

## **WORKINGPAPER**

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# **The EU's Hybrid Governmentalities: Enlargement Policy and the Carbon Border Adjustment Mechanism in the Western Balkans**

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## **Abstract**

Climate Policy in the Western Balkans has increasingly become a focus of different EU policies. Both Enlargement Policy and the Carbon Border Adjustment Mechanism (CBAM) target the region's climate policies yet differ substantially in their approach. The way these policies interact and shape both concrete policy issues and the broader question of the Western Balkans' integration into the EU offers broader insight into the nature of EU external action. This article shows how potential contradictions between these policies emerge, but also how they are mediated in practice. To this end, it uses governmentality analysis to explore the underlying structures and logics they embody. Based on its case studies, the article argues that the interaction between the policies' governmentalities reveals a structural feature of EU external action: a hybrid governmentality, which turns contradictions into politically productive tension and enables their strategic use.

## **Keywords**

CBAM, External Climate Policy, Enlargement Policy, Western Balkans, Governmentality

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## 1. Introduction

Climate Policy in the Western Balkans is heavily influenced by the European Union (EU). The EU addresses climate policy in the Western Balkans through its enlargement policy, and external climate policy – most notably the Carbon Border Adjustment Mechanism (CBAM). Interestingly, the EU approaches climate policy in this region according to different terms and logics, treating states both as accession candidates and as third countries. This field of contradictions and interactions within the EU's approach is highly relevant to understanding the nature of EU external action as it attempts to balance unilateralism and enlargement policy.

Embedded in the European Green Deal, that placed a new emphasis on environmental aspects in its sustainability concept<sup>1</sup> and thus created a “discursive break,”<sup>2</sup> CBAM is part of a new approach in external climate policy,<sup>3</sup> described as constituting a “qualitative leap forward.”<sup>4</sup> CBAM has been subject to a broad debate,<sup>5</sup> among others regarding its economic impact on the Western Balkans linked to trade patterns and potential carbon lock-in.<sup>6</sup> Its primary objective is to prevent carbon leakage by putting a price on the carbon in imported goods, is,<sup>7</sup> but its multifunctionality<sup>8</sup> includes extraterritorial steering of climate policy in third countries,<sup>9</sup> overall exemplifying the recent unilateral turn in EU trade policy.<sup>10</sup>

Meanwhile, enlargement policy has increasingly turned into an autonomous regulatory policy, based on asymmetry and conditionality.<sup>11</sup> It addresses climate policy not only as part of the EU *acquis* to be negotiated, transposed, and implemented,<sup>12</sup> but also in specific instruments. This creates an entanglement and potential contradictions between enlargement and climate policy that can be traced empirically: while CBAM is likely to have a negative impact on the Western Balkans' economies,<sup>13</sup> there is also a history of EU enlargements weakening environmental policy.<sup>14</sup>

While the states within the Western Balkans differ in many aspects, they are all subject to EU external climate policy. This overarching structural similarity justifies a common analysis, allowing the region to serve as an excellent case study to demonstrate broader dynamics of EU policy. To understand potential contradictions between these policies and how they are mediated in practice, it is necessary to explore the underlying structures and logics they embody.

This interaction between the different approaches embodied by CBAM and Enlargement, how it works and what it may mean for broader EU external action currently represents an important gap in the literature. More broadly, this work is situated between

1 Simon Schunz, “The “European Green Deal” – a Paradigm Shift? Transformations in the European Union’s Sustainability Meta-Discourse,” *Political Research Exchange* 4, no. 1 (2022): 16.

2 *Ibid.*, 18.

3 Camilla Adelle et al., *European Union External Environmental Policy* (Palgrave Macmillan, 2017), 2.

4 Xavier Fernández-Pons and Maria del Mar Campins Eritja, *Deploying the European Green Deal* (Taylor & Francis 2024), 3.

5 Jiarui Zhong and Jiansuo Pei, “Carbon border adjustment mechanism: a systematic literature review of the latest developments,” *Climate Policy*, 24 no.2 (2022): 228-242.

6 Laima Eicke et al., “Pulling Up the Carbon Ladder? Decarbonization, Dependence, and Third-Country Risks from the European Carbon Border Adjustment Mechanism,” *Energy Research and Social Science* 80 (2021): 8.

7 Alice Pirlot, “Carbon Leakage and International Climate Change Law,” *Transnational Environmental Law* 13 no.1 (2024): 61.

8 Alexandra Buylova and Naghmeh Nasiritousi, “CBAM: Bending the carbon curve or breaking international trade?,” *European Policy Analysis* 9 (2024): 4, 5.

9 Regulation 2023/956, (10), (14).

10 Simon Happersberger, Ferdi de Ville, Harri Kalimo, “The Unilateral Turn in EU Trade Policy? The Origins and Characteristics of the EU’s New Trade Instruments,” *European Foreign Affairs Review* 28 no.1 (2023): 26.

11 Antoaneta Dimitrova, “Enlargement, Institution-Building and the EU’s Administrative Capacity Requirement,” *West European Politics* 25 no.4 (2022): 172.

12 Susan Baker, “EU Conditionality and Environmental Policy in Southeastern Europe”, *Südosteuropa* 63 no.3 (2015): 391.

13 Sonja Risteska et al., “The EU’s Carbon Border Adjustment Mechanism: Challenges and Opportunities for the Western Balkan Countries,” *Agora Energiewende* (2022), 13.

14 Sanja Bogojevic, Mirjana Drenovak-Ivanovic, “Environmental Protection through the Prism of Enlargement: Time for Reflection,” *Common Market Law Review* 56 no.4 (2019): 959.

the study of EU environmental policy, enlargement policy, and external action in general. This paper proposes to use the lens of governmentality<sup>15</sup> to fill this gap with insights about the logics and mechanisms of these policies that other frameworks might not find.

The study of governmentality aims to uncover the underlying technologies (the means, methods, and techniques by which government is accomplished), rationalities (the “truths,” logics, or mentalities that guide governmental and individual behaviour), and subjectivities (the identities that particular forms of governmentality create and that in turn help to reproduce them)<sup>16</sup> of these policies.

This paper asks how CBAM and enlargement climate policy can be assessed in terms of governmentality, and what their interactions and contradictions reveal about broader structural features of EU external action. It first carries out a detailed governmentality analysis, before explaining and conceptualising the results as a specific (hybrid) mode of governmentality that characterises EU external action. It argues that these policies’ interactions exemplify a broader feature of EU external action: a hybrid governmentality, which turns contradictions into politically productive tension and enables the strategic use of this tension. This transformation helps explain how the EU maintains flexibility and legitimacy in external climate governance and beyond.

## 2. Theoretical Framework

To understand the underlying features of CBAM and enlargement policy and gain broader insight into EU external action, this paper approaches CBAM through a governmentality analysis. A governmentality lens explores “how what we assume to be ‘true’ about the way the world does and should work directs and limits the behaviour of governments and individuals”.<sup>17</sup> Governmentality can be understood as the aggregation of activities of a multiplicity of agents that “seek to shape conduct by working through the desires, aspirations, interests and beliefs of various actors”.<sup>18</sup> This approach allows us to explore the different policies’ logics and how their interplay shapes climate governance in the Western Balkans.

Situated within a broader Foucauldian approach to (EU) external action,<sup>19</sup> this study draws on a Foucault-inspired, governmentality-focussed analytical framework developed by legal scholar Jessica Lawrence, which allows for interpreting the EU’s external climate policy “as a regime of practice that entails particular rationalities of government, is associated with particular technologies of government, and that is intimately bound up with the production of subjectivity at the international level”.<sup>20</sup> It enables operationalising the general insights of governmentality in a more structured way and is especially applicable to the area of EU external action.

Rationalities refer to the “truths,” logics, or mentalities guiding governmental and individual behaviour.<sup>21</sup> They manifest as boundaries of discursive constellations that “make governing thinkable and therefore possible”, and “render specific practices meaningful”.<sup>22</sup> As such they are not only patterns of thought, but also structuring forces of politics that define the framing of problems and justification of solutions. A key distinction can be made between market and rights rationalities, which differ in how they imagine “government, the identity and behaviour of the individual, and the relationship between the state and its subjects”.<sup>23</sup>

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15 Michel Foucault, *Security, Territory, Population: Lectures at the College de France, 1977–1978* (Arnold I. Davidson ed, Graham Burchell tr, Palgrave Macmillan 2007), 108.

16 Jessica Lawrence, *Governmentality in EU External Trade and Environment Policy* (Routledge, 2018), 45.

17 *Ibid.*, 13.

18 Mitchell Dean, *Governmentality: Power and Rule in Modern Society* (2nd edition, Sage 2010), 18.

19 Marjolein Derous and Frederik De Roeck, “On Foucault and foreign policy: the merits of governmentality for the study of EU external relations,” *European Politics and Society*, 20 no.3 (2019), 254.

20 Lawrence, *op.cit.* (2018), 21.

21 *Ibid.*, 45.

22 Jonathan Joseph, “The limits of governmentality: Social theory and the international,” *European Journal of International Relations*, 16 no.2 (2010): 223

23 Lawrence, *op.cit.* (2018), 57.

Rights rationalities conceptualise individuals as autonomous citizens to be protected by the state. Internationally, this entails a focus on maintaining sovereign authority, promoting of domestic welfare, and protecting the rights of citizens.<sup>24</sup> Market rationalities instead focus on “constructing competitive markets, efficiently managing development and securing the health and wellbeing of populations”.<sup>25</sup>

Within the Foucauldian governmentality framework, technologies are “the means by which rationalities of government are deployed, and by which governing is accomplished”<sup>26</sup> that add an “element of materiality (...), the realm of objects, measurements, and instruments”.<sup>27</sup>

Rights technologies are “hierarchical, state-centred, political, and formal” that engage primarily with “territory, citizens, and borders”.<sup>28</sup> Market technologies are de-centred, de-formalised, and de-politicised in comparison,<sup>29</sup> focussing on universal norms to “improve the efficiency and legitimacy of government”.<sup>30</sup> They can be divided into technologies of agency and performance.<sup>31</sup> The final term relevant to this discussion is subjectivities, which refer to the identities of the governing and governed created by and reproducing governmentalities<sup>32</sup> or “the different modes by which, in our culture, human beings are made subjects”.<sup>33</sup> The market subject is conceptualised as a participant in political-economic processes, as an interest-maximising subject. In contrast, the rights subject is viewed as the legal subject of the sovereign state with subjective rights and included in a specific political association.<sup>34</sup> In practice, however, subjectivities “are unstable and can exist alongside each other, overlap, and even conflict”.<sup>35</sup> Subjectivity refers both to states and to individual subjects, which are both shaping each other.

This approach is well suited to explain EU external action, particularly compared to EU external action governance approaches.<sup>36</sup> While governance approaches focus primarily on effectiveness and efficiency,<sup>40</sup> governmentality explains how power operates through norms, institutions, and subject formation, through discursive and material practices. Its insights extend further into the realms of rationality and subjectivity, areas that are not sufficiently conceptualised by other approaches. Only by combining insights into these different elements, does governmentality allow to conceptualise broader structural features of EU policy, thus demonstrating its specific usefulness. Since Foucauldian approaches are already present in EU studies,<sup>41</sup> they are additionally suited to uncover the complexities of EU governmentalities,<sup>42</sup> especially theorising external action.<sup>43</sup>

<sup>24</sup> Ibid., 58.

<sup>25</sup> Ibid., 75.

<sup>26</sup> Dean, op.cit. (2010), 41–42.

<sup>27</sup> Lawrence, op.cit. (2018), 103.

<sup>28</sup> Ibid., 105.

<sup>29</sup> Ibid., 106.

<sup>30</sup> Bal Sokhi-Bulley, “Government(al)ity by Experts: Human Rights as Governance,” *Law & Critique* 22 (2011): 254.

<sup>31</sup> Dean, op. cit. (2010), 196.

<sup>32</sup> Lawrence, op.cit. (2018), 45.

<sup>33</sup> Michel Foucault, “The Subject and Power,” *Critical Inquiry* 8 no.4 (1982): 777.

<sup>34</sup> Ibid. 158.

<sup>35</sup> Ibid., 163.

<sup>36</sup> Sandra Lavenex and Frank Schimmelfennig. *EU External Governance: Projecting EU Rules beyond Membership* (Routledge 2010), 1.

<sup>37</sup> Lucie Chamlian and Dirk Nabers, “Introduction: Foucault meets EU Studies,” *Global Society*, 30 no. 3 (2016): 387.

<sup>38</sup> Jessica Lawrence, “Governmentality Approaches,” in *The Routledge handbook of critical European studies* edited by Didier Bigo et al. (Routledge 2021), 65.

<sup>39</sup> Derous and De Roeck, op.cit. (2019), 246.

<sup>40</sup> Ibid., 249.

<sup>41</sup> Lucie Chamlian and Dirk Nabers, “Introduction: Foucault meets EU Studies,” *Global Society*, 30 no. 3 (2016): 387.

<sup>42</sup> Jessica Lawrence, “Governmentality Approaches,” in *The Routledge handbook of critical European studies* edited by Didier Bigo et al. (Routledge 2021), 65.

<sup>43</sup> Derous and De Roeck, op.cit. (2019), 246.

The following analysis relies on text-based, qualitative policy and discourse analysis of key policy, legal, and communication documents that shape the policies, based on the interwoven analytical categories of rationality, technology, and subjectivity.<sup>44</sup> It can be concretised as “inductive, examining the EU’s practices and discourses in order to determine what forms of political reason guide and motivate its behaviour.”<sup>45</sup> The paper additionally utilises a pattern-matching approach, involving “iterative matching between theoretical patterns derived from the literature and observed patterns emerging from empirical data”.<sup>46</sup> This adds a deductive element, resulting in an overall abductive approach. The paper grounds the analysis by linking empirical results to theoretically exposed patterns of governmentality.

### 3. Analysing CBAM and Enlargement Climate Policies Through the Lens of Governmentality

This central section carries out the governmentality analysis, describing and explaining the underlying technologies, rationalities, and subjectivities inherent to the two policies. The section also includes the first juxtaposition between the two policies, preparing for later discussion of their interactions and contradictions.

#### 3.1 Technologies

##### 3.1.1. CBAM

CBAM is a tool that puts a price on carbon emitted during the production of certain goods entering the EU. It requires EU importers of certain goods to acquire public certificates for carbon emissions embedded in their goods which includes a price set by the European Commission that is equivalent to the weekly average price of emissions allowances auctioned within the (market-based) EU Emissions Trading System (ETS).<sup>47</sup>

As such, CBAM is a tool of centralised government, a legislative act, that is implemented by the central executive in cooperation with border customs authorities. Its implementation is based on notions of border, territory, and sovereignty, differentiating between goods produced within and outside of EU territory, and operationalising the distinction at the border. This analysis is supported by the description of CBAM as a tool of “climate unilateralism”.<sup>48</sup> CBAM’s enforcement mechanism, relies on monitoring, reporting, and verification<sup>49</sup> to enable customs controls with potential penalties for non-compliance. This utilisation of a surveillance mechanism means the policy can be viewed as involving a rights-based technology.

The EU’s controversial adoption of CBAM – including a (perceived) lack of communication about the policy -- show its contested character<sup>50</sup> and political-normative grounding.<sup>51</sup> CBAM uses codified, binding law, setting formal and mostly inflexible criteria for its conditions and consequences. It is thus based on political and hierarchical authority.

However, CBAM appears to contain two key flexibilities. The first concerns prices, linked to the market mechanism of the ETS.<sup>52</sup> This should be qualified as a “secondary” flexibility, as the link is fixed, and CBAM allows no margin of negotiation or modification. The second flexibility is the possibility for exporting states’ goods to be exempt from CBAM if equivalent domestic carbon pricing is in place.<sup>53</sup> While providing agency for foreign governments, the exemption policy is linked to the fixed condition

44 Lawrence, op.cit. (2018), 46.

45 Ibid., 48.

46 Noemi Sinkovics, “Pattern matching in qualitative analysis,” in *The sage handbook of qualitative business and management research methods*, edited by Catherine Cassell et al. (SAGE Publications 2017), 472.

47 Fernández-Pons and Campins Eritja, op.cit. (2024), 20.

48 Eva Pander Maat, “Leading by Example, Ideas or Coercion? The Carbon Border Adjustment Mechanism as a Case of Hybrid EU Climate Leadership,” *European Papers* vol.7 (2022): 57.

49 Regulation (EU) 2023/956, art. 27(3); art. 35; art. 8(1).

50 Marian Feist, et al., “Selling CBAM – Diplomacy for the European Union’s Carbon Border Adjustment Mechanism,” *Kopernikus project Ariadne*, Potsdam, (2024), 7.

51 Pander Maat, op.cit. (2022), 60.

52 Regulation (EU) 2023/956, Art. 21

53 Ibid., Art. 9.

of a carbon price equivalent to the ETS. Hence, both flexibilities are subordinated to the fixed equivalence with the ETS, thereby reflecting the policy objective of preventing carbon leakage by creating a level playing field.<sup>54</sup>

Furthermore, contrary to the notion of individual entrepreneurial actors capable of calculating and assuming their own range of risks and rewards,<sup>55</sup> CBAM implies a collectivised notion of risk where a central state actor assumes responsibility for protecting the society and its economy.<sup>56</sup>

Market technologies imply a situation where the national state delegates regulatory tasks to “higher scales or levels of governance,”<sup>57</sup> which arguably applies here due to European states delegating the EU with climate policy regulatory powers. However, the EU, a supranational actor, still uses CBAM as a territorial, sovereign, centralised, hierarchical, legally formal and political technology in line with rights technologies. The EU seems to be at the end of a dialectical movement that involved delegations of sovereign states recreating a sovereign entity on a supranational scale and thereby returning to a rights-based mode – precisely because the individual states became unable to regulate under the conditions of market-based globalisation.

Earlier environmental import restrictions share with CBAM several key features such as utilisation of centralised, political-hierarchical, legally formal tools that are based on a “conception of regulators as atomistic, sovereign entities that are entitled to act inflexibly, without consultation or negotiation”.<sup>58</sup> Scholarly analyses of CBAM reiterate this qualification<sup>59</sup>, showing how it builds upon this earlier trend of global climate policy.

CBAM, however, is a more complex tool than earlier import restrictions. Several hybrid aspects nuance the analysis. While the monitoring, reporting, and verification framework ultimately depends on the implementation of rules and penalties by customs authorities at the border, it also involves agency for private actors in reporting and for third parties in verification. This role for private actors combined with the involvement of stakeholders in the policymaking process, supports the view that CBAM is also based on a horizontal network of nonstate actors, introducing greater flexibility than the sovereign model, and thus resembles a market technology that is supported by a quantitative, scientific base.<sup>60</sup>

While this analysis establishes the hybridity of hierarchical and horizontal regulatory approaches, aspects concerning the structure, form, sources of power, and the material implementation of the policy reflect a rights-based core of the technology. This core is based on central, political, hierarchical, formal, and inflexible authority that functions in terms of territory, border, and sovereignty.

### 3.1.2. Climate Enlargement Policies

The climate aspects of enlargement policy include relevant accession negotiation chapters and specific accompanying instruments, notably the Green Agenda for the Western Balkans, the New Growth Plan for the Western Balkans, and the Energy Community. Their shared overarching feature is a reliance on the mechanism of conditionality which in turn facilitates extraterritorial norm diffusion.<sup>61</sup>

Conditionality can be classified as a primarily market-based technology, as it involves both positive and negative incentives in the form of rewards and sanctions. It relies on the agency and risk calculations of the targeted state,<sup>62</sup> thereby both assuming

54 Michael Mehling et al. “Designing Border Carbon Adjustments for Enhanced Climate Action,” *The American Journal of International Law* 113, no.3 (2019): 441.

55 Lawrence, op.cit. (2018), 113.

56 Ibid., 121.

57 Erik Swyngedouw, “Governance Innovation and the Citizen: The Janus Face of Governance-beyond-the-State” *Urban Studies* 42 (2005): 1998.

58 Lawrence, op.cit. (2018), 121.

59 Buylova and Nasiritous, op.cit. (2024), 2.

60 Regulation (EU) 2023/956, (6), (19).

61 Baker, op.cit. (2015), 391.

62 Lawrence, op.cit. (2018), 111.

and constructing an understanding of the targeted state as a rational economic actor.<sup>63</sup> While the very structure of conditionality relies on a technology of agency, its operationalisation mostly passes through a process of quantification through benchmarking and monitoring,<sup>64</sup> thus indicating a technology of performance is at work.<sup>65</sup> Enlargement conditionality could therefore be described as a normatively charged constitutional conditionality.<sup>66</sup>

Beyond its economic incentive structure, climate conditionality manifests as a market technology mainly through its implementation. In practice, climate conditionality relies on benchmarking, quantified targets, and monitoring. This reliance on metrics is used for the overall measurement of progress in toward the acquis,<sup>67</sup> as well as for specific environmental elements, including emissions reductions and quantified pollution-related goals. Both kinds of quantified performance indicators are linked to regular monitoring mechanisms.<sup>68</sup>

Benchmarking and quantification are not only a feature of monitoring mechanisms but transform the very process of governance into a comparative<sup>69</sup> and competitive structure.<sup>70</sup> Yet at the same time, candidate states are framed as agents who must take ownership of reforms, thereby granting them flexibility of means – which corresponds to a technology of agency.<sup>71</sup>

Climate aspects do not stand alone in enlargement policy: they are linked to and entangled with considerations of good governance, public participation, environmental assessments, access to information, etc., which is particularly reflected in the Green Agenda.<sup>72</sup> This focus on good (environmental) governance and procedural norms is paradigmatic of market-based technologies.<sup>73</sup>

While the Green Agenda for the Western Balkans is open in terms of the concrete measures states can take (often identifying certain avenues that “could be explored”<sup>74</sup>), it has structural features indicating it is better characterized as a market-based technology and not a technology of agency. These features include its horizontal governance structure, which references both stakeholders<sup>75</sup> and partnerships, thus indicating a role for actors beyond state entities.<sup>76</sup> This emphasis on horizontal structures is further reflected through the policy’s focus on decentralisation and participatory governance, on local levels of governance, business, and civil society.<sup>77</sup> These structural features of agency-based market technologies are supported by the operational principles of transparency and accountability,<sup>78</sup> which are equally associated with the performance paradigm of market-based

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63 Frank Schimmelfennig, and Ulrich Sedelmeier, “The Europeanization of Eastern Europe: the external incentives model revisited,” *Journal of European public policy* 27 no.6 (2020): 818.

64 Heather Grabbe, *The EU’s Transformative Power* (Palgrave Macmillan, 2005), 101.

65 Lawrence, op.cit. (2018), 112.

66 Peter Becker, “Conditionality as an Instrument of European Governance—Cases, Characteristics and Types,” *Journal of Common Market Studies* 63 no.2 (2024): 412.

67 European Commission, “Commission Staff Working Document. Albania 2024 Report.” *Official Journal of the European Union*, SWD/2024/690 final, Brussels, 30 October 2024.

68 Council of the European Union, “European Union Common Position, Chapter 27, accession negotiations with the Republic of Serbia,” (2019), 19.

69 Emma Lecavalier, “Can you standardise transformation? Reflections on the transformative potential of benchmarking as a mode of governance,” *Local Environment* 28 no.7 (2023): 920.

70 *Ibid.*, 921.

71 Lawrence, op.cit. (2018), 125.

72 European Commission, “Commission Staff Working Document, Guidelines for the Implementation of the Green Agenda for the Western Balkans,” *Official Journal of the European Union*, SWD/2020/223 final, Brussels, 6 October 2020, 16.

73 Lawrence, op.cit. (2018), 125.

74 European Commission, SWD/2020/223, 16, 20, 21.

75 *Ibid.*, 7, 17, 20.

76 *Ibid.*, 18, 21.

77 *Ibid.*, 7, 16, 17.

78 *Ibid.*, 15.

technologies.<sup>79</sup>

These structures and principles of governance tend to align with self-regulation approaches and fit the features of market-based technologies, notably techniques requiring impact assessments and horizontal voluntary partnerships.<sup>80</sup> The prevalence of such features is visible in the very structure of policy documents – for instance, the action plan for the implementation of the Green Agenda contains a 10-page section titled “governance, monitoring, reporting and other mechanisms to support the implementation of the Sofia declaration”.<sup>81</sup>

Finally, aspects of the Energy Community exemplify a shift from command-and-control governance to a focus on market integration, including the organisation’s general design and regarding specific policies, from regional energy market<sup>82</sup> creation through emissions trading schemes and private sector participation.<sup>83</sup>

But these market-based technologies contain rights-based residues throughout, contributing to an overall hybrid character. Such rights-based features include the strict legal harmonisation requirements and inflexible EU standards in *acquis* negotiations, the surveillance and enforcement mechanisms of the Energy Community,<sup>84</sup> and imperative *acquis* alignment requirements in the Green Agenda.<sup>85</sup>

While the structure, procedural principles, and mechanisms of enlargement conditionality correspond to market-based technologies in terms of candidate agency and performance measurements, the mechanism retains a hierarchical element, linked to the sovereignty transfer and dependency inherent to conditionality.

CBAM and climate enlargement policy share a similar hybridity, but with inverted structures. CBAM’s rights-based core is complemented with minor market elements such as stakeholder involvement and quantitative monitoring, while climate enlargement policy’s market-based structure contains rights-based residues visible in legal harmonisation and hierarchical oversight.

This hybridity results in a paradoxical structure in which the residues of the opposite technology reveal the dominance of an overarching opposite rationality. These internal contradictions are symptomatic of EU external action,<sup>86</sup> which oscillates between sovereign control and decentralised, participatory mechanisms.

## 3.2 Rationalities

### 3.2.1. CBAM

The central feature of CBAM is carbon pricing. Reflecting the Polluter Pays Principle<sup>87</sup>, CBAM’s carbon pricing mechanism is linked to the ETS pricing emissions within the EU.<sup>88</sup> It addresses the risk of carbon leakage<sup>89</sup> by emissions embedded in imported products.<sup>90</sup> This extension of the ETS to cover imports reinforces the assumption that markets are the primary tool for solving

<sup>79</sup> Lawrence, *op.cit.* (2018), 112.

<sup>80</sup> *Ibid.*, 131.

<sup>81</sup> Regional Cooperation Council, “Action Plan for the Implementation of the Green Agenda of the Western Balkans 2021-2030,” (2020), 30.

<sup>82</sup> European Union, L198/18, 59.

<sup>83</sup> *Ibid.*, 9, 40.

<sup>84</sup> European Union, L198/18, 133, 134.

<sup>85</sup> Regional Cooperation Council, *op.cit.* (2020), 12.

<sup>86</sup> Lawrence, *op.cit.* (2018), 132.

<sup>87</sup> Regulation (EU) 2023/956, (1).

<sup>88</sup> *Ibid.*, (7).

<sup>89</sup> *Ibid.*, (9)

<sup>90</sup> *Ibid.*, (8)

environmental challenges, highlighting the commodification of emissions.<sup>91</sup>

However, an important distinction can be made within the broader framing of market rationality between a human capital and free-market perspective. While a human capital perspective focuses on questions of market failure through information asymmetries or environmental externalities, and justifies unilateral action, on the other hand, a free-market perspective rejects this intervention, even if its purpose is a level playing field.<sup>92</sup>

CBAM arguably reflects a human capital perspective: it aims to accurately price in the environmental externality that could go unaccounted if carbon leakage occurs. According to CBAM's logic, unpriced emissions are a market failure that threatens the market-based solution established within the EU through the ETS. From this perspective, it is only by creating a level playing field for domestic and foreign industries alike that this market failure can be avoided.

CBAM is thus both generally market-based (incentivising foreign industries to decarbonise via price signals)<sup>93</sup> and a targeted intervention to protect the market-based framework of the EU from distortions (carbon leakage) by creating a level playing field. Its general function aligns with the human capital-oriented market rationality.

In addition to the central pricing mechanism, CBAM's operational principles also align with market rationalities. CBAM is based on notions of efficiency, effectiveness, and competitiveness. It is in line with earlier examples of market rationality in terms of policy justifications. For instance, for the EU Aviation ETS, each regulatory choice "is justified by reference to efficiency, effectiveness, risk, and science".<sup>94</sup>

However, the CBAM regulation text makes use of efficiency-themed vocabulary much less extensively than earlier EU environmental policy documents,<sup>95</sup> instead focussing more on "effectiveness".<sup>96</sup> This difference in emphasis, however, does not mean that it steps away from market rationality.

Indeed, alongside its references to climate science,<sup>97</sup> CBAM's key justification for avoiding carbon leakage establishes a firm link with the EU ETS. It reinforces its existing market rationality by following the underlying assumption that commodifying emissions in a cap-and-trade system is a tool for "reductions of greenhouse gas emissions in a cost-effective and economically efficient manner".<sup>98</sup>

CBAM takes this logic further through its preoccupation with carbon leakage. Establishing equivalence between interior and exterior carbon prices is the most efficient way to avoid financial incentives to produce or import high-carbon products<sup>99</sup> – an approach that, even if framed in climate terms, reflects competitiveness considerations.<sup>100</sup> This role of CBAM thereby follows the market rationality conception of market regulation.

CBAM is also embedded in a market rationality in its conception of flexibility and risk. It conceptualises risk mainly as the risk of

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91 Edward Page, "The hidden costs of carbon commodification: emissions trading, political legitimacy and procedural justice," *Democratization*, 19 no.5 (2012): 936.

92 Lawrence, *op.cit.* (2018), 79.

93 Regulation (EU) 2023/956, (14).

94 Lawrence, *op.cit.* (2018), 92.

95 *Ibid.*, 75.

96 Regulation (EU) 2023/956, (22), (23).

97 *Ibid.*, (6).

98 European Union, "Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading within the Union and amending Council Directive 96/61/EC," consolidated version 01.03.2024, Official Journal of the European Union L275/32, Brussels, 1 March 2024, art. 1 (1)

99 Regulation (EU) 2023/956, (9).

100 Buylova and Nasiritousi, *op.cit.* (2024), 2.

carbon leakage,<sup>101</sup> which is linked to the broader risk of unmitigated climate change.<sup>102</sup> While this latter concern, with its focus on protecting citizens from risk, contains a residue of rights rationalities, the former concern corresponds purely to market logics. As Lawrence points out, the threat posed by climate change is not presented “in terms of a risk to individual rights or to justice, but rather an evidence-based risk to the effective functioning of the global system”.<sup>103</sup> The ETS sought to “manage these risks in a way that provides maximum freedom and flexibility for entrepreneurial actors”<sup>104</sup> and CBAM seeks to maintain the level of flexibility guaranteed under the ETS.<sup>105</sup> While this claim about flexibility might raise doubts when thinking about the technologies at play, as seen above, the use of this claim to justify the policy does imply a continuous market rationality linking ETS and CBAM.

Finally, market rationality is so influential that it shapes even the terms of debate around a policy. Even so, strong residues of a rights rationality persist. While arguments in line with the market rationality focus on the practical effectivity of CBAM<sup>106</sup> and its compatibility with free trade frameworks,<sup>107</sup> others are constructed in terms of sovereignty<sup>108</sup> or justice,<sup>109</sup> thus reflecting a rights rationality.

The territorial version of sovereignty, exemplified by command-and-control-style customs controls at borders, can be seen as a residue of rights rationality in CBAM. However, this aspect of rights rationality is subordinated to the functionality of the market rationality, as it does not serve an independent normative or structuring function.

Thus, the key contradiction within CBAM’s hybrid rationality is that it uses rights-based technologies from a protectionist framework, that is in line with a sovereigntist rights rationality, to achieve a fundamentally market-rational goal: the functioning of its interior market-based approaches to mitigate climate change. The former is instrumental to the latter, yet their interaction goes beyond simple subordination. The result is the coexistence of a sovereigntist rights rationality with a human capital market rationality.

### 3.2.2. Climate Enlargement Policies

The underlying telos of enlargement policy is the transformation of accession candidates into fully compliant member states through legal alignment and democratic governance, thus mirroring the rights-based normative aspirations of the EU itself. This is grounded in the constitutional character of the accession process<sup>110</sup> with its highly demanding normative criteria.

This transformation of accession candidates is linked to supposed benefits of an enlarged EU as a “better guarantor of political stability, security and peace on the continent” and “a stronger global player” bringing “far reaching socio-economic benefits”.<sup>111</sup> These goals closely mirror the features of a sovereigntist rights rationality, aiming to “increase influence and power through normative action, shield the EU against incursions of EU rights”.<sup>112</sup>

101 Regulation (EU) 2023/956, (9)-(15).

102 Ibid., (1).

103 Lawrence, *op.cit.* (2018), 89.

104 Ibid.

105 Regulation (EU) 2023/956, (22).

106 Buylova and Nasiritousi, *op.cit.* (2024), 10.

107 Giulia Claudia Leonelli, “Export Rebates and the EU Carbon Border Adjustment Mechanism: WTO Law and Environmental Objections”, *Journal of World Trade* 56 no. 6 (2023): 969.

108 Pander Maat, *op.cit.* (2022), 61.

109 Callum Brockett and Felicity Deane, “Carbon Border Adjustments – a tool for mitigation or a barrier to justice?” *Climate Law* 13 no.1 (2023): 44.

110 Art. 49 TEU.

111 European Commission, “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2024 Communication on EU enlargement policy.” *Official Journal of the European Union* COM/2024/690 final, Brussels, 30 October 2024, 20.

112 Lawrence, *op.cit.* (2018), 82.

This logic is spelt out through the legal harmonisation requirements in the negotiations. While its operationalisation in different policies like the Green Agenda or the Energy Community largely passes through market-based mechanisms, these are linked to strict hierarchical compliance requirements with the *acquis*.<sup>113</sup> This extends even to a key link between enlargement and CBAM: the electricity market exemption clause<sup>114</sup> is linked to extensive *acquis* alignment, beyond the market-based aspect of equivalent carbon pricing.

The Energy Community, while promoting market integration with tools such as emissions trading and private sector participation, is closely tied to *acquis* compliance through a conditional link. This link, and its hierarchical framework -- including binding commitments with the possibility of sanctions<sup>115</sup> for non-compliance under the oversight of the Ministerial Council<sup>116</sup> -- embed the market-based technologies in the broader rights-based framework of legal obligations and top-down enforcement. The link between a rights rationality and market technologies is exemplified by the specific mechanisms of this conditionality: while its technical functioning can be explained by the external incentives model,<sup>117</sup> presupposing rational economic choices, its objects are highly normative, from extensive *acquis* adoption<sup>118</sup> to fundamental reforms.<sup>119</sup>

The way *acquis* alignment is measured through benchmarking and monitoring is not only an instrumental mediation of its rights-based objective, but it also influences the way actors think about the *acquis* and its implementation. The discourse about the Energy Community reflects both rights-based declarations of its historic opportunities<sup>120</sup> and market-based technical details of Interim Benchmark Assessment Reports.<sup>121</sup>

One part of the debate on enlargement focusses on whether the EU's external normative transformation of the accession candidates amounts to an infringement of the candidate states' sovereignty. Another line of critique questions the reduction of the environmental *acquis* to a quantifiable "checklist"<sup>122</sup> (an example of benchmarking and monitoring), instead highlighting the normative importance of environmental transformation as "a fundamental legal and political commitment" anchored in the treaties.<sup>123</sup> This second argument exemplifies how criticism is formulated within the framework of a rights rationality.

The transformative, rights-based *telos* of enlargement policy are largely implemented through market-based technologies that use conditionality. These technologies are embedded in a rights-based framework that is linked to normative considerations and hierarchical obligations. Similar to CBAM, this combination gives rise to an overall paradoxical hybrid rationality.

However, in the regulatory approach of the Energy Community, the market-based technologies are in a subordinate, instrumental relationship to the rights-based framework. Yet, even from this position the market-based technologies influence the overall rationality beyond their formal status. This relationship between technologies and rationalities is inverse to that of CBAM and climate enlargement policy.

### 3.3 Subjectivities

#### 3.3.1. CBAM

When thinking about CBAM's construction of subjectivities, the normative-structural goal of levelling the playing field of the internal market is a lesser consideration than the presumed effect on individual firms. Indeed, the secondary objective of CBAM

<sup>113</sup> Regional Cooperation Council, *op.cit.* (2020), 15; European Union, L198/18, art. 3.

<sup>114</sup> Regulation (EU) 2023/956, art. 2 (7).

<sup>115</sup> *Ibid.*, art. 40.

<sup>116</sup> European Union, L198/18, art. 47

<sup>117</sup> Schimmelfennig and Sedelmeier, *op.cit.* (2020), 818.

<sup>118</sup> European Union, L198/18, 11.

<sup>119</sup> European Commission, COM/2023/691, 8.

<sup>120</sup> European Commission, COM/2024/690, 3.

<sup>121</sup> *Ibid.*, 5.

<sup>122</sup> Bogojevic and Drenovak-Ivanovic, *op.cit.* (2019), 968.

<sup>123</sup> Art. 3 (3) TEU.

is to “encourage producers from third countries to use technologies that are more efficient in reducing greenhouse gases so that fewer emissions are generated”.<sup>124</sup> This objective assumes that the third-country producers are market-rational actors that will respond to financial incentives and price signals. CBAM actively constructs and leverages this subjectivity of market-rationality in order to achieve non-market goals.

This viewpoint relies on the assumption that market failures involving negative externalities can lead to harmful behaviour by rational economic actors, since price incentives tend to outweigh other considerations, such as the consequences of emissions. This assumption leads to a reproduction of the same market logic on the level of responses and, in doing so, constructs the concerned subjects to fit that logic.

Market subjects mediate knowledge of the world through measurement, quantification, and comparison. Accordingly, their actions are driven by an abstract numerical nexus of emissions and prices that is subjected to actions of calculation and monitoring. These acts of quantification serve as the basis for categorisation and surveillance. Whether certificates must be purchased, and the monitoring<sup>125</sup> of compliance, depends on the imported products<sup>126 127</sup> and the current carbon price<sup>128</sup>. Subjects internalise this structure and act accordingly. They adapt their economic behaviour reacting to price signals and conceptualise themselves through these categories. In other words, involved actors self-regulate to align their behaviour with this logic.

The subjectivity of the EU as a market regulator parallels this constructed market subjectivity of economic actors. Assuming actors behave according to market rationality, the CBAM’s mechanisms operate in accordance with these subjectivities. Additionally, by actively promoting market-based solutions, CBAM also recreates and reinforces these subjectivities. In reinforcing the behaviour it seeks to incentivise, CBAM follows the logic that “regulation should proceed by making desirable activities easy or inexpensive, and undesirable activities costly.”<sup>129</sup> It thus “nudges” firms in cost-efficient directions, rather than legally obliging them to decarbonise.

However, a further distinction can be made within this market-subjectivity. By intervening and modifying price signals with political intentions, CBAM’s regulatory approach leans more towards its human capital variety as opposed to free-market. This objective is visible in the EU’s self-conceptualisation “as a referee of the international system, imposing efficient, scientific rules to ensure its smooth functioning as a platform for the development of all stakeholders”.<sup>130</sup>

At the same time, the territorial basis of the market logics, visible in the distinct yet coupled mechanisms used inside and outside the internal market, and the corresponding differentiated treatment of enterprises and stakeholders indicates rights-based residues. Indeed, the EU’s stated role as a sovereign protector of domestic industry and citizens provides further evidence of rights-based residues.

This combination of logics indicates a two-level approach, where the EU’s regulatory action views corporations on one level as rational market subjects steered by price signals, but adds an additional level for domestic firms, in which they receive citizen-like protection. The EU’s subjectivity thus oscillates between neutral market regulator and sovereign protectionist. Overall, this dynamic demonstrates the thin line between human capital market and sovereigntist rights subjectivities, and results in a primarily market-based yet altogether hybrid subjectivity constructed through CBAM.

### 3.3.2. Climate Enlargement Policies

Climate enlargement policy can be conceptualised in the opposite way. While the EU conceptualises its own and foreign citizens according to a rights subjectivity, market-based residues equally persist. As an example, the Green Agenda give particular

<sup>124</sup> Regulation (EU) 2023/956, (14).

<sup>125</sup> Ibid., art. 20.

<sup>126</sup> Ibid., art. 2.

<sup>127</sup> Ibid., art. 7.

<sup>128</sup> Ibid., art. 21.

<sup>129</sup> Lawrence, op.cit. (2018), 162.

<sup>130</sup> Ibid., 197.

attention to citizens' needs and intentions.<sup>131</sup> Citizens' involvement here is twofold, with status as both object and subject of EU policy.

Climate policy, including specific measures like phasing out coal mines, is explicitly justified through the claim that these actions protect citizens' health and well-being.<sup>132</sup> Embedded in this justification is the assumption that states are to act to protect rights-bearing citizens – implying the EU's responsibility for citizens extends beyond its borders but is limited to the enlargement region. Accordingly, this assumption follows a sovereigntist framework.

The EU additionally constructs Western Balkans citizens as subjects, as evident in the EU requiring the backing of these citizens for climate policy and their mobilisation for reforms.<sup>133</sup> The EU's emphasis on awareness-raising not only targets procedural consent to reforms but also implies a belief in the agency of transformative actors to "act and demand change".<sup>134</sup> This focus on normative agency, rather than economic incentives, constructs citizens as political subjects. Even so, this agency is still linked to the hierarchical process of accession, which is controlled through mechanisms of compliance and conditionality.

While accession is based on a scientific regime of technical expertise associated with market-based subjectivities, the other processes of subjectivation address individuals as rights-bearing citizens to be empowered to defend their rights through access to information. The internalisation of governing norms develops out of political activation – the EU's recognition of Western Balkan citizens as rights-based subjects. This process mirrors (and explicitly references) the internal approach of building climate action from citizen involvement via the European Climate Pact.<sup>135</sup>

At the same time as constructing citizens, the EU constructs itself as a subject with a specific identity. This construction is based on difference and othering.<sup>136</sup> Indeed, the EU's construction as a moral leader based on universal norms implies the construction of others as inferior or in violation of those norms – "as students to be developed, taught or led, or as delinquents that are purposefully straying from the correct path".<sup>137</sup>

This construction of a normative subjectivity takes a specific form in the context of enlargement policy. The EU defines itself through the criteria it sets up for others to join, which serves both to differentiate itself and incentivise transformation. Climate enlargement policy follows the same pattern – in recent years, the Green Deal has become central to the global leadership aspirations and normative identity of the EU.<sup>138</sup>

As the leader,<sup>139</sup> the EU will share its "experience, know-how, and resources"<sup>140</sup> with the Western Balkans, which will in turn adopt the role of "students". Through the creation of this relationship, climate policy acts as a prime example of the identity-construction and role distribution the EU pursues in global governance. The EU's identity as a moral leader and teacher, which is based on its normative aspirations, is in line with a rights-based subjectivity.

Climate enlargement policy constructs both EU and Western Balkan citizens through rights-based subjectivities – from the protection of citizens' rights, through the activation of their political agency, to the differential construction of self and others, the entire subjectivation process follows this logic.

However, market-based residues can also be identified. While the EU actively addresses citizens and governments in rights-

131 European Commission, SWD/2020/223, 3.

132 Ibid., 20.

133 Ibid., 3.

134 Ibid., 19.

135 Schunz, op.cit. (2022), 15.

136 Caterina Carta, "Discourse Analytical Approaches and the Study of EU External Action," in Gstöhl and Schunz, op.cit. (2021), 217.

137 Lawrence, op.cit. (2018), 179.

138 Sven Grimm et al., "The Global Dimension of the European Green Deal: The EU as a Green Leader?" in The Brussels: Multinational Development Policy Dialogue, edited by Konrad Adenauer Stiftung (2021), 3.

139 European Commission, SWD/2020/223, 2.

140 Ibid., 3.

based terms, its mechanisms are still largely market-based. Accordingly, it is the functional framework of enlargement itself -- its conditionality, monitoring, benchmarking, and emphasis on market integration -- that leaves space for market residues. Individuals in the Western Balkans are targeted not only as citizens, but also as consumers<sup>141</sup> needing to be “accompanied” to make sustainable choices<sup>142</sup> via the market mechanisms of the Green Agenda.

While these instrumental market mechanisms do not turn the EU into a market-based subject per se, they do influence external subjectivities. Conditionality and benchmarking turn rights-based transformations into a measurable, performance-based process, subtly shaping the way subjects perceive the EU, themselves, and the process of accession.

While individuals and states are discursively addressed in normative terms, their choices and actions are influenced by market mechanisms. This influence results in material subjectivation by economic incentives and the logics of conditionality. This subsequently leads to a dual process of subjectivation, working both in parallel and in tension to each other on ideational and material levels, producing hybrid subjectivities.

However, these hybrid subjectivities are not mere byproducts of conflicting rationalities and technologies, but rather a central feature of the EU’s governmentality in external climate action, where contradictions are not resolved but strategically mediated.

## 4. Discussion

The findings of the analysis are summarised in the following subsection, before delving into their implications and insight into the interaction between the two policies. This is the basis for the conceptualisation of structural features of the EU’s external action.

### 4.1 Synthesis of Findings

As the analysis has shown, not only are there internal incoherences of the two policies, but the policies appear to follow a clear (inverse) pattern. In both, a dominant rationality is linked to instrumental technologies, constructing hybrid subjectivities. This in turn creates a double internal incoherence of the two policies between and within the elements of governmentality. Table 1 summarises the findings.

EU Policy Instrument Components of governmentality	CBAM	EU enlargement climate policies
Technologies	Dominant rights-based, market-based residues	Dominant market-based, rights-based residues
Rationalities	Dominant market-based, rights-based residues	Dominant rights-based, market-based residues
Subjectivities	Hybrid	Hybrid

Table 1: The Governmentality of CBAM and EU Climate Enlargement Policies Compared

CBAM follows an overarching market rationality, in which its policy objectives are linked to market mechanisms such as competition and efficiency. However, it uses rights-based technologies to implement and ensure the functioning of these broader logics. On the ground, CBAM operates based on state sovereignty, border-policing, and inflexible hierarchical rules. This contradiction is linked to the construction of a subjectivity that is hybrid both through its differentiation between foreign

<sup>141</sup> Ibid., 5, 7.

<sup>142</sup> Ibid., 9.

and domestic corporations and in the ambiguity of the EU's role as a normative market regulator. It reveals the thin line between sovereigntist rights-based and human capital market-based subjectivities.

The instrumental relation between rationality and technology introduces residues of the former into the latter. It also leads to an inverted absorption of characteristics. CBAM's market rationality influences its rights-based technologies but to some extent also absorbs foundational rights-based concepts of sovereignty and territoriality. The rights rationality of enlargement policy introduces residues into its market technologies while absorbing their logic of quantification and performance. Processes of subjectivation are influenced by both rationalities and technologies. By internalising distinct norms and logics, the policies develop the ambiguous hybridity observed.

Climate enlargement policy mirrors the structure of CBAM's governmentality. Its rights rationality, which focusses on normative transformation, legal harmonisation, and citizens' rights, uses the market-based technologies of conditionality and benchmarking. It results in hybrid subjectivities, that are shaped by both a rights-based normative discourse and market-based material incentives. Despite their seemingly one-sided instrumental relationship, rationality and technology exert reciprocal influence on each other, leading to the presence of opposite residues. Together, they shape the hybrid subjectivities between market instruments and a rights discourse.

Different logics interact at every stage, influencing functionality and legitimacy, objectives and perceptions. The "hybridity" between the different governmentalities is based on contradictions that run through their very structures. This extends to their interaction. Insofar as they share a field of action, their differing governmentalities can clash. They subject Western Balkans citizens and governments to contrasting modes of thinking and instruments in the same field, thereby constructing contrasting subjectivities.

At the same time, the hybrid subjectivities show how contradictory governmentalities interact and merge. Indeed, in their ambiguity between the influences of human capital market and sovereigntist rights rationality, the subjects of CBAM and enlargement appear almost similar.

## 4.2 Interactions

Compatibility between the policies is ensured through linkages, exemptions, and mutual reinforcements. By integrating aspects of the other's technology, they complement each other, through economic pressure for enlargement's gradual transition, and institutional capacities for compliance with CBAM. This complementarity could explain the observed convergence of subjectivities and in turn be explained by the EU's hybrid governmentality.

CBAM is linked to the Energy Community Treaty<sup>143</sup> and enlargement policies also deal with CBAM. Article 2(7) of CBAM foresees an exemption for coupled electricity markets if certain criteria are fulfilled – *acquis* transposition, carbon pricing and the decarbonisation goals of the Energy Community Treaty.

This exemption integrates the Energy Community framework and assimilates the technology of conditionality from enlargement policy. It also adds an incentive to the enlargement conditionality framework: full exposure to CBAM with its dire consequences for the Western Balkan economies.<sup>144</sup> The exemption thus tries to prevent incoherence between the approaches by creating policy linkages.<sup>145</sup>

This link is reflected in all major instruments of enlargement climate policy, which focus on carbon pricing equivalent to the ETS,<sup>146</sup> particularly for electricity markets in the context of the Energy Community.<sup>147</sup> Explicitly referencing CBAM and electricity

<sup>143</sup> Regulation (EU) 2023/956, art. 2 (7).

<sup>144</sup> Eicke et al., *op. cit.* (2021), 5.

<sup>145</sup> Rozeta Karova, "The EU's Carbon Border Adjustment Mechanism and the Energy Community Treaty: Threat for Electricity Trade or Tool for Raising Climate Ambition and Electricity Market Integration," *Carbon and Climate Law Review* 16 no.2 (2022): 100.

<sup>146</sup> European Commission, SWD/2020/223, 16.

<sup>147</sup> European Commission, COM/2024/690, 17.

market coupling, through the Energy Community Treaty,<sup>148</sup> the EU also targets the decarbonisation of CBAM-covered sectors and the expertise needed for compliance.<sup>149</sup> While CBAM assimilates conditionality through its exemptions, it also serves as an economic incentive to advance reforms within enlargement policy. These interactions are responses to the risk of incoherence that may result from the clash of different rationalities in the case of an unprepared introduction of CBAM.

The complementary dynamics of CBAM and enlargement policy are based on the interplay of CBAM's coercive function that uses financial pressure and the positive incentives that are characteristic of enlargement policy. This complementarity illustrates the function of the mutual assimilation and integration of CBAM with the enlargement framework.

This complementarity between coercive and enabling incentives also applies to institutional issues. While there seems to be a tension between CBAM's inflexible demand of immediate compliance and enlargement's gradual capacity-building approach which recognises financial and technical limitations, this tension can be productive. CBAM depends on (still deficient) institutional capacity for monitoring and reporting that enlargement policy builds over time. At the same time, CBAM also incentivises even faster advances in capacity-building.

However, this complementarity is not absolute. It depends on the way policy interactions are implemented. The dual status of Western Balkans states as both third countries subject to coercive measures to prevent carbon leakage and accession candidates approached by the EU through gradual integration, transition periods, as well as financial and technical support risks contradictions.

The coercive character of CBAM with its adverse economic consequences threatens the functioning of enlargement policy, which focusses on a just transition.<sup>150</sup> If the policies' interaction is not fine-tuned, CBAM's full market pressure could undermine the transition efforts in enlargement policy, instead of strengthening them. Further, domestic contestation in the Western Balkans is crucial for practical complementarity – but analysis of that factor is beyond the scope of this article.

### 4.3 Conceptualising Hybridity

Practical compatibility is thus achieved not despite but through governmentality incoherences. This is a feature of a distinct EU governmentality, which transforms tension into a politically productive feature. It does not eliminate contradictions but uses them to achieve and increase flexibility, legitimacy, and strategic adaptability.<sup>151</sup>

Indeed, the EU is able “to hold multiple, even conflicting views simultaneously, and to switch back and forth between frames to elide inconsistencies in its policy positions”.<sup>152</sup> This appears as a strong tool allowing the adaptation of framing, communication, and even functionality of policies to diverging contexts. The coexistence of market and rights technologies is therefore “both uneasy and politically productive,” drawing on contradictory rationalities of government but allowing the EU to act in multiple, conflicting ways and enabling strategic behaviour.<sup>153</sup>

This flexibility is equally reflected in how the EU constructs subjects. Operating both within the citizen and stakeholder paradigms, it can deploy arguments from both rationalities and escape seeming contradictions,<sup>154</sup> thus combining material incentives and discursive strategies.

While structurally embedded in its governmentality, the EU's hybridity remains an active process – replicated for instance in strategies of justification. The hybrid discourses surrounding CBAM and enlargement, oscillating between normative-legal and functional-economic arguments, mirror the debate around the aviation ETS. This system was perceived “as legitimate based

148 European Commission, COM/2023/691, 4.

149 Regional Cooperation Council, “Common Regional Market Action Plan 2025-2028” (2024), 3.7.

150 European Commission, SWD/2020/223, 3.

151 Lawrence, *op.cit.* (2018), 125.

152 *Ibid.*, 57.

153 *Ibid.*, 104.

154 *Ibid.*, 200.

on both sovereign right and scientific necessity; as properly designed both because of its conformity with international law and because of its efficiency and effectiveness; and as appropriate both because of the need for global leadership and the need to prevent market distortions”.<sup>155</sup>

Even if the contradictory elements of governmentality create structural incoherences within and between policies, the EU is able to bridge them with a distinct mode of governmentality. It does not enforce a unitary logic but creates a dynamic hybridity, combining its conflicting elements to reinforce its legitimacy and functionality. This is ensured by its capacity to make contradictions productive and strategically use them to pursue normative aspirations. The EU’s governmentality does not resolve contradictions into a stable synthesis but thrives in their permanent productive tension.

## 5. Conclusion

CBAM and enlargement policy interact in shaping climate governance in the Western Balkans. As part of the EU’s broader external action, they represent two distinct yet intertwined instances of external climate policy. They do not operate in a vacuum, but in a complex field of overlapping objectives, mechanisms, and rationalities, caught up between contradictions and complementarities. This analysis described the two policies’ governmental features, and how their interactions exemplify the broader hybrid governmentality of the EU’s external action.

CBAM operates within a market rationality but uses rights-based technologies, thus constructing hybrid subjectivities. On the other hand, enlargement policy operates within a rights rationality but uses market-based technologies, thereby also constructing hybrid subjectivities. They are both internally and horizontally incoherent; however, their interactions create practical complementarity.

The inverted structure of the policies’ governmentality ensures that tensions become, and stay, productive. This political productivity is not a coincidence but a feature of EU external governmentality. The productive interaction of contradictory governmentalities allows for strategic flexibility and adaptability and ensures legitimacy beyond a single normative framework. The contradictions and hybridity between governmentalities is not exceptional but structurally inherent to EU climate external action since its unilateral turn.<sup>156</sup> This functional hybridity is reproduced through the constant motion and contradiction of its constitutive elements. In that sense, EU governmentality can be called properly dialectical.

This dialectical quality has consequences for EU external climate policy. The contradictory governmentalities are politically productive thanks to their strategic flexibility and adaptability, but this ambiguity also allows for contestation by external actors. This contestation is observable in the debates both around CBAM (between its strategically economic and normatively environmental reading) and enlargement policy (between its merit-based technocratic and political-normative aspects).

Building on the existing literature on governmentality, its insights are applied to two policies, CBAM and climate enlargement policy, as well as their interactions. This paper contributes two new case studies of the governmentality of EU policies to the literature. More specifically, this paper sheds new light on the deeper dynamics of EU external action between unilateral climate policy and enlargement policy. In doing so, it provides further insight into the EU policies’ broader hybrid governmentality, allowing for hypotheses that go beyond the field of climate and enlargement policy.

While this study of governmentality has focussed on the EU’s role and agency, it has largely left out the question of how third countries perceive and react to this governmentality as well as how exactly this governmentality is (institutionally) constructed within “the EU”.<sup>157</sup> These questions require further empirical research, and a better theoretical conceptualisation, particularly on the question of agency. Further research could also try to conceptualise what this external hybridity means for the internal dynamics of European integration.

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<sup>155</sup> Ibid., 210.

<sup>156</sup> Happersberger et al., op.cit. (2023), 26.

<sup>157</sup> Feist et al., op.cit. (2024), 8.

To conclude, this study demonstrates the complexity of EU governmentality in external climate policy. Focussing on the interaction between two seemingly contradictory policies, it traces how the elements of their governmentalities interact and shows how this interaction exemplifies a hybrid governmentality as a structural feature of EU external action. Hence, the paradoxical structure and interaction of CBAM and enlargement policy are not flaws of EU external climate action – they are the very condition of its operation.

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