78] In addition, paragraph 2 of article 2, TUA, identifies the chargeability of the excise duty when the product is released for consumption in the territory of the State. It also recalls the judgement of the Italian Court of Cassation of 6 November 2013, no. 24912, according to which the suitability, as an economic attitude, of manufacturers or importers, to present themselves on the market to sell products to third parties «translates into an ability to pay index, (which) propitiates the compatibility of the taxation with article 53 of the Constitution».
[79] In the founding Treaty, Article 4 regulates for the first time and fully the prohibition of State aid in the common market for carbon and steel, as well as the granting of entry and exit duties, taxes having equivalent effect and quantitative restrictions on the movement of products or restrictive and discriminatory practices. See A. QUATTROCCHI, *Gli Aiuti di Stato nel diritto tributario*, Padua 2020, 15.

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article III.2, the border tax may not exceed the domestic tax rate

The prohibition of fiscal discrimination is, however, tempered by the same rule that admits *subsidies* in favor of domestic producers only, including *tax collection* and *diversified domestic taxation*.

Article XX mentions, in fact, some exceptions and, among these that may be adopted, arbitrary or unjustifiable discrimination between countries when they are necessary to protect human, animal and plant health/life (paragraph *b*) or to conserve depleted natural resources (paragraph *g*), were such measures are rendered effective in conjunction with restrictions on domestic production or consumption[80].

If the carbon border tax is accompanied exclusively by the relocation of carbon emissions quotas in the ETS-EU it could indeed prove to be an excessive and unjustified measure to protect European companies.

However, the European Commission considers that this does not exist and that the CBAM will be compatible with international trade standards[81], it will be applied in a fair and gradual manner[82], as well as, at least initially, only to limited energy-intensive productions.

At the same time, it is clear that it will be a complex operation as some States would inevitably suffer negative economic repercussions from the introduction of the *mechanism*. China, for example, has already expressed its opposition to a carbon border tax[83], arguing that such a framework would undermine relations with the EU, otherwise friendly and cooperative on the carbon market[84].

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[80] On the compatibility of the carbon tax with the rules of the MTO, see L. KREISER - M.S. ANDERSON - B.E. OLSEN - S. SPECK - H.E. MILNE - H. ASHIABOR (eds.), *Carbon Pricing, Design, Experience*, Cheltenham 2015.

[81] P. KRUGMAN, *Working Out: Two Cheers for Carbon Tariffs*, in *New York Times*, 16 July 2021, spoke in favor of a carbon border tax. The economist, observing the US system, recalls the intentions of the EU Commission on CBAM, not considering it a form of protectionism and a measure at risk of carbon leakage. He states, in fact, that it is necessary to introduce «international sanctions against nations that do not take measures to limit emissions […], so as to stop an environmental threat that endangers our existence […]. If China and developing countries - responsible for a large proportion of CO_2 emissions - do not participate in the fight against change, the efforts of the EU or the United States risk being thwarted». To support his belief, the Author gives the example of VAT «a tax on producers which, in fact, is a national tax, resulting in higher prices, undergoing an adjustment at the borders, so as not to balance on one side». It is therefore necessary to think of the tax "as a sales tax. In fact, who imports pays a tax on imported products and who exports gets a reduction equal to the tax paid on what they export». From here, CBAM could be conceived in the same way, morphing «in a technique to induce the citizens of a State to consider the emissions connected to the production of the goods they consume [...], allowing to consider many rules on climate change as a form of taxation on national consumers».

[82] In fact, starting from 2023, there will be a transitional period (3 years), during which importers will have to communicate only the emissions contained in their goods without undergoing any fiscal impact. The mechanism will be reviewed in 2025 and the carbon border tax will be applied between 2026 and 2035.

[83] UN Conference "COP25".

[84] See, Memorandum of understanding on the circular economy between the European Union and China, 17 July 2018. The BASIC countries (Brazil, South Africa, India and China itself) issued, inter alia, a joint statement in April 2021 which strongly criticized the EU's protectionist policy by invoking the principle, as set out in the 1992 UNFCCC Treaty, that is, if the responsibilities are "common" in the fight against climate change, they must be "commensurate" to the respective economies.

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Further difficulties have been expressed by the European Parliament in a report dated 15 February 2021[85] indicating that this import tax: *i*) would not completely solve the risk of relocation of European plants due to the higher costs of CO_2 emissions; *ii*) difficulty on how can greenhouse gas emissions be traced in the global value chains[86]; *iii*) would impose a significant "burden" on taxpayers/finals consumers; *iv*) would give EU industries a double advantage over their foreign competitors, as the former already receive free allowances from their ETS[87].
In any case, a preliminary and fundamental question remains waiting for an answer: how to design an objectively optimal structure to introduce a carbon border tax? Decisions are needed on which products to *cover* with the tax and on how to adapt it to different products from different suppliers/countries[88].

7. Carbon taxation not only at the "borders".
To what has been said, it is possible to add the alternative of providing a tax proportional to the amount of CO_2 emissions to produce specific European and imported products, namely a carbon tax that is not exclusively *at the border*[89].
It would therefore be an environmental tax in the *strict sense* as it is characterized by the «proportional and etiological correlation between the use of substances that cause environmental damage and the onset of tax liability»[90], resulting in a higher level of carbon used to produce a *good*, the higher the *price* that, through taxation, will be attributed to fossil fuels in order to encourage economic operators to prefer cleaner forms of energy and, consequently, the consumers to buy it.
At the level of the individual States, this is a tax already present, at least in some, and since the nineties of the twentieth century.
The first country to provide for it was Finland, which initially linked the tax base to

[85] COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY, *Towards an EU border carbon adaptation mechanism compatible with the WTO* - 2020/2043 (INI).

[86] This is due to the fact that economic and commercial ties are now at global level and of close interrelation between the productive processes of the States. In essence, even if the carbon tax were proportional to the emission content of the imported goods, it would only affect the last link in the production chain, without affecting the upstream stages. See V. COSTANTINI - I. FUSACCHIA - E. PAGLIALUNGA -L. SALVATICI, *Controllo delle emissioni climalteranti e catene globali del valore*, in *Rivista di politica economica*, 1/2021, 75.

[87] This element has long been reported by J. HILLMAN, *Changing Climate for Carbon Taxes: Who's Afraid of the WTO?*, in *Climate & Energy Policy Paper Series*, July 2013.

[88] G. ZACHMANN - B. MCWILLIAMS, *A European carbon border tax: much pain, little gain*, in *Policy Contribution*, 5/2020, 8.

[89] A carbon tax has begun to become an object of consideration as climate change awareness has increased. Internationally, this coincides with the establishment of the Intergovernmental Panel on Climate Change (IPCC) in 1988, the publication of its first report in 1990 and, later, with the establishment of the United Nations Framework Convention on Climate Change (UNFCCC) at the Earth Summit in Rio de Janeiro two years later. See, B.P. HEBER - J.T. RAGA, *An international carbon tax to combat global worming; an economic and political analysis of European Union proposal*, in *The American Journal of Economics and Sociology*, 3/1995, 257 - 267.

[90] A. ELIA, *La carbon tax e la sua applicazione proporzionale al potere inquinante dei combustibili: il criterio della proporzionalità adeguata nella tassazione ambientale*, in *Diritto e pratica tributaria*, 1/2012, 113.

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the carbon dioxide content of the *goods* necessary for the production of heat and electricity, later extending it to energy and fuels for transport[91].
Shortly thereafter, Norway[92], Sweden[93], Denmark[94], the Netherlands, Slovenia and Ireland[95], intervened on the matter.
With regard to France, since 2014, there is the *contribution climat-énegie*, that together with the *taxe intérieure de consummation sur le produits énergétique* and the *taxe sur le gaz naturel*[96], whose main objective is not to reduce emissions harmful to the ecosystem but – as is the case in much of our continent – simply to increase tax revenue to reduce budget deficits[97].
On 8 August, moreover, the *Loi Climat et Résilience* came into force, created to meet the demands of the movement of "yellow vests", and finalized in the first months of 2019 in a national debate aimed at knowing the wishes of the community on taxation, public spending, state organization, public services and, indeed, ecological transition. Hence, the "climate" is placed at the center of national projects and, in April 2019, the President of the Republic announced the creation of an Ecological Defense Council and the Citizens' Convention on Climate, organized by the Economic, Social and Environmental Council (EESC), whose proposals will have to be submitted to a referendum, parliamentary vote or directly applied.
So, since October 2019, the CCC brings together 150 citizens (drawn lots), identified as "responsible" for defining measures to reduce greenhouse gas emissions by 2030 by at least 40% (compared to 1990), following social justice objectives. In July 2020, again, the Council adopts the first regulatory measures and, in the following September, "Plan France Relance" sees the light embedded in the Financial Law for 2021. Finally, in February 2021, the bill *Cimate and Resilience* was presented becaming law last August.
As regards the United Kingdom, on the other hand, and since 2000, there has been a real climate change levy for energy and non-domestic supplies in relation to

[91] For further information, A. VOURC'H - M. JIMENEZ, *Enhancing Environmentally Sustainable Growth in Finland*, OSCE, w.p. 29/2000.
[92] The State has now eliminated most of the exemptions in the area, covering with its carbon tax more than 60 % of the emissions produced there.
[93] In 2017, the State passed a law that commits itself by 2045 to reduce total emissions by at least 85% compared to 1990 levels. For the remaining 15%, emissions are "offset" by investing in projects that help to reduce pollution even beyond national borders.
[94] For a general review of the tax in Europe, see TAX FOUNDATION, *European Countries with a Carbon Tax*, 2021.
[95] OSCE, *Effective Carbon Rates 2021: Pricing Carbon Emissions Through Taxes and Emissions Trading*, Paris 2021.
[96] R. BOURGET, *Propos sur quelques promoteurs de la fiscalité sur l'énergie*, in *Revue européenne et internationale de droit fiscal*, 3/2016, 281 - 293: L. ROGISSAT - S. POSTIC - J. GRIMAUD, *La composante carbonne in France: fonctionnement, revenus et exoneration*, in *i4ice.org*, October 12, 2021. On the difficulty of introducing it, see X. MAGNON, *De la possibilité d'une contribution carbone: entre censure constitutionnelle, contraintes communautaires et concurrence international*, in *Droit de l'Environnement*, 2010, 219 - 224.
[97] OSCE, *What are the Best Policy Instruments for Fiscal Consolidation,* paper n. 12/2012; G. SAINTENY *Plaidoyer pour l'écofiscalité*, Buchet Chastel 2019, 49.

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electricity, end-use gases, hydrocarbon gases distributed in liquid form, coal, lignite and petroleum (plus coke and semi-coke), adding to other environmental taxes, such as landfill and aggregate tax.

Since 1996, a minimum price has been set on carbon, an eco-tax *in the functional sense* as it assumes the higher consumption of the products to which it is parameterized[98], not the physical pollutant unit. Therefore, it is not a *strictu sensu* environmental tax since, to be such, it is indispensable «a necessary causal link, a direct (almost osmotic) relationship between the premise and the material fact – physical unity – which leads to a scientifically proven and sustainable deterioration of the environment […], which must not be absolute in order to justify taxation, but relative, therefore bearable, possibly reversible, possibly repairable. In fact, an unsustainable and irreversible deterioration is not part of the fiscal instrumentation because in these cases the physical unit that produces it cannot but be affected by prohibitions and related sanctioning instruments and certainly not *legitimized* by the fiscal instrument or, in any case, by other economic measures»[99].

In the German tax system, instead, since November 2019, a carbon pricing has been set in the transport and domestic heating sectors with a simultaneous and progressive decrease in the *Erneuerbare-Energien-Gesetz* surcharge on the electricity bill[100], while the Austrian government has outlined a plan to impose new taxes on carbon emissions which, in turn, will finance tax cuts for middle-income workers.

From next July, taxpayers will be taxed € 30 per tonne of carbon, which will rise to € 55 by 2025.

The measure will initially result in an additional cost of 10 cents per liter at service stations and at the same time € 130 more for the average annual heating costs of the Austrian family.

It is clear from the brief outline that the tax in question is dissimilar in the Euro-States and this inevitably has repercussions on harmful emissions quotas provided for each of them.

Moreover, differences in this sense are also inferred within the same state and, in this regard, an example is offered by the Spanish carbon tax that intervenes only on fluorinated gases[101], while in Catalonia – in addition to the *impuesto sobre la emisión de*

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[98] F. GALLO, *I problemi della tassazione ambientale*, in *rivistacortedeiconti.it*, 2021.

[99] See F. GALLO, *Profili critici della tassazione ambientale*, in L. ANTONINI (ed.), *L'imposizione ambientale nel quadro del nuovo federalismo fiscale*, Naples 2010, 3; F. MARCHETTI, *I tributi ambientali*, in S. GRASSI - M.A. SANDULLI (eds.), 277 - 300; A.F. URICCHIO, *Italia: le politiche tributarie in materia ambientale*, in A. Di Pietro (ed.), *La fiscalità ambientale in Europa e per l'Europa*, Bari 2016, 468 - 472.

[100] See A. MAJOCCHI, *Il carbon pricing in Germania e le nuove risorse proprie europee*, in *L'Unità europea*, July 28, 2020.

[101] See F. ADAME MARTÍNEZ (ed.), *Fiscalidad ambiental en España: situación actual y perspectivas de futuro* Pamplona 2015; C. ÁMARA BARROSO, *La fiscalidad energética y medioambiental en España a la luz del derecho de la Unión europea*, in I. MERINO JARA (ed.), *Fiscalidad internacional y comunitaria*, Madrid 2019, 151; A. VAQUERA GARCÍA, *De la tributación ambiental a las medidas financieras incentivadoras de la economía circular*, Pamplona 2020.

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óxidos de nitrógeno a la atmósfera producida por la aviación comercial and the *impuesto sobre la emisión de gases y partículas a la atmósfera producida por la industria* – there is a tax specifically affecting carbon dioxide emissions from mechanical traction vehicles.
This environmental tax measure – established in 2017 with the law no. 5 containing fiscal, administrative, financial measures for the public sector, as well as aimed at creating and regulating the taxation of large businesses, stays in tourist establishments, on radiotoxic elements, on packaged sugary drinks and on CO_2 emissions – has been extended, in application, by law no. 9/2019 to other categories of cars and motorcycles to replenish the "Climate Fund" and the "Natural Heritage Fund".
With some specific exemptions, taxable persons are also identified as legal entities owning vehicles, provided that they are domiciled for tax purposes in the Autonomous Community. With regard to the tax base, it is given by the carbon dioxide emissions produced and "measured" in grams per km, on the basis of what is indicated in the specific certifications issued by the manufacturer or importer. If, on the other hand, the tax base cannot be determined in this way, the tax is calculated by applying specific *formulations* which take into account engine capacity, fiscal and maximum net power, maximum weight, *running mass*, tare and *age* of the vehicle, considering a maximum and minimum limit of CO_2/Km emission limit[102].
With reference to Italy, an unrealized project to introduce a carbon tax was present in article 6, paragraph 7, of the connected to the "1999 budget law" which indicated that pollutant production should have been reduced as a result of the commitments made under the "Kyoto Global Warming Agreement" at "COP3".
In particular, it was a tax on the consumption of coal, petroleum coke and bitumen of natural origin emulsified with 30 per cent of water ("orimulsion"), used in combustion plants and its rate was to be directly proportional to the harmful effects caused to the environment. As for the resulting income, the tax was to replace other forms of taxation, especially on labour to increase employment, in compliance with *fiscal neutrality*[103].
The Italian carbon tax, as mentioned, was not introduced as well as the *Green Act*, although announced as *imminent* in 2015 by the Prime Minister at the time in office.
Another proposal, somehow aimed at protecting the environment, was launched in

[102] SECRETARÍA GENERAL DE FINANCIACIÓN AUTONÓMICA Y LOCAL, Subdirección General de Relaciones Tributarias con las Comunidades Autónomas, *Relación de impuestos propios y recargos de las comunidades autónomas de régimen común*, Madrid 2021; F. SERRANO ANTÒN, *Presente y futuro de la tributaciòn ambiental autonòmica*, in F.D. ADAME MARTINEZ (ed.), *Fiscalidad ambiental en España: situaciòn actual y perspectivas de futuro*, Navarra 2015, 73 - 112.

[103] See A. MAJOCCHI, *La tassazione ambientale nella prospettiva del Documento di previsione economica e finanziaria*, in S. MINESTRINI -L. DE BENEDETTI (eds.), *Fiscalità, Ambiente, Sviluppo. Delega al Governo per l'introduzione di incentivi per finalità ecologiche per uno sviluppo economico sostenibile e per l'occupazione*, Roma 1999, 9; A.F. URICCHIO, *Le politiche tributarie in materia ambientale*, in A. DI PIETRO (ed.), 484.

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2009 with the law decree n. 78 which introduced the *Robin Hood Tax*[104], an additional corporate income tax (IRES), to be applied also to the refining and production/ marketing of petroleum, diesel for various uses, lubricating oils and electricity produced by them in previous tax period when revenues exceeded 25 million euros.
This measure (surcharge), at least initially, would have increased the tax rate from 27.5 to 33 per cent (both on windfall profits and on excess profits), with the simultaneous prohibition of economic operators to pass on the increase to consumer prices.
However, the Constitutional Court declared the surcharge illegitimate in decision no. 10/2015 for violation of the principles of reasonableness and ability to pay (article 53 of the Constitution), as it is an increase in the rate based on the total entrepreneurial income and a *structural measure*, although introduced for the increase in raw material prices due to the economic situation. In the present case, there were no verification *mechanisms* prohibiting economic operators from passing on the tax burden to consumers[105].
Returning to another intention to introduce a tax on emissions harmful to the environment into Italian tax system, law no. 23/2014 intervened on the excise duties on energy products and electricity in relation to the *content* of nitrogen oxide and sulphur and the related revenues were to be allocated to plants with exemptions already foreseen for renewable energy[106].
In this regard, a reference is made to the "refund of excise duties on diesel fuel" for motor vehicles, that is to a subsidy against payment for having purchased it and recently modified by the budget law for the year 2020.
To finish, the decree law n. 146/2021, linked to the financial interventions for 2022, refinanced with provision in article 7 the *eco-bonus Fund* for the purchase of low carbon emissions vehicles.
Having carried out a concise analysis of energy taxation in the Member States, which is clearly inconsistent, and having considered the intention to introducing a carbon tax not only at the *borders* and at a general level, it should be noted that the

[104] Law decree n. 112/2008.

[105] For the appropriate insights, see A. MARCHESELLI - S.M. RONCO, *L´"incostituzionalità differita" della c.d. Robin Tax, tra diritti fondamentali, analisi economica del diritto e diritto dell'Unione europea: il futuro della fiscalità tra nuove categorie concettuali e rischi di "teratogenesi" giuridica*, in *Consultaonline*, 2015, 647 - 655; D. STEVANATO, *Robin Hood Tax tra incostituzionalità e aperture della Corte a discriminazioni qualitative dei redditi societari*, in *Corriere tributario*, 13/2015, 951 - 957; L. LETIZIA, *Equilibri finanziari e squilibri costituzionali: alcune (aggiuntive) riflessioni a margine della sentenza n. 10/2015 della Corte costituzionale*, in *Innovazione e diritto*, 4/2015, 87 - 107.

[106] See G. SELICATO, *Profili teorici ed elementi evolutivi degli strumenti agevolativi a carattere fiscale e non fiscale per la promozione dello sviluppo sostenibile*, *International Tax Law Review*, 2-3/2015, 399-429; R. PIGNATONE, *Agevolazioni su imposte ambientali ed aiuti di Stato,* in M. INGROSSO - G. TESAURO (eds.), *Aiuti di Stato ed agevolazioni fiscali,* Naples 2009, 747 - 754; F. PEPE, *Le agevolazioni fiscali regionali in materia ambientale*, in *Rivista di diritto tributario*, 3/2012, 281 - 313; P. PURI, *La produzione dell'energia tra tributi ambientali ed agevolazioni fiscali*, in *Diritto e pratica tributaria,* 2/2012, 1039 - 1059.

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hypothesis would also pose problems and, among them, a fundamental one determined by the continuous difficulty of being able to know/estimate the *cost* of environmental damage for each *level* of pollution/emission produced.
In this regard, harmful emission standards could be identified for each *good* to be associated with the energy used in the production/distribution process.
However, and concretely, the introduction of a carbon tax on is an issue closely related to fiscal policy objectives that are intended to be achieved by defining tax bases and rates, considering fuels or *sources* to be taxed, verifying what revenues will be able to generate and how to use them, the impact that can determine on consumers, businesses and more widely on the economic system.
It is certain that the introduction of a *pure* carbon tax would lead to an increase in export prices and this could reduce the competitiveness of EU companies.
Moreover, it would have a particularly critical impact on specific categories of workers and industrial sectors without the launch of fiscal reforms[107].
In addition, the risks of fraud that could arise on energy certifications with reduced payments should not be overlooked.
Finally, both a carbon tax and a carbon border tax would require the unanimous agreement of the Member States.

8. *The remote prospect of a minimum global tax on environmentally harmful emissions.*
Climate change is a major emergency, not to be postponed, and an event closely linked to economic development in a redistributive sense. CO_2 emissions remain the main factor in greenhouse gases (GHG) and the increase in its mass is mainly due to the harmful use of polluting and non-renewable energies.
In this regard, the International Monetary Fund proposed, on June 18, an international carbon price floor among large emitters, but here too there would be considerable implementation problems.
In reality, globalization has been severely compromised by the pandemic which has shown protectionist and nationalist tendencies, although it is clear that trade relations between states are closely interlinked.
In fact, a uniform global tax on harmful emissions would affect, way too much energy-intensive States (such as China and India), major exporters of fossil fuels, *i.e.*: coal, oil and methane (Russia, USA).
In addition, it would penalize large oil exporters (Saudi Arabia, Qatar), those who do not or have little differentiation of their energy sources or who have high consumption of energy per capita, and finally those characterized by energy-intensive production (USA, Japan, Israel).

[107] A. BARANZINI - S. CARATTINI, *Taxation of Emissions of Greenhouse Gases*, in B. FREEDMAN (ed.), *Global Environmental Change. Handbook of Environmental Pollution*, 1/2014, Springer, Dordrecht, 543 - 560.

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The consequence would be the inevitable increase in fuel prices for transport and heating also in countries with "good" environmental protection measures (Sweden, Norway, Iceland).

It is certain that, in addition to coordinated and multilateral actions, one of the "tools" to mitigate climate change can only be a tribute, but the preliminary creation of an international emissions market is still a long way off.

Indeed, if a carbon tax is established in the EU alone, this will represent an insufficient remedy to solve the serious environmental problems that extend into a global dimension[108].

The introduction of a CBAM should overcome the difficulties linked both to compatibility with World Trade Organization standards, and to the *calculation* of the content of polluting emissions incorporated in *intermediate* goods: the previous stages of the production chain can certainly have an international dimension.

Finally, it is necessary to clearly outline the policy objectives to be achieved.

Unfortunately, globally they are (still and only) good intentions as the UN climate Conference recently held in Scotland has unequivocally demonstrated, showing the impossibility of reaching common rules for a global market, especially for reasons related to commercial interests.

The Glasgow Climate Pact, although described as *historic* by the President of "COP26" and the German Minister of the Environment, contains only guidelines so that all the States participating in the Conference (in fact, a few), comply with the new targets for limiting global warming. Moreover, almost at the conclusion of the negotiations, India has asked and obtained the modification of article 36, replacing *phase out* with *phase down* regarding the harmful emissions.

[108] The purpose, in fact, was also advanced by the United States with respect to the referable ETS. See, J. BIDEN, *Plan for Climate Change and Environmental Justice,* April 2021, in *JOEBIDEN.COM/CLIMATE-PLAN*; CLIMATE LEADERSHIP COUNCIL, *The Baker Shultz Carbon Dividend Plan, Bipartisan Climate Roadmap*, in *clcouncil.org*, February 2021; R.N. STAVINS, *The Future of U.S. Carbon-Pricing Policy*, w.p., Cambridge 2019; S.A. BROOKS - N.O. KEOHANE, *The Political Economy of Hybrid Approaches to a U.S. Carbon Tax: A Perspective from the Policy World*, in *Review of Environmental Economics and Policy*, 14/2020.

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