



## EXAMINING THE LEGAL AND POLITICAL BARRIERS THE EUROPEAN UNION FACES IN ITS TRANSITION INTO RENEWABLE SOURCES OF ENERGY

**Aditi Pandey**

Research Scholar, College- New Law College, Bharati Vidyapeeth Deemed University

Email-09aditianil@gmail.com

### Abstract

*This article examines the barriers to the European Union's transition away from fossil fuels and shows how its current structure can impede that transition. This article aims to improve understanding of why the EU is still so reliant on fossil fuels and highlight some key issues renewable energy policy faces. This is achieved through analysing the relevant EU legal framework and political procedure, with a strong emphasis on foundational treaties and the practical application of those principles. It finds that the EU's policy-making process is slow and encourages compromise, making it unsuitable for rapid and widespread change. This is especially true for energy policy. It also finds that the EU's legal obligations to defend particular economic objectives cause a further delay in implementing energy policy. It concludes that the European Union's design, along with its stated goals, significantly contributed to the structural issues that undermine the goals of the EU's energy transition.*

**Keywords** – Energy, European Union, EU, Fossil Fuels, Renewable.

### Introduction

From the establishment of the European Coal and Steel Community with the Treaty of Paris, fossil fuels have been at the centre of European integration. Since then, the landscape of energy policy has significantly changed. This article will discuss the difficulties the EU as an institution faces in transitioning, and how the setup of the EU limits its ability to respond to the energy crisis. It will focus on the treaties that create the EU and the functioning of its institutions.

This article will open with a brief description of the current situation regarding fossil fuels and describing the EU's legal basis for transitioning to renewable energy. It will then analyse two systemic factors that restrict the EU's ability to implement this change quickly. Firstly, that the layout of the policymaking and implementation process in the EU is slow and ineffective at dealing with crises. It will then analyse the intersection between economic and environmental policy within the single market, and the way the EU's economic structure and priorities conflict with environmental commitments. This article is not intended to prove fault or conclude on the overall effectiveness of the union, but to improve understanding of why policy is how it is and what threats EU governance faces.



---

## **Analysing the Current situation**

Climate change refers to overall long-term shifts in the planet's climate system and environment, and their effects. It is largely caused by human activities. It results in loss of biodiversity, more frequent extreme weather events, loss of human life and loss of economic output (Masson Delmott et al, 2021). To limit human-caused climate change combined CO<sub>2</sub> output must reach at least net zero (Masson Delmott et al, 2021: D.1.1; D.1.8.).

The Treaty on the Functioning of the European Union (2012), referred to as TFEU, provides the legal basis and requirement for the EU's environmental policy. Articles 11, 191, 192 and 193 create the requirement for high standards of environmental protection in the EU and across its policy areas. They also consolidate powers in the Parliament and Council to enact legislation and regulations intended to protect the environment (TFEU, 2012). Fossil fuel reliance also affects other areas under the scope of EU action. It is a threat to public health (EEA 2022b) and so falls under Title XIV of TFEU. They are unreliable as the EU is dependent on imports, mainly from Russia, (Eurostat, 2022 a; b; c; d) to meet necessary supplies. This contradicts the goals set out in Article 194(1)(a) and (b) of TFEU.

In line with these facts the EU has taken steps to be less reliant on fossil fuels and has a legally binding commitment to reach net zero greenhouse gas emissions (Regulation [EU] 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations [EC] No 401/2009 and [EU] 2018/1999, 2021). The deadline for this commitment is 2050, unlikely to be soon enough to keep global warming to the levels outlined in the Paris agreement (Paris Agreement, 2015; Masson Delmott et al, 2021: table SPM 1). The EU is not on track to reach 2030 emissions targets either (Nikas et al, 2021; Ignacio Pena and Rodríguez, 2019). This is despite the European public broadly favouring extensive climate policy. (European Commission, 2021). Here the EU is out of step with its citizenry and legal commitments.

## **The European Union's policy making is slow**

One argument as to why the EU fails to address this issue is that its policy making process is inherently slow. New EU legislation can require extensive negotiation and take a long time to become law. The treaty of Lisbon extended the Parliament's legislative powers to equal those of the Council and extended its competency to new areas including energy policy (Pavy, 2021; Erbach et al, 2016). As such legislation requires an agreement between the Council and Parliament. The standard means for introducing legislation is the 'ordinary legislative procedure'. This began as the 'codecision' procedure in the Maastricht Treaty but was renamed and made the primary procedure under the Lisbon Treaty (European Parliament, undated).



The ordinary legislative procedure has its legal basis in articles 289 and 294 of TFEU. Under it only the Commission can propose legislation, although can do so at the request of other institutions. Getting a policy to the proposal stage therefore takes time. A proposal will then go to a first reading. Parliament will read and either accept or amend it, then the Council will do the same for the Parliament's position. There is no time limit for a first reading. If amendments are made by the Council, the proposal will have a second reading in both institutions for up to three months each. If an agreement is not reached between the institutions, there can be a further 18 weeks for a conciliation committee to agree a joint text and the Parliament and Council to accept or reject it (Council of the EU, 2022a; Treaty on the Functioning of the European Union, 2012).

The first reading can cause significant delay. Holding readings where EU interests must be navigated as well as the series of stakeholders relevant to the proposal will naturally take time, especially given the size and scope of the EU. Negotiations are also complicated by national interests diverging from the EU or other nations. This is especially important regarding adjustments to the multiyear budget, as this requires ratification at the state level, member states opposed to change can gain disproportionate leverage (Dufour and Mattera, 2021). National elections, parliamentary elections and changes in Commission can all occur during the process and further interfere.

This is amplified when dealing with an issue such as fossil fuel reliance. It is complex, involving a wide range of policy impacting various sectors and many stakeholders. Multiple of the European Parliament's committees cover energy policy. As well as the usual negotiation process, the issue of fossil fuel reliance is the shared competency of the Director General of Energy, as well as DGs for Climate, Taxation and Customs Union, Mobility and Transport, Research and Innovation, Competition, and Environment. Competency for energy policy is shared between the EU and member states, shared between the Parliament and Council at EU level and energy spending is distributed throughout the budget (Erbach et al, 2016). The European investment bank also plays a role as it provides the investment for energy sector changes (International Energy Agency, 2020), such as renewable projects. This also increases the time needed for negotiation as many departments must coordinate their policy to achieve anything substantial.

An example of this in practice is the "Fit for 55" package. It is a bundle of proposals aimed at bringing EU transport, energy, and pollution legislation in line with its environmental commitments, including new initiatives and revisions to existing law (European Council, 2022). The package does help reduce environmental damage although it receives criticism for not doing enough and failing in certain areas of policy (Greenpeace European Unit, 2021; European Association of Environmental and Resource Economists, undated; Masson Delmotte et al, 2021). Overall, "fit for 55" is moderate and further steps will need to be taken



to ensure security. After the package's release it was estimated it will spend 2-3 years in negotiation between EU institutions (Dufour, 2021). This is in addition to the time it took the Commission to decide on the original proposal. The policy will still require implementation across the EU and member states after it is legislated. Some legislation, for example the *CO2 emission standards for new cars and vans* revision in the package, set long term targets. This proposal aims to only allow zero emission vehicles from 2035 (Erbach, 2022), and is an example of large delays before the enacted legislation has the desired effect. This will be discussed further in the article.

The major issues regarding fossil fuel consumption are dynamic. Climate science adapts and changes but requires time-sensitive policy response (Masson Delmotte et al, 2021). International relations are also dynamic, and the apparent tenability of trading arrangements can vary as relationships between states and their internal politics change. For example, Russia's incursion into Ukrainian territory (Council of the EU, 2022b). It creates a problem if the EU takes years to implement moderate legislation.

This delay is one major factor contributing to the EU continuing to rely on fossil fuels. It makes it more difficult for the EU to keep up with a changing landscape and risks the EU failing to capitalise fully on political momentum (Dufour, M. and Mattera, L.). It also directly makes it take longer for the EU to achieve its goals.

### **Economic orientation**

One argument is that the EU is focused on economic expansion, and that its economic policy conflicts with environmental goals. It is important to stress that the reduction of fossil fuel consumption is not bad for the economy. Instead, increasing the portion of energy generated by renewables typically reduces wholesale costs of electricity (Ignacio Pena and Rodríguez, 2019). The further investments required for a more drastic climate plan would be cheap relative to the EU's GDP, ranging from 0.2% – 0.8% (Enerdata, 2014) depending on targets, and would provide for more economic security by reducing the effects of climate change and energy shortages. However, the current economy relies heavily on fossil fuels for output. Without adequate intervention, high emission products can remain popular and fossil fuels remain a cheaper alternative for industry. This article argues how the specific economic aims of the EU make the transition period slower and more difficult.

The foundation for the EU's economic policy is laid out in the Treaty on European Union and TFEU. Article 3 of TEU aims for economic growth and a competitive market economy (Consolidated Version of the Treaty on European Union, 2012). This limits the options for reducing fossil fuel consumption as policy that affects demand or production could endanger economic growth. It then leads to overly cautious policies designed to protect markets, like the *CO2 emission standards for new cars and vans* revision that effectively delays its own



implementation by approximately 10 years (Erbach, 2022). This does not boost the economy in any material way. It does the opposite as materials continue being wasted on vehicles that use redundant and dangerous fossil fuels (EEA, 2022b). It is done to ensure the vehicle market does not shrink too rapidly, as that would reflect on overall market growth and damage certain businesses.

The structure of the market economy can restrict the ability for states to intervene when necessary, and the market alone has failed to move on from fossil fuels (Masson Delmott et al, 2021). TFEU Chapter VIII regards economic policy. It repeatedly uses similar language of “free competition” and an open market economy, as well as creating key economic institutions of the central bank and EFC. This means that embedded in the DNA of the EU is a neoliberal approach economy, and opts for stability and short term growth rather than dynamism and sustainable growth. The merits of this method are outside the scope of this article, but it fails to address fossil fuel reliance.

TEU Title V (2)(e) encourages the “progressive abolition of restrictions on international trade” (Consolidated Version of the Treaty on European Union, 2012). This presents an issue due to carbon leakage. This is where states restrict their internal carbon output, which causes industry to move to less restrictive countries. National industry can then be undercut by imports. This means overall fossil fuel reliance and consumption is not reduced (Yu et al, 2021), just shifted.

Carbon leakage is worsened inside the single market by mutual recognition. Mutual recognition stems from Article 34 of TFEU forbids policy with the effect of reducing imports between member states. Article 36 of TFEU provides exceptions to this including “the protection of health and life of humans, animals or plants” (Consolidated version of the Treaty on the Functioning of the European Union, 2012). This is vague. It is easy to imagine any national technical rule having justification amongst one of these areas. However, carbon leakage is a secondary risk with the product itself not dangerous so it is unclear how this exemption would apply.

*Regulation (EU) 2019/515 of the European Parliament and of the Council 2019* further clarifies the mutual recognition principle and its exceptions. Article 2 (2)(c) defines the scope of rules that should be overridden by mutual recognition, including national rules relating to product quality and rules that affect the life cycle of the product to protect the environment. EU targets are minimums so member states could have their own higher targets for fossil fuel reliance (*Regulation 842 of the European Parliament and of the Council on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013*, 2018). In practice however, this regulation renders states unable to reduce fossil fuel reliance in industry as they cannot implement policy to reduce carbon leakage. The



overall fossil fuel reliance of the EU industrial sector would remain largely unaffected while industry would be lost on a national level. This is a problem as industry accounts for a large portion of the EU's energy usage, and most of the non-energy use of oil products (Eurostat, 2022e). This is another example how a focus on free-market economics within the EU's setup can reduce the efficacy of climate action.

### **Conclusion**

In conclusion this article has explained some of the factors that cause delay in the EU's move away from fossil fuel. It has demonstrated the EU's legal responsibility in this area based on its commitments to environmental protection and energy security. It has explained the EU legislative process and the delays it can cause. It has demonstrated how these delays can interfere with the transition from fossil fuels. The progress of the "fit for 55" package was analysed and used as an example to show the delay. This article also examined the layout of the EU's economic commitments and regulations, and analysed how these priorities can interfere with a fast and effective transition away from fossil fuels. This was demonstrated through the conflict of carbon leakage and mutual recognition. Through focusing on the EU as an institution and drawing upon its foundational treaties where possible, this article has shown two factors contributing to the EU's current reliance on fossil fuels. It is my view that the EU should take as drastic an action as possible in reducing fossil fuel usage to offset the policy delay and manage risk more effectively than trying to respond to changing circumstances. Furthermore, the EU possesses the economic institutions and resources to make major investments. To maintain the single market and economic output it should aim for EU wide energy to be 100% at-home renewables. This is the area where the EU's economic, security and environmental concerns are best aligned and should be its primary focus in the immediate future.

### **Bibliography**

Consolidated Version of the Treaty on European Union, 2012, *Official Journal of the European Union*. O.J. (C 326) 13, EUR-Lex.

Consolidated Version of the Treaty on the Functioning of the European Union art. 15, May 9, 2008, 2012, O.J. (C 326) 01, EUR-Lex.

Council of the European Union (2022a). *The ordinary legislative procedure*.  
<https://www.consilium.europa.eu/en/council-eu/decision-making/ordinary-legislative-procedure/>

Council of the European Union (2022b). *EU adopts fifth round of sanctions against Russia over its military aggression against Ukraine*. <https://www.consilium.europa.eu/en/press/press->



[releases/2022/04/08/eu-adopts-fifth-round-of-sanctions-against-russia-over-its-military-aggression-against-ukraine/](https://www.e3g.org/wp-content/uploads/2022/04/08/eu-adopts-fifth-round-of-sanctions-against-russia-over-its-military-aggression-against-ukraine/)

Dufour, M. (2021). *Fit for 55% package: briefing ahead of the July 14 release*. E3G.  
[https://www.e3g.org/wp-content/uploads/E3G\\_Press-Briefing\\_Fit\\_for\\_55-July-2021.pdf](https://www.e3g.org/wp-content/uploads/E3G_Press-Briefing_Fit_for_55-July-2021.pdf)

Dufour, M. and Mattera, L. (2021). *Does Fit for 55 live up to expectations?*. E3G.  
<https://www.e3g.org/news/does-fit-for-55-live-up-to-expectations/>

Enerdata (2014). *Costs and Benefits to EU Member States of 2030 Climate and Energy Targets*.  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/285505/costs\\_benefits\\_eu\\_states\\_2030\\_climate\\_and\\_energy\\_targets\\_enerdata\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/285505/costs_benefits_eu_states_2030_climate_and_energy_targets_enerdata_report.pdf)

Erbach, G., Svasek, M., Dobrova, A. (2016). *Public expectations and EU policies*. European Parliamentary Research Service.  
[https://www.eesc.europa.eu/sites/default/files/files/briefing\\_energy\\_supply\\_security.pdf](https://www.eesc.europa.eu/sites/default/files/files/briefing_energy_supply_security.pdf)

Erbach, G. (2022). *CO2 emission standards for new cars and vans*. European Parliamentary Research Service. Available at:  
[https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698920/EPRS\\_BRI\(2022\)698920\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698920/EPRS_BRI(2022)698920_EN.pdf)

European Association of Environmental and Resource Economists (undated). *Statement on the EU's legislative proposals on climate change*. <https://www.eaere.org/wp-content/uploads/2021/10/statement.pdf>

European Commission (2021). *Special Eurobarometer 513 Climate*, Report. DOI:10.2834/437.

European Council (2022). *Fit for 55*. <https://www.consilium.europa.eu/en/policies/green-deal/fit-for-55-the-eu-plan-for-a-green-transition/>

European Environment Agency (2022a). *Share of energy consumption from renewable sources in Europe*. <https://www.eea.europa.eu/ims/share-of-energy-consumption-from#ref-QBL-9>

European Environment Agency (2022b). *Europe's air quality status 2022*.  
<https://www.eea.europa.eu/publications/status-of-air-quality-in-Europe-2022>

European Parliament (undated). *About Parliament – Legislative Powers*.  
<https://www.europarl.europa.eu/about-parliament/en/powers-and-procedures/legislative-powers>

Eurostat (2022a). *Energy imports dependency*. Online data code: NRG\_IND\_ID.  
<https://ec.europa.eu/eurostat/databrowser/bookmark/ddfc33-d0aa-422d-9d65-da9707d6f0b8?lang=en> (Accessed 08/04/2022)



Eurostat (2022b). *Imports of oil and petroleum products by partner country*. Online data code: NRG\_TI\_OIL. <https://ec.europa.eu/eurostat/databrowser/bookmark/d256a970-582f-4d65-bfc4-c9d04ed416dc?lang=en> (Accessed 08/04/2022)

Eurostat (2022c). *Imports of solid fossil fuels by partner country*. Online data code: NRG\_TI\_SFF. <https://ec.europa.eu/eurostat/databrowser/bookmark/ced94ad3-110c-4826-b4d3-c8ab75fa6dd9?lang=en> (Accessed 08/04/2022)

Eurostat (2022d). *Imports of natural gas by partner country*. Online data code: NRG\_TI\_GAS. <https://ec.europa.eu/eurostat/databrowser/bookmark/3935cd42-d02f-4c2b-8b70-f94b0cbd30ad?lang=en> (Accessed 08/04/2022)

Eurostat (2022e). *Energy flow - Sankey diagram data*. Online data code: nrg\_bal\_sd. [http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nrg\\_bal\\_sd&lang=en](http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=nrg_bal_sd&lang=en) Available visualized at: [https://ec.europa.eu/eurostat/cache/sankey/energy/sankey.html?geos=EU27\\_2020&year=2020&unit=KTOE&fuels=TOTAL&highlight=\\_&nodeDisagg=010111111000&flowDisagg=true&translateX=-431.27086917193833&translateY=50.7557146394049&scale=0.5901570892016739&language=EN](https://ec.europa.eu/eurostat/cache/sankey/energy/sankey.html?geos=EU27_2020&year=2020&unit=KTOE&fuels=TOTAL&highlight=_&nodeDisagg=010111111000&flowDisagg=true&translateX=-431.27086917193833&translateY=50.7557146394049&scale=0.5901570892016739&language=EN) (Accessed 11/04/2022)

Greenpeace European Unit (2021). *EU Commission 'Fit for 55' package unfit to contain climate crisis*. Greenpeace. <https://www.greenpeace.org/eu-unit/issues/climate-energy/45795/eu-commission-fit-for-55-package-unfit-to-contain-climate-crisis/>

Ignacio Pena, J. and Rodríguez, R. (2019). Are EU's Climate and Energy Package 20-20-20 targets achievable and compatible? Evidence from the impact of renewables on electricity prices. *Energy*. Vol 183 (September). 477-486. <https://doi.org/10.1016/j.energy.2019.06.138>

International Energy Agency (2020 June). *European Union 2020 Energy Policy Review*. IEA Publications. [https://iea.blob.core.windows.net/assets/ec7cc7e5-f638-431b-ab6e-86f62aa5752b/European\\_Union\\_2020\\_Energy\\_Policy\\_Review.pdf](https://iea.blob.core.windows.net/assets/ec7cc7e5-f638-431b-ab6e-86f62aa5752b/European_Union_2020_Energy_Policy_Review.pdf)

Masson Delmotte, V., Zhai, P., Pirani, A., Connors, S.L., Péan, C., Berger, S., Caud, N., Chen, Y., Goldfarb, L., Gomis, M.I., Huang, M., Leitzell, K., Lonnoy, E., Matthews, J.B.R., Maycock, T.K., Waterfield, T., Yelekçi, O., Yu, R., and Zhou, B. (eds.). (2021). Summary for Policymakers. *Climate Change 2021: The Physical Science Basis*. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change. Cambridge University Press. [https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC\\_AR6\\_WGI\\_SPM\\_final.pdf](https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM_final.pdf)

Nikas, A., Elia, A., Boitier, B., Koasidis, K., Doukas, H., Cassetti, G., Anger-Kraavi, A., Bui, H., Campagnolo, L., De Miglio, R., Delpiazzi, E., Fougeyrollas, A., Gambhir, A., Gargiulo, M., Giarola, S., Grant, N., Hawkes, A., Herbst, A., Köberle, A.C., Kolpakov, A., Le Mouél, P., McWilliams B., Mittal, S., Moreno J., Neuner, F., Perdana, S., Peters, G.P.,





Plötz, P., Rogelj, J., Sognæs, I., Van de Ven, D., Vielleo, M., Zachmann, G., Zagamé, P. and Chiodi, A. (2021). Where is the EU headed given its current climate policy? A stakeholder-driven model inter-comparison. *Science of The Total Environment*. Vol 793 (September). <https://doi.org/10.1016/j.scitotenv.2021.148549>

*Paris Agreement*. 2015. (online). United Nations: *Treaty Series*. vol. 3156, Chapter XXVII 7.d. Opened for signature 22 April 2016, entered into force 4 November 2016. [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XXVII-7-d&chapter=27&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XXVII-7-d&chapter=27&clang=_en)

Pavy, E. (2021). *The Treaty of Lisbon*. European Parliament. <https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon>

Regulation [EU] 2018/842 of the European Parliament and of the Council on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation [EU] No 525/2013. (2018). *Official Journal of the European Union*. OJ L 156. 26–42. <http://data.europa.eu/eli/reg/2018/842/oj>

Regulation [EU] 2019/515 of the European Parliament and of the Council of 19 March 2019 on the mutual recognition of goods lawfully marketed in another Member State and repealing Regulation [EC] No 764/2008 (2019). *Official Journal of the European Union*. OJ L 91. 1–18. <http://data.europa.eu/eli/reg/2019/515/oj>

Regulation [EU] 2021/1119 of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulations [EC] No 401/2009 and [EU] 2018/1999 (2021) *Official Journal of the European Union*. 9 July. OJ L 243, pp.1–17. <http://data.europa.eu/eli/reg/2021/1119/oj>

Yu, B., Zhao, Q., Wei, Y.M. (2021). Review of carbon leakage under regionally differentiated climate policies. *Science of the Total Environment*. Vol. 782. <https://doi.org/10.1016/j.scitotenv.2021.146765>