

The European Green Deal: The future of a polycentric Europe?

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Abstract

The Green Deal (GD) and the Conference on the Future of Europe (CoFoE) are both central to the EU's environmental, economic and social sustainability, even as many questions persist regarding their processes and outcomes. This article considers both processes as essential catalysts for, and tools of, a more polycentric Europe. It specifically wants to harness the problem-definition and problem-solving abilities of such a polycentric system through greater participation, solidarity and trust. By ensuring citizen empowerment through citizen assemblies such as the CoFoE, the success and legitimacy of the GD, as a central part of the EU's sustainability agenda, could be strongly amplified. This article highlights several procedural and substantive overlaps and synergies that present low-cost, high-gain opportunities to make these processes mutually reinforcing. More generally, the CoFoE, and possible future iterations, should be central to the EU's democratic integration and its longevity.

1 | INTRODUCTION

The European Green Deal (GD or Green Deal),¹ presented by the European Commission in December 2019, sets out the EU's growth strategy in light of climatic and environmental realities such as climate change, biodiversity loss,

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¹ Commission Communication, The European Green Deal, COM(2019) 640 final, 11 December 2019. The EGD is accompanied by an elaborate roadmap, which in turn is supported by a plethora of additional communications, legislative proposals and other policy documents. For all documentation, see EC, 'Documents', at https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en#documents.

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energy and food insecurity.² The GD seeks to present an ambitious and well-balanced answer to some of the most important questions of our time: How can we transform our economy and society to maintain quality of life in a sustainable way? How will EU citizens living in relatively poorer socio-economic conditions be able to catch up with and/or be included in the transitions that we deem necessary to sustain our economy and our environment? How, if at all, should we incorporate our legal and ethical responsibility for past, present and future resource use vis-à-vis future generations and the rest of the world?

The Green Deal was presented primarily as a forward-looking policy, aimed at transforming the EU into a climate-neutral economy by 2050. As such, it is accompanied by an elaborate roadmap, which in turn is supported by a plethora of additional communications, legislative proposals and other policy documents.³ Many of the GD's plans are to be implemented over the coming five to ten years, and the assessment of its ambitions will not take place until 2030 and 2050, which makes it difficult to evaluate it at this stage.⁴ At the same time, the Green Deal explicitly recognises that its success depends not only on the adoption of new legislation, but also, and in great part, on the successful implementation and enforcement of existing legislation.⁵ It therefore also represents an important step change in light of the expected failure to achieve existing EU environmental and climate goals.⁶

One could wonder what the point would be of re-submitting—in many ways, prematurely—the Green Deal to popular assessment through the Conference on the Future of Europe (CoFoE). The answer to this question lies in the issues the GD aims to tackle: they touch upon core aspects of citizens' lives, which makes important the involvement of citizens in the, often hard fought, political determinations that need to be made in order to implement it. Citizen participation is therefore a prerequisite for ensuring the GD's success and legitimacy. The GD's agenda requires trust and solidarity, which in turn hinge on the measures' legitimacy.

Natural realities, specifically climate change and the ongoing pandemic, make trust and solidarity essential for the viability of the EU and, perhaps more importantly, the well-being of Europe's peoples.⁷ At €720 billion, the Recovery and Resilience Facility of NextGenerationEU is arguably one of the largest shows of mutual economic solidarity in the EU's history.⁸ However, the road towards its adoption was not a smooth one, as demonstrated by the responses to the Green Deal, and the subsequent 'Fit for 55' package.⁹ Trust and solidarity—between European peoples, between Member States and in the EU institutions—are under constant pressure, despite the many recent reminders, such as the recent deadly flooding in Belgium, Germany and the Netherlands,¹⁰ that no level of affluence

²On 14 July 2021, an important step in this regard was taken by the adoption of the 'Fit for 55' legislative package, which proposes the adoption or redesign of 12 EU laws related to the GD; see Commission Communication, 'Fit for 55: Delivering the EU's 2030 Climate Target on the way to climate neutrality', COM(2021) 550 final. Given the breadth and scope of the proposals, a full analysis lies beyond the scope of this article. All documentation can be found at: https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal/delivering-european-green-deal_en#documents. For initial analysis, consider James Kneebone, 'Fit for 55: EU rolls out largest ever legislative package in pursuit of climate goals', available at: <https://fsr.eu.eu/fit-for-55-eu-rolls-out-largest-ever-legislative-package-in-pursuit-of-climate-goals/> and A. Clark, 'The Fit for 55 package: A diplomatic tightrope', available at: <https://ecfr.eu/article/the-fit-for-55-package-a-diplomatic-tightrope/>.

³For all documentation, see https://ec.europa.eu/info/strategy/priorities-2019-2024/european-green-deal_en#documents.

⁴This includes the goals articulated in the 7th and 8th Environmental Action Programmes (EAPs). See Decision No. 1386/2013/EU of the Parliament and the Council of 20 November 2013 on a General Union Environmental Action Programme to 2020 'Living Well, within the limits of our planet', OJ 2013 L354/171, 28 December 2013 and Commission Communication, Proposal on a General Union Environmental Action Programme to 2030, COM (2020) 652 final, 14 October 2020, respectively.

⁵Green Deal, above, n. 1, 4.

⁶The 2020 targets on GHG reductions and renewable energy were likely to be met, but not those for 2030, and both the 2020 and 2030 energy efficiency targets were likely to be missed. See European Environment Agency, Trends and projections in Europe 2019: Tracking progress towards Europe's climate and energy targets, EEA Report 15/2019: 19, 40, 51, available at: <https://www.eea.europa.eu/publications/trends-and-projections-in-europe-1>.

⁷Regrettably, the external effects of the EU's Green Deal policy (and broader actions) fall outside the scope of this article. Needless to say, climate change is a global problem, as is the SARS-CoV-2 pandemic, that requires a global solidarity. See, e.g., S.L. Greer, 'National, European, and Global Solidarity: COVID-19, Public Health, and Vaccines', (2020) 26(2) *Eurohealth*, 104–108.

⁸See, also, reflections by N. Levrat, 'Mutual Trust between the Peoples of Europe as the Foundation of the EU Polity', (2021) 68 *EU Law Live – Weekend edition*, 24–25 July 2021.

⁹See, e.g., <https://eeb.org/eus-fit-for-55-is-unfit-and-unfair-ngos-say/>; <https://www.nrc.nl/nieuws/2021/07/14/nu-het-europese-klimaatpakket-er-ligt-groot-de-vrees-voor-verzet-a4051037>; <https://socialeurope.eu/is-europe-socially-fit-for-the-fit-for-55-package>; <https://www.nrc.nl/nieuws/2021/07/12/eu-vult-ambitieuze-groen-plan-in-a4050787>.

¹⁰Events of July 2021.

will be able to insulate us entirely from the effects of climate change, and our mutual vulnerabilities have only grown.

The Green Deal is a policy response for the peoples of Europe to a situation of widespread mutual vulnerability, something which has been found to increase trust in situations of distrust. However, if pushed too far, such vulnerability could also push people to prioritise their self-interests, thereby reducing, or even destroying, existing trust.¹¹ This dynamic highlights the interaction between trust and solidarity, which are closely linked by their ability to solidify bonds between actors within a system which is in many other ways constantly changing. Trust and solidarity are essential in countering the fragmentation and potential externalisation that can occur in large-scale political systems that aim to address transboundary problems, such as those addressed in the GD and by the EU more generally.¹² Trust and solidarity must be present to ensure the legitimacy and effectiveness of the EU and its policies.

Many of the EU's constitutional moments have arisen out of necessity; responses to internal and external pressures, such as Brexit or climate change. These "crises" often lead to existential questions regarding the EU and its legitimacy.¹³ Legitimacy and trust are concepts that are theoretically connected, even more so in a democratic context. Yet, the concept of trust is far less commonplace in EU legal scholarship.¹⁴ In analysing why this is so, von Bogdandy showed both the potential and methodological challenges in considering the EU, and its legal system, from the perspective of trust.¹⁵ Apart from highlighting efforts to "impose" trust between EU actors in a top-down manner by the European Court of Justice,¹⁶ von Bogdandy emphasises that once lost, trust is slow to rebuild and that legal instruments can only play a very limited role in doing so. A more hopeful undertaking is to use law to prevent an 'escalation of distrust' and to enable interactions that implicitly nurture trust.¹⁷

Polycentric governance theory, which allows us to study the EU as a dynamic, non-hierarchical, collaborative and cooperative space,¹⁸ recognises trust in, and between, EU institutions, as well as in, and between, Member States and EU institutions, as important preconditions to success. In addition to these relationships, however, it prioritises trust between individuals in the EU¹⁹ as a precondition for broader systemic trust. This is one of the EU's key challenges as the building of societal trust tends to start at a smaller scale, locally or within the confines of the nation-state.²⁰ Once these relationships exist, we use the assessment of "trusted" others to help inform our feelings about the trustworthiness of institutions and processes.²¹ Public participation is vital for the creation of 'trust-

¹¹A. von Bogdandy, 'Ways to Frame the European Rule of Law: *Rechtsgemeinschaft*, Trust, Revolution, and Kantian Peace', (2018) 14 *European Law Review*, 675, 691.

¹²The promotion of 'economic, social and territorial cohesion, and solidarity among Member States' is a long-standing EU goal, see Article 3 TEU.

¹³See, in particular, J.H.H. Weiler, 'In the Face of Crisis: Input Legitimacy, Output Legitimacy and the Political Messianism of European Integration', (2012) 37 *Journal of European Integration*, 825; J.H.H. Weiler, 'Van Gend en Loos: The Individual as Subject and Object and the Dilemma of European Legitimacy', (2014) 12 *International Journal of Constitutional Law*, 94; L. Papadopoulou, I. Pernice and J.H.H. Weiler (eds.), *Legitimacy Issues of the European Union in the Face of Crisis—Dimitris Tsatsos in memoriam* (Nomos, 2017).

¹⁴An exception is the literature focused around the principle of mutual trust, see n. 17. See, e.g., E. Xanthopoulos, 'Mutual Trust and Rights in EU Criminal and Asylum Law: Three Phases of Evolution and the Uncharted Territory beyond Blind Trust', (2018) 55(2) *Common Market Law Review*, 489; E. Herlin-Karnell, 'From Mutual Trust to the Full Effectiveness of EU Law: 10 Years of the European Arrest Warrant', (2013) 38 *European Law Review*, 79; X. Groussot et al., 'Regulatory Trust in EU Free Movement Law—Adopting the Level of Protection of the Other?', (2016) 1(3) *European Papers*, 865.

¹⁵Von Bogdandy, see n. 11.

¹⁶For example, the principle of mutual trust between Member States as adopted by the European Court of Justice: all Member States must trust that all other Member States observe EU law, particularly its fundamental rights; see ECJ (Full Court), 18 December 2014, Opinion 2/13, margin number 191; the Court emphasised the importance of that principle already in ECJ (Grand Chamber), 21 December 2011, Cases C-411/10 and C-493/10, N.S., margin number 83: 'At issue here is the *raison d'être* of the European Union and the creation of an area of freedom, security and justice and, in particular, the Common European Asylum System, based on mutual confidence and a presumption of compliance, by other Member States, with European Union law and, in particular, fundamental rights'; see, further, earlier judgments relying on a practically unrestricted principle of mutual trust, ECJ, 26 June 2007, Case C-305/05, *Advocaten voor de Wereld*; ECJ, 29 January 2013, Case C-396/11, *Radu*; ECJ, 26 February 2013, Case C-399/11, *Melloni*.

¹⁷Von Bogdandy, above, n. 11, 690. Specifically, von Bogdandy considers the EU's protection of the rule of law (see, in this regard, D. Kochenov and P. Bárd, 'Rule of Law Crisis in the New Member States of the EU—The Pitfalls of Overemphasising Enforcement', (2018) *Working Paper No 1. Reconnect* available at: https://reconnect-europe.eu/wp-content/uploads/2018/07/RECONNECT-KochenovBard-WP_27072018b.pdf), a precondition of continued trust in the EU's institutions (*ibid.*, 697).

¹⁸See, in detail, J. van Zeben and A. Bobić (eds.), *Polycentricity in the European Union* (Cambridge University Press, 2019).

¹⁹On this, see G.M. Genna, 'Images of Europeans: Transnational Trust and Support for European Integration', (2017) 20 *Journal of International Relations and Development*, 358.

²⁰See A. Honneth, *Das Recht der Freiheit: Grundriß einer demokratischen Sittlichkeit* (Suhrkamp, 2011).

²¹F. Kroeger, 'The Development, Escalation and Collapse of System Trust: From the Financial Crisis to Society at Large', (2015) 33 *European Management Journal*, 431.

producing' conflicts in a peaceful manner. These types of conflicts incentivise individuals to 'self-enforce the rules of the game but also to change those rules in an orderly way'.²² These dynamics strengthen trust among the actors and within the system as a whole. This is even more important when faced with rising populism, which unfortunately seems to be a sign of our times.

In 1990, Vincent Ostrom, one of the founding fathers of polycentric governance theory, wrote: 'The future belongs to those whose covenants are bonds of mutual trust grounded in principles of self-governance and who learn to use processes of conflict and conflict resolution to elucidate information, clarify alternatives, stimulate innovation, and extend the frontiers of inquiry to open new potentials for human development.'²³ Ostrom considered the EU to be an example of such a society. In order to make good on this promise, this article argues that the Green Deal and the Conference of the Future of Europe should be used primarily as catalysts for mutual trust and solidarity in order to face our mutual vulnerabilities.

Since the creation of the EU, legal scholars and other social scientists have constantly defined and redefined it. These definitions have shaped the EU in important ways, comparable to the political and social processes that drive European integration.²⁴ By labelling the EU "polycentric", emphasis is put on the EU's ability to provide a forum for diverse and inclusive problem-definition and problem-solving with room for public participation and contestation with a view to create bottom-up trust and solidarity. Engagement with issues pertaining to sustainability during the Conference on the Future of Europe could result in more successful achievement of the GD goals and more generally, by being more inclusive, result in greater citizen ownership of the EU. As such, the CoFoE could play an important part in transitioning to a polycentric model of the EU, equipped to democratically and successfully cope with sustainability issues.

This article aims to highlight in concrete terms the relationship between public participation, peaceful contestation and trust in these two processes. The law cannot impose trust but legal processes can facilitate the creation of trust through sustained and safe interactions. The time has come to revive and mould the meaning of integration through law in order to tackle transboundary problems with intergenerational implications such as climate change that question our existing legal processes and laws, and our deliberative ideals.²⁵ As Jean Monnet wrote some 40 years ago: 'Europe will be forged in crises and will be the sum of the solutions adopted for those crises'.²⁶ The polycrisis we are facing pushes us to think what a true European democratic integration would mean in practice and how to implement it concretely when trying to tackle sustainability challenges.

Against this backdrop, this article will address two main issues: First, with the Green Deal the Commission announced it will 'ensure that the green transition features prominently in the debate on the future of Europe'.²⁷ However, this likely refers to the substantive focus of the debates, rather than a procedural overlap between the participatory processes of the Green Deal and the Conference. Public participation may be viewed as an important value underlying the laws and policies of the Green Deal, and arguably even as a secondary goal of the Green Deal. In contrast, the Conference on the Future of Europe has made public participation its primary goal. We would thus also like to explore the procedural overlap between the GD and the CoFoE as a polycentric prototype. This, we contend, is a prerequisite for GD success (Section 2). Second, the GD emphasises the need for citizen involvement in its design and implementation in order for it to be successful.²⁸ Prima facie, this suggests public participation in problem-solving rather than problem-definition. However, as so much work remains on the further development of the GD, meaningful public participation may still be achieved on both elements. In this regard, the Conference on the Future of Europe has the potential to play a key role in strengthening public participation in problem-definition

²²D. Kukovec, 'Peaceful Contestation', in van Zeben and Bobić, above, n. 19, 208, 214.

²³V. Ostrom, *The Meaning of American Federalism: Constituting a Self-governing Society* (ICS Press, 1994), 272.

²⁴See, also, von Bogdandy, above, n. 11, 677.

²⁵On deliberation in the face of climate change, see also L. Duvic-Paoli, 'Re-imagining the Making of Climate Law and Policy in Citizens' Assemblies', *Transnational Environmental Law* (forthcoming, 2021).

²⁶J. Monnet, *Memoirs* (Doubleday, 1978).

²⁷Green Deal, above, n. 1, 22.

²⁸*Ibid.*

and we would like to suggest a few central issues that would be worth addressing regarding the GD goals (Section 3).

2 | THE COFOE'S PROCEDURAL ADDED-VALUE: ENSURING A CITIZENS' GREEN DEAL THROUGH PUBLIC PARTICIPATION

According to Vincent Ostrom, the *raison d'être* of polycentric governance is its ability to safeguard individuals' ability to self-govern.²⁹ By emphasising the individual as the focus of sovereignty, a picture of society develops where an individual's social identities relate to different claims to self-governance on different topics. Clashing opinions between individuals are an inherent, and arguably necessary, feature of such a constantly dynamic system where people change positions on issues and can shift allegiances between groups.³⁰ Peaceful contestation is a constructive result of these changes and tensions: a way for people to sharpen their own views and to eventually collaborate in order to create and maintain the evolving order that characterises polycentric systems. This process greatly contributes to the definition and solving of shared problems.

Polycentric theory emphasises that this seemingly chaotic process of contestation can only be successful through careful social engineering.³¹ If not, it is impossible to create and maintain the level of dialogue, expertise and participation that is needed for constructive contestation. These processes depend on the presence of public entrepreneurs 'who dare to experiment, but also learn from mistakes made. Knowledge, education, and constant learning and engagement are vital'.³² Moreover, such public entrepreneurs need to be dispersed throughout society and include all social layers,³³ and need to have access to legal and political forms of peaceful contestation. In the absence of such processes, contestation becomes—at best—unproductive, and—at worst—violent.

In this framework, public participation is one of the most common and fundamental forms of peaceful contestation. If performed successfully, public participation involves shared problem-definition and problem-solving, where clashing opinions with respect to a specific situation can be expressed before a course of action is set. There is empirical evidence that shows the success of collective deliberation in terms of "better" outcomes,³⁴ and that the process itself makes individuals more open to changing their initial preferences. Relatedly, it has been shown that communities can be far more successful than top-down regulators in addressing questions of natural resources such as those included in the Green Deal.³⁵

Crucially, public participation should be able to question a dominant discourse set by an institution or actor that may be considered hierarchically privileged. In the context of the EU, this would be a shift away from the binary between prerogatives of Member States and European institutions, and provide a larger role for the individual.³⁶ This also seems to be a necessary shift in order to successfully address sustainability challenges, which inevitably entail hard political choices that question our European social and redistributive justice models and avoid reinforcing social divides exacerbated by populist discourses. How to ensure such a polycentric shift is a crucial question to which both the Green Deal and the Conference on the Future of Europe might hold some answers. This means there is a window of opportunity to position the GD and the Conference as *polycentric social engineering tools*, thanks to existing overlaps in terms of timing, values and substance.

²⁹van Zeben, 'Polycentric Features of the European Union', in van Zeben and Bobić, above, n. 19.

³⁰See, also, P.D. Aligica and V. Tarko, 'Polycentricity: From Polanyi to Ostrom, and Beyond', (2012) 25(2) *Governance: An International Journal of Policy, Administration and Institutions*, 237.

³¹Ostrom, above, n. 24, 199–221; M. Fotos, 'Vincent Ostrom's Revolutionary Science of Association', (2015) 163(1) *Public Choice*, 67.

³²Kukovec, 'Peaceful Contestation', in van Zeben and Bobić, n. 19, 208, 223.

³³Ibid.

³⁴See, e.g., A. Lang, 'But Is It for Real? The British Columbia Citizens' Assembly as a Model of State-Sponsored Citizen Empowerment', (2007) 35(1) *Politics & Society*, 35–70; M. Gerber, A. Bächtiger, S. Shikano, S. Reber and S. Rohr, 'Deliberative Abilities and Influence in a Transnational Deliberative Poll (EuroPolls)', (2018) 48(4) *British Journal of Political Science*, 1093–1118.

³⁵Ostrom, above, n. 24.

³⁶See, also, *ibid.*, 211.

First, there are important synchronisms in the development of the Green Deal and the Conference on the Future of Europe. One strong, and unforeseen, link is born out of the positive and negative impact of the ongoing SARS-CoV-2 pandemic on both processes. Most initial actions on the Green Deal's Roadmap were expected to take place in 2020 and 2021.³⁷ The timeline for the implementation of specific initiatives and strategies is considerably longer; for example, the draft action plan for the Farm to Fork Strategy extends into 2024.³⁸

An important, unforeseen, complication to the execution of the Green Deal is the SARS-CoV-2 pandemic,³⁹ the economic, social and environmental consequences of which are still crystalising.⁴⁰ In mid-April 2020, the Commission announced that certain “less essential” elements of the Green Deal, such as the new EU Strategy on Adaptation to Climate Change and the new EU Forest Strategy, planned for 2020, would be postponed until 2021 and beyond, but that key priorities would take place on schedule.⁴¹ The pandemic also impacted the launch of the Conference on the Future of Europe. Initially scheduled to start on 9 May 2020, it was delayed for a year, moved to running from mid-2021 until mid-2022.⁴²

Notwithstanding delays, both initiatives were also strengthened by the pandemic. The EU's COVID-19 recovery package, NextGenerationEU (NGEU) committed €750 billion to a green and sustainable recovery and resilience plan for the pandemic.⁴³ Moreover, the pandemic and the unprecedented scale of the EU response to tackle its socio-economic consequences gave a new impetus to the idea of having a Conference on the Future of Europe, which led to the Joint Declaration on the Conference on the Future of Europe entitled ‘Engaging with Citizens for Democracy—Building a More Resilient Europe’.⁴⁴

Second and relatedly, the potential procedural synergies between the GD and the CoFoE conceived as polycentric social engineering processes are strengthened by an axiological convergence regarding their foundational principles. Fostering solidarity and trust is one of the main *raison d'être* of the CoFoE. It is also key for, and arguably one of, the deliverables of the GD. Solidarity features heavily in the Green Deal: initially implicitly as a foundational value for the “just transition”, and later explicitly in the ‘Fit for 55’ Communication, which states that ‘solidarity is a defining principle of the European Green Deal’.⁴⁵ However, the shape that solidarity should take in the GD is not yet clear; thus far, the GD seems to focus mainly and narrowly on financial solidarity.

For a key illustration, consider the GD's focus on a ‘just and inclusive transition’ towards a sustainable, zero net emissions economy. This focus is reflected primarily in the “Just Transition” elements and the financial measures linked to the transition.⁴⁶ This includes the European Green Investment Plan, also known as the Sustainable Europe Investment Plan,⁴⁷ which introduces several financial mechanisms, including those related to Just Transition, such as

³⁷Annex to Green Deal, above, n. 1.

³⁸Annex to Commission Communication, A Farm to Fork Strategy—For a fair, healthy and environmentally-friendly food system, COM(2020) 381 final, 20 May 2020. For this specific example, see the proposed timing for the proposal for a new sustainable food labelling framework for consumer empowerment (no. 23 at 3).

³⁹See Parliament resolution, 18 June 2020 on the European Parliament's position on the Conference on the Future of Europe (2020/2657(RSP)), P9_TA(2020)0153, at paras. 1 and 2; European Parliament resolution of 15 January 2020 on the European Parliament's position on the Conference of Europe (2019/2990(RSP)), P9_TA(2020)0010; Council Position, Conference on the Future of Europe, 24 June 2020, 9102/20, at para. 17.

⁴⁰See, e.g., A. Cavoski, ‘An Ambitious and Climate-focused Commission Agenda for Post COVID-19 EU’, (2020) 29(6) *Environmental Politics*, 1112–1117; F. Colli, ‘The End of Business as Usual? COVID-19 and the European Green Deal’, (2020) available at: <https://lirias.kuleuven.be/3030342?limo=0>; C. Dupont, S. Oberthür and I. von Homeyer, ‘The Covid-19 Crisis: A Critical Juncture for EU Climate Policy Development?’, (2020) 42(8) *Journal of European Integration*, 1095–1110.

⁴¹See Euractiv, ‘Full list of delayed European Green Deal initiatives’, 16 April 2020, available at <https://www.euractiv.com/section/energy-environment/news/leaked-full-list-of-delayed-european-green-deal-initiatives/>, as cited by M. Siddi, ‘The European Green Deal: Assessing its Current State and Future Implementation’, *FIIA Working Paper*, May 2020, no. 114, at 8, fn 24.

⁴²For more details, see, in this issue, F. Fabbrini, ‘The Conference on the Future of Europe: Process and prospects’, Special issue on the Conference on the Future of Europe, (2020) 26 *European Law Journal*.

⁴³See <https://www.consilium.europa.eu/en/policies/eu-recovery-plan/>.

⁴⁴For more details, see, in this issue, Fabbrini, above, n. 43.

⁴⁵Fit for 55, COM(2021) 550, above, n. 2, 4.

⁴⁶See Green Deal, above, n. 1, 15–18. See, also, EC, Proposal for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund, COM(2020) 22 final.

⁴⁷EC Com, ‘Sustainable Europe Investment Plan: European Green Deal Investment Plan’, COM(2020) 21 final.

the Fund, aimed at mobilising (at least) €1 trillion over the next decade. The Just Transition Mechanism would account for at least €100 billion over the period 2021–2027 to alleviate the socio-economic impact of the transition.⁴⁸ Apart from the significant direct (public) financing needed to make these plans feasible, indirect effects on areas such as state aid, competition law, and the European Semester are also expected.⁴⁹ Levelling up these efforts, the Social Climate Fund—with a €72.2 billion budget—aims to limit the price impacts of carbon pricing on vulnerable households, enterprises and transport users by using the revenues generated by the EU Emissions Trading System (ETS).⁵⁰ Crucially, these measures do speak to a mutual vulnerability but the Green Deal's approach to addressing it does not foster bottom-up trust or solidarity. There is thus an axiological convergence between the GD and the CoFoE. However, when looking concretely at the GD, the overlap is only partial and could be strengthened through fresh perspectives that could emerge from the CoFoE.

More generally, monetary solidarity has been a topic of fierce debate within the EU since its inception, as illustrated most recently by the financial crisis and the creation of the European Stability Mechanism.⁵¹ There are interesting parallels between the issues presented in that context to that of the GD: a contestable problem-definition (what are the causes of environmental problems/climate change/financial crises?) and different approaches to problem-solving (what actors should take which actions and at what cost?). Certain conceptualisations of solidarity, such as Dean's reflective solidarity, explicitly stress the importance of solidarity in recognising shared vulnerabilities and interdependencies, which are crucial for continued democratic discourse.⁵² Moreover, for problems that have long time horizons, solidarity between generations, as well as between Member States and peoples,⁵³ is necessary. A polycentric approach could work particularly well in this context, especially if public participation, amounting to peaceful contestation, were ensured. Relatedly, a decisive factor in creating such solidarity is trust, for which the CoFoE could also be a catalyst. This constitutes another potential synergy between the CoFoE and the Green Deal related to the creation of trust between the actors involved in European implementation and problem-solving, leading to bottom-up solidarity.

Third, besides the topicality of both the GD and the CoFoE in times of COVID-19 and the axiological question, there is a substantive overlap between these two European initiatives. At its core, the GD represents a vision for the EU's future; plans for 'building a world we want to live in'.⁵⁴ Similarly, the CoFoE⁵⁵ aims to 'provide a forum for discussion with the public about crucial issues of importance for the EU's medium and long-term development'.⁵⁶ It is not surprising that the topics addressed by the Green Deal—including the fight against climate change, environmental challenges, an economy that works for people, social fairness and equality—largely overlap with the topics of the

⁴⁸European Commission, 'Financing the Green Transition: The European Green Deal Investment Plan and Just Transition Mechanism', (2020) Press release, available at: https://ec.europa.eu/commission/presscorner/detail/en/ip_20_17.

⁴⁹See Green Deal, above, n. 1, e.g., 16–18.

⁵⁰Proposal for a Regulation establishing a Social Climate Fund, COM(2021) 568 final, at 2.

⁵¹See, in detail, A. Farahat and X. Arzo (eds.), *Contesting Austerity: A Socio-Legal Inquiry into Resistance to Austerity* (Hart Publishing, 2021).

⁵²Dean, 'Reflective Solidarity', above, n. 12, 114, 135.

⁵³An important aspect of the Green Deal is its impact on non-European countries and peoples. However, the Green Deal does not specify how the EU will support a 'just transition' in other parts of the world. A large share of EU emissions takes place in third countries but are not incorporated in the GD, which raises concerns of externalization and equity. The 25 January 2021 Council Conclusions on Climate and Energy Diplomacy, point at several specific initiatives, for example the phasing out of support for unabated coal production, and supporting economic and energy diversification plans, see Council Conclusions on Climate and Energy Diplomacy—Delivering on the external dimension of the European Green Deal, 5263/21, 25 January 2021, at 7 (para. 10) and 8 (para. 11).

⁵⁴U. von der Leyen, 'State of the Union address', 16 September 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655.

⁵⁵The CoFoE was proposed by the (then candidate) President of the Commission, Ursula von der Leyen, in her Agenda for Europe, see https://ec.europa.eu/commission/sites/beta-political/files/political-guidelines-next-commission_en.pdf, 19. On her appointment, von der Leyen took the idea forward—as illustrated by the mission letter for the vice-president-designate for Democracy and Demography Dubravka Suica—https://ec.europa.eu/commission/sites/beta-political/files/mission-letter-dubravka-suica_en.pdf, 4—supported by several Member States and the European Parliament. See, inter alia, the non-paper issued by France and Germany (<https://www.politico.eu/wp-content/uploads/2019/11/Conference-on-the-Future-of-Europe.pdf>) and the Parliament resolution on the state of the debate on the future of Europe (2008/2094(INI)).

⁵⁶See <https://www.eu2020.de/eu2020-en/civil-society-conferende-on-the-future-of-europe/2360192>.

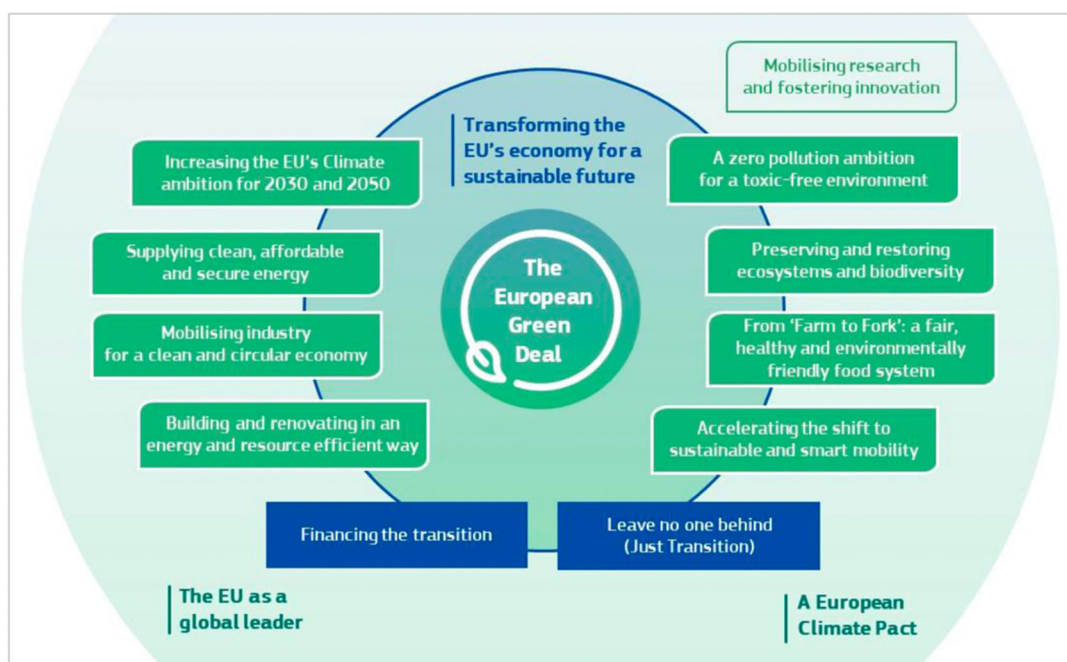


FIGURE 1 Overview of the Green Deal [Colour figure can be viewed at [wileyonlinelibrary.com](https://onlinelibrary.wiley.com)]

key structured debates within the Conference on the Future of Europe.⁵⁷ Specifically, the Green Deal's effects on the economy, standard of living, innovation, jobs and the need for (re-)training of younger and older generations of the workforce are likely to be salient issues for EU citizens, raised in the framework of the Conference. It is, however, less clear how the GD and the CoFoE will, and should, interact, substantively.⁵⁸

The Green Deal's initiatives can be broadly divided into three themes: (1) climate-related goals, focused primarily on emission reductions, clean energy and energy efficiency; these are economy-wide goals with specific programmes focused on construction and mobility; (2) environmental aims, linked to biodiversity, pollution and circularity; and (3) a healthy and sustainable food system, which combines environmental and health ambitions. The achievement of these goals is in part facilitated by overarching initiatives including (i) the “Just Transition” which speaks to financing, as well as social and economic inclusion; (ii) the EU's international policies on the Green Deal's main issues; and (iii) the importance of the widespread use of digital tools as enablers.⁵⁹ The latter is a red line that runs through the Green Deal's initiatives as a method to achieve policy goals (see also Figure 1⁶⁰).

The scope of the Green Deal is vast and it is hard to predict which topics will be picked up in the framework of the CoFoE and whether a transversal and holistic picture of the relevant challenges will be achieved despite its importance for both problem-definition and problem-solving. Instead of invalidating the significance of the overlap between the two social engineering processes however, this might actually call for deepening their synergies through, for example, an integration of both processes over a longer term and/or the reproduction of the

⁵⁷See European Parliament resolution of 18 June 2020 on the European Parliament's position on the ‘Conference on the Future of Europe’ (2020/2657 (RSP)), P9_TA(2020)0153; European Parliament resolution of 15 January 2020 on the European Parliament's position on the Conference of Europe (2019/2990(RSP)), P9_TA(2020)0010; Council Position, Conference on the Future of Europe, 24 June 2020, 9102/20. Sustainability and climate neutrality by 2050 is highlighted as (the first) key topic in the Council Position on 3 (para. 5), and similarly (as third) policy priority in the Parliament's position on 4 (para. 7).

⁵⁸See, in detail, Section 3.

⁵⁹Green Deal, above, n. 1, 4.

⁶⁰Ibid., 2.

Conference's polycentric prototype beyond 2022. It also underlines the importance of going back to the roots of the GD by identifying key political issues that need to be shaped and assessed by citizens. This is a point we will return to in the next section.

Having set the temporal, axiological and substantive overlaps between the GD and the CoFoE, another fundamental question emerges: how to ensure a methodological synchrony from a procedural standpoint? Indeed, our main contention is that the CoFoE should focus not only on the substantive side of the Green Deal but also on its deliberative side in order to ensure its success in the medium to long term. Therefore, a reflexive process of implementation and development would greatly benefit the GD and the CoFoE.

As previously mentioned, the CoFoE and the GD aim at, substantively, creating a vision for the sustainable future of Europe⁶¹; procedurally, they both also aim for this vision to be representative of the interests of the diverse constituencies within the EU. However, the GD and the CoFoE highlight different approaches to increased public participation in the EU and, by extension, peaceful contestation. The deliberative role of the CoFoE is perhaps most self-evident in view of its aim to involve a wide range of actors across the EU and its bottom-up nature (though supplemented with top-down elements such as the setting of key topics, selection of actors and other parameters).⁶² In contrast, the Green Deal is a package of top-down policies aimed at achieving a pre-determined policy aim, based on a shared political understanding—at the Member State level—of a transboundary problem.⁶³ Yet, the GD has also made public participation a central aim in its implementation. Thus, if the GD points to public participation in problem-solving rather than problem-definition, meaningful public participation in problem-definition as well may still be achieved. This raises the question of the extent to which these two processes could be seen to nurture each other and how the CoFoE, as a deliberative prototype, could actually strengthen the polycentricity of the GD, transforming it into a true citizens' Green Deal.

Already before the Green Deal, the EU has put in place numerous ways in which the public can be involved in environmental decision-making, environmental justice and the private enforcement of EU environmental law—though all of these mechanisms continue to have important shortcomings.⁶⁴ As part of the GD, the Commission considers addressing one of these—the limited standing of citizens and non-governmental organisations (NGOs) who want to challenge environmental decisions—through the revision of the Aarhus Regulation.⁶⁵ Moreover, there is the suggestion of creating a monitoring dashboard aimed at ensuring Member State-level implementation efforts. However, the Green Deal's main innovation for democratic inclusion is the European Climate Pact, which is aimed at public information sharing, the provision of real and virtual spaces where citizens can express ideas, and support for grassroots initiatives on climate change and environmental protection, which was launched on 16 December 2020.⁶⁶ These public participation initiatives suggest the solicitation of input from different EU constituencies, which may lead to tangible changes in the (implementation of the) Green Deal, making the GD a more collaborative process.

Nevertheless, for a more polycentric EU, these avenues of public participation remain problematic as many of them still depend on the Member States and/or EU institutions for their effectiveness. As a result, too few of them successfully challenge the hierarchical power of these actors, thus limiting their potential for inclusivity and their chance of success through citizen ownership. In addition, many of these forms of public participation—with perhaps the exception of the Climate Pact—do not allow for horizontal dialogue and debate between different actors. Most

⁶¹The Council and Parliament's policy priorities for the CoFoE are a 'green and just transition and climate neutrality by 2050' and 'environmental challenges and the climate crisis', respectively. See Council (revised) Position, Conference on the Future of Europe, 3 February 2021, 5911/21, https://www.federalists.eu/fileadmin/files_uef/press_releases/ST_5911_2021_INIT_en.pdf, at para. 5 and Parliament position, no. 7, para. 7.

⁶²See above, n. 58. See, also, in this issue, A. Alemanno, 'Unboxing the Conference on the Future of Europe and its democratic raison d'être', (2020) 26 *European Law Journal*.

⁶³This is not to say that all Member States support (all parts of) the Green Deal and that there is unanimous support. See, e.g., M. Khan and J. Brunsten, 'Dumping Europe's Green Ideals' *Financial Times*, 3 April 2020, <https://www.ft.com/content/2c44c927-f007-4fbd-8b20-4d467c45a0c2>, and M. Elkerbout et al., 'The European Green Deal After Corona: Implications for EU Climate Policy', (2020) *CEPS Policy Insight 2020/6*: 2 (on Member State prioritisation of post-pandemic economic recovery over the GD's economic transformation).

⁶⁴J. van Zeben, 'The Untapped Potential of Horizontal Private Enforcement within EU Environmental Law', (2010) 22 *Georgetown International Environmental Law Review*, 241–269.

⁶⁵Green Deal, above, n. 1, 23. This revision is not part of the first legislative package 'Fit for 55'.

⁶⁶*Ibid.*, 22. See also EU, 'European Climate Pact', available at: https://europa.eu/climate-pact/index_en.

of the public participation is unidirectional, targeting the Member States or EU institutions. Again, exceptions to this can be found—for example, public consultation notes related to legislative proposals are open to the public—but as a rule, the aim (and result) is not the creation of ‘low cost, local arenas to resolve conflict among users or between users and officials’⁶⁷ necessary to maintain dynamic and constant participation and contestation. This finding is in line with more general observations regarding the nature of climate law and policy design, which tends to favour actors with considerable socio-political power.⁶⁸ Thus, there could be significant synergies between the debates and dialogues under the Climate Pact and those of the CoFoE. It is, however, unclear whether any such integration, or even interaction, between these fora is foreseen, or considered desirable, while this should be at the top of the CoFoE's agenda in order to ensure the success of the GD.

The CoFoE is essentially a species of citizens' assembly: a random selection of citizens asked to make recommendations on a certain policy issue. These assemblies are generally used to respond to three types of public policy problems: value-driven dilemmas; complex problems that require trade-offs; and long-term issues that go beyond the short-term incentives of political cycles.⁶⁹ The problems targeted by the Green Deal, in particular climate change, fit these characteristics perfectly, making them a particularly good fit for this type of forum.⁷⁰

In this spirit, there is one main way in which public participation in the CoFoE as a polycentric prototype may be pushed forward: through participation of a diverse selection of EU actors in the process itself. In this regard, there was a widespread concern that participants might self-select into the platform, meaning that only those with pre-existing knowledge and interest in the EU would participate. However, the citizens' panels look to counter this effect as they are randomly selected and participation partially compensated; and some of these randomly selected individuals will also be present in the conference plenaries (though only as participants, not decision-makers).⁷¹ While this still means that Member States have a strong voice in the plenaries, the “consensus”-based voting on proposals means that there is no Member State veto on traditionally controversial issues.⁷² Nevertheless, in terms of inclusivity and in light of the GD's expected effects on the economy, standard of living, innovation, jobs and the need for (re-) training of younger and older generations of the workforce, corporate partners that will influence the financing of the Green Deal may also need to be included. Furthermore, other issues would need to be addressed in order for the CoFoE to constitute a meaningful polycentric prototype.

Though in some ways distinctly different, public participation in the CoFoE and the GD share one important obstacle: even when institutional barriers are removed, the complexity of the issues—and the EU itself—is an obstacle for diverse participation.⁷³ In addition, it undermines the functionality of public participation as a means of peaceful contestation in the context of common problem-definition and problem-solving: if the problem—or associated process for its resolution, such as the law—is so complex as to require highly expert knowledge before meaningful participation is possible, we are faced with a situation of de facto power monopolies. For example, the new financial instruments created by the Green Deal, and the important role foreseen for private sector financing, create a need to reflect on the kind of contestation and public participation mechanisms that may be needed for these financial instruments,⁷⁴ beyond more general methods of accountability currently in

⁶⁷Ostrom, n. 24, as cited in Kukovec, above, n. 23, 213.

⁶⁸J. Knox-Hayes, ‘Negotiating Climate Legislation: Policy Path Dependence and Coalition Stabilization’, (2012) 6(4) *Regulation & Governance*, 545–567.

⁶⁹L. Duvic-Paoli, above, n. 26.

⁷⁰H.W. Rittel and M.M. Webber, ‘Dilemmas in a General Theory of Planning’, (1973) 4(2) *Policy Sciences*, 155; F.P. Incropera, *Climate Change: A Wicked Problem. Complexity and Uncertainty at the Intersection of Science, Economics, Politics, and Human Behavior* (Cambridge University Press, 2016); B.W. Head, ‘Wicked Problems in Public Policy’, (2008) 3(2) *Public Policy*, 101.

⁷¹See, also, A. Alemanno, ‘Releasing Europe's Democratic Genie’, *Social Europe*, 1 July 2021, available at: <https://socialeurope.eu/releasing-europes-democratic-genie>.

⁷²See European Parliament, ‘Conference on the Future of Europe’, Briefing (2021), at: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690590/EPRS_BRI\(2021\)690590_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690590/EPRS_BRI(2021)690590_EN.pdf), 7.

⁷³A.R. Zito and A. Schout, ‘Learning Theory Reconsidered: EU Integration Theories and Learning’, (2009) 16(8) *Journal of European Public Policy*, 1103.

⁷⁴Consider, for example, proposals made in the context of the EMU by M. Dawson and A. Maricut-Akbik, ‘Procedural vs Substantive Accountability in EMU Governance: Between Payoffs and Trade-offs’, (2021) 28(11) *Journal of European Public Policy*, 1707. On judicial means of peaceful contestation in this context, see A. Bobić, ‘(Re)Turning to Solidarity in EU Economic Governance: A Normative Proposal’, in Farahat and Arzoz (eds.), above, n. 52.

place.⁷⁵ Another issue that the Green Deal's implementation has underlined is the role of the Commission and its ability to adopt delegated acts, for example the power to do so in relation to the proposed Climate Law, which, according to the opinion of the European Parliament's legal services, would not be in line with Article 290 TFEU.⁷⁶ Both these topics require specialised legal and economic knowledge, which may not feature heavily in the citizen-driven debates of the Conference.

Complexity can be linked to lower participation rates, which in turn lead to greater dissatisfaction with representative democracy and an erosion of trust in politics.⁷⁷ However, if successfully debated, these would be important features to include in recommendations related to the greater accountability and transparency of the EU more broadly that could come out of the CoFoE. This in turn raises the question as to how to ensure a good balance between inclusiveness and diversity of participants within the Conference,⁷⁸ and level of familiarity with EU processes. These examples stress the importance of polycentric prerequisites of fostering the ability to learn and access information equally within the EU in ensuring meaningful public participation and peaceful contestation. This also calls for further reflection on how to make permanent and institutionalise the Conference model beyond 2022 in order for it to inform the Green Deal throughout its policy, legislative and implementation cycle, not only substantively but procedurally as well, the two being intrinsically linked in a virtuous democratic circle.

Initial findings of earlier work regarding the EU's functioning as a polycentric system show that, despite the EU's polycentric promise, some institutional essentials and prerequisites only function incompletely and/or for some groups.⁷⁹ Moreover, it is analytically and theoretically challenging to "scale up" the polycentric framework offered by Vincent and Elinor Ostrom—and more generally the work undertaken by the Bloomington School—from the community level to larger jurisdictions such as the EU, and/or to larger scale problems such as climate change.⁸⁰ This scaling problem closely interlinks with the issue of incomplete/selective polycentricity, as the relevant centres of decision-making and self-governance become further removed from each other and possibly do not interact at all, limiting competition, co-operation and conflict-resolution options.⁸¹ The CoFoE, through its multi-spatial scale, could be a remedy to this scaling issue. The Conference is indeed constructed around a multilingual digital platform, four citizens' panels and several plenary sessions, which interact through recommendations and contributions, with the involvement of close to 20,000 participants. Alongside these elements, there are also other decentralised events, online and in person.⁸²

Another central question is how to streamline these debates in order for them to amount to substantive participation and debate. Notably, research and policy assessment on distributive effects of EU policies thus far have mostly been *ex ante*; though important, more *ex post* research is needed to assess actual impacts of these policies on different societal groups.⁸³ It is also uncertain whether these assessments would be made (public) early enough

⁷⁵See generally on accountability within the EU, A. Arnul and D. Wincott (eds.), *Accountability and Legitimacy in the EU* (Oxford University Press, 2003). In the area of environmental matters, see, e.g., K. Getliffe, 'Proceduralisation and the Aarhus Connection: Does Increased Participation in the Decision-Making Process Lead to More Effective EU Environmental Law?', (2002) 4(2) *Environmental Law Review*, 101.

⁷⁶European Parliament, 'Non-paper on the choice of delegated acts to set out the trajectory for achieving climate neutrality in the proposal for a European Climate Law [2020/0036(COD)]', 31 March 2020.

⁷⁷T.W.G. van der Meer, 'Political Trust and the "Crisis of Democracy"', *Oxford Research Encyclopedia of Politics* (2017).

⁷⁸Parliament position, no. 7, paras. 4, 6 and 9. The role of young people and those with disabilities is also emphasised; see Parliament position, no. 7, para. 13.

⁷⁹See, e.g., S. Garben, 'The Capacity to Learn in the Polycentric European Union', in van Zeben and Bobić, n. 19, 276 (finding that the main beneficiaries of EU learning and capacity building are governmental bodies and a select number of non-governmental organisations).

⁸⁰A. Jordan, D. Huitea, H. van Asselt and J. Forster (eds.), *Governing Climate Change: Polycentricity in Action?* (Cambridge University Press, 2018).

⁸¹Moreover, in complex polycentric governance systems, such as the EU, the relevant unit of analysis should be 'self-governing' groups, rather than self-governing individuals—in order to do justice to the fact that the problem-solving and self-governance that polycentricity aims for is only possible through sustained interactions between individuals. See, in detail, van Zeben, 'Polycentricity as a Theory of Governance', in van Zeben and Bobić, above, n. 19, 18–19.

⁸²In the format of the Conference, the impact of the ongoing pandemic cannot be overstated. The digital platforms will feature even more heavily than they might have done otherwise, with some arguing that the current delay in the Conference's start could, and should, have been avoided if these platforms had been used more intensively. See M. Banks, 'Proposed Set-up for Conference on the Future of Europe under Fire', (2021) *The Parliament Magazine*, at: <https://www.theparliamentmagazine.eu/news/article/proposed-setup-for-conference-on-the-future-of-europe-under-fire>.

⁸³See, also, M. Miccinilli, 'Europe's Green Deal Needs to Effectively Handle Rising Distributional Effects' (2020) 9 *European Energy and Climate Journal*, 15.

for citizens to engage with them in the context of the CoFoE. Moreover, there are common heuristics that make it harder for people to consider these effects constructively; for example, people are hard wired to weigh losses more heavily than gains.⁸⁴

The broad scope of the topics earmarked for debate in the Conference makes detailed debate generally unlikely both in terms of contestation and participation shaping policy. This means that the Conference's recommendations are likely to feed into processes within, *inter alia*, the Commission, that are seen as particularly “undemocratic”,⁸⁵ which means that any trust created through the Conference would not “scale” upwards. This is especially true as the Council,⁸⁶ and several Member States, have already stressed that the CoFoE cannot and should not result in any type of expectation for Treaty-level reform, although France, in charge of the Presidency of the Council of the EU for the first semester 2022, and Germany⁸⁷ have explicitly expressed their support for such a possibility. In any event, this emphasises the importance of ensuring a clear mandate and transparent process to ensure that the implementation of the Conference's recommendations is in line with its participatory and inclusive goals. Lessons could be taken from more established public participation processes such as the Citizens' Dialogues⁸⁸ and Citizens' Consultations,⁸⁹ but the divergent Council and Parliament positions on this issue and among these institutions make clear that this is as much a political question⁹⁰ as it is a technical or formal one. The joint Chairmanship between the Parliament, Council and Commission therefore has the crucial outstanding task of clarifying the mandate of the Conference and how its outcomes will be incorporated into the fibre of EU policymaking. European Parliament President Sassoli suggested that formalising this mandate may not be desirable since this may presuppose certain outcomes and/or diminish ambition levels.⁹¹ While this may be true, it also leaves less ambitious EU institutions and Member States, with broader scope for sidestepping or ignoring the Conference's outcomes. And equally importantly, it detracts from the transparency and predictability of the Conference's processes.

In summary, the European Green Deal sets out a transformative vision of the European Union's economy in light of environmental and climatic challenges. Its adoption and implementation overlap with the Conference on the Future of Europe—a forum for public debate on the EU's medium and long-term goals. From a polycentric governance perspective,⁹² these developments signal a potential shift towards a more polycentric EU that addresses mutual vulnerabilities in an inclusive, bottom-up and solidarity-driven way. However, in order to do so successfully, the re-establishment and operationalisation of trust through public participation and peaceful contestation is essential. The CoFoE, if conceived as a polycentric social engineering exercise and prototype, could result in procedural synergies with the GD that would transform it into a true citizens' Green Deal.

⁸⁴See, e.g., D. Kahneman, J. Knetsch and R. Thaler, ‘Anomalies: The Endowment Effect, Loss Aversion, and Status Quo Bias’, (1991) 5 *Journal of Economic Perspectives*, 193; W. Samuelson and R. Zeckhauser, ‘Status Quo Bias in Decision Making’, (1988) 1 *Journal of Risk & Uncertainty*, 7.

⁸⁵See, e.g., J. Blom-Hansen, ‘Comitology: Controlling Everyday Rule-Making in the European Union’, *Oxford Research Encyclopedia of Politics* (2019).

⁸⁶In the run-up to the Conference, the Council requested to be submitted in the form a report, followed by a ‘swift response’ of EU institutions, but ruling out Treaty reform. See Council (revised) Position, n. 62, at paras. 19–20.

⁸⁷See Koalitionsvertrag 2021–2025, zwischen SPD, Bündnis 90/Die Grünen und FPD, ‘Mehr Fortschritt Wagen, Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit, 24 November 2021, available at: https://www.spd.de/fileadmin/Dokumente/Koalitionsvertrag/Koalitionsvertrag_2021-2025.pdf.

⁸⁸European Commission, ‘Public debates on EU policies’, available at: https://ec.europa.eu/info/about-european-commission/get-involved/citizens-dialogues_en and EC, ‘Citizens' dialogues and Citizens' consultations—Key Conclusions’ (2019), available at: https://ec.europa.eu/info/sites/default/files/euco-sibi-citizensdialogues_en.pdf.

⁸⁹See P. Butcher and C. Stratulat, ‘Citizens Expect: Lessons from the European Citizens' Consultations’, (2019) *European Policy Center*, available at: <https://www.epc.eu/en/Publications/Citizens-expect-Lessons-from-the-European-Citizens-Consultations~26c3d4> and Council of the European Union, ‘Citizens' Consultations—Executive Summaries’ (2018) 14791/18.

⁹⁰See European Parliament resolution, n. 7; Council Position, n. 7. Sustainability and climate neutrality by 2050 is highlighted as (the first) key topic in the Council Position, 3 (para. 5), and similarly (as third) policy priority in the Parliament's position, 4 (para. 7).

⁹¹Comments by European Parliament President Sassoli, High Level Interdisciplinary Conference on The Future of Europe Conference, organised by the European Law Journal and the College of Europe (2021), available at: https://multimedia.europarl.europa.eu/en/conference-on-the-future-of-europe-inaugural-event-statement-by-david-sassoli-ep-president_1205247-V_v.

⁹²See, for more details, conclusions presented in van Zeben, above, n. 30, 28.

3 | THE COFOE'S SUBSTANTIVE ADDED-VALUE: ENSURING A TRUE CITIZENS' GREEN DEAL THROUGH SHARED PROBLEM-DEFINITION AND PROBLEM-SOLVING

Apart from the procedural aspects previously analysed, public participation in the CoFoE could also be pushed forward by making the outcome have tangible effects on the EU's structure and direction. This kind of power is traditionally within the exclusive purview of Member States through Treaty revision negotiations. The CoFoE could achieve the same in a bottom-up fashion through the recommendations for “concrete measures” coming from its plenaries⁹³ and, more fundamentally, by setting the EU's agenda. The latter would involve not only problem-solving but also shared problem-definition. This is particularly powerful as the way an issue is framed often has a fundamental impact on proposed solutions.

For example, citizens are increasingly supportive of the EU's energy policy,⁹⁴ but its competences in this area are limited. Whether a recommendation pushing for a broader EU mandate in this area would be acted on remains an open question. Similarly, critical recommendations on more controversial parts of the Green Deal, such as the conceptualisation of “sustainability” that it promotes—one that is premised on critical growth, rather than degrowth; and its vision of the EU's role vis-à-vis third countries when it comes to environmental and climate challenges—one of a leader and “enforcer” through conditional trade relations, but much less clearly one that takes responsibility for its role in environmental problems in other parts of the world—may not be addressed or taken further by the EU institutions. This potential failure to act on the shared problem-solving that EU citizens engaged in at the CoFoE could result in a trust-reducing conflict, rather than create broader ownership of the European project.

This section will therefore touch on several central issues within the EU's sustainability policy and reflect on how the CoFoE, and any potential successors, may help in defining its goals and parameters. True to a polycentric perspective, my point here is not to provide answers pertaining to the specific content of the GD; these should be the subject of shared problem-definition and problem-solving. However, it is worthwhile to sketch the contours of some key issues that should be subject to this polycentric participation in order to stimulate bottom-up trust and solidarity, ultimately leading to greater legitimacy and success of the GD.

The scope of the Green Deal is vast and to do justice to each of the programmes that it seeks to influence or create would require an analysis that goes far beyond the scope of this article, especially since there are many different (legal, environmental, economic and social) bases on which to assess each policy suggestion. In light of the aim of this article—inventorying the possible implications of the CoFoE for the GD—this section will instead present an overview of the Green Deal's main ambitions and their main challenges, and analyse these ambitions in light of the principles that the GD itself aims to prioritise: sustainable and inclusive (“just”) growth; the ‘do no harm’ principle; and global leadership.

3.1 | Towards “sustainable” growth?

The Green Deal strives for sustainable and inclusive growth. All three concepts—sustainability, inclusivity and growth—are multifaceted and open to a broad range of interpretations, which in turn depend on many political, social, economic and environmental considerations. The CoFoE process, could, and arguably should, be a forum for this type of problem-definition.

The economic model underlying the concept of “sustainability” and accompanying the green transition could benefit from citizen debate. The GD seeks to marry socio-economic and environmental objectives through “green growth”. The Green Deal is often categorised as a new version of the green growth narrative (‘critical green growth

⁹³See n. 42.

⁹⁴See, e.g., Special EC, ‘Eurobarometer 492; European's Attitudes on EU Energy Policy’, (2019), 2238/492.

model', rather than a break with this tradition.⁹⁵ While green growth advocates the “decoupling” of economic growth from resource use, it remains fundamentally different from “degrowth”. The focus of green growth is to maintain a certain standard of living through economic growth and competitiveness in line with environmental objectives, where possible. Degrowth would imply a reversal of priorities, where environmental justice and living standards must be accommodated within planetary boundaries, and socio-ecological wellbeing may be prioritised over economic growth. In other words, green growth supports an understanding of “sustainability” where environmental, economic and social sustainability are—in principle—weighed equally but continue to be premised on growth, i.e. “*economic sustainability*”. Under a degrowth model, this balance shifts to prioritise environmental sustainability. Since the choice between these two models entails a fundamental political choice on the meaning of ‘economic sustainability’ with a wide range of consequences on citizens' lives, the latter ought to have a say, at least through a citizens' assembly.

Furthermore, within the green growth narrative, the Green Deal focuses heavily on inclusivity and a just transition—hallmarks of “*social sustainability*” and inclusivity. The Green Deal emphasises a ‘just and inclusive transition’ towards a sustainable, zero net emissions economy, reflected primarily in the “Just Transition” elements and the financial measures linked to the transition.⁹⁶ The term “just transition” emerged in the late 1970s in the United States. Since then, many restatements of the term have been offered at national and international levels. Shared basic goals that have emerged from these debates and policy statements include: the reduction of social and regional inequalities in terms of environmental health hazards and impacts, access to eco-system services and social inclusion; the prevention of disproportionate burdens of vulnerable households and ensuring they also have access to financial savings; and overall positive effects on employment opportunities, also for regions negatively affected.⁹⁷ The aim of a just transition is both politically sensitive and economically complex: the transition advocated by the GD will result in winners and losers. Even if measured by seemingly objective standards, for example through economic modelling, decisions of which factors, areas, sectors and time lines to include will heavily influence the resulting policy decisions and therefore cannot be viewed as politically neutral, and this might be a typical issue to be dealt with by the CoFoE.

Many different parts of the GD reflect the need for continuous balancing, both in terms of different types of sustainability aims, and in terms of accommodating winners and losers. For example, the EU continues to rely heavily on carbon pricing. This means that a “good” carbon price must be established across economic sectors in order to manage the effects on industries and (regions of) Member States. There is no “easy fix” for this problem: if there were to be a single carbon price for all sectors and countries, which is viewed as the economically efficient option, there will be higher impacts on certain sectors and countries, depending on their carbon intensity and the possibilities for reform.⁹⁸ Relatedly, the ideal combination of emission permits and taxes—traditional tools for the internalisation of externalities—is hard to find, and would require revision of the 2003 Energy Taxation Directive.⁹⁹ These are also questions at the heart of “social sustainability” that would be worth addressing in the framework of the CoFoE or its future iterations.

Relatedly, the Green Deal also emphasises the role of the—non-binding—European Pillar of Social Rights, for example by pointing at social risks of the energy transition, such as energy poverty.¹⁰⁰ While the EU's role regarding energy poverty remains restricted to offering “guidance” to the Member States, it is clear that many of the foreseen

⁹⁵See, in detail, M. Ossewaarde and R. Ossewaarde-Lowtoot, ‘The EU's Green Deal: A Third Alternative to Green Growth and Degrowth’, (2020) 12 *Sustainability*, 9825, doi:10.3390/su12239825.

⁹⁶See Green Deal, above, n. 1, 15–18. See also, European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing the Just Transition Fund, COM(2020) 22 final, 14 January 2020.

⁹⁷See D.A. Heyen, L. Menzemer, F. Wolff, A. Beznea and R. Williams, ‘Just Transition in the Context of EU Environmental Policy and the European Green Deal’, (2020) *Issue Paper under Task 3 of the Service Contract on Future of EU Environmental Policy*, 13.

⁹⁸See G. Claeys, S. Tagliapietra and G. Zachmann, ‘How to Make the European Green Deal Work’, *Policy Contribution No. 14*, November 2019, Bruegel, 3.

⁹⁹Council Directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity. The EGD does include such a revision; see Green Deal, above, n. 1, 5.

¹⁰⁰*Ibid.*, 6.

reforms¹⁰¹ will touch on areas in which the EU currently has limited competence.¹⁰² To discuss the bindingness of the European Pillar of Social Rights or the current scope of the EU's competences in the framework of a citizens' assembly, even more so if Treaty reform is one of the possible outcomes of the CoFoE, might be a much welcomed, if not necessary, development towards concretely defining and operationalising social sustainability.

Another illustration of how the concept of "just" and inclusive growth can quickly become blurred in light of other considerations can be found the Just Transition (JT) Fund's role in incentivising reluctant Member States, such as Poland, which is thus far the only Member State that has refused to commit to the 2050 zero net emissions target. Poland also looks to be one of the largest prospective recipients of the Fund.¹⁰³ Similarly, one of the main goals of the JT Fund is to support workers in industries that would shrink or disappear as a result of the transition to a zero/low carbon economy, e.g. coal. Though these jobs do not make up a significant share of the EU economy, or even national economies, they can have a significant regional impact. For example, one region in Poland stands to lose 41,000 jobs while three other regions (in the Czech Republic, Romania and Bulgaria) could each lose more than 10,000 jobs.¹⁰⁴ It remains to be seen how the JT Fund will interact with the Recovery and Resilience Facility and the European Globalisation Adjustment Fund (EGF). The budget of the EGF, established in 2006,¹⁰⁵ has not been fully used over the past years (annual budget of €150 million between 2014 and 2020 with on average €40 million claimed) despite its scope expanding over time. There is no clear indication why carbon-intensive industries or regions could not be added to its scope.¹⁰⁶

Similarly, the pandemic—and its expected economic consequences—has provided an opening for Member States to question, and potentially undermine, the Green Deal's ambitions by pitting economic transformation against economic recovery.¹⁰⁷ The Czech government has already suggested scrapping the Green Deal entirely, while a Polish minister raised the option of discontinuing the EU ETS.¹⁰⁸ However, economic recovery and the Green Deal's environmental and climate ambitions are not necessarily antagonistic—as stressed by at least 17 ministers, who called for green economic recovery measures¹⁰⁹—but the perception that they may be is (politically) persistent. The EU's COVID-19 recovery package, Next Generation EU (NGEU), rejects this premise, committing €750 billion to a green and sustainable recovery and resilience plan for the pandemic.¹¹⁰ The Recovery and Resilience Facility (RRF) Regulation requires Member States to formulate national recovery plans that invest in six policy areas that are closely aligned with the Green Deal areas,¹¹¹ including green transition, digital transformation, inclusive growth and jobs, social and territorial cohesion, health and resilience, and next generation policies by 30 April 2021.¹¹²

¹⁰¹As part of the Fit for 55 package, see, e.g., Proposal for a Directive of the European Parliament and of the Council on energy efficiency (recast), COM/2021/558 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0558>, Art. 9 (5): 'Member States may require obligated parties to work with local authorities or municipalities to promote energy efficiency improvement measures among people affected by energy poverty, vulnerable customers and, where applicable, people living in social housing. This includes identifying and addressing the specific needs of particular groups at risk of energy poverty or more susceptible to its effects.' See also Proposal for a Regulation of the European Parliament and of the Council establishing a Social Climate Fund, COM/2021/568 final, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0568>, Art. 3 on Social Climate Plans ('2. The Plan may include national measures providing temporary direct income support to vulnerable households and households that are vulnerable transport users to reduce the impact of the increase in the price of fossil fuels resulting from the inclusion of buildings and road transport into the scope of Directive 2003/87/EC').

¹⁰²See, e.g., S. Bouzarovski, *Energy Poverty* (Springer, 2017) 41–73.

¹⁰³See Siddi, above, n. 42, 6.

¹⁰⁴See, in detail, A. Dias et al., 'EU Coal Regions: Opportunities and Challenges Ahead', *JRC Science for Policy Report* (Publications Office of the European Union, 2018), available at <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/eu-coal-regions-opportunities-and-challenges-ahead>.

¹⁰⁵See Claes et al., above, n. 99, 18.

¹⁰⁶Ibid.

¹⁰⁷On the perceived trade-off between social cohesion/cooperation versus economic competitiveness in the EU's competitive social market economy, see, also, in this volume, A. Crespy, 'Can Scharpf Be Proved Wrong? Modelling the EU into a Competitive Social Market Economy for the Next Generation', Special issue on the Conference on the Future of Europe, (2020) 26 *European Law Journal*.

¹⁰⁸See, e.g., Elkerbout et al., above, n. 64; Khan and Brunsden, above, n. 64.

¹⁰⁹See <https://www.climatechangenews.com/2020/04/09/european-green-deal-must-central-resilient-recovery-covid-19/>.

¹¹⁰See <https://www.consilium.europa.eu/en/policies/eu-recovery-plan/>.

¹¹¹See also preambles 5, 23, 32 of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ 2021 L57/17.

¹¹²Ibid., Article 3.

On these issues, concretely shaping the meaning of a “just” and “inclusive” growth from a “social sustainability” perspective, relying for their solution on trust and solidarity, and potentially generating far-reaching consequences on citizens' lives, to empower the latter through the CoFoE or its future iterations would have more than an added value; it would be a precondition to their success and legitimacy. The greening of European economies and the synergies between environmental and climate ambitions and economic goals would similarly be worth addressing in a polycentric forum such as the CoFoE.

In terms of “*environmental sustainability*”, the Green Deal goes beyond climate-related goals, as is to be expected given the broad scope of the EU's environmental competence.¹¹³ Nevertheless, it is useful to distinguish some of the elements of the Green Deal that focus more broadly on the environment, beyond climate change, in light of the differences in relevant actors and instruments involved with their implementation. When it comes to environmentally sustainable growth, the GD's greatest impact would appear to be a restated ambition for achieving the EU's environmental goals. In the lead up to the Green Deal, the European Environmental Agency reported that none of the EU's 2030 environmental objectives as listed in the 7th Environmental Action Programme (EAP) were likely to be achieved.¹¹⁴ However, in an initial assessment of the Green Deal by the Institute for European Environmental Policy (IEEP), the achievement of all but three of the environmental objectives specified in the 7th EAP continues to be tenuous or in fact unlikely.¹¹⁵ The only elements of the Green Deal that are assessed as improving the likelihood of achieving the EU's environmental objectives are the Industrial Strategy, with respect to the goal of achieving clean industrial technologies and processes; the initiatives focused on improved energy efficiency such as the review of the Energy Efficiency and Renewable Energy Directives, and the TEN-E regulation; and the circular economy action plan with respect to waste management.¹¹⁶ Naturally, this first impression was based exclusively on the Green Deal and its roadmap and much will depend on its implementation and execution. Nevertheless, the picture painted is not a hopeful one: it highlights lack of ambition, lack of specificity and, at times, lack of specific environmental goals entirely, such as noise pollution and water abstraction.¹¹⁷ Deliberation on these issues in the CoFoE may result in increased citizen ownership of these environmental sustainability goals, which may act as a catalyst for their—at this stage, very tenuous chance of—success.

From a cross-sectoral policy perspective, the recent Common Agricultural Policy (CAP) reform appears to confirm this gloomy prediction, with many of the most promising proposed amendments—such as amendment 881 on organic farming—being excluded from the final plans. A longstanding criticism of the CAP is its failure to respond to, and integrate, environmental objectives,¹¹⁸ rather, the CAP focused exclusively on the effective management of agricultural goods in the internal market.¹¹⁹ The most recent reform of the CAP,¹²⁰ affecting the post-2020 period, was in many ways a test case as to the potential impact of the GD on related policy areas and their development. Many, including Commission vice-president Frans Timmermans,¹²¹ have been critical of the results, approved by the Council and the Parliament, viewing them as unsuitable for the achievement of the Green Deal, including the Farm to Fork, aims.¹²² The CoFoE, as well as future similar European deliberative exercises, focusing on goal-definition prior to solution-finding, could make a significant contribution in facilitating cross-policy exercises and consistently

¹¹³See Article 191(1) TFEU.

¹¹⁴European Environmental Agency, *European environment: state and outlook (SOER 2020)*, 4 December 2019, available at: <https://www.eea.europa.eu/highlights/soer2020-europes-environment-state-and-outlook-report>.

¹¹⁵E. Bodin and T. Stainforth, ‘First Analysis of the European Green Deal’, (IEEP, 2019).

¹¹⁶*Ibid.*, 8, 9.

¹¹⁷*Ibid.*

¹¹⁸The 2017 Communication on *The Future of Food and Farming* did stress the potential of the CAP in contributing to the UN Sustainable Development Goals; see Commission Communication, *The Future of Food and Farming*, COM(2017) 713, at 7.

¹¹⁹See J. McMahon, *EU Agricultural Law and Policy* (Edward Elgar, 2019), 2–7.

¹²⁰See Proposal for a Regulation establishing CAP Strategic Plans, COM(2018) 392 final, 1–15.

¹²¹See, e.g., <https://euobserver.com/green-deal/150068>.

¹²²See, e.g., G. Pe'er et al., ‘Action Needed for the EU Common Agricultural Policy to Address Sustainability Challenges’ (2020) 2(2) *People and Nature*, 305. An important parallel development had been the adoption of the EU's methane emissions strategy, which includes, but is not limited to, agricultural emissions; see Commission Communication, *Report on an EU Strategy to reduce methane emissions*, COM(2020) 663 final.

ordering, prioritising and balancing the goals of the various policies involved, based on a clear definition of “environmental sustainability”, among other forms of sustainability.

To conclude, the CoFoE or its future offspring could play a significant role in drawing and operationalising the many shades of “sustainability” to ensure the success of the GD.

3.2 | A green oath to ‘do no harm’?

As will have become clear, the regulatory impact of the GD will be significant. There will be considerable redrafting of existing legislation and the adoption of new policies and regulations. The Commission addresses this development in two ways: first, in reference to its Better Regulation agenda, aimed at simplified legislation whose impacts are minimised;¹²³ and second, by attaching an explanatory memorandum to each GD-related legislative proposal and delegated act that shows how Green Deal initiatives achieve the ‘green oath to do no harm’,¹²⁴ portrayed as essential in achieving the GD's goals.

The ‘do no harm’ principle has not been articulated in EU environmental or climate policy before and its meaning is not immediately clear from the text of the GD. Developments related to the Recovery and Resilience Facility have provided initial information regarding the role and impact of the principle. Specifically, the sustainable finance (SF) taxonomy developed to help investors and companies to develop projects under the RRF requires economic activities to make a substantive contribution to one of six environmental objectives *as well as* to ‘do no significant harm’ to the other five objectives, and meet minimum safeguards, such as the UN Guiding principles on Business and Human Rights.¹²⁵ The SF taxonomy report shows that when an activity is considered a high risk for significant harm to, for example, climate change mitigation, additional technical screening may be required.¹²⁶ The assessment of this risk is based on the technical screening criteria contained in the Report.¹²⁷

At a principled level, two main questions may be raised about the ‘do no harm’ principle: whether this interpretation of the ‘do no harm’ principle can, and will, be politically and legally enforceable on the Member States and the EU institutions; and how this principle relates to other EU principles, such as the integration principle in Article 11 TFEU. With respect to the former, it is *prima facie* hard to see how the ‘do no harm’ principle will be more likely to lead to political or legal enforcement than the principle of subsidiarity, as there are (even) fewer legal safeguards to ensure this.¹²⁸ With respect to the latter, the obligation to integrate environmental protection requirements into the definition and implementation of Union policies ‘with a view to promoting sustainable development’ provides a similarly strong basis to hold the EU, and to a lesser extent Member States, accountable.¹²⁹ However, this potential has arguably not materialised and the GD provides few leads on how the fate of the ‘do no harm’ principle will be different. Whereas Frans Timmermans has stated that: ‘I think this principle of do no harm should be guiding all of us as of now’,¹³⁰ Member States have been split, with respect to the RRF, with some refusing to implement the taxonomy due to its negative evaluation of fossil fuel-related investments, and others asking for even higher thresholds for gas project inclusion.¹³¹

¹²³See, in detail, https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en.

¹²⁴Green Deal, above, n. 1, 19.

¹²⁵EU Technical Expert Group on Sustainable Finance, ‘Taxonomy: Final report of the Technical Expert Group on Sustainable Finance’, March 2020, at 2, available at: https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/200309-sustainable-finance-teg-final-report-taxonomy_en.pdf.

¹²⁶*Ibid.*, 22.

¹²⁷*Ibid.*, Section 5.

¹²⁸See, e.g., P. Craig, ‘Subsidiarity: A Political and Legal Analysis’, (2012) 50(1) *Journal of Common Market Studies*, 72.

¹²⁹B. Sjäffell, ‘The Legal Significance of Article 11 TFEU for EU Institutions and Member States’, in B. Sjäffell and A. Wiersbrock (eds.), *The Greening of European Business under EU Law: Taking Article 11 TFEU Seriously* (Routledge, 2015), 51–72.

¹³⁰Remarks by Frans Timmermans at the meeting of Environmental Ministers, 23 June 2020, available at: https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_20_1182.

¹³¹K. Taylor, ‘Czechs lead the charge against EU’s ‘do no harm’ green criteria’, *EURACTIV.com*, 24 March 2021, available at: <https://www.euractiv.com/section/climate-environment/news/czechs-lead-the-charge-against-eus-do-no-harm-green-criteria/>.

The developmental history of EU (environmental) principles has been one monopolised by the Court of Justice of the European Union, often in dialogue with national courts, and the European Commission.¹³² The GD and the CoFoE allow for an additional voice in this debate where citizens could directly comment on the meaning and role of these principles, without having to navigate lengthy and costly court systems. The incorporation of citizen deliberation would, moreover, constitute an important complement to the more parliamentary routes discussed so far.

3.3 | Global leadership

The Green Deal's goal of making the EU's economy sustainable, inclusive, competitive and climate-neutral reflects pre-existing EU objectives as well as external commitments, such as the United Nations' 2030 Agenda and the sustainable development goals,¹³³ and the Paris Agreement.¹³⁴ Unsurprisingly, a global leadership position for the EU in the related international agendas is a pillar of the Green Deal and may even be argued to take the shape of a “principle” underlying the GD, as multilateralism is such an intrinsic part of EU environmental policy.¹³⁵ The expression of this principled ambition raises, or should raise, important questions as to how the EU's past and current role in creating environmental impacts in other parts of the world impacts its global leadership on these issues. However, the Green Deal does not specify how the EU will support a “just transition” in other parts of the world.¹³⁶

While instruments such as an energy tax would internalise the costs of “foreign” emissions and might even incentivise climate action in exporting third countries,¹³⁷ it does not make emissions taking place outside the EU, for products meant for the EU market, part of the EU's carbon tally. The global equity concerns caused by the large share of EU emissions that take place in third countries are thus not incorporated in the GD. In addition, the leveraging of the EU's trading position in order to impose environmental practices on third countries has been the subject of an extensive and ongoing debate, with many questioning its effectiveness and desirability.¹³⁸ Moreover, the EU is not alone in setting, for example, a climate-neutral target for 2050; China, Japan and South Korea announced similar targets in 2020.¹³⁹ Though the GD is arguably one of the most comprehensive sustainable growth agendas adopted by a large economy in recent years, the EU is unlikely to be able to position itself as a leader if it fails to implement and enforce its ambitions successfully.

Brexit has emphasised that identity plays an important role in the European project. European identity, and by extension the desirability of EU membership, speak to how the EU addresses important problems and values “at home”, but also how it treats third countries.¹⁴⁰ EU global leadership on sustainability are—or again, should be—an

¹³²Consider, for example, the precautionary principle, see J.B. Wiener, ‘Precautionary principle’, in L. Krämer and E. Orlando (eds.), *Principles of Environmental Law* (Edward Elgar, 2018), 174–185.

¹³³See <https://sdgs.un.org/2030agenda>.

¹³⁴https://unfccc.int/sites/default/files/english_paris_agreement.pdf.

¹³⁵See, e.g., Article 191(1) TFEU.

¹³⁶The 25 January 2021 Council Conclusions on Climate and Energy Diplomacy, do point at several specific initiatives, for example the phasing out of support for unabated coal production, and supporting economic and energy diversification plans; see Council Conclusions on Climate and Energy Diplomacy—Delivering on the external dimension of the European Green Deal, 5263/21, 25 January 2021, at 7 (para. 10) and 8 (para. 11).

¹³⁷B. Aris, ‘Europe's Plan to Introduce a Carbon Import Tax is Forcing Russia to Go Green’, *bne IntelliNews*, 8 March 2020, available at: <https://www.intellinews.com/europe-s-plan-to-introduce-a-carbon-import-tax-is-forcing-russia-to-go-green-178003/>.

¹³⁸See presentation by P. De Baere during the High-Level Interdisciplinary Conference on the Future of Europe co-organised by the European Law Journal and the College of Europe on 28–29 January 2021, available at: <https://www.coleurope.eu/events/high-level-interdisciplinary-conference-future-europe>.

¹³⁹The Chinese target for climate neutrality is set for 2060; see S. Mallapaty, ‘How China Could Be Carbon Neutral by Mid-century’, *Nature*, 19 October 2020, available at: <https://www.nature.com/articles/d41586-020-02927-9>; E. Lies, ‘Japan Aims for Zero Emissions, Carbon Neutral Society by 2050’, *Reuters*, 26 October 2020, available at: <https://www.reuters.com/article/japan-politics-suga-idUSKBN27B0FB>; and J. McCurry, ‘South Korea Vows to Go Carbon Neutral by 2050 to Fight Climate Emergency’, *The Guardian*, 28 October 2020, available at: <https://www.theguardian.com/world/2020/oct/28/south-korea-vows-to-go-carbon-neutral-by-2050-to-fight-climate-emergency>.

¹⁴⁰This includes its former members; see K. Nicolaidis, ‘Brexit Negotiations: Linkages Need to Be Handled with Care’, *UK in a Changing Europe*, 4 March 2020, available at: <https://ukandeu.ac.uk/negotiations-linkages-need-to-be-handled-with-care/>.

embodiment of EU values and identity, which are worth addressing in the framework of the CoFoE, or hopefully future European citizen assemblies tackling this theme.

In summary, many foundational issues within the Green Deal still require further definition and implementation, including its conceptualisation of “sustainability” and related trade-offs, the formalisation of the ‘do no harm’ principle, and the contours of the self-proclaimed global leadership of the EU on GD-related issues. The CoFoE, and possible successors, offer an opportunity to involve European citizens in this process. This would benefit the substantive formulation of these concepts and their solutions, but it would, moreover, add to their ownership by the European peoples, adding to the likelihood of successful implementation of the GD.

4 | CONCLUSIONS

This article views both the Green Deal and the Conference on the Future of Europe as important examples of, and key tools for, a more polycentric Europe. A polycentric reimagining—and in many cases, simply facilitating polycentric practices and potential already in place—can result in a diverse set of benefits.¹⁴¹ In the context of the GD and the CoFoE, this polycentric approach points to the need to place specific emphasis on public participation in the sustainability policy and practices of the EU. By ensuring citizen empowerment through citizen assemblies such as the CoFoE, the success and legitimacy of the GD, as a central part of the EU's sustainability agenda, could be strongly amplified.

By shaping the CoFoE process in ways that encourage public participation, peaceful contestation and trust, the CoFoE would allow for shared problem-definition and problem-solving, which is essential in addressing trans-boundary problems with intergenerational implications such as climate change. Given the challenging road ahead for the GD, the CoFoE provides an important avenue for input, buy-in, and ownership by its most essential stakeholders: the European peoples.

By highlighting several procedural and substantive overlaps and synergies, several low-cost, high-gain, opportunities were presented that can make these processes mutually reinforcing. More generally, the CoFoE, and possible future iterations, should be central to the EU's democratic integration and its longevity. In considering their design and outcomes, these polycentric insights and emphases on problem-definition and problem-solving should be considered.

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¹⁴¹See van Zeben, above, n. 30, 28.