

Reforming the EU: What Role for Climate and Energy Policies in a Reformed EU?

Discussion Paper

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Nils Meyer-Ohlendorf, Ecologic Institute

This paper presents a number of thoughts and first ideas for further discussion at the working group's first meeting. These thoughts and ideas are by no means conclusive.

1. Where we are: the EU reform debate in 2018

- **EU reform debate remains ambivalent:** At a general level – ‘do you like the EU’ – the perception of the EU remains gloomy although recent Eurobarometer and Edelman Trust barometer show upward trends (albeit from a low level). This negative mood has dominated public perception of the EU for a long time and has shaped the EU reform debate. At a more specific level – ‘do you want EU action to solve specific problems’ (secure external borders, fight tax evasion or combat climate change, for example) – the debate is less gloomy. Reflecting this ambivalence, Member States call the EU ‘out of touch’, ‘bureaucratic’, ‘interfering’ or ‘elitist’ but many want more cooperation in “their” policy field and less in others. It is not very likely that the EU reform debate will overcome this ambivalence or schizophrenic touch – less EU but more EU action on specific issues – any time soon.
- **Debate on EU reform is incomplete and one-sided:** EU reform is complex but the incompleteness and one-sidedness of the EU reform debate – as presented by many politicians, analysts and media – is remarkable: *First*, the dominating tone of the debate suggests that the EU is in crisis (*‘the EU crisis’*) and unable to act. This ignores that the EU has adopted important reforms since 2008 when the economic crisis began. Refugee policies are a (pivotal) exception to this rule. The debate also ignores that compliance with EU law is high and transposition deficit is low. *Second*, in contrast to a widely accepted assumption of a divided EU, Member States work together routinely and silently on many issues every day. Council takes most decisions by consensus. *Third*, the debate often confuses opposition to ‘more integration’ with EU skepticism. It is possible to oppose

additional EU competencies without questioning the EU as a whole. *Fourth*, the debate often fails to specify problems. Describing the EU as non-transparent, unaccountable or undemocratic, for example, is common but specifying problems of participatory decision making, for instance, is rare. *Fifth*, the debate often blames the EU for problems for which Member States are largely responsible – debt crisis, rule of law or security – and rarely specifies problems for which EU institutions are responsible – limited transparency of the troika or trade negotiations, for example. Analysts have not managed to bring the debate to a more informed level but have often added to the self-reinforcing gloom.

- **Democracy problems in Member States pose the biggest challenge to the EU's legitimacy:** Functioning democracy in all Member States is a precondition for European integration because EU law prevails over national law and can have immediate effect on Member States and citizens. EU law and policies would become illegitimate if undemocratic governments were part of the legislative process. Stressing the importance of democracy in Member States for the EU's legitimacy, Germany's constitutional court, for example, ruled that democratic governance in Member States is a precondition for Germany's EU membership. For this reason, attacks on democracy in some Member States are not an internal problem but a problem for all Member States and for the EU as whole. For the same reason, Article 7 proceedings against Poland are essential for the future of the EU. EU reform debate has not yet clearly articulated the critical importance of national democracy problems for the EU's legitimacy.
- **Climate and energy policies are becoming more important in the EU debate:** None of Europe's long-term hidden challenges are at the top of the EU reform agenda. Climate change, digitalization, energy security, environmental degradation, education, or demographic change do not have the same political weight as issues that are considered more acute, such as migration, Euro or security. However, after President Macron and Prime Minister Rutte's recent speeches and a number of other statements, climate policies have become a more important consideration in the debate. Recent Eurobarometer confirms this.

2. Where should we go: what should EU reform achieve (and what not)?

- **To arrive at a compelling result, priorities must be set soon:** More than one year after the European Council launched the EU reform process in fall 2016, it is still a challenge to define its objectives. This is because of three reasons. First, objectives formulated by the

European Council in Bratislava and Rome are vague. The informal meeting of the European Council in February 2018 agreed on a number of institutional issues but it did not specify objectives. Second, EU reform is driven by a number of thematic issues, such as migration, protection of external borders, Euro, security, or Brexit, which have their “own” political process. Third, there is institutional competition between the Commission and European Council on who ‘owns’ the reform agenda. To remain a process that yields tangible results, objectives must be agreed soon. If everything is a priority nothing is.

- **Suggestions for what EU reform should achieve (and what not):**
 - **EU reform is about the EU’s future:** EU reform is about future challenges; it is much less about daily and acute business. It should help enable the EU to respond to the challenges of the next five to ten years and beyond. Once agreed, the core of EU legislation rarely changes – which creates considerable confidence in the long-term policy direction and equips the EU well to address long-term challenges.
 - **Ability to act and help solve problems that require a collective response:** There is fairly broad agreement that EU reform should strengthen the EU’s ability to help solve problems that can only be solved together. This is what citizens and Member States expect but it is not agreed which specific problems the EU should help solve and which should be in the exclusive realm of Member States.
 - **Agreement on (redefined) relations between Member States and the EU:** The relation between the Member States and the EU, the distribution of competencies and the principle of subsidiarity are central themes of the EU reform process. There are considerable differences between Member States not only on which issues the EU should decide but also on what competencies EU institutions should have.
 - **Renewed commitment to democracy:** Democracy is a core value of the EU but has been called into question in some Member States – not in rhetoric but in its application. EU reform must help renew and specify the commitment to democracy, including the rule of law. It should also help develop robust EU responses to these challenges.
 - **Agreement on (redefined) relations between citizens and the EU:** Over the years the European Parliament has been strengthened significantly. The EU also introduced new ways to allow for citizens to participate in policy making but the call for a more democratic, transparent and participatory EU is an omnipresent theme of EU reform. This call requires answers.

- **Breathing space for the EU:** Given the temperature of the debate there is a case that EU reform should give the EU a break from grand rhetoric and fundamental issues, such as the EU's final destination, institutional overhaul or further enlargement.

3. How can EU climate and energy policies support EU reform?

- **Effective Climate Action – a precondition for successful EU Reform:** Citizens expect that the EU helps deliver security, participation, prosperity, innovation and a cleaner environment. It is not possible to deliver any of these without effective climate action:
 - **Stability and freedom:** Climate change is a threat multiplier. It can increase migration – possibly to an extent that belittles the levels of migration that Europe saw in 2015. Considering the tremendous political fall-out 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 neighboring regions where demography, economic crisis and bad governance already create high emigration pressures.
 - **Lack of innovation and investment:** A lack of investment, innovation and competitiveness are at the heart of the economic difficulties in many EU 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 modernize the EU economy, and to make it fit for a key global market of the 21st century.
 - **Security:** Oil is a source of tension. It funds corrupt and authoritarian regimes or even terrorists. Because its production is concentrated in a few hands and places, it is prone to cartelization. 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.
 - **Cleaner environment:** Effective climate action reduces air pollution and helps avoid degradation of biodiversity, soil and water.
- **Reinforcing international leadership:** It is essential that EU reform helps strengthen the EU's ability to shape the international agenda and relations with neighbors. International climate policy is one of the success stories of EU diplomacy. The Paris Agreement proves

that the EU is capable of shaping the global order. These successes can offer important lessons to other fields of the EU's external policies.

- **Climate and energy policies can make the EU more participatory:** Environmental policies have specific instruments for public participation, access to information and justice. Climate and energy policies often impact on local affairs in which citizens take particular interest. Two out of four successful European Citizen Initiatives, for example, dealt with environmental matters. In this sense, climate policy can help make the EU more participatory. As climate and energy policies are subject to the ordinary legislative process, these policies could also be instrumental in strengthening parliament.

4. How can EU reform strengthen EU climate and energy policies?

- **EU reform to make sustainability, innovation and climate action the trademark of a reformed EU:** EU reform would support EU climate and energy policies tremendously if it would help make climate action, sustainability, modernization and innovation the trademark of a reformed EU. An ambitious long-term climate target could embody this vision. Like any political process, however, the EU reform process alone will not be able to deliver or even command a single, universally popular, new vision. It can only contribute to formulating such visions.
- **Do EU rules impede ambitious front runners?** There are only few instances where Member States voluntarily pursue more ambitious targets than what EU legislation requires. Only a few Member States, for example, have adopted more ambitious climate and energy targets and specific measures to support them. Member States have rarely invoked Article 193 TFEU which allows them to take more stringent protective measures. Secondary law gives Member States broad discretion in its implementation and transposition – because it uses “should clauses”, differentiates between Member States (different targets) or includes only vague obligations. This argues against an EU of different speeds for energy and climate policies, where secondary law or reformed provisions on enhanced cooperation would allow for more flexibility.
- **Local action at the forefront of effective climate policies:** Cities and regions participate in EU decision-making primarily through the Committee of the Regions and consultation. They are represented by their national governments and MEPs. Because cities and regions are at the forefront of innovative climate and energy policies, EU reform could support

climate action if it would help channel this local expertise to the European debate – without complicating EU decision-making.

- **Community method has supported climate and energy policies but the environmental and energy chapter would benefit from reform:** The strong role of the European Parliament in shaping environmental policies – generally an advocate for ambitious environmental policy – and the leading role of the environmental council have been essential factors for relatively ambitious environmental policy making at EU level. But there is a strong case for institutional reform: First, issues with great significance for climate action – such as taxation or spatial planning – are subject to the special legislative process (Parliament only consulted, unanimity in Council). Second, Article 194.2 (second subparagraph) limits EU energy competencies significantly because EU measures may “not affect a Member State's right to determine its choice between different energy sources and the general structure of its energy supply”. Invoking the *Passerelle* clause in Article 192 is a possible way forward without going through treaty change.
- **Compliance framework already strong but improvements possible:** Insufficient compliance with EU climate and energy rules largely stem from lacking political will and capacities, not necessarily from a deficient legal framework. However, infringement procedures – although fairly effective – suffer from its length. EU reform would help compliance if it would make infringement procedures – the EU's standard compliance tool – shorter. In addition, EU reform should consider compensation payments and other new compliance tools to further improve compliance.
- **EU external and trade policy to help climate and energy policies:** Trade negotiations can either give the EU levers to encourage decarbonisation action from its trading partners; or it can create competitiveness challenges (for example, by exposing carbon-priced EU production to unfair competition from economies with a weak, or no, carbon price). For this reason, EU reform should explore how EU trade and external policy could be better aligned to its internal climate and energy policies and how democratic control over EU trade and external policy could be strengthened.
- **EU budget:** The Multiannual Financial Framework is currently adopted by unanimity (Article 312(2) TFEU). Switching to QMV could be beneficial for EU climate and energy; laggard countries would lose their veto. New own EU resources can create opportunities for a harmonized and more effective approach to carbon pricing. The EU budget could be closer aligned to climate and energy action, similarly to the Swedish climate law that requires the public budget to be spent pursuing the country's climate objectives.