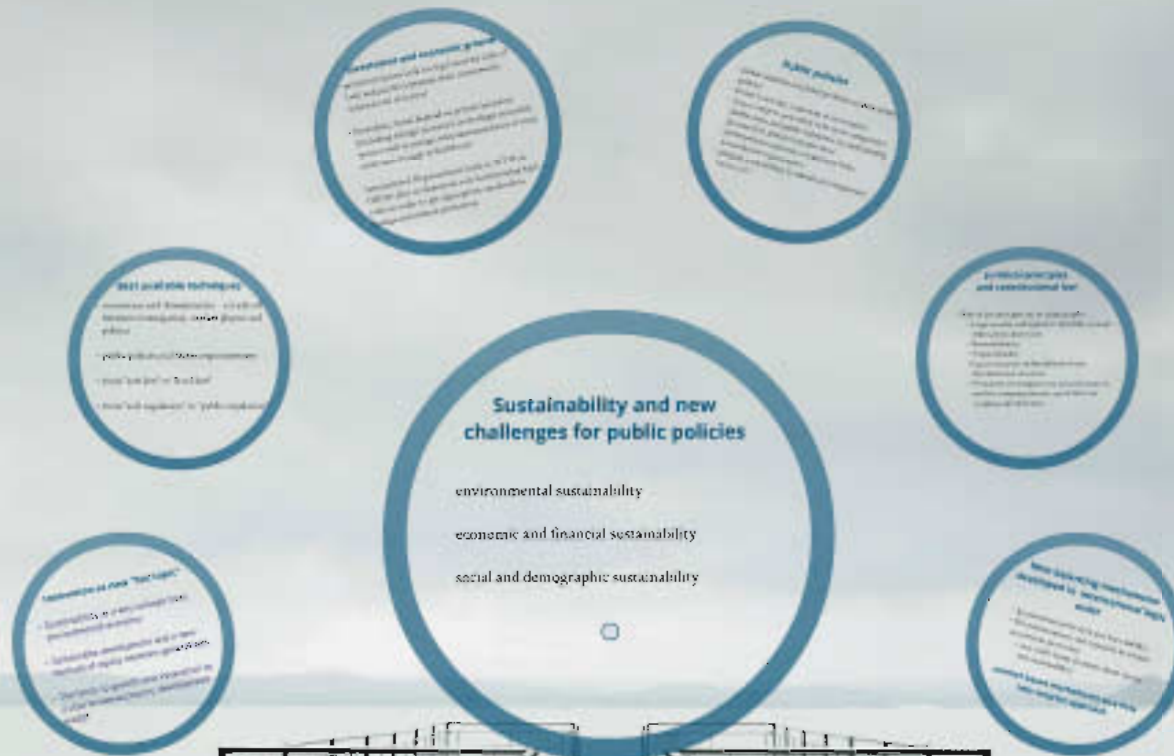


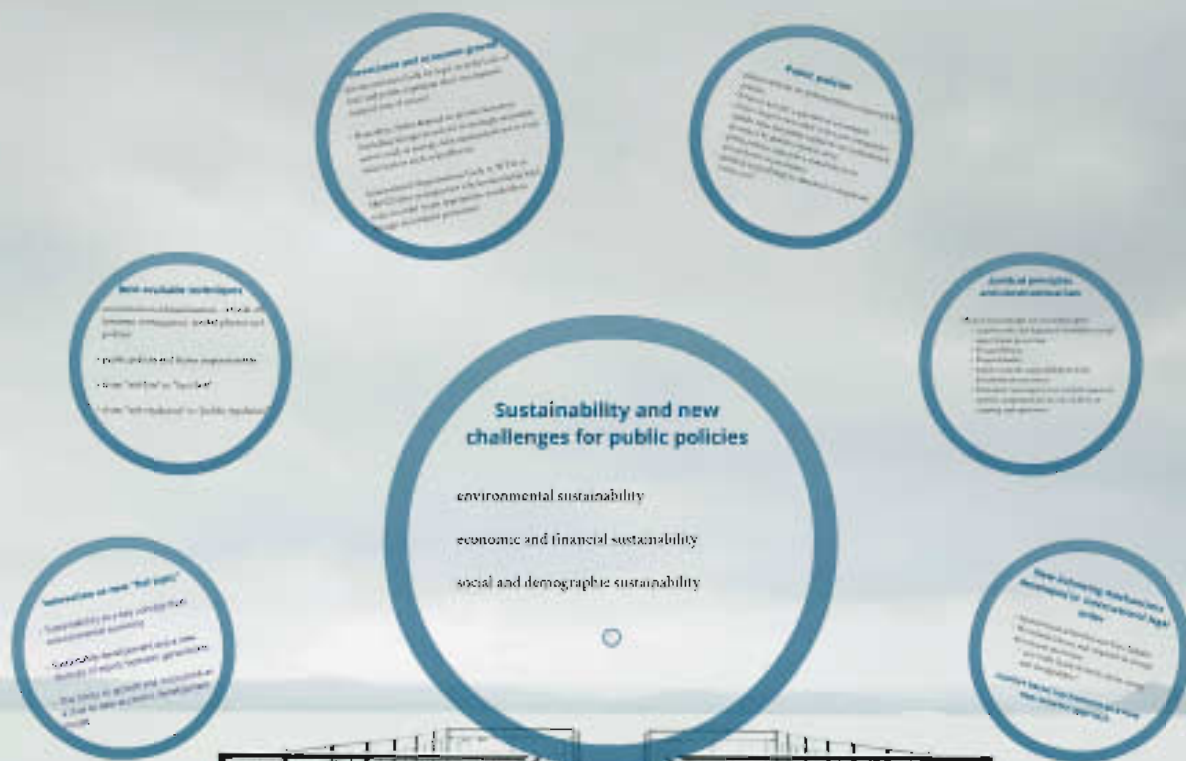
# Sustainability and investments protection

Harnessing investment to promote energy efficiency or energy renewable sources: How can we do it efficiently?



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# **Sustainability and new challenges for public policies**

environmental sustainability

economic and financial sustainability

social and demographic sustainability



# sustainability

## juridical approaches:

- command and control
- market based mechanisms

### Market based approach mechanisms

- international emissions trading schemes
- white certificates
- green certificates
- financing ecosystem services from revolving funds supported by new ecological or energy taxes/fees
- contracts for difference, debt for energy swaps, energy saving performance contracts, energy management contracts

## **Innovation as new "hot topic"**

- Sustainability as a key concept from environmental economy
- Sustainable development and a new formula of equity between generations
- The limits to growth and innovation as a clue to new economic development model

## **Best available techniques**

- innovation and dissemination - a trade off between investigation, market players and politics
- public policies and States responsiveness
- from "soft law" to "hard law"
- from "soft regulation" to "public regulation"

## **Investment and economic growth**

- private investors look for legal security (rule of law) and profits (optimize their investments internal rate of return)
- Nowadays, States depend on private investors (including foreign investors) in strategic economic sectors such as energy, telecommunications or even social sectors such as health care

International Organizations (such as WTO or OECD) play an important role harmonizing legal rules in order to get appropriate standards in foreign investment protection

## Public policies

- global solutions for global problems request global policies
- Power is not just a question of sovereignty
- States compete each other to be more competitive (public rules and public regulators are permanently pressured by global economic data)
- global policies represent a transitions from government to governance
- juridical methodology is submitted to important "stress tests"



## Juridical principles and constitutional law

- Rule of law principle and its subprinciples
  - Legal security and legitimate (lawfully created) expectations protection
  - Reasonableness
  - Proportionality
  - Equal treatment and prohibition from discriminatory measures
  - Permanent sovereignty over natural resources and fair compensations in case of direct or creeping expropriations

## **New balancing mechanisms developed in international legal order**

- International arbitration and State liability
- Procedural fairness and standards in foreign investment protection
  - case study (main decisions about energy and sustainability)

**market based mechanisms as a new  
new smarter approach**

## **Market based approach mechanisms:**

- **international emissions trading schemes**
- **white certificates**
- **green certificates**
- **financing ecosystem services from revolving funds supported by new ecological or energy taxes/fees**
- **contratualisation: debt-for-energy swaps; energy (saving) performance contracts; energy management contracts**