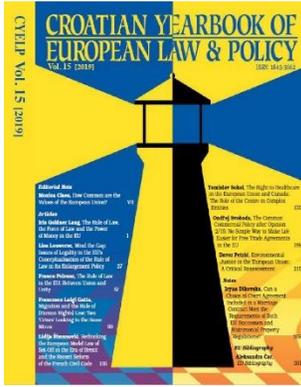




Department of European Public Law  
Faculty of Law – University of Zagreb



## Croatian Yearbook of European Law and Policy

ISSN 1848-9958 (Online) | ISSN 1845-5662 (Print)

Journal webpage: <https://www.cyelp.com>

---

### Editorial Note: Can Climate Policy Give Europe Its Mojo Back?

Gareth Davies

**Suggested citation:** G Davies, 'Editorial Note: Can Climate Policy Give Europe Its Mojo Back?' (2021) 17 CYELP VII.

**DOI:** 10.3935/cyelp.17.2021.466

 <https://www.cyelp.com/index.php/cyelp/article/view/466>

 <https://orcid.org/0000-0002-9907-7758>

 2021 The Author(s)

 Published by University of Zagreb

 Submit your work to CYELP 

 Published online: 27 December 2021

### OPEN ACCESS

All users are permitted to read, download, copy, distribute, print, search, or link to the full texts of this article, or use it for any other lawful purpose, provided the author(s) are properly acknowledged and cited.



This work is licensed under the *Creative Commons Attribution – Non-Commercial – No Derivatives 4.0 International License*. This permits anyone to copy and redistribute their work in any medium or format for non-commercial purposes provided the original work and source are appropriately cited.

More information about the journal and submission process can be found at

<https://www.cyelp.com/index.php/cyelp/about>

## **Editorial note**

Gareth Davies\*

# **CAN CLIMATE POLICY GIVE EUROPE ITS MOJO BACK?**

## **The limits of integration**

The European Union has been running into the sand for some years now. In its early decades it offered a vision for Europe that had the capacity to inspire. European integration seemed a plausible route to individual freedom, and national wealth and security, while at the same time being built on lofty, and historically necessary, anti-nationalist values. When the path to the moral high ground is also the path of self-interest one tends not to look for another route.

Europe delivered. There is no doubt that the opening of borders and the reduction of protectionism and exclusion fuelled decades of optimism and growth, and coincided with the development of contemporary sensibilities and concerns that were a good match for those of the EU: environmentalism, feminism, the rejection of discrimination generally, the desire for an inclusive and solidaristic, but free, economy. Not only for the young, if perhaps for them more than others, membership of the EU was clearly a part of the solution. If it was also a counterweight, even a threat, to entrenched national power structures, then this mildly revolutionary aspect made it only more attractive. Each generation must fight free of its parents.

But integration can only go so far. The strange ‘ever closer Union’ clause of the Treaty on European Union expresses a view of what the EU is for that is both nonsensical and undesirable, if one takes it seriously. In any union whose aim is not the obliteration of the self there remains a certain distance, a certain core of identity which makes it possible to speak about a union ‘of’. There necessarily comes a time, if integration progresses, when further integration is no longer desirable because the marginal extra benefits in wholeness that it would bring are not worth the loss of self, identity and diversity. Member States do not have the ambition to commit cultural or constitutional suicide, and so their integration, however deep, satisfying and meaningful it may be, must have its limits.

We have not reached that point. But the greatest intellectual and legal steps have been taken. There is still practical and detailed work to be

---

\* Professor of European Law, Vrije Universiteit, Amsterdam (ORCID iD: 0000-0002-9907-7758). DOI: 10.3935/cyelp.17.2021.466.

done, and the maintenance of a union is an ongoing task, but one cannot expect fine tuning and entrenchment to resonate with the same power as a call to create a new utopia. The integration of the Member States of the European Union, the underlying logical foundation stone of most of the case law of the Court of Justice, is still an excellent and important idea, but it is not the call to arms that it once was, or that this moment in history needs.

We see this in populism and Euroscepticism, which should be viewed as opportunistic infections of a weakened body, not underlying causes. That the EU has been running into the sand is not because of the pushback that it has been receiving on political and legal fronts, from national courts, governments, and to a certain extent populations. There is, undoubtedly, a new willingness to stand up to the EU and proclaim world views that used to be taboo, and a resulting debate about whether the EU should robustly fight back, or whether it should be the tolerant parent, allowing states their space for dissent. Should it deny Poland funding until its authorities behave, or should it see that state as more than its government of the moment, and not try to punish the people for the behaviour of those they choose? Yet while these questions are important, in that the wrong approach can destabilise and perhaps even break apart the Union, they are also beside the bigger point. That some politicians can exploit the EU's weakening grip on the utopian imagination should not obscure the fact that this grip is weakening, and that the exploitation is a symptom not a cause. We may be grateful to the Orbans and their sort for reminding us that the EU needs either to repackage and resell its big ideas, or it needs to find a new one.

### **Saved by the climate**

The climate crisis then comes at a convenient moment for the Union. There seems little reason to doubt that climate change will be the dominating policy question for governments and their populations in the coming decades. Moreover, after years of dragging its feet, the world is slowly starting to move. To a growing extent, climate policy in many nations is no longer about vague promises for the future, but about significant action programmes now.

It is onto this bandwagon that the European Union is seeking to jump with its European Green Deal, or, to give due credit for the scale of ambition in that plan, it is this bandwagon that it is seeking to help push.<sup>1</sup> There is much at stake here, and not just the future of the world,

---

<sup>1</sup> Commission, 'The European Green Deal' (Communication) COM/2019/640 final <[https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal\\_en#documents](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en#documents)> accessed 12 December 2021.

but also that of the EU, for if it can truly take (part) ownership of climate protection policy then it can recover its capacity to inspire and motivate and once again be the beacon of hope for Europeans that it once was. Combatting climate change could put the EU back in the game.

### **Continuity and change, from market to climate**

This will not happen if climate policy is an add-on, even a major one. Greening the economy sounds too much like an attempt to avoid serious change, as if the nature and scale of economic activity is a given, and the question is how to do it less harmfully. Rather, serious self-interest requires us to reverse that relationship: how to integrate economic activity into sustainability? The given is the need for a non-degraded and liveable planet. Within the context of policies ensuring this, it would be reasonable to ask what kinds of economic activities are possible and desirable.

The phrasing is not the point. The substantive priorities are. If Europe wants its mojo back it will need to make environmental, and in particular climate, policies its central thrust, purpose and vision, taking over the role that was once occupied by integration and the internal market. That may seem like a problem. It is often thought that the EU is essentially about integration, that this is in its DNA. To ask it to repurpose is then really to disband it and recreate something new.

There is however much more continuity and logic in reorienting the EU towards climate than at first seems. It is suited to its talents and nature, but, more importantly, also to its deeper purpose.

Firstly, combatting climate change is the kind of thing that the EU ought to be good at. It is to a large extent a technocratic project, requiring the wide implementation of technological innovations, and the management of the socio-economic challenges of change. It is certainly not apolitical, and has the potential to be polarising, but the actual action is expert led. This kind of implementation of technocratic rationality in a sensitive context, negotiating and dealing with political resistance and public doubt, is where the EU excels. Competition policy, harmonisation, and even the Covid crisis have shown it keeping a cool head and managing to entrench expert prescriptions in a context of national political doubt, fear, and sometimes chaos. This is not to say that it is always right, or that the growth of technocratic power in Europe over past decades is to be unequivocally celebrated. Rather, it is just to say that if you had a bunch of scientists who were able to outline effective climate policies, and a bunch of governments who realised that these were a good idea but were faced with conflicting and sometimes value-based domestic concerns, and you needed an organisation capable of getting those policies implemented, the EU's CV to date would look like a good match.

It looks even better when one realises that climate change, like many environmental problems, is a sovereignty issue. In one sense, it is not a very difficult problem – there are plenty of alternative energy sources, and the knowledge is there to utilise them. There is not even much doubt that in the longer term the costs of cleaner energy would be as low or lower than what they replace. What hinders action is the costs of transition. These may not even be that great, and certainly not for rich countries, but in the context of a global economy it is hard for a state to take on a burden that its neighbours do not. Thus the major hindrance to effective action comes from the need for coordination instead of competition. If we all agree to reduce emissions, then we will all benefit. If some of us refuse, and decide to exploit fossil fuels to the max, it becomes harder for other states to take on the short-term costs of an alternative path.

This is precisely analogous to other, more prosaic, race-to-the-bottom issues. The supranational nature of the EU is what makes it possible for Member States to maintain high standards in areas where they want them without fearing a loss of competition from states that will not play the game. The primary functional reason for having an organisation like the EU is to address problems that states cannot address alone. As subsidiarity tells us, what distinguishes these problems is that there is a need for a common approach, and therefore for a body that can create this.

### **The EU as a response to crisis, and to self-awareness**

But if having the toolbox and the institutional arrangements to address climate change is a good start, the EU's fit with this challenge goes deeper. It was created to allow Member States to recover in the face of an almost existential threat. Their economies and societies were devastated by war, their institutions were often corrupted and delegitimated, and their previously dominant role in the world had been snatched away by the two new great powers, the United States and the Soviet Union. Europe faced at best global marginalisation, and at worst poverty, if it could not find a new way forward. The EU's task, most fundamentally, was to ensure a better future for Europe, if necessary by breaking taboos, challenging entrenched institutions and norms, and constraining the freedom of the same states it was supposed to serve. It had the mission to do whatever it takes, its almost Machiavellian powers defined primarily by what was to be achieved.<sup>2</sup>

That mission was a reflection of the Member States' quite justified lack of faith in themselves. Recognising the social and economic need for

---

<sup>2</sup> G Davies, 'Democracy and Legitimacy in the Shadow of Purposive Competence' (2015) 21 ELJ 2.

a process of opening to each other, they also recognised that they themselves were incapable of achieving this, not just because of the practical problems but because of their own fragile and conflicted politics. The EU was and has always been a mechanism to save states from themselves, to discipline them to follow the path they know they need to take, but from which they are so easily distracted by their internal conflicts. The EU is designed to be the personal trainer, the dietician, the supervisor of homework, the conscience of Europe, who serves by taking on the role of master.

In this light, reorienting towards climate policy is more of a continuity than a break. It is more faithful to the EU's original mission than continuation along the path of integration *per se* would be. Once again, the continent faces a challenge to its wellbeing, on a scale unprecedented since the last global war, and that challenge is no less because it is shared by the rest of humanity too. Indeed, perhaps it is more, because to manage climate it will not be enough for any nation or region to address its own emissions. Those who care also have to find a way to change the direction of other parts of the world, a task which only a few superpowers can realistically take on. A European nation which does not want to burn or disappear beneath the sea desperately needs the EU, not so much to reduce its own emissions, but to cause change elsewhere.

So, as in 1957, Europe needs cooperation and discipline – supranationalism – if it is to preserve its future. A turn to climate for the EU would in a sense be a confirmation of the original insight of the Member States that, when faced with an existential threat that calls for radical change, working together offers more hope than staying apart.

By contrast, sticking to the original market-based policy mandate after that crisis has passed, and another has arisen, would be to reconceive the EU as a sort of day-to-day market management organisation, no longer guiding the continent in new directions, but merely helping administer the status quo. Given the staggering success of the EU at disrupting, transforming and revitalising the continent, its downgrading to a mere regulator would be a tragic end.

### **The European Green Deal**

The European Green Deal is the framework for the EU's push into global environmental issues and above all for its climate policy. It is a wide-ranging packet of policies, which will absorb around a third of the EU's budget over the next ten years, albeit that this will largely happen within the framework of other policies, rather than being new and independent spending: agriculture, investment and other fields will see

their financing reoriented towards green objectives.<sup>3</sup> Alongside this direct spending of about EUR 500 billion over ten years, it is planned that the Green Deal will lead to around another 500 billion in spending via public and private investments and loans that the EU directly or indirectly stimulates.<sup>4</sup>

Within the Green Deal, the ‘fit for 55’ programme aims to achieve a 55% reduction in EU emissions, compared with 1990, by 2030, as a first step towards, in the words of the Commission, making Europe the first carbon neutral continent by 2050.<sup>5</sup> This is very much a reflection of the goals of the Paris Agreements, which also envisages carbon neutrality by the second half of the twenty-first century, and in general the goals of ‘fit for 55’ are intended to be an implementation of the EU’s Paris commitments.<sup>6</sup> There has been some commentary on the name, which has been described as more like an exercise class for the early middle-aged than a plan to save the planet.<sup>7</sup> On the other hand, that demographic group is probably the most involved in designing and executing the programme, and also the one most important to keep onside – the power-holders for the next twenty years. A certain uncoolness in the ‘fit for 55’ image may be deliberate and not without advantages. After all, this is not a tik-tok.

On scope and ambition, the Green Deal and ‘fit for 55’ score highly. They do not just address the usual suspects of energy, transport, insulation, emissions trading, reduction targets and investment in scientific innovation. There is also a major programme on land use and reforestation in Europe, which seeks to repair and remodel Europe’s landscape to make it healthier, more biodiverse and more effective as a carbon sink, and is a form of environmental social engineering comparable in vision to the socio-economic engineering of the internal market.<sup>8</sup> If these poli-

<sup>3</sup> See Commission, ‘Sustainable Europe Investment Plan European Green Deal Investment Plan’ (Communication) COM/2020/21 final, especially figure 3 <[https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/finance-and-green-deal\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/finance-and-green-deal_en)> accessed 12 December 2021.

<sup>4</sup> *ibid.*

<sup>5</sup> Commission, ‘“Fit for 55”: Delivering the EU’s 2030 Climate Target on the Way to Climate Neutrality’ (Communication) COM/2021/550 final <<https://www.consilium.europa.eu/en/policies/eu-plan-for-a-green-transition/>> accessed 12 December 2021.

<sup>6</sup> *ibid.*, 1.

<sup>7</sup> K Oroschakoff, ‘5 Things to Know about the EU’s Fit for 55 Climate Package’ (*Politico.eu*, 21 June 2021) <<https://www.politico.eu/article/fit-for-55-eu-5-things-to-know/>>. See also G Monti, Editorial Comments (2021) 58 CML Rev 1321.

<sup>8</sup> Commission, ‘Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of the Member States for 2030 and committing to the collective achievement of climate neutrality by 2035 in the land use, forestry and agriculture sector, and (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review’ COM/2021/554 final; Commission, ‘New EU Forest Strategy for 2030’ (Communication) COM/2021/572 final.

cies can be effectively transmitted to and internalised within the Member States, who rarely see land use environmentalism in terms much beyond aesthetics and pollution, it will be a significant step forward.

There is also the proposal for a Carbon Border Adjustment Mechanism, aiming to prevent carbon leakage, but also offering a lever to push trading partners in the rest of the world towards lower carbon production.<sup>9</sup> This is and will continue to be intensely controversial within the framework of the WTO, for initially understandable reasons: if countries start using economic brute force to externalise their policy preferences, the trading system could fragment. On the other hand, climate change is exceptional and generic arguments have no force against the exception. CBAM is eminently defensible and necessary, and one must hope – and it is very likely to be the case – that the EU will both adopt it and defend it robustly. There is no good case in policy or law for compelling states to admit products made in ways harming the global environment, and any reading of WTO law to the contrary is fundamentally incoherent.

The Green Deal is not purely about climate. It also involves measures, within the framework of other policies, to preserve biodiversity and address issues of marine ecosystems.<sup>10</sup> As well as this, the Social Climate Fund and Just Transition Mechanism are two large pots of money intended to help Member States with the cost of investing in greener policies, but above all to support vulnerable communities and households with the costs of transition, for example by compensating for increased energy prices or investing in new jobs where transition has employment consequences.<sup>11</sup> The rhetoric that climate change mitigation and social justice cannot be separated, which is *de rigueur* in many circles – even if ‘should not’ has as good a claim to plausibility as the more holistically deterministic, almost Marxist, ‘cannot’ – has been enthusiastically adopted. The Commission, as ever, knows which boxes to tick.

It is a good plan. One could quibble that the finances involved are not quite as impressive as they seem to be, since they involve greening already existing policies and then claiming that these budgets are part of the Green Deal. However, this would be a quibble: it is the essence

---

<sup>9</sup> Commission, ‘Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism’ COM/2021/564 final.

<sup>10</sup> Commission, ‘EU Biodiversity Strategy for 2030 Bringing nature back into our lives’ (Communication) COM/2020/380 final; Commission, ‘On a new approach for a sustainable blue economy in the EU Transforming the EU’s Blue Economy for a Sustainable Future’ (Communication) COM/2021/240 final.

<sup>11</sup> Commission, ‘Proposal for a Regulation of the European Parliament and of the Council establishing a Social Climate Fund’ COM/2021/568 final; Regulation (EU) 2021/1056 of the European Parliament and of the Council of 24 June 2021 establishing the Just Transition Fund [2021] OJ L231/1.

of environmentalism that it has to be integrated with the other aspects of life, for it is about living in a not-too-harmful way, so it is quite right not to try and isolate the Green Deal as a policy fiefdom of its own. The fact is that by the standards of governments it is ambitious, significantly exceeding in its emissions goals what any other major state has put forward, with the exception of the UK which has promised to achieve a 68% reduction from 1990 levels by 2030 (although UK promises are not a particularly hard currency at the moment, so one must reserve judgment on what this will actually mean).<sup>12</sup> As far as what it promises, the Green Deal is not a bad show, and it does appear to be quite carefully worked out. There is a healthy degree of policy and scientific depth to the proposals. There is also an encouraging difference from the EU's early grand plans – the Lisbon Strategy, and Europe 2020 – which were largely based on ideas and communication, and relatively little on finance or law. These envisaged the EU as a stimulator and facilitator of voluntary reform within Member States. The Member States turned out to be a disappointment. By contrast, the Green Deal is striking for its range of legislative proposals – the punchily named European Climate Law, for example – and for its plans to spend an awful lot of money. It has more meat on its bones.

Nevertheless, the question should not be whether the Green Deal is better than what other countries are proposing, or better than one might have expected, or better than other EU programmes. The important question is whether it is good enough, both to save the climate, and to save the EU. Probably it is too early to tell, for there is much space for development over the years, but it is appropriate in this early phase to voice a few concerns.

### **From a policy to an identity**

Firstly, it is rather conservative. It is institutionally conservative, in that it manages to bring this huge new programme within the existing EU structure. As above, that is not an entirely bad thing – if one wants agriculture and economic affairs to take account of climate, then climate needs to be inside, not without. However, given the scale and novelty of the challenge that is being faced, one might also think that there is merit in having DGs which provide leadership on specific policy aspects. A specific directorate general on adaptation to climate change – dealing with issues from flood prevention to urban cooling – and one on climate management and technology – dealing with negative emissions technologies

---

<sup>12</sup> The UK's Nationally Determined Contribution communication to the UNFCCC, 12 December 2020 <<https://www.gov.uk/government/publications/the-uks-nationally-determined-contribution-communication-to-the-unfccc>> accessed 12 December 2021.

and climate engineering, among others – and one on biodiversity would be appropriate both to the needs of policy, and the ambitions and claims of the Green Deal. Surely a selection of policy management structures that predates climate change concerns cannot be cut and pasted to the new reality simply by sticking on a single Climate Action DG. With all due respect to justice and consumers, and competition, to name but two, this is a matter of a different order of importance.

However, this status quo bias is reflected also in the policies, where we see the path dependency of a fundamentally market-based organisation. Despite the admirable novelty of the forestry action plan, on the whole the Green Deal goes for vanilla climate policy, offering a policy pathway where socio-economic change is fairly superficial, and not threatening to current power holders. It is the world now, with windmills and better farming practices. That would be acceptable to many people – if not social justice campaigners – if it was enough, but there is little reason to think that it is. On almost all plausible scenarios which limit global warming within the 1.5-2 degree range beyond which scientists start to sweat, there is a need for active removal of greenhouse gases from the climate.<sup>13</sup> Getting to net zero in 2050 would be great, but not enough. For decades afterwards there will be a need to repair and manage the climate, using negative emissions technologies or natural carbon sinks, and under some scenarios even needing Solar Radiation Management to cool a carbon-overloaded atmosphere.<sup>14</sup>

There is an abundance of exciting/crazy/speculative/promising ideas as to how these goals could be achieved but none of them are ready for use at scale, in most cases not at all, and as with new drugs, there is a terrible fall-off in the stages between a clever idea that *ought* to work, and having something that actually does.<sup>15</sup> Any serious attempt to address climate change should be treating this knowledge gap as urgent and terrifying, and putting the development of climate management techniques at the top of its agenda.

---

<sup>13</sup> J Rogelj and others, 'Mitigation Pathways Compatible with 1.5°C in the Context of Sustainable Development' in V Masson-Delmotte and others (eds), *Global Warming of 1.5°C: An IPCC Special Report on the Impacts of Global Warming of 1.5°C above Pre-industrial Levels and Related Global Greenhouse Gas Emission Pathways, in the Context of Strengthening the Global Response to the Threat of Climate Change, Sustainable Development, and Efforts to Eradicate Poverty* (2018) <[https://www.ipcc.ch/site/assets/uploads/sites/2/2019/02/SR15\\_Chapter2\\_Low\\_Res.pdf](https://www.ipcc.ch/site/assets/uploads/sites/2/2019/02/SR15_Chapter2_Low_Res.pdf)> accessed 12 December 2021.

<sup>14</sup> M Honegger, A Michaelowa and J Pan, 'Potential Implications of Solar Radiation Modification for Achievement of the Sustainable Development Goals' (2021) 26 *Mitigation and Adaption Strategies for Global Change* 21; J Reynolds 'Solar Geoengineering to Reduce Climate Change: A Review of Governance Proposals' (2019) *Proc R Soc A* 475 <<http://doi.org/10.1098/rspa.2019.0255>> accessed 12 December 2021.

<sup>15</sup> EASAC, 'Negative Emission Technologies: What Role in Meeting Paris Agreement Targets?' EASAC Policy Report 35 (2018) <[www.easac.eu](http://www.easac.eu)> accessed 12 December 2021.

That would be controversial. SRM is widely loathed by environmentalists, and NETs tend to be regarded with a degree of suspicion, above all because of the fear that these two techniques will distract from emissions reduction and reduce public support for it: if we can take it out of the atmosphere, who cares if we emit it? If the atmosphere can be cooled, who cares if CO<sub>2</sub> warms it up? These are legitimate concerns, and mean that the integration of sufficient emissions reduction with research into post-zero emissions extraction is politically challenging, requiring hard-headed and skilled management of the processes and actors. One would think that the EU would be good at this, but it has chosen to dodge the task. There is almost nothing on post-neutrality climate management, not even in the innovation and research plans, which are more focused on applying and developing existing approaches than encouraging blue-sky original thinking.<sup>16</sup>

That gives us a Green Deal without all that much vision; it takes us halfway to a sustainable planet, but offers no plan to get the rest of the way. The forests and land-use plan is a partial exception, as is research into carbon capture and storage, both being ways to remove greenhouse gases from the atmosphere. However, no one thinks that these alone will be enough, and they are but two approaches from a huge number proposed in scientific literature. It may be sad that we have done so much damage as a species that we have to resort to such planetary repair, but there is little policy merit in denying it. Precisely where a bullet is hard to bite, and the things that states need to do are painful and controversial, a supranational technocratic organisation can offer useful leadership. If it dares. The Green Deal is big, but when it comes to ideas, it is following, not leading. There is no moment spent wondering whether sustainability might benefit from fundamentally new ideas, rather than the development of those already mainstream in bon ton society.

A second concern about the Green Deal is that it is introspective. It is too focused on Europe. The thing about climate change is that only total global reductions matter. If Europe reduces its emissions but others do not, then as good as nothing has been achieved. Sitting on the moral high ground will not, in this case, protect against the flood.

Most countries can do nothing about this uncomfortable dependence on everyone else, except for bravely doing their own bit and joining in with multilateral programmes. There are just a very few jurisdictions that conceivably have the economic and ideological muscle to cause change on a global scale, the obvious candidates being China, the United States, and the European Union.

---

<sup>16</sup> Commission, 'Research and Innovation for the European Green Deal' <[https://ec.europa.eu/info/research-and-innovation/strategy/strategy-2020-2024/environment-and-climate/european-green-deal\\_en](https://ec.europa.eu/info/research-and-innovation/strategy/strategy-2020-2024/environment-and-climate/european-green-deal_en)> accessed 12 December 2021.

Quite often, the EU does leave it up to the first two of these to run the world, notably on issues of defence and security. However, where climate change is concerned, delegation of executive responsibility to the other superpowers seems risky. Both China and the US are wobbly on climate. It is not just Europe's chance to lead, but probably its responsibility and its self-interest.

The Green Deal pays attention to this. There is a plan for partnership with neighbours, particularly with Africa, including assisting with energy transition, adaption, and the greening of trade.<sup>17</sup> These are all excellent ideas. At the same time, this aspect of the Green Deal seems relatively underdeveloped and more technical – there are fewer documents, less mention of grand sums of money. While there are references to the EU as a global leader, it feels more like a good neighbour or a good trading partner policy. The external aspects of the Green Deal feel a little like an add on, whereas really they are the measure of the success of the internal ones: the EU should be changing itself, so that this change spreads.

Of course, it is not for the EU to dictate terms to the rest of the world. It would be neither successful nor acceptable. However, perhaps it can be an example, and create examples in its neighbours, of a carbon neutral, sustainable society, that is enviable enough that it spreads by force of persuasion. The perceived attractiveness of life in the west was a major force for change in Central Europe before and after enlargement. The challenge must be to achieve something like this on a global scale. The goal of EU climate and environment policy should be to develop a vision for the globe that is powerful enough to drive change, and to use its own change as the showpiece that pulls in other states. This is not necessarily easy, but it is the only way to make meaningful and successful the Paris Agreement, the Green Deal, and the EU itself.

Finally, a third remark on the Green Deal: it makes relatively little use of rights. The radical change achieved by the original Treaties was to a great extent because of direct effect and the domestic enforceability of EU rules.<sup>18</sup> Declaring that the EU Treaties were not an interstate bargain but an expression of the rights of Europeans turned out to be a highly effective way of harnessing the population and economic actors to discipline and steer their own states.<sup>19</sup> It not only made the law hard, but it made it creative – adjudication in the context of concrete situations provides opportunities and stories which let the law develop and grow and adapt, as well as giving it socially embedded legitimacy.

---

<sup>17</sup> Commission, 'The European Green Deal' (Communication) COM/2019/640 final, part 3 <[https://ec.europa.eu/international-partnerships/topics/green-deal\\_en](https://ec.europa.eu/international-partnerships/topics/green-deal_en)> accessed 12 December 2021.

<sup>18</sup> Case 26/62 Van Gend en Loos ECLI:EU:C:1963:1.

<sup>19</sup> *ibid.*

The recent rush of national cases holding governments to account for their emissions plans shows that lawsuits can have legal and political force in this area too.<sup>20</sup> The Green Deal does not fully internalise this. It is still largely expressed as a partnership between governments and EU institutions, and whereas there is reference to the bindingness of goals the implication is that these are to be enforced by inter-institutional methods.

The role of individuals as legal guardians of the Green Deal may well develop over time, certainly if the Court of Justice finds a role. The Green Deal may become more than a sustainability policy, and develop into an expression of the right to a sustainable, liveable, recognisable society and environment. Right now, it is a pretty decent policy plan. It is not yet an identity. It is not as constitutional as it ought to be, given what is at stake.

## Conclusion

What should the EU be? I suggest something like this:

The EU is an organisation committed to transcending the limitations of the nation state, improving the lives of Europeans and others throughout the globe by constructing solutions to problems where sovereignty stands in the way of progress.

It is really just the old externalities argument in fancy language, and in that sense both less and more than the traditional definitions of the EU in terms of ever closer union. However, it works. It is an accurate description of what the EU could and should be and could mean for the future of humanity. The nation state does not seem to be dying, but neither are the governance problems created by a planet of nations going away. There will be an endless stream of challenges requiring an approach more sophisticated than mere interstate deal-making, but less hierarchical than a global state. The EU, as still the only serious experiment in supranational governance, should try and show the way. It is coming to the end of chapter one in its story, on anti-nationalism and the internal market. Chapter two, on the climate and environment is opening. What will be next?



This work is licensed under the *Creative Commons Attribution – Non-Commercial – No Derivatives 4.0 International License*.

**Suggested citation:** Gareth Davies, ‘Editorial Note: Can Climate Policy Give Europe Its Mojo Back?’ (2021) 17 CYELP VII.

<sup>20</sup> See the useful overview at Urgenda <[www.urgenda.nl/en/themas/climate-case/global-climate-litigation/](http://www.urgenda.nl/en/themas/climate-case/global-climate-litigation/)> accessed 12 December 2021; ‘The UNEP Global Climate Litigation Report: 2020 Status Review’ (2020) Law Division, United Nations Environment Programme <[www.unep.org/resources/report/global-climate-litigation-report-2020-status-review](http://www.unep.org/resources/report/global-climate-litigation-report-2020-status-review)> accessed 12 December 2021.