



European Climate Law – real changes or postponed future?

Carlos Abreu Amorim*
Ana Cardoso**

ABSTRACT: One cannot question the scientific evidence of the deterioration of the planet's environmental quality and the global climate emergency. The apparent growth of denialism in the climate debate does not bring anything positive. The European Green Deal ("EGD") appeared as a consolidated strategy to fight climate change, but the world is not the same as it was in December 2019. Even before the COVID-19 crisis, there were doubts about the viability of such a powerful political and financial investment. As we try to deal with the fallout of the COVID-19 pandemic and guide our economies to recovery, risks of diversion or misuse of these environmental funds seemed possible. Fortunately, environmental common sense seems to have prevailed. In an unforeseen but potentially happy marriage, the Recovery Plan for Europe and the EGD were united in their purposes and in their concrete action. The European Climate Law ("ECL") is the first binding legal instrument born of the EGD. With a non-mishap-free preparation process, the final version provokes contradictory feelings. First, the perception that one could have gone further is inescapable. On the other hand, what is already acquired is relevant and Europe is unlikely to go back on this essential matter. There are innovations in the ECL that significantly altered the Commission's original proposal, introducing new elements. But while some of these changes appear to have been forced by the new circumstances, others may be proof that Member States do not have the same predisposition to deal with the objectives of the EGD and the fight against climate change. The safest way to contradict this inclination is to strengthen the ECL as a key tool in the implementation of the European Union's environmental and policy strategy.

KEYWORDS: European Climate Law – European Green Deal – EU climate governance

* Professor of Administrative and Environmental Law, University of Minho.

** Master's student in European Union Law at the School of Law of the University of Minho.

1. Introduction – the path towards the European Climate Law

There is no longer time (or patience) to seriously discuss the various types of environmental denialism that seem to be in the public and political debate, in an apparent parallel effort to the scientific arguments that demonstrate precisely the opposite. Of course, scientific evidence of the deterioration of the planet's environmental quality and the global climate emergency does not rule out the possibility of debate, as Michael Shellenberger's¹ disenchanted new scepticism is an example of, despite the poor choice of basic arguments and solutions advocated by the author, it is a position to be considered.² However, no matter how enticing this position as a whole might seem, we argue that from its lack of argumentative consistency, it should only be used as constructive criticism – a way to facilitate paths or improving public policies that inevitably will have to be followed. The predisposition to climate dialogue should never be a pretext for perpetually jeopardising the fundamental choices, and especially the legal and existential changes that are manifestly urgent and necessary.

Scientific consensus in this area exists as much as the concept itself manages to understand. This is a situation that requires immediate and definitive action, if there is any chance of reversing the damage already done to our planet. As the Secretary General of the United Nations, António Guterres, stated: *“the climate emergency is a race we are losing, but it is a race we can win”*.³

In December 2019, the European Union (“EU”) has established an ambitious action plan in the form of the European Green Deal (“EGD”) as a consolidated strategy to fight climate change. And this position is not a recent one, the EU has a long history of pushing forth the need to protect the environment. Thanks to Europe and other groups of countries, international organisations – and mainly worldwide public opinion which takes the environmental emergency seriously – the effort culminated in The Paris Climate Agreement of December 2015, a testament to the success of EU and French diplomacy, encouraging the Union to be even more ambitious with its goals regarding emission reduction, renewable energy and energy efficiency.⁴ Since 1973 the EU has approved seven multi-annual environmental actions⁵, making it one of the most active actors in the field of environmental protection.

We cannot deny, however, that there was a political and almost an emotional step back with the dawn of climate change denying political movements and politicians all over the globe, which turned the conversation around environmental protection into one of extremes. Donald Trump in the United States and Jair Bolsonaro in Brazil occupying high office positions and denying the ever-growing scientific evidence supporting the fact that we are in the midst of a climate emergency have undermined

¹ Michael Shellenberger, *Apocalypse Never: why environmental alarmism hurts us all* (New York: HarperCollins Publishers, 2020).

² Peter Gleick, “Book review: bad science and bad arguments abound in ‘Apocalypse Never’ by Michael Shellenberger”, review of *Apocalypse Never: Why Environmental Alarmism Hurts Us All*, by Michael Shellenberger, Yale Climate Connections, July 15, 2020, <https://yaleclimateconnections.org/2020/07/review-bad-science-and-bad-arguments-abound-in-apocalypse-never/>.

³ United Nations, “The climate crisis – A race we can win”, accessed April 15, 2021, <https://www.un.org/en/un75/climate-crisis-race-we-can-win#:~:text=The%202015%20Paris%20Agreement%20on,even%20further%2C%20to%201.5%20degrees.>

⁴ Marco Sidi, *The European Green Deal: assessing its current state and future implementation*, FIIA Working Paper 114, May 2020, 1, <https://www.fia.fi/en/publication/the-european-green-deal>.

⁵ Carlos Abreu Amorim, “Editorial of June 2020”, *UNIO The Official Blog*, June 2020, <https://officialblogofunio.com/2020/06/01/editorial-of-june-2020/>.

global cooperation on tackling climate change.⁶ The main negative effect of these political positions was to give voice to those who were not right and were not even able to mount capable arguments, by turning the environmental debate into a matter of political opinion.

A prime example of this was President Trump's withdrawal of the United States from the Paris Agreement and his fiery allegation that climate change was a "*hoax created by and for the Chinese in order to make U.S. manufacturing non-competitive*".⁷ Undeniably, this has put a dent on the credibility of the Agreement for some of the more sceptical. This was a stance corrected by Joe Biden in his first days in office that did return the relevance of the Paris Agreement and proved that the EU had always been right. On the other hand, we have people who firmly believe the scientific evidence which supports that we are currently living through a climate emergency, who when confronted by climate change deniers tend to close rank and defend radical change in all dimensions of human existence, seeming to want the eradication of the modern way of life, with all its comforts and benefits. This polarisation tends to lead most people out of the conversation about the environment and what we can do to protect it, because they do not agree with either side.⁸ Recently deceased Supreme Court Justice Ruth Bader Ginsburg once said: "*Fight for the things you care about, but do it in a way that will lead others to join you*". This is where the EU comes in. The EU had to prove that it remains on the front line of the fight against climate change, and this is a role which it intends to continue to fulfil in the future. The conclusive step was taken in December 2019 when the Commission presented the Communication on the EGD, highlighting that climate and environmental-related challenges are "*this generation's defining task*".⁹ The EGD is a long thought out strategy to make Europe living proof that it is possible to have a thriving and sustainable, resource-efficient and competitive economy, and to be the world reference in the fight against climate change.¹⁰ The two main objectives of this ambitious plan – to boost the efficient use of resources by moving to a clean, circular economy, and to restore biodiversity and cut pollution need to become a reality. A wide-reaching concomitant action by all sectors of society is necessary. The EGD¹¹ implementation requires a significant investment, calculated by the Commission to be EUR 260 billion yearly by 2030, together with other parcel investments, namely the Investment Plan for a Sustainable Europe which will reach EUR 1 trillion over the next decade.¹² Even before the COVID-19 crisis, there were doubts about the viability of such a powerful financial investment. There was talk of "reshuffling" pre-existing EU funds, but the plan is highly reliant on expected mobilisation of national and private resources.¹³ As we try to deal with the fall-out of the COVID-19 pandemic and recover our economy, risks of diversion or misuse of these environmental funds seem possible.

⁶ Marco Siddi, *The European Green Deal*, 6.

⁷ Michael Greshko, "The global dangers of Trump's climate denial", *National Geographic*, November 2016, <https://www.nationalgeographic.com/science/article/president-trump-global-climate-change-denial-environment>.

⁸ Carlos Abreu Amorim, "Editorial of June 2020".

⁹ Marco Siddi, *The European Green Deal*, 6.

¹⁰ Mauro Albrizio, "L'Europa siamo noi: Insieme per un Green New Deal europeo", in *Un Green New Deal per l'Europa, Le idee e le sfide per rilanciare il progetto europeo* (Milano: Edizioni Ambiente, 2019).

¹¹ European Commission, "A European Green Deal – Striving to be the first climate neutral continent", accessed May 17, 2021, https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en.

¹² Carlos Abreu Amorim, "Editorial of June 2020".

¹³ Marco Siddi, *The European Green Deal*, 13.

The climate emergency and the deterioration of our planet will not disappear or be resolved because we are dealing with a different crisis.¹⁴ As we have seen happening with the 2008 economic crisis, there are reports of a decrease in pollutant emissions caused by the current economic contraction. However, this reduction of emissions can be put into perspective if we look at what happened during other economic recovery periods, such as after the Spanish flu of 1918, the Great Depression of 1929, and the financial crisis of 2008. After a period of shrinkage of the emissions level, followed a period of sharp increase due to the economic recovery.¹⁵ With this in mind, the European Commission rightly rebutted the notion that the public health crisis should lead to the scrapping of the EU climate effort. More than ever, the Commission's focus on the advantages of technology and digitalisation can come into its own, shifting the attention from inefficient production facilities reliant on coal and other highly polluting energy sources, to technologically developed ones, which take advantage of renewable or less carbon-intensive sources such as natural gas. Delaying this transition, not only can put at risk the chances of ever recovering from this climate emergency, but also can reveal itself to be even more expensive than initially thought.¹⁶

Fortunately, environmental common sense seems to have prevailed in the minds of European statesmen despite known difficulties. In an unforeseen but potentially happy marriage, the Recovery Plan for Europe¹⁷ and the EGD were united in their purposes and in their concrete action.¹⁸ Just as there is no room to seriously debate with climate denialists, we are no longer able to wait for the solution of a bigger problem, to only address this issue after solving all the other problems that may exist in its vicinity. The European Climate Law ("ECL") is the first binding law instrument born of the EGD. With a non-mishap-free preparation process, the results of the Agreement obtained in April and adopted in May of this year provoke contradictory feelings. First, the perception that one could have gone further is unescapable. On the other hand, what is already acquired is very relevant and Europe is unlikely to go back on this essential matter.

The main objective of this reflection is to try to understand the scope and some of the impacts of the changes that the Commission's draft regulation of March 2020 has seen until its final version. Whether this ECL corresponds to the ambitions of the EGD or whether politics, fears, and cloaked denialism are being able to reschedule the solutions that scientific knowledge says cannot be delayed is unclear.

¹⁴ Milan Elkerbout *et al.*, "The European Green Deal after Corona: implications for EU climate policy", CEPS Policy Insights, March 2020, 2-5, <https://www.ceps.eu/ceps-publications/the-european-green-deal-after-corona/>.

¹⁵ Nataly Machado, "Thinking about the post-COVID-19 world is putting the European Green Deal into practice: this is the time for the European Union to respond in line with «green»", *UNIO The Official Blog*, June 2020, <https://officialblogofunio.com/2020/06/16/thinking-about-the-post-COVID-19-world-is-putting-the-european-green-deal-into-practice-this-is-the-time-for-the-european-union-to-respond-in-line-with-green/>.

¹⁶ Milan Elkerbout *et al.*, "The European Green Deal after Corona", 2-5.

¹⁷ European Commission, "Recovery plan for Europe", accessed May 24, 2021, https://ec.europa.eu/info/strategy/recovery-plan-europe_en#:~:text=NextGenerationEU%20is%20a%20€750,the%20current%20and%20forthcoming%20challenges.

¹⁸ Lia Montalvi, *Ci Salverà L'Europa? Un futuro da scrivere tra Recovery Fund e Green Deal europeo* (Reggio Emilia; Diarkos, 2021).

2. The provisional agreement – a definitive step towards a Union-wide climate regulation

In March 2020, the Commission proposed the European Climate Law Regulation (“ECLR”),¹⁹ which has undergone several alterations since the initial proposal. In September 2020 binding greenhouse gas reduction levels that should be reached by 2030 were established, as enshrined in Recital 17 and Article 2(3) of the original proposal. The target was set at 55% compared to 1990 levels, to be reached domestically and economy-wide²⁰. This resulted in alterations to Recital 17, Article 1, and Article 3(2), whereas Article 2(3)(4) was deleted, and Article 2a was added.

The accordance of the proposed ECLR with the 2030 target on greenhouse gas emissions is the starting point to reach the 2050 climate neutrality objective²¹, which has been in the horizon since November 2018 with the presentation by the Commission of a long-term strategic vision to reduce greenhouse gas emissions called *Going climate-neutral by 2050 – A strategic long-term vision for a prosperous, modern, competitive and climate-neutral EU economy*, following the steps taken by the Paris Agreement (2015).²² In May 2021, the provisional agreement on the European Climate Law was adopted, which represents a key milestone for the von der Leyen Commission, delivering on one of the commitments announced in July 2019.²³

This agreement introduces the following elements: (i) enlarges the presence of the ambitious 2030 climate target of at least 55% reduction of net emissions as compared to 1990, better explaining its importance and how it is to be achieved; (ii) affords clarity on the contribution of emission reductions and removals; (iii) recognizes the need to enhance the EU’s carbon sink through a more ambitious land use, land use change and forestry Regulation, for which the Commission will make proposals in June 2021; (iv) introduces a process for setting a 2040 climate target, taking into account an indicative greenhouse gas budget for 2030-2050 to be published by the Commission; a commitment to negative emissions after 2050; (v) the establishment of the European Scientific Advisory Board on Climate Change; (vi) strong coherence across Union policies with the climate neutrality objective; and (vii) a commitment to engage with sectors to prepare sector-specific roadmaps charting the path to climate neutrality in different areas of the economy.²⁴

This is a more wide-reaching amendment which significantly altered the Commission’s original proposal, introducing new elements and taking into account the situation created by the COVID-19 pandemic.

¹⁹ European Commission, Fact Sheet “The European Climate Law”, March 2020, https://ec.europa.eu/commission/presscorner/detail/en/FS_20_360.

²⁰ This is a more ambitious than the EU’s initial nationally determined contribution (NDC) under the Paris Agreement of reducing greenhouse gas emissions by at least 40% by 2030 compared to 1990 (accessed July 03, 2021, https://ec.europa.eu/clima/policies/international/negotiations/paris_en).

²¹ European Commission, Amended proposal for a Regulation of the European Parliament and of the Council on establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), Brussels, September 17, 2020, COM(2020) 563 final, 1 and 4-5.

²² European Commission, “Going climate-neutral by 2050 – A strategic long-term vision for a prosperous, modern, competitive and climate-neutral EU economy”, Publications Office of the European Union, 2019, accessed July 03, 2021, <https://op.europa.eu/en/publication-detail/-/publication/92f6d5bc-76bc-11e9-9f05-01aa75ed71a1>.

²³ European Commission, “European Climate Law”.

²⁴ European Commission, Press Release “Commission welcomes provisional agreement on the European Climate Law”, April 2021, accessed July 23, 2021, https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1828.

3. The relevant alterations to the initial ECL proposal

To start off, the Recitals of the new proposal were exponentially extended, in order to clarify some points and add new considerations. The EU's commitment to the climate matter and the reaching of the objectives established on the Paris Agreement are reiterated in Recital 1, something which was not mentioned previously but clarifies the EU's position on the matter, recognizing the serious threat that climate change presents. It also adds, in Recital 5, the principles that should govern Member States when acting under the ECL, the action should be “*precautionary*”, applying the “*polluter pays*” principle, the energy efficiency first principle, and the “do no harm” principle.²⁵ In succeeding Recitals the scope of action of the ECL is broadened to specifically mention sectors of the economy which were previously ignored, and clarifies the Union's position regarding subsequent steps – the addition of Recital 10a, for example, which mentions that the Union should continue its action on the climate matter past 2050 –, reiterates the cooperation and commitment of all Union Institutions, as well as it recognizes the importance of climate diplomacy, and the fact that countries outside of the Union might agree on the climate matter. Recital 10b was added and mentions that the Commission intends to propose the climate boarder adjustment mechanism, in accordance with World Trade Organization Rules. The ECL sends a strong political signal to the EU's partners and businesses wishing to work within it. The impasse regarding the new EU-Mercosur trade agreement is a good example of this, until Brazil makes a commitment to curb deforestation in the Amazon rainforest it will not be resolved.²⁶ And this stance is likely to be repeated as other agreements are negotiated and as it becomes clear that the EU wants to create environmental changes that are long-lasting and influence others to follow.²⁷

Nonetheless, we also see a step back regarding the extent of the Union's intervention – namely the Commission – on legislative proposals and other initiatives. The writing of Recital 14 introduces a segment which could, in practice, result in an excuse/way out of climate related obligations for Member States, arguing that the adverse effects of climate change could exceed the adaptive capacities of Member States. Although true, compared to the previous wording, it reads like a safety net for when the agreed targets are not reached. In the same Recital, at the end, it seems to want to bring the climate question back into the scope of Member States and limit the Union's intervention, in a stroke of national protectionism. Further in Recital 21, the same happens, the initial wording which states that the ability of the Commission to adopt appropriate legislation under the competence attributed by Article 290 of the Treaty on the Functioning of the European Union is eliminated in favour of citing the various climate objectives and deadlines. From the beginning, we see a shrinkage of the possible intervention at the Union level in favour of intervention at State level. Although the need for cooperation is recognized, and it is stated that the Union should adopt measures taking into account the principle of subsidiarity in accordance with Article 5 of the Treaty on European Union.²⁸

²⁵ Council of the European Union, Outcome of Proceedings “Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), May 5, 2021(OR. en) 8440/21, 4 and 8.

²⁶ Anthony Boadle, “Brazil pledge on Amazon needed to save EU-Mercosur trade deal -EU diplomat”, *Reuters*, December 7, 2020, <https://www.reuters.com/article/eu-mercotur-brazil-idUSKBN28H1SP>.

²⁷ European Commission, Fact Sheet “The European Climate Law”.

²⁸ Council of the European Union, Outcome of Proceedings “Proposal for a Regulation of the

Addressing the specific content of the Articles, it becomes even clearer that to reach the provisional agreement the legislative power attributed to the Commission on the original proposal had to be significantly reduced. Article 3 in the original proposal gave the Commission power to adopt delegated acts with the aim of achieving climate neutrality, and what should be taken into account in the exercise of that power.²⁹ Now, this same Article is completely overhauled, giving the Commission more of an assessment/evaluation role of the acts adopted by Member States, and only if things are not on track towards climate neutrality should the Commission intervene in accordance with the Treaties, including through legislative proposals. In short, what started as a blanket possibility to adopt measures and put forth legislative proposals was turned into a possibility of intervention in very specific situations.³⁰

This is quite a blow to the Commission's ambitious plan for the EU's transition to a sustainable and green economy and for the roadmap it had for the fulfilment of the climate objectives to which we are internationally bound through the Paris Agreement. Coordination is important, but at the same time, if Member States are, arguably, left with too much latitude to adopt their own policies dependant on national political wills and understandings, there is a risk that countries will diverge in the policies, which will make the attainment of Europe wide, uniform strategy more difficult. This could lead to a significant gap between countries that are more advanced in this field and already have legislative instruments in place regarding the green transition, and countries which, by virtue of, either, lack of resources, stability or will are trailing countries in the former category. If the Commission could act to adopt initiatives and legislation to tackle the climate matter first and foremost instead of in a subsidiary capacity, there was a potential to make climate action more immediate and effective, freeing it of the excessive politicisation to which it has been submitted to this point. Since the Commission's role is to pursue the general interest of the Union, independently of the interests of Member States, it would be easier to put forth a clear sequencing of measures which enable people to see how they will be affected by a certain action, as well as adopting binding action plans which include firm timelines for implementing the EU's climate goals. All of this is to ensure that the policies enacted under the ECL are fair, durable, trusted by the public, positively reinforcing, innovative, and visionary.³¹ But if the measures on climate are left to Member States, this could mean each country will have their own plans adapted to their economic needs, perhaps relegating the need to respond to the climate emergency to second or third place, and making a grand stand of protecting national pollutant industries and jobs above what is stipulated in the ECL. The infringement mechanisms could be a path to be followed, although we have serious doubts that they are enough. João Pedro Matos Fernandes, responding to criticism, recognized that some steps back had to be taken, since the implementation of the ECL will require profound and ambitious alterations³² and thus a consensus was

European Parliament and of the Council", 16, 24 and 26.

²⁹ European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), March 4, 2020, COM (2020) 80 final, 15.

³⁰ Council of the European Union, Outcome of Proceedings "Proposal for a Regulation of the European Parliament and of the Council", 34-38.

³¹ Heather Grabbe and Stefan Lehne, "Climate politics in a fragmented Europe", Carnegie Endowment for International Peace Working Paper, December 2019, 7-8, accessed July 1, 2021, https://carnegieendowment.org/files/Lehne_Grabbe_Climate_v2.pdf.

³² Rita Siza, "A primeira Lei do Clima da UE já está no papel, e em breve estará em todo o lado",

necessary. But we must question if this recoil does not have the potential to endanger the very core of the ECL.

Article 8a of the new proposal adds that the Commission should engage with stakeholders of the various economic sectors, specifically those who choose to voluntarily create sector-specific roadmaps towards achieving the Union's climate neutrality objective by 2050 in a bid to facilitate dialogue at the Union level.³³ Although we recognize that dialogue is important, perhaps there is potential here for an abuse of this mechanism. In a way, we are giving the industries which are at the root of most greenhouse gas emissions and other forms of pollution the opportunity to put their economic interests above the environmental needs of the planet, by not reaching as far as they could – from an economic standpoint – with their roadmaps because that could be temporarily reducing their profit margins. We are not referring to those companies to which an ambitious green transition investment could mean collapse, those need support, but mainly multinational companies with vast economic power which are in a place to transition rapidly and efficiently but choose to not do so because, from a profit standpoint, it does not favour them. We argue that the Commission should be cautious and remain vigilant in this case, by carefully analysing the roadmaps to see if they are reaching their full potential and the full capabilities of the companies that propose them. Furthermore, this merges with the EU's concern of creating public trust in the ECL and the policies adopted under it. By closely monitoring the implementation and enforcement of climate policy the Commission would be maintaining a sense of accountability to the end-goal of climate neutrality by 2050. In addition, the Commission could ensure that climate measures are having a real impact, that governments are committed to action, not only through rhetoric, and that both the EU and Member States are making sure big polluters are abiding by the rules and joining everyone in the fight against climate change.³⁴

Still, the ECLR addresses a gap which was criticised by academics in the previous proposal.³⁵ In Article 2aa, it calls for the amendment of Regulation (EC) No. 401/2009, establishing the European Scientific Advisory Board (“Advisory Board”), which will be essential to ensure the proper functioning of the ECL, guaranteeing that any action adopted under it is up to date with the latest scientific knowledge, be it by the Union be it by Member States.³⁶ The Advisory Board is a very important link in the chain It will

Público, June 30, 2021, <https://www.publico.pt/2021/06/30/mundo/noticia/primeira-lei-clima-ue-ja-papel-breve-estara-lado-1968595>.

³³ Council of the European Union, Outcome of Proceedings “Proposal for a Regulation of the European Parliament and of the Council”, 49.

³⁴ Heather Grabbe and Stefan Lehne, *Climate politics in a fragmented Europe*, 9-10.

³⁵ A report commissioned by the European Climate Foundation and elaborated by the Ecologic Institute before the publication of the original ECL proposal already defended the creation of an independent advisory body to support the EU climate action, arguing it essential for its success (accessed July 01, 2021, https://www.ecologic.eu/sites/default/files/publication/2020/climatelawsineurope_fullreport_0.pdf). In May 2020, the Committee on the Environment, Public Health and Food Safety recognized the importance of creating such an organism, proposing that the original ECL proposal be altered to include an independent scientific advisory panel on climate change, to be called European Panel on Climate Change (EPCC) (accessed July 01, 2021, https://www.europarl.europa.eu/doceo/document/ENVI-PR-648563_EN.pdf). Authors such Alina Averchenkova followed in the same vein; in her paper “The design of an independent expert advisory mechanism under the European Climate Law: What are the options?” she proposes a creation of an advisory board under the ECL, taking as examples advisory boards created at national level which produced favourable results, such as in the United Kingdom.

³⁶ Council of the European Union, Outcome of Proceedings “Proposal for a Regulation of the European Parliament and of the Council”, 29-31.

consist of 15 scientific experts appointed for four years, and will provide independent scientific advice, stronger provisions on adaptation to climate change, strong coherence across Union policies with the climate neutrality objective, and a commitment to engage with sectors to prepare sector-specific roadmaps charting the path to climate neutrality in different areas of the economy.³⁷ Independent advisory bodies such as this can hold governments accountable for policy enactment, as well as lend credibility to the climate targets and their underlying policies. They are also shown to increase transparency, legitimacy of policymaking, contributing to increased support for the legislation, be it from the general public, businesses, civil society or politicians.³⁸

4. Conclusion

Some of the changes from the provisional agreement reveal a tendency of Member States to keep competences at the national level, which we do not believe to be reasonable regarding matters such as the climate matter. Since all Member States are affected by climate change and environment destruction, a wide-ranging, concerted, all-encompassing action is essential if we wish to have any hopes of reversing the damage. To show its commitment to the climate matter, the EU has put the abovementioned objectives at the root of the COVID-19 recovery plan for Europe.³⁹ The ECL no longer has the same socio-economic background as when it was announced, now there are very clear economic consequences from the health crisis that need to be resolved which are undeniable.⁴⁰ Here, we have an opportunity to jumpstart a new era of the European project, based on a green, fair and digital economy. There is a need to understand that scrapping any part of the EGD or the Climate Law, as some Member States have suggested, is a mistake.⁴¹ We must fight against the human tendency of falling back into old habits in moments of crisis, since the climate emergency will disappear or stop, just because it would be easier to go back to pollutant industrial means of production.⁴²

One of the EU's great strengths is that European governing institutions still largely base policy on advice from independent scientific experts, hence eliminating a great enemy of policy consistency and staying power – political will. Unfortunately, national governments do not always operate under the same principle which could potentially undercut the implementation of effective, evidence-based climate change policies consistently over several decades as it is required to achieve the EU's climate objective and the objectives enshrined in the Paris Agreement. Additionally, the politics of climate change are already an extremely divisive and complicated matter. Allowing climate intervention in a non-comprehensive manner, putting Member States at the forefront of policymaking, could deepen the divisions between the EU and Member States, as well as the differences between rural and urban regions, generations, and

³⁷ European Commission, Press Release “Commission welcomes provisional agreement”.

³⁸ Alina Averchenkova, “The design of an independent expert advisory mechanism under the European Climate Law: What are the options?”, Policy Publication, London School of Economics and Political Science, September 3, 2020, 8, accessed May 24, 2021, <https://www.lse.ac.uk/granthaminstitute/publication/the-design-of-an-independent-expert-advisory-mechanism-under-the-european-climate-law/>.

³⁹ European Commission, “Recovery plan for Europe”, accessed May 24, 2021, https://ec.europa.eu/info/strategy/recovery-plan-europe_en#:~:text=NextGenerationEU%20is%20a%20€750,the%20current%20and%20forthcoming%20challenges.

⁴⁰ Nataly Machado, “Thinking about the post-COVID-19 world”.

⁴¹ Milan Elkerbout *et al.*, “The European Green Deal after Corona”, 2-5.

⁴² Carlos Abreu Amorim, “Editorial of June 2020”.

social classes. Which in turn could lead to toxic political fights and numerous impasses deepening existing power inequalities and limiting the economic and social justice, major preoccupations of the EGD and the ECL.⁴³ Given the climate emergency, we do not have the luxury of letting yet another strategy to combat climate change stagnate into oblivion.

⁴³ Heather Grabbe and Stefan Lehne, *Climate politics in a fragmented Europe*, 9 and 15.