



How can EU reform strengthen EU climate and energy policies?

Background Paper

15 November 2018

Nils Meyer-Ohlendorf

Supported by:



based on a decision of the German Bundestag

Contact

Dr. Nils Meyer-Ohlendorf
Head, International and European Governance
Ecologic Institute
Pfalzburger Straße 43/44
10717 Berlin
E-Mail: nils.meyer-ohlendorf@ecologic.eu

Proposed Citation

Meyer-Ohlendorf, Nils (2018). How can EU reform strengthen EU climate and energy policies?, Ecologic Institute, Berlin.

This background paper is part of the project 'Reforming the EU: Climate Policies as the New Trade Mark of the EU'

Funded by the European Climate Initiative (EUKI), Federal Ministry for Environment, Nature Conservation and Nuclear Safety (BMU), Germany

Disclaimer

The European Climate Initiative (EUKI), Federal Ministry for Environment, Nature Conservation and Nuclear Safety (BMU) funded this analysis. The Ecologic Institute is appreciative of this support. Opinions expressed in this report represent the views of the authors and do not necessarily represent the official position or policies of the EUKI. The responsibility for the content of this publication lies solely with the authors.

About Ecologic Institute

The Ecologic Institute is a private not-for-profit think tank for applied environmental research, policy analysis and consultancy with offices in Berlin, Brussels and Washington DC. An independent, non-partisan body, the Ecologic Institute is dedicated to bringing fresh ideas to environmental policies and sustainable development. The Ecologic Institute's work programme focuses on obtaining practical results. It covers the entire spectrum of environmental issues, including the integration of environmental concerns into other policy fields. Founded in 1995, the Ecologic Institute is a partner in the network of Institutes for European Environmental Policy. The Ecologic Institute acts in the public interest.

More information on: www.ecologic.eu

1 Summary

The EU is fundamentally important for climate and energy policies in Europe. Because of this, EU reform is always a crucial moment for climate and energy policymaking. Now, triggered by Brexit, the EU has started a process of reflection and possibly reform. This process has yet to develop specific scenarios for reform. The early stage of the process offers opportunities for EU climate and energy policy to contribute and to shape it. As the process on the future of the EU evolves, **climate and energy policies should take account of the following issues:**

- **Climate and energy policies – a trademark of the reformed EU:** To a large extent, EU climate and energy policies are not recognised for what they are: a genuine opportunity to improve the quality of living of Europeans, to modernize economies, to increase competitiveness and to seize the markets of the future. The debate is still largely about short term costs of specific sectors. This is a problem for Europe's environment and economies. EU reform would support EU climate and energy policies greatly if it would help make climate action, sustainability, competitiveness, modernization and innovation a trademark of a reformed EU.
- **EU already gives frontrunner countries room:** There is a long-standing debate whether the EU is flexible enough. The current institutional set up is already very flexible, giving frontrunners room to move ahead. Additional flexibility, such as easier enhanced cooperation, would come at the price of more fragmentation and probably little added value for climate and energy policies.
- **Reform of the EU treaty chapter on the environment:** For the most part, the EU adopts its climate laws through the ordinary legislative process, which means that the European Parliament is a full co-legislator and that the Council can decide by qualified majority. This set up has been instrumental for adopting fairly strong policies. However, some issues with great significance for climate action – such as the choice of the national energy mixes as well as taxation or spatial planning – are still subject to the special legislative process. The special legislative process is less likely to produce ambitious policies because each Member State has a veto – including less ambitious countries – and because the European Parliament – generally an advocate for ambitious policies – is not a full co-legislator. Changing this does not require treaty reform (*passarelle* clauses) but is politically difficult. Because these changes could be particularly beneficial for climate action, the process on the future of the EU should address the current shortcomings. Expanding the ordinary legislative process would also increase transparency, democratic accountability and control because the European Parliament would become equal co-legislator in nearly all aspects of EU environment and climate policies. The Commission is expected to publish a communication on the subject in the first quarter of 2019.
- **Institutional reform:** Currently, institutional reform seems unlikely. If a debate on institutional reform was to begin, these issues are important for climate and energy policies:

- **Reforming the European Parliament:** Empirically, Parliament has been a strong advocate for ambitious EU climate and energy policies – despite different majorities. Parliament's institutional set up with strong rapporteurs and committees has been instrumental for its generally strong environmental positions. To this extent there is an argument that strengthening Parliament – through, for example, a new right to initiate legislation or stronger inquiry rights – would not only help democracy in the EU but also climate and energy policies.
- **Reforming the Council:** There are a number of proposals to turn the Council of Ministers into a genuine second legislative chamber and its configurations into preparatory bodies similar to parliamentary Committees. This would be problematic if down-grading the Environment Council to a committee entails weakening climate action.
- **Clarifying the mandate of the European Council:** The European Council has often engaged in the details of energy and climate law making, although in recent years to a lesser extent. This has raised constitutional issues because this engagement in legislative details could infringe 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 start a debate on the role of the European Council in legislative processes. The European Court of Justice (ECJ) could clarify the mandate of the European Council – if procedurally possible.
- **Stronger role of national parliaments in EU decision making:** Today, national parliaments are involved in EU decision making – either indirectly through controlling national governments or directly through, for example, subsidiarity control. Article 12 TEU and Treaty Protocol No 1 set out the roles and rights of national Parliaments in more detail. There are a number of proposals to strengthen the role of national parliaments in EU decision making, ranging from a European Parliament only consisting of national MPs, to informing national parliaments better about EU affairs. These proposals rarely make concrete and detailed suggestions for changing protocol No 1 or even Article 12. Because of this, it is hard to predict possible impacts of these proposals on climate and energy policies. There is a general concern that greater involvement of national parliaments would slow down EU decision making and would interfere with the mandate of the European Parliament.
- **Compliance framework already strong but improvements possible:** Compliance with EU law is relatively good, despite important differences between Member States in law enforcement. The EU's strong enforcement system is an important reason for these high levels of compliance. Infringement procedures are a fairly effective compliance instrument but their long duration and complex procedures are a problem. Next to their length, infringement procedures suffer from their responsive nature. They are the response to a specific case but are not designed to address or even prevent systematic shortcomings in Member States. EU reform would improve compliance if it would help shorten infringement procedures. In addition, EU

reform should consider enhanced early warning systems for systematic problems, similar to the pledge and review system under the new Governance Regulation on the Energy Union.

- **Improving the Multiannual Financial Framework (MFF):** Beyond the negotiations of the details of the next MFF, there are a number of ideas how EU reform could help improve the MFF governance, also in a way that contributes more to climate action and clean energy:
 - **Align climate action and spending:** 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.
 - **New own EU revenues:** EU own revenues, i.e. revenues to which the EU is directly entitled and not depending on Member States contributions, are an important reform proposal. Own revenues could be designed to help climate action and clean energy. Auction revenue from the Emission Trading Scheme is one example. Introducing a European tax, including a tax on energy or emissions, is another. These proposals for "green EU own revenues" would be a major achievement and a significant contribution of the process on the future of the EU to climate action and clean energy.

Contents

1	Summary	3
2	Introduction.....	7
3	Are EU climate and energy policies flexible enough?	9
4	Reforming the environment chapter?	11
5	Reforming the energy chapter?	12
6	Institutional reform.....	13
7	Multiannual Financial Framework (MFF).....	17

2 Introduction

Climate and energy policies in EU Member States are largely driven by the EU. The EU is almost the system software of national climate policies in Europe. There is practically no piece of national climate legislation that is not impacted by or originates from EU legislation. The EU Emission Trading Scheme, the Effort Sharing Decision, fuel efficiency standards for cars, and ecodesign requirements for household appliances are all instruments that have shaped climate action at national level. National energy policies are also shaped by EU laws and policies, although to a lesser extent. Examples include rules on energy markets and energy efficiency. The EU has been instrumental for creating relatively consistent and relatively ambitious climate policies. In other words, reforming the EU has automatically important implications for climate and energy policies in Europe.

Because the EU is such an essential player in climate and energy policies, **its reform has always been an important moment in climate and energy policymaking.** Now, triggered by Brexit, the EU has embarked on a process of reflection, soul-searching and possibly reform. This process is often called “Bratislava process” because it started in Bratislava, in September 2016, when the European Council adopted the so-called Bratislava Declaration and Roadmap. The Bratislava process is scheduled to present its first conclusions in Sibiu in May 2019. In other words, the process is well in its second half now and yet it still lacks momentum and a sense of purpose. Its direction and objectives still need to be clarified.

In the past, EU reform was largely about changing the Treaty on the Functioning of the EU (TFEU). Now it is different. **For the time being, treaty changes are not a priority but something to be avoided** because of their ratification process. The MFF and changes to secondary legislation and policies are the more likely vehicles of reform. Improving the functioning of the EU on the basis of the Lisbon Treaty is another potential avenue of reform. So-called *passarelle* clauses, for example, allow reforms without changing the treaties. The environmental chapter of the TFEU contains a *passarelle* clause, which allows the Council to move certain measures from the special legislative process to the ordinary legislative process. The MFF, the Common Security and Defence Policy, judicial cooperation concerning family law, or Social Affairs are other areas that have *passarelle* clauses – next to the general *passarelle* clause in Article 48.7 of the Treaty on European Union (TEU).

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 (for example, 2050 energy and climate strategy), social inclusion but also the issues such as Euro, migration or security. Only the Euro, migration and security have featured highly on the political agenda of the European Council.

But there is only one process (singular) that deals with the future of the EU as an organization with fairly clearly defined competencies. This process was launched in Bratislava in 2016 and is scheduled to draw first conclusion in Sibiu in May 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. Macron's and Juncker's speeches have been important contributions to this process.

There are numerous interlinkages and references between these different processes but there is only one process that provides the opportunity to reform the EU as an organization and its decision-making. This is the Bratislava process, or the road to Sibiu and probably beyond.

This paper discusses how EU reform can strengthen EU climate and energy policies. It focuses on the Bratislava process and only addresses a few selected issues of other processes relevant for the future of the EU and its climate and energy policies. Notably, the negotiations on the MFF are essential processes for the future of EU climate policy. The paper will not provide a comprehensive discussion of this issue because it has been covered elsewhere in detail. Since the Bratislava process has not developed specific scenarios for the future of the EU, this paper discusses issues that could become relevant for climate and energy policies when the EU starts negotiating reforms in detail.

More specifically, the paper discusses:

- Is the EU flexible enough? To what extent do EU rules impede ambitious front runners and if so, to what extent could EU reform help address this issue?
- To what extent can the Bratislava process help improve the TFEU's environment and energy chapters?
- To what extent would climate and energy policies benefit from institutional reform, i.e. reforming the European Commission, the European Parliament, the Council of Ministers and the European Council or facilitating a stronger involvement of national parliaments in EU decision-making?
- To what extent could reform of the EU's compliance framework strengthen climate and energy policies?

3 Are EU climate and energy policies flexible enough?

Flexibility has been an important item of EU policy discussions for a long time. The discussion on flexibility has two angles: First, does the EU impede national frontrunners; is it a straightjacket for Member States that want to pursue more ambitious climate and energy policies? Second, does the EU treat Member States equally even though they are different; in other words does it apply an unfair one-size-fits-all approach to Member States?

The discussion on the future of the EU has touched on the issues on various occasions in general terms but it has not fully taken into account the fact that **EU climate and energy policies already provide various flexibility instruments:**

- **Member States may adopt more stringent measures (Article 193 of the TFEU):** The Treaty does not prevent Member States from maintaining or introducing more stringent protective measures. These measures must be compatible with the TFEU and must be notified to the Commission. This gives fairly wide room for adopting more stringent environmental policies but so far there have been only a few cases where Member States invoked Article 193. Only some Member States, for example, have adopted more ambitious climate and energy targets and specific measures to support them. This is an indication that Member States do not perceive EU rules as an impediment to more ambitious policies.
- **In principle, secondary law is flexible:** EU climate and energy law is detailed but often gives Member States fairly broad discretion regarding its implementation and transposition. It regularly uses “should clauses”, differentiates between Member States (different targets) or includes only vague obligations. There are various mechanisms in EU climate and energy law that support poorer Member States. Auctioning revenues from the emission trading are distributed according to income and GDP. The Climate Action Regulation includes a so-called safety reserve for poorer Member States. EU climate law also contains a mechanism that supports Member States with high mitigation costs although they are richer. The same regulation allows trading of emission units between Member states, another important mechanism to take account of different national circumstances.

These instruments suggest that the EU already gives room to frontrunners and is not a straightjacket but there are **specific ideas for promoting more flexibility:**

- **Reforming enhanced cooperation:** Enhanced cooperation is another flexibility mechanism which allows a group of at least nine Member States to establish advanced integration or cooperation between them. Acts adopted in the framework of enhanced cooperation only bind the participating Member States. They are not part of the *acquis* but must comply with EU law and may not undermine the internal market, economic, social or territorial cohesion. Following a proposal from the Commission and consent of the European Parliament, the Council adopts measures of enhanced cooperation. The Council must establish that the objectives of enhanced cooperation cannot be attained with other policies within reasonable time periods, making enhanced cooperation a measure of last resort. Enhanced cooperation must be open at any time to all Member States.

As of October 2017, enhanced procedure is used in the fields of divorce law, patents, property regimes of international couples, and for the establishment of the office of the European Public Prosecutor. It was applied to approve a financial transaction tax. It has not been used in climate and energy policies. This meagre use of the instrument could be an argument for a reform. In this vein, the Verhofstadt report of the European Parliament suggests that the requirements for establishing enhanced cooperation should be less restrictive, for example by lowering the minimum number of participating Member States.¹

However, there are strong reasons why requirements of enhanced cooperation are restrictive and why it is an instrument of last resort. Wider use of enhanced cooperation poses a risk of an increase in fragmentation and complexity. Making enhanced cooperation easier would run counter to one of the reform's possible objectives, namely to make the EU simpler and more accessible. It is also unclear how enhanced cooperation could help EU climate and energy policies. With its current institutional set up the EU has adopted fairly ambitious policies. It is unclear whether groups of more ambitious Member States would use enhanced cooperation to adopt policies that are more ambitious than EU policies, and it is also not clear why the current system of enhanced cooperation has impeded ambitious countries to do more together.

- **Local action at the forefront of effective climate policies:** Cities and regions are often at the forefront of innovative climate and energy policies. For this reason, EU reform could support climate action if it would help channel this local expertise to the European debate. In the current institutional set up, cities and regions participate in EU decision-making primarily through the Committee of the Regions (CoR) and consultation. The CoR intervenes at several stages of the EU law-making process, bringing views from regional and local authorities to the European debate. Although often not quoted in the media and not an important point of reference in the political debate, contributions of the CoR often have had an impact, in particular on specific legislative files with important implications for local and regional affairs. There is no advanced debate on reforming the CoR to make it a more influential advocate for regional or local affairs. A stronger role of cities and regions in EU decision making is bound to make an already complicated system even more complicated. This argues against a reform of the CoR, in particular if this reform would establish an additional hurdle in EU decision-making, e.g. through granting the CoR quasi functions of a co-legislator.

In **sum**, the current institutional set up already gives frontrunners significant room. Additional flexibility would come at the price of more fragmentation and would probably provide little added value for climate and energy policies. However, financial incentives for frontrunners and state aid rules designed to support frontrunners are options to help frontrunners and reduce fragmentation at the same time.

¹ Report on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)), Committee on Constitutional Affairs, Rapporteur: Guy Verhofstadt

4 Reforming the environment chapter?

EU climate policy is generally based on the EU's environmental competencies (Article 192 of the TFEU). **This means that the ordinary legislative process is the standard way of adopting climate laws in the EU**, i.e. the European Parliament and the Council are equal co-legislators, and the Council can decide by qualified majority. Only in exceptional cases the special legislative process applies, in which case the Council decides unanimously and the European Parliament is only consulted rather than having to agree. These exceptions apply, for example, where the EU adopts environmental provisions primarily of a fiscal nature, measures affecting town and country planning, or measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply. The current institutional set up has been instrumental for adopting fairly strong policies – presumably stronger than what many Member States would have adopted alone. 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.

Although the current system has delivered important policies, **there is a case for reforming specific elements of the Treaty's environment chapter and to expand ordinary legislative processes:**

- Issues with great significance for climate action – such as the choice between different energy sources and the general structure as well as taxation or spatial planning – are subject to the special legislative process. This institutional set-up is less likely to produce ambitious policies because the Parliament is only consulted and is considerably weaker. The unanimity requirement in Council grants a veto to individual countries, including less ambitious Member States. This institutional set up has been an important reason why the EU has not been able to adopt ambitious energy taxation rules. Negotiations of the Energy Taxation Directive, for example, are essential for climate and energy policies but have made only little progress over the past two decades – largely because of the unanimity requirement.
- Addressing this shortcoming does not require changes to the treaty but “only” a unanimous decision by the Council. According to Article 192, the Council may make the ordinary legislative procedure applicable – following a unanimous decision based on a proposal from the Commission and after consulting the European Parliament. A unanimous decision by the Council is politically difficult because many Member States do not support expanding qualified majority voting (QMV), and in practice there is a strong preference for consensus decisions in the Council. However, EU reform should start a debate on the matter, as has President Juncker in his state of the Union addresses in 2017 and 2018. The Commission is expected to publish a communication on the subject in the first quarter of 2019. The European Parliament suggests that the Council should switch to qualified majority voting, whenever possible, including environment.

5 Reforming the energy chapter?

Like climate policies, EU energy policy is subject to the ordinary legislative process. Special legislative process only applies where energy measures are primarily of a fiscal nature. In contrast to the chapter on the environment, the energy chapter explicitly forbids specific EU measures, which is rarely the case in EU law. According to Article 194.2 of the Treaty on Functioning of the European Union (TFEU), the EU may not adopt measures that “affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192 (2) (c).” This provision limits the EU energy competencies, although it does not restrict an EU action based on its environmental competence. The limitation is, for example, a potential hurdle for adopting EU targets for renewable energy because these could affect Member State’s choice between different energy sources.

However, practice has based these energy targets on the environmental chapter. For reasons of clarity, a reform of these rules would help climate and energy policies in Europe because it would take account of the fact that energy markets in Europe are becoming increasingly interconnected, which in turn makes the current national competencies regarding energy mixes outdated. A reformed energy chapter would take account of Europe’s new energy realities but a reform requires treaty changes. Unlike the environment chapter, the energy chapter has no *passarelle* clause which would make treaty changes easier. To this end, the European Parliament deplored “the constraint that EU policy must not affect a state's right to determine the conditions for exploiting its energy sources, its choice between different energy sources and the general structure of its energy supply (Article 194(2) TFEU), and calls for amending it in order to ensure successful implementation of common clean and renewable energy policies”.²

² Report on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)), Committee on Constitutional Affairs, Rapporteur: Guy Verhofstadt

6 Institutional reform

After the failure of the transnational list, the EU minister of finance, the *Spitzenkandidat* and double hat, no major institutional reforms are expected in the near future. Equally important, there is no appetite to change the treaty, which is a requirement for institutional reform in many cases. All this makes institutional reform an unlikely scenario but this could change as the debate on EU reform develops. **If a debate on institutional reform was to begin, the following issues are important for climate and energy policies:**

- **Strengthening the European Parliament:** Empirically, Parliament has been a strong advocate for ambitious EU climate and energy policies. There are exceptions but in general terms the Parliament has been advocating policies that are more ambitious than what the Council or Commission have proposed.³ Importantly, Parliament has taken more ambitious stances for many years - despite different majorities. This suggests that Parliament's institutional set up with strong rapporteurs and committees has been instrumental for its generally strong environmental positions. Obviously, this could change with new majorities; past experience does not guarantee that the future will be similar.

To this extent, there is an argument that strengthening Parliament improves climate and energy policies quasi automatically. Suggestions for strengthening Parliament include more use of legislative initiative reports by the European Parliament (Article 225 TFEU) or an own right of legislative initiative (without prejudice to the basic legislative prerogative of the Commission). As another proposal, the European Parliament could be granted stronger inquiry rights, including the right to summon witnesses, to have full access to documents, to conduct on-the-spot investigations and to impose sanctions for non-compliance.⁴ All this would not only strengthen the EU's only directly elected body and thereby democratic governance in the EU, it would also support climate action and energy policies in most cases.

- **Reforming the Council:** There are a number of proposals to turn the Council of Ministers into a genuine second legislative chamber and its configurations into preparatory bodies, similar to parliamentary Committees. This would be problematic if it were downgrading the Environment Council to an environmental committee. This concern could be addressed if committees are designed in ways that ensure their strong role. Proposals to replace the rotating six-month Council presidency with permanent chairs is unlikely to have a negative impact on climate and energy policies if permanent chairs are explicitly mandated to pursue climate and energy policies.

³ Examples for stronger positions of Parliament include emission values for car emissions, the Climate Action Regulation or the Governance Regulation for the Energy Union. As an exception, Parliament had advocated a reform of the emission trading scheme that was weaker than what Council and Commission had proposed.

⁴ Report on possible evolutions of and adjustments to the current institutional set-up of the European Union (2014/2248(INI)), Committee on Constitutional Affairs, Rapporteur: Guy Verhofstadt

- **Reforming the Commission:** Proposals to reform the Commission include the appointment of an EU Finance Minister (merging the position of President of the Eurogroup and Commissioner for Economic and Financial Affairs) and an EU Foreign Minister (merging Commission Vice-President/High Representative) or reducing the number of Commissioners. None of these proposals is likely to strengthen EU climate and energy policies. The creation of an EU Finance or an EU Foreign Minister could tip the power within the Commission towards finance and foreign policy, possibly at the expense of other policies. Reducing the number of Commissioners is an important proposal to strengthen the Commission but it is neutral for climate and energy policy - if climate and energy policies continue to be a distinct DG, represented by a Commissioner with a strong mandate.
- **Reforming the European Council:** The European Council has often engaged in the details of political or legislative processes, although to a lesser extent in recent years than before. 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.

In addition to these constitutional issues, the active role of the European Council has also raised a number of questions for EU climate and energy policies because rule-making in the European Council could *de facto* lead to granting a veto to each Member State. This contrasts with the standard way of energy and climate policy making in the EU, where the ordinary legislative process generally applies and decisions are taken by qualified majority. The process on the future of the EU could start a debate on the role of the European Council in EU policy making and adoption of legislation. The ECJ could clarify the mandate of the European Council – if procedurally possible.

- **Stronger role of national parliaments in EU decision making:** National parliaments are involved in EU decision making – either indirectly through controlling national governments or directly through, for example, subsidiarity control (“yellow and orange card system”). Article 12 TEU and Protocol No 1 of the TFEU set out the rights of national Parliaments in more detail. These provisions – introduced by the Lisbon Treaty – have greatly improved the cooperation between the European Institutions and national parliaments⁵, but a number of proposals to strengthen the role of national parliaments in EU decision making remain under discussion. Proposals range from a European Parliament only consisting of national MPs – similar to the Assembly of the European Economic Community where national MPs served part-time – to better communication to national parliaments in daily EU affairs. As other proposals, national representation in the Council could include national parliamentarians, and national parliaments could be allowed to submit legislative pro-

⁵ Committee on Constitutional Affairs, 25.9.2017, WORKING DOCUMENT on the implementation of the Treaty provisions concerning national parliaments, Rapporteur: Paulo Rangel

posals to the Council (so-called 'green card' procedure). The framework of interparliamentary cooperation between the European Parliament and national parliaments (Article 9 of Protocol No 1 TFEU) ⁶ could be simplified, synchronized and accelerated. ⁷

It is hard to predict the impacts of these proposals on climate and energy policies. There is a general concern that these proposals would slow down decision making in the EU. Furthermore, stronger involvement of national parliaments needs to be reconciled with the mandate of other EU institutions. A stronger role for national parliaments also could pose a risk to climate and energy policies if it weakens the European Parliament, generally a promoter of ambitious policies. As another concern, greater involvement of national parliaments would not lead to more democratic decision-making in the EU but would simply provide national governments with an additional opportunity to challenge EU decisions – as they are supported by the parliamentary majority, turning parliaments into government's mouthpiece.

- **Compliance framework is already strong but improvements are possible:** Compliance with EU law is relatively good, despite important differences between Member States on law enforcement. The number of Single Market-related open infringement cases fell by 38 % between 2007 and 2014⁸; the transposition deficit was at 0.9 % in 2017⁹. The EU's strong enforcement system is an important reason for these high levels of compliance. Infringement procedures are a fairly effective compliance instrument but their long duration are a problem. EU reform would help compliance if it would make infringement procedures shorter. In addition to enforcing EU law, EU reform should consider the following proposals to improve compliance:
 - **Early warning of systematic problems:** Next to their length, infringement procedures suffer from their responsive nature. They are a response to a specific case but are not designed to prevent and address systematic shortcomings. The new Governance Regulation on the Energy Union tries to address this problem through a pledge and review system where Member States submit national energy plans to the Commission for a review. The Commission can issue recommendations to Member States for consideration and improvement. It is worth discussing and possibly transferring experiences with this new system to other parts of climate policies. The corrective action plans in the Climate Action Regulation are another other way to complement infringement procedures.
 - **Expanding legal standing in the European Court of Justice (ECJ):** As another proposal to strengthen compliance, the right of natural and legal persons to bring

⁶ Committee on Constitutional Affairs, 25.9.2017, WORKING DOCUMENT on the implementation of the Treaty provisions concerning national parliaments, Rapporteur: Paulo Rangel

⁷ Committee on Constitutional Affairs, 25.9.2017, WORKING DOCUMENT on the implementation of the Treaty provisions concerning national parliaments, Rapporteur: Paulo Rangel

⁸ 2015 EU Sustainable Development Monitoring Report

⁹ Single Market Scoreboard: http://ec.europa.eu/internal_market/scoreboard/performance_by_governance_tool/transposition/index_en.htm

a case before the ECJ could be extended for alleged violations of EU climate and energy law. Expanding the legal standing in the ECJ needs to be reconciled with the workload of the court.

- **EU trade policies:** Trade negotiations can either give the EU leverage to encourage decarbonisation action from its trading partners; or it can create competitiveness challenges, for example, by exposing carbon-priced EU production to 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. Specific proposals in this respect include an obligation to have climate policies in the individual negotiating mandates, possibly in the form of a Council decision or guidelines to that effect.

7 Multiannual Financial Framework (MFF)

The Multiannual Financial Framework (MFF) is an important vehicle for reforming the EU and shaping its future. The EU is currently negotiating the next MFF for the period 2021-2027. As part of this negotiation process, there is a detailed discussion to ensure that the MFF plays an important role in decarbonizing the EU. The Commission, for example, proposed to earmark 25% of the funding to climate action. **Beyond the negotiations of the details of the next MFF, there are a number of ideas how EU reform could help improve the MFF governance in a way that it contributes more to climate action and clean energy:**

- **New own EU revenues:** About 80% of the EU budget is financed from national contributions based on VAT and GNI. This system is a stable and sufficient source of income for the EU budget but some Member States have negotiated adjustments and ‘rebates’, making the current system complex.¹⁰ A high-level group on own revenues was established to assess if the revenue side of the EU budget could be made more simple, transparent, fair and democratically accountable.¹¹

Reform proposal for a simpler revenue system includes in particular so-called own revenues, i.e. revenues to which the EU is directly entitled and not depending on Member States contributions. These own revenues could also be designed to help climate action and clean energy. Auction revenue from the Emission Trading Scheme is one example which has received more attention recently. Introducing a European tax, including a tax on energy or emissions, is another example. A European tax would be a major milestone in the European integration.¹² While these proposals for “green EU own revenues” would be a major achievement and a significant contribution of the process of the future of the EU to climate action, it is currently unlikely to happen. Already the question of the EU having its own source of income is one of the biggest and most difficult political questions, greening these revenues is also difficult. If the political context changes, EU own revenues could become an important tool to help climate action and clean energy.

- **Align climate action and spending:** The EU budget could be more closely aligned to climate and energy action, similar to the Swedish climate act that requires the public budget to be spent pursuing the country’s climate objectives. According to section 2 of the Sweden’s climate act, Sweden’s climate work “shall be conducted in such a way as to allow for climate policy and budgetary policy objectives to cooperate with each other.” This provision will help to increase the weight of climate considerations in the budgeting process. It could improve the meagre results of the so-called climate-mainstreaming into EU spending.¹³

¹⁰ https://ec.europa.eu/commission/sites/beta-political/files/modernising-revenue-sources-eu-budget_en.pdf

¹¹ http://ec.europa.eu/budget/mff/hlgor/library/reports-communication/hlgor-report_20170104.pdf

¹² <http://institutdelors.eu/wp-content/uploads/2018/01/europeantaxlecacheuxnemay07.pdf>

¹³ Court of Auditors: Special report No 31/2016: Spending at least one euro in every five from the EU budget on climate action: ambitious work underway, but at serious risk of falling short, <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=39853>