

The Future of the EU – the Role of Climate and Energy Policies

Conclusions

EU climate and energy policies and the Process on the Future of the EU¹ are mutually reinforcing. Climate and energy policies can support this process, and climate and energy policies can benefit from it. These are the main conclusions of the discussions in the Working Group on the “Future of the EU – the Role of Climate and Energy Policies”.²

1. How climate and energy policies can support the Process on the Future of the EU

- **Conclusion 1: In times of tension, EU climate and energy policies build bridges between EU Member States.** Deep conflicts over the rule of law, democracy in Member States and migration shape public perceptions of the EU. As a result, the EU appears divided and paralysed. EU climate and energy policies provide evidence to the contrary. In 2017 and 2018, for example, the EU adopted important reforms of its climate and energy laws, including a reform of the emissions trading system, a new framework for energy legislation, and a new Climate Action Regulation. These reforms were contested but they demonstrated that the EU is able to act. As an important contribution to the Process on the Future of the EU, climate and energy policies showed what the EU and its Member States can achieve when they work together.
- **Conclusion 2: Climate and energy policies help reframe the debate on the Future of the EU towards solving real problems together.** Slogans like “More or less Europe” and “reinventing or restarting Europe” have framed much of the debate on the future of the EU. This framing is a problem for a constructive and informed debate on the EU’s future. First, it incorrectly suggests that the EU is dysfunctional, while many of

¹ Triggered by Brexit, the EU began in late 2016 a process of reflection, soul-searching and possibly reform – the so-called Bratislava process or the Process on the Future of EU. For reasons of clarity, these conclusions use “Process on the Future of EU”. These conclusions pertain to EU policy makers, the new European Parliament and European Commission – regardless whether the European Council draws first conclusions on the process or not, only a few weeks from now, at its meeting in Sibiu, Romania, on 9 May 2019.

² With funding from the Stiftung Mercator, the working group brought together senior representatives from trade unions, business, think tanks, academia and EU institutions. It met three times between April 2018 and March 2019 in Brussels. Discussions in the group focused on two questions: 1) How could climate and energy policies help improve the EU? and 2) How could EU reform strengthen climate and energy policies? Discussions were under the Chatham House Rule. In addition to the endorsing organisations, Gábor Baranyai, National University of Public Service, Hungary; Monica Frassoni, President, European Alliance to save Energy; Annika Hedberg, European Policy Centre; Stefan Lehne, Visiting Scholar, Carnegie Europe; and Sebastian Oberthür, Vrije Universiteit Brussel, were among the members of the working group that choose to explicitly endorsing these conclusions in their individual capacity.

the EU's daily routines and outputs clearly prove the opposite. Second, it distracts from the *raison d'être* of the EU: to solve practical and vital problems that require institutionalised cooperation between Member States over long periods.

For these reasons, it is important that the Process on the Future of the EU reframes the debate and refocuses on issues where the EU specifically adds value and solves practical problems. Instead of abstract and ideological issues, the debate should focus on how the EU can continue to help Member States and citizens to solve practical problems together and maximize their joint potential. A number of policy fields can bring the debate to this level but climate and energy policies are particularly well positioned because they possess a strong rationale for institutionalised European cooperation and induce the sense of a common challenge that gives direction to the EU. No country is capable of addressing the challenges of climate and energy policies alone.

- **Conclusion 3: Climate and energy policies are a role model for a more transparent and participatory EU.** Climate and energy policies have specific transparency and participation rules that go beyond the related standards of the general EU framework. The new Governance Regulation for the Energy Union and Climate Action, for example, requires Member States to establish permanent multilevel dialogues on energy policies with all relevant stakeholders and the public. The new EU energy legislation also facilitates citizen energy projects. These achievements demonstrate that a more transparent and participatory EU is possible.
- **Conclusion 4: Climate and energy policies provide lessons that can help strengthen 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 comparatively successful role in shaping the international climate policy agenda. The EU's international climate policies offer some lessons for EU foreign policy. In contrast to EU foreign policies, Article 218.9 of the Treaty on the Functioning of the EU (TFEU) offers the potential to adopt positions by qualified majority, where they are based on internal legislation – although consensus remains the uncontested practice for determining the EU position in international climate negotiations.³ This legal set-up has been instrumental for a united EU that speaks with one voice in international climate negotiations.
- **Conclusion 5: EU climate and energy policies show that the EU is flexible and able to address the different needs and circumstances of Member States.** There is a long-standing debate about whether the EU regulatory framework is flexible enough. EU climate and energy policies show that the current institutional set-up is

³ According to Article 218 of the TFEU, the Council acts by a qualified majority throughout the negotiation of an international treaty and subsequent international decision-making with legal effects. In practice, this provision has not been applied to international climate policies. However, this practice does not change the legal framework, including the possibility of majority voting on international climate negotiations (where these produce outcomes with legal effect). The Process on the Future of the EU could help make explicit that Article 218.9 offers the opportunity to abandon the EU's current practice, if necessary.

already relatively flexible. Differentiated emission reductions targets for Member States in the non-ETS sectors, support mechanisms tailored to the needs of Member States and opt-out clauses for more stringent climate policies under Article 193 of the TFEU demonstrate the EU's relatively high degree of flexibility. Even greater flexibility would be possible – e.g. by using “enhanced cooperation” or introducing even more flexibility in secondary law⁴ – but this would come at the price of more fragmentation and probably little benefit for climate and energy policies.

2. How climate and energy policies can benefit from the Process on the Future of the EU

- **Conclusion 6: The Process on the Future of the EU could help make climate and energy policies a hallmark of the EU.** EU climate and energy policies are not yet fully recognised for what they are: a genuine opportunity to improve the quality of life for citizens, to modernize economies, to increase competitiveness, to seize the markets of the future and to enhance transparency and public participation. They also act as an insurance against some of the consequences of the climate crisis, and a demonstration of the EU's ability to act on long-term challenges. The Process on the Future of the EU could provide important impetus and direction to EU climate and energy policies by acknowledging that they are a hallmark of the EU of the future.
- **Conclusion 7: The Process on the Future of the EU can help make EU funding, state aid, and the financial sector more beneficial for climate and energy policies.** The EU's own resources have great potential, including for energy and climate policies. There is an urgent need and ample potential for strengthening climate mainstreaming into EU funding and investment rules. The Process on the Future of the EU can address these issues as well as phase out subsidies and privileges that are harmful to the climate. The Process can also help ensure that climate-related risks are fully reflected in credit and investment risk assessment and disclosure.
- **Conclusion 8: Using the Treaty's *passerelle* clause, the Process on the Future of the EU could help expand the ordinary legislative process in EU climate policies.** The ordinary legislative process – the standard way of energy and climate law-making in the EU – has been instrumental for adopting relatively strong policies. However, some issues with great significance for climate action – such as the choice of national energy mixes as well as taxation or spatial planning – are still in principle subject to the special legislative process, requiring unanimity in the Council and granting the European Parliament only consultative status. The special legislative process is less likely to produce ambitious policies because each Member State has a veto and because the European Parliament is not a full co-legislator. In turn, expanding the

⁴ Such as more frequent use of should-clauses and vague and programmatic terminology.

ordinary legislative process would not only help strengthen climate and energy policies; it would also enhance transparency and democratic legitimacy because the European Parliament – the only directly elected EU institution – would become an equal co-legislator in nearly all aspects of EU energy and climate policies, including energy taxation.

Expanding the ordinary legislative process does not require treaty reform, but “only” a unanimous decision by the Council (*passerelle* clause, Article 192.2 TFEU). The process on the Future of the EU could effectively pave the way towards such a decision. The Commission’s recent communication⁵ on the subject has started this discussion in the field of taxation.

- **Conclusion 9: Strengthening the European Parliament is good for both democracy in the EU and effective climate policies.** In most cases since its establishment in 1979, the European Parliament has been a strong advocate for ambitious EU climate and energy policies – irrespective of varying majorities. The Parliament’s institutional set-up with strong rapporteurs and committees has been instrumental for its generally strong environmental positions. For this reason, strengthening the Parliament would enhance both democratic decision-making in the EU and climate and energy policies. To this end, the Process on the Future of the EU should discuss ways to strengthen the European Parliament, including the right to initiate legislation and a full right of inquiry.⁶
- **Conclusion 10: The European Council has at times engaged in the details of climate and energy legislation; the Process on the Future of the EU can help clarify the mandate of the European Council.** The European Council has occasionally intervened in the details of energy and climate law-making, although to a lesser extent in recent years. The European Council has also engaged in the details of the multiannual financial framework, another dossier with important implications for climate and energy policies. This intervention in legislative details has raised constitutional issues because it can be seen as infringing on the mandate of the EU’s legislators: the Council and the European Parliament. It can also *de facto* undermine majority voting. The process on the Future of the EU could provide an opportunity to clarify the role of the European Council vis-a-vis legislative processes. Eventually, the European Court of Auditors or the European Court of Justice could help clarify the mandate of the European Council.

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⁵ “Communication by the Commission (15 January 2019): Towards a more efficient and democratic decision making in EU tax policy, https://ec.europa.eu/taxation_customs/taxation/decision-making-eu-tax-policy_en

⁶ The working group noted that some of these proposals would require changes to the treaties.