



# Conference on the Future of Europe

## The Role of Climate and Energy Policies

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### Key messages

- 1 On 9 May 2021, the Conference on the Future of Europe (CFE) will begin. The CFE is an important moment for EU climate policy making. EU climate policies and the CFE are mutually supportive.
- 2 Climate policies can support the CFE in various ways. Climate policies provide numerous examples of what the EU can achieve when it acts together. Climate policy is also an example of advanced citizen engagement, and it provides lessons on how the EU can successfully shape the international agenda. With differentiated targets and support mechanisms, climate policies illustrate how the EU can give Member States flexibilities, while ensuring coherence and level playing fields in the EU.
- 3 EU climate policies can also benefit from the CFE. The CFE could help frame climate policies as what they should be for the EU – its hallmark. The CFE could help climate policies by supporting the extension of the ordinary legislative process to more policy areas with relevance for climate action. Strengthening the European Parliament and clearly defining the role of the European Council in EU climate policy making are other areas where the CFE could support climate action.

## Introduction

**On 9 May 2021, the Conference on the Future of Europe (CFE) will start.** The CFE will provide a new space for citizens to engage in the debate on the future of the EU. As a “citizen-focused, bottom-up exercise”, the CFE will organise a large number of events at European, national, regional and local levels. So-called European citizens’ panels – composed of citizens from all walks of life – will be at the heart of this deliberative process.

**The CFE is scheduled to conclude by spring 2022.** The CFE’s final outcome will be a report to the Joint Presidency, i.e. the Presidents of the European Parliament, the Commission and the European Council. This report will provide guidance for the future of Europe. The Commission, the European Parliament and the Council have committed to follow up on the recommendations made by the CFE – “in full respect of their competences and the subsidiarity and proportionality principles enshrined in the European Treaties”.

**Climate action will play an important role in the CFE.** The European Parliament, the Member States, the European Commission and civil society agree that climate action is at the core of the future of the EU – for two main reasons.

- ▶ **We must act to stop climate change if we want to maintain our European way of life:** The climate crisis affects our basic living conditions – weather, water, soil, biodiversity and – in consequence – habitable land, food production and health. The impacts of the climate crisis can result in economic crises, famine, armed conflicts and migration. It is inconceivable that Europe could remain safe, prosperous and free if it were impacted by the drastic consequences of unchecked climate change. The future of Europe depends on successful climate action.

- ▶ **There is no successful climate action without cooperation:** The climate crisis is a truly global problem. It affects all humans, though in very different ways, and it can be solved only by cooperation of all countries. The EU cannot solve the climate crisis alone, but the EU is indispensable to enable cooperation between Member States, to ensure a level playing field between Member States and to increase Europe’s importance in global climate action. Unlike the EU, no Member State is capable of shaping the global climate agenda alone.

Although it is clear that climate action will be a critical agenda item of the CFE and will shape the future of the EU, more so than other policy fields, **it remains unclear what this means in concrete terms.** How can climate and energy policies support the CFE process concretely? And how can climate and energy policies benefit specifically from the CFE?

## How can climate and energy policies support the CFE?

**In times of crisis, the EU climate and energy policies build bridges between EU Member States.**

The EU has supported Member States in the COVID-19 crisis in an unprecedented manner. The EU recovery funds are not only unprecedented in size, but also in terms of governance – for the first time the EU lends substantial amounts from capital markets to be repayable through the EU’s budget. At the same time, conflicts over the rule of law, migration, and democracy in Member States continue to simmer, and the EU’s efforts to support vaccination are largely perceived

negatively. As a result, the EU appears divided – at least in policy fields of critical importance.

However, EU climate and energy policies provide evidence to the contrary. The EU achieved agreement on a 2050 climate neutrality target and a substantially higher emissions reduction target for 2030. These targets are set to be enshrined in EU law. The European Green Deal alone has so far garnered high levels of support, although its implementation remains a profound challenge. In recent years, the EU also adopted important reforms of its climate and energy laws, including, for example, a reform of the emissions trading system, a new framework for energy legislation, a new Climate Action Regulation and a new EU Adaptation Strategy.

All these reforms were contested, but they demonstrated that the EU is able to act. Climate and energy policies provide a great example to the CFE on what the EU and its Member States can achieve when they work together.

### **Climate and energy policies are a role model for a more transparent and participatory EU.**

It is one of the core objectives of the CFE to engage citizens more actively in EU affairs. Climate and energy policies can show how greater citizen engagement could work – despite implementation challenges in some Member States. Both policy fields have specific transparency and participation rules that often go beyond the related standards of the general EU framework.<sup>1</sup> The 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. The new European Climate Pact offers additional opportunities for citizen engagement.

### **Climate and energy policies provide lessons that can help strengthen EU foreign policy.**

It is another important objective of the CFE to help strengthen the EU's capacities to shape international affairs. In contrast to its foreign policy, the EU was comparatively successful in shaping the international climate agenda. Unlike EU foreign policies, Article 218.9 of the Treaty on the Functioning of the EU (TFEU) allows Member States to adopt positions on international climate negotiations by qualified majority – although in practice, Member States continue to determine the EU position by consensus.<sup>2</sup> This legal set-up has been instrumental for a united EU that speaks with one voice in international climate negotiations, including its global engagement on adaptation.

### **EU climate and energy policies show that the EU is flexible and able to address the different needs and circumstances of its Member States.**

As another important agenda item, the CFE will discuss whether or not the EU regulatory framework is flexible enough to accommodate the needs of all Member States. EU climate and energy policies contain various features to ensure flexibilities. Specifically, differentiated emissions reduction targets for Member States in the sectors not covered by

<sup>1</sup> In other EU policy fields, such as cohesion policies also have specific consultation requirements, but only environmental policies have developed a full framework protected by international law, the Aarhus Convention.

<sup>2</sup> 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 Conference on the Future of Europe could help make explicit that Article 218.9 offers the opportunity to abandon the EU's current practice, if necessary.

EU emission trading, support mechanisms tailored to the specific needs of Member States or opt-out clauses for more stringent climate policies demonstrate the EU's relatively high degree of flexibility. What is more, even greater flexibility would be possible – e.g. by using “enhanced cooperation” or introducing even more flexibility in secondary law<sup>3</sup> – but this would come at the price of more fragmentation and probably little benefit for climate and energy policies.

## How can climate and energy policies benefit from the CFE?

### The CFE could help make climate and energy policies a hallmark of the EU.

Despite quickly growing political clout and much greater public awareness, 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 modernise 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 CFE 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.

### The CFE 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. The 30% share of climate-related measures

under the new Multiannual Financial Framework and the EU's recovery funds also offers great opportunities for climate action. The CFE should address these issues as well as phase out subsidies and privileges that are harmful to the climate. The CFE can also help ensure that climate-related risks and the level of preparedness are fully reflected in credit and investment risk assessment and disclosure.

### Using the Treaty's passerelle clause, the CFE 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 of great significance to 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 veto power and because the European Parliament is not a full co-legislator. In turn, expanding the 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 CFE could help pave the way towards such a decision.

<sup>3</sup> Such as more frequent use of should-clauses and vague and programmatic terminology.

## **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 CFE should discuss ways to strengthen the European Parliament, including the right to initiate legislation and a full right of inquiry.<sup>4</sup>

## **The European Council has at times engaged in the details of climate and energy legislation; the CFE 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. 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 CFE could provide an opportunity to clarify the role of the European Council vis-a-vis legislative processes.

## IMPRINT

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<sup>4</sup> It should be noted that some of these proposals would require changes to the treaties.