



How can EU climate and energy policies support EU reform?

Background Paper

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1 Summary

Triggered by Brexit, the EU began a process of reflection, soul-searching and possibly reform – the so-called “Bratislava process” or the “process on the Future of Europe”. EU institutions, Member States and civil society have made a number of contributions to this process, but it still lacks momentum and a sense of purpose. The objectives of the process have yet to be clarified. With a few exceptions, discussions remain general. This is a problem because the European Council is scheduled to adopt first results only a few months from now – at its meeting in Sibiu, Romania, in May 2019. **EU climate and energy policies can support this process in various ways:**

- **EU climate and energy policies show that the EU is united and able to act:** The EU routinely works together in many policy fields but deep conflicts over the rule of law, democracy in Member States and migration overshadow this routine. These conflicts demonstrate a growing division between Member States and EU institutions on fundamental issues. EU climate and energy policies contrasts this division and proves that the EU and its Member States are able to work together and to deliver. In 2017 and 2018, for example, EU climate and energy polices achieved very important legislative reforms: reforms of emission trading, the Renewable Energy Directive, the Energy Efficiency Directive or the adoption of the Climate Action Regulation and the Governance Regulation for the Energy Union. None of these reforms completely resolve the issue of decarbonising Europe’s economies and all of them were contested but they demonstrate that the EU is able to act. EU climate and energy polices built bridges.
- **Help reframe the debate on the Future of Europe:** In large parts, terms like “the EU in crisis”, “a new vision for the EU” or “more or less Brussels” have framed the debate on the future of the EU. Migration has also framed the debate significantly. All this has invited bipolar views of the EU – liberals against populists, the people against the elites or Macron against Salvini and Orbán. This framing is problematic for an informed and successful debate on the EU and its future. It deviates attention from the *raison d’être* of the EU: to solve practical problems that require cooperation in institutions between Member States over long periods of time. The current framing also suggests that the EU is dysfunctional, and it puts the EU in the ideological trap of more or less nation state, more or less migration or the elites against the people. For these reasons, it is important to reframe the debate and refocus on more practical and less ideological issues. Many policy fields can bring the debate to this level but climate and energy policy are particularly well positioned because they possess a strong rationale for institutionalised international cooperation. It is not possible to solve climate change or challenges to Europe’s energy system *ad hoc* or in loose settings alone.
- **EU reform to help make the EU future-proof:** Member States and their citizens expect that the EU helps deliver security, participation, prosperity, innovation and a cleaner environment. Many processes are relevant to addressing these issues. The process on the Future of Europe is not the primary vehicle to solve these issues but it can help. Over the longer term, Europe’s environment, security and prosperity will depend on successful adaptation to an unstable warming climate and a just transition to a decarbonised economy.

- **Climate and energy policies a model for more transparent decision making:** The EU already has relatively high transparency standards, but it is an important objective of the Bratislava process to make EU decision making more transparent and to “bring it closer to its citizens”. EU climate and energy policies have specific transparency rules that often offer more to citizens than general EU rules. Going beyond this requirement, for example, the Aarhus Regulation requires EU institutions to present this information in a way that is easily understood and to equip databases with search aid. EU law does not have this requirement; there are only political commitments in the Better Regulation Agenda. In this sense, the EU’s general rules are weaker than the environmental framework that is enshrined in law and legally binding.
- **Climate and energy policies a model for a more participatory EU:** It is one of the primary objectives of EU reform to make the EU more participatory. Climate and energy policy can provide proven examples of public participation that go beyond the EU’s general framework of public participation. According to the Governance Regulation for the Energy Union, for example, Member States must give the public early and effective opportunities to participate in the preparation of the draft energy and climate plans and of long-term climate strategies. As another innovation, the Governance Regulation requires Member States to establish permanent multilevel dialogues on energy policies with all relevant stakeholders and the general public.
- **Help strengthening EU foreign policy:** EU foreign policy has a mixed record with a number of successes and a greater number of failures. This contrasts with the EU’s international climate policy where the EU has successfully shaped the international agenda, including the adoption of the Paris Agreement. In this respect, the EU’s international climate policies offer some important lessons for EU foreign policy. In contrast to EU foreign policies, the EU can decide its international EU climate policies by qualified majority, although consensus remains the norm. This constitutional set up has been instrumental for a united EU that generally speaks with one voice in international climate negotiations.
- **Help clarify the mandate of the European Council:** The European Council has often engaged in the details of political or legislative processes. This has raised a number of constitutional issues because this engagement in legislative details could infringe on the mandate of the Council and the European Parliament. It can also *de facto* undermine majority voting. Since the European Council has been actively engaged in the details of EU climate and energy law making, these policies can help clarify the mandate of the European Council.

There are a number of **areas of EU reform where climate and energy policies cannot contribute**. These include, for example, Euro governance, threats to the EU legitimacy because of democracy problems in Member States or migration.

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2 Introduction

Triggered by Brexit, the EU has embarked on a process of reflection, soul-searching and possibly reform. This process started in Bratislava, in September 2016, when the European Council adopted the **so-called Bratislava Declaration and the Bratislava Roadmap**. In the following months, the European Commission, the European Council, the European Parliament, Member States and civil society made a number of contributions to this process. In contrast to previous reforms, only few proposals call actively for changing the treaties but rather portrays treaty changes as something to be avoided – because of the required consensus and ratifications by all Member States. First results should be published in May 2019, when the European Council meets in Sibiu, Romania. In other words – the process is well in its second half now. In his last State of the Union address of September 2018, President Juncker said that Sibiu is the moment where “we must offer all Europeans a strong perspective for the future”. Uncertainty and confused objectives must end then.

Although the first half is over, the **Bratislava process still lacks visibility, momentum and a sense of purpose**. The process has touched on many issues of EU policy making – at least in passing – but its objectives remain largely unclear. It is not clear to what extent the process should address the EU, its relationship to Member States, its competencies and decision making. It is equally unclear to what extent the Bratislava process should help address Europe’s long-term challenges – neither climate change, digitalisation, energy security, environmental degradation, education, or demographic change have become prominent agenda items. There are various reasons for this lack of orientation but two are particularly important. First, migration has overshadowed the process and made an informed discussion on the EU and its challenges difficult. Second, political common ground among Member States on the EU, its purpose and objectives has shrunk since the Bratislava process began. Not only migration, but to a much larger extent controversies about the rule of law and democracy in Member States has shown a growing rift between Member States on the foundation of EU integration.

Although the Bratislava process lacks momentum today, this could change in the coming months or after the election to the European Parliament in May 2019. There are number of proposals on how to improve the EU and its decision-making. The European Commission, for example, proposed a number of changes, including an expansion of majority voting. European Parliament and numerous Member States also made proposals. The 2019 working programme of the European Commission contains a number of initiatives in the run-up to the summit in Sibiu. Elections to the European Parliament and the end of the term of the current Commission will change the political landscape in the EU.

This paper discusses how EU climate and energy policies can support EU reform. More specifically, the paper discusses to what extent climate and energy policies

- can help to improve the framing of the debate on the future of the EU,
- is an opportunity not to be missed in a successful EU reform,
- can be part of the new or a renewed EU narrative,
- can help strengthen EU foreign policy making,

- can help make the EU more transparent,
- can help clarify the mandate of the European Council.

One EU reform process or more?

There are a number of processes (plural!) that are relevant for the future of the EU and the well-being of its citizens. These include, for example, climate and energy policies (such as the 2050 energy and climate strategy), social inclusion, but also issues such as the Euro, migration and security. Only the Euro, migration or security have featured high on the political agenda of the European Council.

There is however only one process (singular!) that deals with the future of the EU as an organisation with fair and clearly defined competencies. This process was launched in Bratislava in 2016 and is scheduled to draw first conclusions in Sibiu in March 2019. It includes the Commission's White Paper on the Future of Europe and a number of complementing papers on specific issues. It also includes dialogues with citizens on the EU.

3 EU climate and energy action – policies that unite and show that the EU delivers

The dominant tone of the EU reform debate suggests that the EU is in crisis (“the EU crisis”), unable to act, and divided. Indeed, the EU has been unable to solve a number of highly political and visible issues, in particular the migration issue, controversies about the rule of law and democracy in Member States and – to a lesser extent – reform of the Euro governance. These issues have dominated the debate for a number of years. They have overshadowed other policy fields. **This creates the impression of a paralysed and divided EU but it ignores that the EU has indeed been able to deliver some important reforms.** It has adopted important reforms since 2008 when the economic crisis began including, for example, major reforms of its rules governing financial markets. It has been united on a number of issues, such as a united approach towards Brexit or trade conflicts with the US. The notion of EU in crisis also ignores that compliance with EU law is high and transposition deficit is low. The number of open infringement cases related to the Single Market fell by 38% between 2007 and 2014¹; the EU’s average transposition deficit is at 0.9%². It also overlooks that Member States work together routinely and silently on many issues every day. It misses that the Council takes most decisions by consensus (not so, however, in climate and energy policies).

Climate and energy policies are two of the policy fields that demonstrate that the EU is able to act and to deliver policies to the benefit of all Member States and its citizens. In 2017 and 2018, the EU was able to overhaul its climate and energy policies: the EU adopted significant reforms of the emission trading scheme, the Renewable Energy Directive and the Energy Efficiency Directive. It adopted the Climate Action Regulation (CAR), the successor of the Effort Sharing Decision, the LU-LUCF Regulation and agreed on the Regulation for the Governance of the Energy Union.³ It ratified the Paris Agreement swiftly. EU energy and climate policies have been contested but it is a policy area where the EU proved that it is willing and capable of working together. The adopted policies might be insufficient for implementing the Paris Agreement (PA) but they are probably more ambitious than the actions that Member States would have taken acting solely on a national level. EU energy and climate policies also show that the EU has worked towards cohesion among Member States: they contain a number of instruments to improve solidarity between Member States – the ETS redistributes auctioning revenues to poorer Member States, and the Climate Action Regulation contains a so-called safety reserve for less wealthy Member States.

¹ 2015 EU Sustainable Development Monitoring Report

² Single Market Scoreboard: http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/transposition/index_en.htm

³ Although these files are closed for the time being, climate and energy policy will remain an area where the EU will continue to work together: the EU has to submit its NDC, it has to develop its strategy for 2050 and it has to respond to the up-coming IPCC report on 1,5°C.

4 Migration is a difficult starting point for EU reform: Can climate and energy policies help?

The number of refugees arriving in the EU has declined drastically since 2015 – by as much as 97% in the Eastern Mediterranean and 80% in the Central Mediterranean.⁴ And yet it is no surprise that migration still dominates the agenda in 2018 because it has become the engine of political growth for many players who won elections with anti-migration campaigns. The focus on migration has undermined an informed and constructive debate on the EU and its future:

- **The most contested issue should not be the starting point:** Usually negotiators avoid putting the most contested issue at center stage. But migration – the EU’s most divisive and ideologically charged issue – has become a point of departure for the EU’s own reform discussion. Some Member States even suggest that EU reform is only possible if the EU finds a lasting solution for its migration policies. For them migration takes precedent over any other EU reform but this takes the EU reform process hostage of solving the migration issue.
- **Migration is insatiable:** Because migration has been a success story for many players, it is very unlikely to disappear any time soon from the political agenda – even if numbers of refugees continue to decrease as they have in the last two years. This suggests that no matter what the EU does on migration, it will never be enough. This makes migration policies the least likely starting point for successful EU reform.
- **Migration touches on the basics of the EU:** The EU is based on the rule of law. It is a community of law but migration policies have become a matter of political survival that takes precedent over EU law and rulings of the European Court of Justice (ECJ). Prime Minister Orbán, for example, stated that his government would not accept quota for refugees regardless of rulings of the ECJ. Senior officials of the Polish government made similar statements.

For the time being it seems difficult to break the dominance of migration and to re-frame the debate, **but focusing on other specific issues can help.** This is true for all issues that are less ideologically and politically charged than migration. Climate and energy policy is one such issue. Occasionally it has shown that it is capable of breaking the dominance of migration – at least temporarily: in late 2015, in the midst of record high numbers of arriving refugees, the adoption of the Paris Agreement demonstrated that the EU is able to take important decisions and address other issues. Bringing these less charged issues to the top of the political agenda can help re-channel political attention to improving the EU and its future.

⁴ Commission, State of the Union 2018

5 Effective Climate Action – an opportunity not to miss for successful EU Reform

Member States and their citizens expect that the EU helps deliver security, participation, prosperity, innovation and a cleaner environment. There is also the expectation that the process on the future of the EU supports the EU in delivering these benefits. Many processes are relevant to addressing these issues. The process on the Future of Europe is not the primary vehicle to solve these issues but it can help by stating clearly:

- **Maintaining Europe’s livelihood, prosperity and environment:** Drought, floods and other extreme weather can undermine Europe’s livelihood and prosperity. Effective climate action will reduce these impacts as it will reduce air pollution and help avoid degradation of biodiversity, soil and water.
- **Lack of innovation and investment:** A lack of investment, innovation and competitiveness are at the heart of economic difficulties in many Member States. Given the urgent need to invest in the ageing energy infrastructure in the EU, and the fiscal space available for such investment in a time of historically low interest rates, climate and energy offer a unique opportunity of investments to modernise the EU economy, and to improve its competitiveness.
- **Maintaining stability and freedom:** Climate change is a threat multiplier. It can increase migration – possibly to an extent that dwarfs the levels of migration that Europe saw in 2015. Considering the tremendous political fallout of the 2015 levels of migration on Europe, it is very likely that much higher levels of immigration – triggered partly by climate change – could undo stability and freedoms in Europe. It is worrisome that climate change is expected to have particularly severe impacts on Europe’s neighbouring regions where demography, economic crisis and bad governance already create high emigration pressures.
- **Security:** Oil is often a source of tension. It funds frequently corrupt and authoritarian regimes or even terrorists. Because its production is concentrated in a few hands and places, it is prone to cartelisation. Renewable energy – in contrast – does not have these security problems. It can be produced practically everywhere by anyone. For these reasons, effective climate action can yield a significant security dividend.
- **The EU essential to fight effectively climate change:** It is not possible for Member States to contribute to fighting climate change effectively without the EU. For this reason, the EU has undisputed legitimacy in climate and energy policies. There is no strong player advocating that these policies should become a national competence. The process on the Future of the EU should underline the importance of the EU for addressing climate change and supporting a just transition to a clean energy system.

6 Can EU climate and energy policies help formulate a (re)newed vision for the EU?

For some observers, the absence of a common vision is one of the EU's fundamental problems; **for them, a new common vision is a precondition for successful EU reform.** The European Parliament, for example, stated that a “lack of a common vision on the part of the Member States has given rise to unprecedented levels of “euroscepticism” which is leading to a return to nationalism and risks undermining the Union and possibly even its disintegration”.⁵ In its Declaration of Rome, the European Council formulated its vision for the EU for the next ten years: it wants a Union that is safe and secure, prosperous, competitive, sustainable and socially responsible, and with the will and capacity of playing a key role in the world and of shaping globalisation.

Ambitious climate and energy policies can help formulate and implement this vision. It can support making the EU more competitive, more prosperous and cleaner, all essential contributions to the process on the future of Europe. Building on its founding vision of preserving peace in Europe, a new vision of the EU could entail to make peace with nature and to stop the war against our environment.

Although important, the need for a new vision and possible contributions of climate and energy policies **to it should not be overrated:**

- **Big ideas enjoy broad support only if they are vague and repeat existing commitments:** The Declaration of Rome, for example, formulates a vision for the next 10 years but it is so broad that it is almost without content. It hardly contains more than commonplaces; it largely repeats what the EU has stated on many occasions before.
- **Hard for political processes to control or produce a new narrative:** The Bratislava process—a political process geared towards governments and EU institutions—is unlikely to command a new vision. It can contribute to formulating such a vision but it is not powerful enough to determine the outcome of this societal discourse.
- **Big ideas often end up very technical:** It is easy to romanticise on the big ideas of the past, but behind big ideas is generally tedious microwork. Decarbonising Europe's economies is a big vision but making it happen requires measures as technical as emission trading or energy taxation. The single market, another example, is one of the EU's biggest ideas but it consists of millions of technical details. It is clear that the technical details came in order to make it happen, they were adopted because there was a general “big idea” to be fulfilled.
- **Discussion on the EU vision can have negative side effects:** The debate on a new vision for the EU is full of grand rhetoric, calling for “reinventing”, “re-founding”, or “rebuilding” the EU. This framing suggests that the EU is dysfunctional and in need of fundamental change. Paradoxically, what is intended to strengthen the EU, weakens it.

⁵ European Parliament resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI))

7 Can climate and energy policies help strengthen EU foreign policy?

The Lisbon Treaty strengthened EU foreign policy making. Since its adoption, EU foreign policy achieved a number of significant successes – such as the nuclear arms deal with Iran. **But the list of failures and disappointments is longer.** It includes the EU's marginal role in Syria, its limited impact in addressing the conflict in Ukraine or its incoherent policies towards China, Belarus or Venezuela. Even trade policies – for a long time an uncontested domain of the EU – have become controversial. Compared to its other policy fields, EU foreign policy remains weak and – worryingly – the trend is negative.⁶ Despite a number of efforts to stem this trend, mostly recently the adoption of deeper security cooperation (PESCO), the EU has continued losing influence over the last ten years. This is a fundamental problem because the EU risks being marginalised in international policies. It is also a problem for rules-based multilateralism because the EU is a key player to defend it – at a time where international law is under severe pressure. For these reasons, it is a central objective of EU reform to strengthen the EU's ability to shape the international agenda and relations with neighbours.

This **mixed record contrasts with the EU international climate policy where the EU has successfully shaped the international agenda and the Paris Agreement (PA), the landmark agreement on climate action.** The PA contains many elements that the EU had advocated, such as a legally binding international treaty, contributions by all parties to reducing emissions, a strong review mechanism or ambitious long-term goals (the 2°C target and efforts to pursue 1.5°C).

The EU's successes in international climate diplomacy can offer important lessons to its foreign policy. With a few exceptions, EU foreign policies are decided by unanimity. Frequently, Member States run their own foreign policy in parallel. These are serious constraints for strong and united EU foreign policy. This is different in international EU climate policies where the EU can legally decide by qualified majority, although in practice the EU negotiates on the basis of Council conclusions that are adopted by consensus. Article 218 (8) of the TFEU requires qualified majority voting for international agreements that cover policy fields where the EU decides with qualified majority – as it is the case for climate policies. In this constitutional setup, Member States are more restrained in pushing national priorities into the EU's international climate policies. This institutional setup helped the EU to speak with one voice and to play an active role in international climate policies. Expanding qualified majority voting for foreign policy decisions, as proposed by President Juncker, would apply this lesson from international climate policies and would remove a big obstacle to the EU's effectiveness. Importantly, expanding QMV in EU foreign policy making does not require changing the treaty but only a unanimous vote in council (Article 31 TEU). Although possible without treaty changes, politically the prospect of expanding QMV in EU foreign policy or other policies is slim – too many Member States are against it and too few are ready to champion it.

⁶ Stefan Lehne: Is there hope for EU foreign policy? <https://carnegieeurope.eu/2017/12/05/is-there-hope-for-eu-foreign-policy-pub-74909>

8 Can climate and energy policies serve as a role model for a more transparent EU?

In contrast to public perception, **the EU already has relatively high transparency standards**. Often it is more transparent than Member States. Legislative proposals by the Commission are publicly consulted. Discussions and hearings in Parliament are also public. Council deliberates in public when it adopts legislation. Many documents are publicly available and fairly easily accessible. According to The Access to Documents Regulation gives citizens the right to access information – in line with certain requirements. This right can be enforced in the courts.

However, **a number of transparency issues remain unresolved**. It is still not easy to trace the evolution of a piece of legislation. Council does not systematically record the positions of Member States in preparatory bodies and restricts access to legislative documents while the decision making process is ongoing (the so-called 'LIMITE' marking). Criticising this practice, the Ombudsman stated that the Council “continues to use old-style diplomacy for reaching deals with a method that obviously views transparency as an impediment to its work”.⁷

These transparency problems should be addressed because greater transparency regarding the positions taken by national governments during the legislative process—not only during discussions at Minister level in the Council— **could mark important progress in achieving one of the main aims of EU reform**: to enhance legitimacy and trust in the EU and its decision making. Equally important, making such information public would oblige Member State governments to assume greater responsibility for legislation and discourage them from “blaming Brussels” for decisions they have ultimately taken themselves or accepted as a compromise.

EU environmental policies have specific transparency rules – the Aarhus Convention, the Aarhus Regulation and the Governance Regulation for the Energy Union commit the EU and its Member States to grant citizens specific information rights. These rules may go beyond general EU rules. In this sense, **they are possible models to address some of the EU’s transparency problems**:

- **Aarhus Regulation:** The Access to Documents Regulation requires the active dissemination of information. Going beyond this requirement, the Aarhus Regulation requires EU institutions to present this information in a way that is easily understood and to equip databases with search aid. EU law does not have this requirement; there are only political commitments in the Better Regulation Agenda. Furthermore, the Aarhus Regulation applies to all European institutions, while Access to Documents Regulation only applies to the European Parliament, the Council and the Commission.
- **Governance Regulation:** The Governance Regulation requires the Commission to establish an online platform to facilitate public access to national energy and climate plans, the updates thereof, and the long-term low emission strategies.

⁷ EU ombudsman: How Transparent are EU Institutions? speech of 22 May 2018, <https://www.ombudsman.europa.eu/en/speech/en/95373>

9 Can climate and energy policies serve as a role model for a more participatory EU?

The **EU has a numerous rules on how to engage citizens in its decision making**. According to Article 10.3 of the TEU, every citizen has the right to participate “in the democratic life” of the EU. Treaty Protocol No. 2 stipulates that “before proposing legislative acts, the Commission shall consult widely”. Under the Inter-institutional Agreement, public and stakeholder consultation is integral to decision-making. Furthermore, guidelines for stakeholder consultation set minimum standards, including clarity, wide publication and advertisement of consultation, sufficient time for stakeholders to contribute, feedback and publication of consultation results. Implementing these rules, **1518 consultations have been conducted from August 2015 to August 2017**, processing a great number of submissions from various stakeholders.

It is one of the primary objectives of EU reform to make the EU more participatory and to bring it closer to its citizens. Similar to improving the EU debate on transparency, **climate and energy policy can help inform the debate on participation and provide proven examples of public participation that go beyond today’s general framework of public participation:**

- **Governance Regulation:** The new Governance Regulation for the Energy Union contains new participation rights that go beyond the existing rules. According to this Regulation, Member States must ensure that the public is given early and effective opportunities to participate in the preparation of the draft energy and climate plans as well as of long-term climate strategies. Member States must provide sufficient time for the public to be informed, to participate and express its views. As another innovation, Member States must establish a permanent multilevel energy dialogue where “local authorities, civil society, business community, investors and other relevant stakeholders and the general public can actively engage and discuss the different scenarios envisaged for energy and climate policies” (Article 10a).
- **Aarhus Regulation:** In contrast to the Better Regulation Agenda, Article 9 Aarhus Regulation requires EU institutions to provide early and effective opportunities for the public to participate during the preparation of plans and programmes. This includes the participation in the preparatory stage where plans and programmes are submitted to other EU institutions for decision.

10 Help clarify the mandate of the European Council

The European Council has often engaged in the details of legislative processes. In principle, this is in line with its mandate to provide strategic guidance to the EU, because details can have a significant impact on the EU's strategic orientation. However, **there are problems with the European Council engaging in the details of legislative processes which EU reform should address:**

- **Respecting the mandate of the Council and Parliament:** The European Council, like any other EU institution, has to respect the mandate of other EU institutions and must mutually and sincerely cooperate with other institutions (Article 13 TFEU). The European Parliament and the Council of Ministers are separate institutions with distinct roles, functions and corresponding legal powers (Article 13 TFEU). According to Article 14 and 16 TFEU, legislative functions are among the core functions of the European Parliament and Council. Article 15 (1) TFEU prohibits the European Council from exercising legislative functions. These rules bar the European Council from rendering the legislative functions of these institutions *de facto* meaningless. This would be the case if the European Council *de facto* predetermines legislative details, turning the Council of Ministers and the Parliament into a mere rubber-stamping body.
- **No undermining of qualified majority voting:** The Council of Ministers generally decides by qualified majority. The European Council decides by consensus. If the European Council *de facto* assumes the law-making function, it undermines the specific voting requirements of the Council of Ministers and of the other EU institutions. This is not in line with the EU treaties, which provide that the European Council may only change voting requirements to extend QMV and ordinary legislative processes to areas where unanimity or the special legislative procedures applied before (Article 48 (7) TFEU). *De facto* requiring consensus for climate legislation would undermine QMV, violating the principle that QMV is the standard form of voting.

In 2008 and 2009, **the European Council was actively engaged in the details of EU climate and energy law making**, notably in the reform of the emission trading scheme. Since then, the European Council continued to play a very significant role in climate and energy policies. In particular, its conclusions of October 2014 contained guidance on technical details of legislative files and pre-defined the debates. However, the European Council was less actively engaged in 2017 than in 2009 and refrained from determining details of legislation. In the end, it was the European Parliament and the Council that decided legislative details and – importantly – revised targets for renewable energy and energy efficiency. Despite these recent developments, however, it remains possible that the European Council reassumes a role of a quasi-legislator, possibly overstepping its constitutional mandate. For this reason, it remains an important issue of EU reform to clarify the mandate of the European Council. Given its experiences of the last 10 years, **EU climate and energy policies show the problems of overly active European Council and could trigger a discussion on the mandate of the European Council.**