



Strengthening Democratic Governance
for Climate Transitions

D3.2 - EU LEVEL REPRESENTATIVE DEMOCRACY AND THE CLIMATE CHALLENGE

WP3: Representative Democratic Institutions

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This report studies the role of non-legislative processes in EU climate change policymaking from the first von der Leyen Commission through to September 2025. We analyse processes whereby the European Commission is given the mandate to amend basic legislation (through delegated and implementing acts), and processes in which the Council of the European Union acts as the sole institution able to amend Commission proposals (emergency procedure under TFEU Article 122). We study how these processes contribute to policymaking efficiency and any potential trade-offs for democracy. Our empirical analysis consists of a database of all non-legislative processes pertaining to climate policy since 2020 initiated by DG CLIMA, DG ENER, and other relevant DGs, complemented by 10 semi-structured interviews conducted with policymakers working at the European Commission, the European Parliament, and the permanent representations of EU member states. We find that non-legislative processes have been used more frequently over time, and are a rapid means to update or clarify policy: implementing act processes are completed quickly, with delegated act processes taking somewhat longer. However, non-legislative processes tend to sideline or only partially reflect certain key features of democratic governance systems: including representation, accountability, participation, and knowledge. Our results highlight an important tension in EU climate policymaking between the need for efficient policymaking and democratic decision-making—in other words, between rapid emissions reductions and policymaking procedures that are inclusive, fair and just. More research is required to study this tension, and to draw attention to it, particularly in a constrained political context in which climate action is a lower priority, especially following the results of the 2024 European elections.

4. Evidence of accomplishment

This report.

Preface

The overall goal of the RETOOL project is to advance our understanding of how to address the twin challenges of responding to the climate imperative while strengthening and reinvigorating democratic governance. The project has four overarching objectives: (i) To deepen our understanding of the relationship between democratic governance and the climate imperative by developing a novel analytical framework and creating new empirical underpinnings, including important new open-access datasets; (ii) To understand how a variety of democratic institutions across Europe are responding to the climate challenge, including learning lessons from history and studying new and innovative democratic practices; (iii) To contribute to reinvigorating democratic governance in Europe by developing and synthesising new knowledge and insights on climate democracy, and presenting them in a range of high-impact formats; and (iv) To serve as a bridge between academic research on climate democracy innovations and policymakers and practitioners, as well as civil society and the wider public. RETOOL brings together an international and interdisciplinary consortium, with partners from Western Europe (Ireland, UK, Belgium, Austria), Northern Europe (Finland), Eastern Europe (Estonia), and Southern Europe (Italy, Greece), combining expertise in political science, political sociology, deliberative democracy, environmental law, European studies, and public administration. The consortium includes a democracy practitioner foundation (DDF), and all partners are closely associated with practitioner and civil society networks and involved in hands-on activities. RETOOL will be undertaken by a mature, settled consortium that has significant experience of working together, with six of our nine partners core members of the EU-funded Jean Monnet Network GreenDeal-NET.

Consortium Partner	Acronym	Country	Logo
Dublin City University	DCU	IR	
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Università degli studi di Trento	UNITN	IT	
Universiteit Gent	UGent	BE	
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University of Eastern Finland	UEF	FI	
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Executive Summary

This report investigates the implications of the increased use of non-legislative processes in EU climate governance for policymaking efficiency and democracy. Our analysis centres on three non-legislative processes, each with distinct inter-institutional balances of power. We study implementing acts, wherein the European Commission publishes implementation guidelines for existing legislation under the oversight of member state experts in the comitology system; delegated acts, in which the Commission makes technical amendments to existing legislation with the Council of the European Union and European Parliament given a 2-month scrutiny period; and the emergency mechanism found under Article 122 of the TFEU, in which European Commission makes a proposal and the Council of the European Union acts as sole legislator in emergency situations. We ask: (1) how have EU non-legislative acts contributed to climate policymaking efficiency since the first von der Leyen Commission? And (2) how has this impacted the democratic nature of EU climate policy development?

To answer these questions, we analyse official registered data of the non-legislative processes, complemented by interviews. First, we created a database of climate policy-related delegated and implementing act processes between January 2020 and September 2025, drawing on information provided by the Commission's Register of delegated and implementing acts and the Commission's "have your say" portal. In this database, we compiled information on the number of acts, the length of the policy process, the political actors involved, and opportunities for public participation. Second, we supplemented this data with 10 semi-structured interviews conducted with senior officials working at the European Commission, the European Parliament, and the permanent representations of EU member states. The interviews provide in-depth policymaker perspectives on understandings of the efficiency of non-legislative processes as well as their democratic strengths and weaknesses. All 10 interviewees point out that the Council emergency mechanism under Article 122 has never been used for climate policy. As such, results for this non-legislative procedure are anecdotal in nature due to its non-use in the policy field under investigation.

Data was analysed by applying an analytical framework that assesses policymaking efficiency with core tenets of democracy. We operationalise efficiency to mean the number of policies created by each process measured alongside the speed of each process. We then analyse the results by assessing four key features of democratic governance systems in the processes (as per the RETOOL analytical framework): accountability, representation, participation and knowledge.

We find that delegated and implementing acts are a relatively efficient means of making technical amendments to the core legislation of the EU's climate programme. The number of these non-legislative processes used in climate governance has been on the rise through successive Commissions and, according to interview sources, may continue to increase in use in the second von der Leyen Commission as the Fit for 55 package is being implemented. Implementing acts are adopted quickly: 56% of implementing acts followed a short-term process concluding between 1 and 10 days while the remaining implementing acts took an average of 9.7 months to be completed. Climate-related delegated acts took longer to complete, with an average process completion time of 15 months. Interviewees corroborate the finding that implementing acts can move rapidly through the comitology system while delegated acts, where the Parliament and Council both have scrutiny authority, tend to take longer. Interview sources also highlighted the rather urgent nature of many delegated and implementing decisions, with stakeholders in various sectors requiring technical specificities to be worked out. Others indicated that in a short five-year political cycle, technical details cannot be delivered through inter-institutional negotiations but require expedited processes with fewer political actors.

Our analysis shows that while delegated and implementing acts are an efficient motor of EU climate policy development, they also contain deficiencies in terms of accountability, representation, knowledge, and participation.

In terms of accountability, removing the ability of Parliament to debate and make amendments to regulatory output removes a layer of transparency in decision-making, since the Parliament aims for openness in decision-

making. Parliament officials highlight the limited transparency involved in implementing acts (with no involvement of the Parliament) and to a lesser extent delegated acts (with the Parliament granted only the power to object).

In terms of representation, removing the Parliament from the decision-making process eliminates an opportunity for pluralistic debate. However, no interviewees advocated for greater involvement for Parliament in delegated and implementing act processes, unless there are political rather than technical implications involved in the process.

In terms of knowledge, Commission officials indicated in interviews that delegated acts are sometimes accompanied by an impact assessment and that expert groups convened during delegated processes and the comitology system for implementing processes are an effective means of reinforcing evidence-based policymaking. However, interviewees acknowledged that the process of stakeholder engagement and data collection during non-legislative negotiations is not as robust as the impact assessments and stakeholder consultations which accompany normal policymaking procedures, such as the Ordinary Legislative Procedure.

Finally, on participation, data reveals that there are some avenues for public participation in delegated and implementing processes. The most inclusive is the online 'have your say' portal. However, these means of participation are often not well known to the public. Furthermore, due to misunderstandings of the technical nature of delegated and implementing acts, public feedback is often deemed irrelevant to the process at hand and is therefore discarded by the Commission.

Finally, on the emergency mechanism under Article 122 TFEU, which is a specific procedure for adopting emergency measures in solidarity with member states, we find that there is very limited democratic oversight, including across the four pillars of democracy we analyse in this report. However, interviewees argued that the Council emergency mechanism under Article 122 TFEU should only be used in emergency situations and that it is not a mechanism for developing legislation, which is the role for the Ordinary Legislative Procedure (OLP). Several interviewees indicated that it seems unlikely that this mechanism will be used in climate policy due to the perceived non-urgent nature of the crisis. However, the mechanism has been used in related policy fields, such as in response to the energy crisis, which has knock-on effects on climate policy when taking a broad understanding of the policy field.

This report emphasises the challenge of developing processes for updating policies that are efficient on the one hand and democratically robust on the other. While non-legislative processes in the EU are an efficient motor of regulatory updating and implementation, they contain democratic deficiencies in terms of accountability, representation, knowledge, and participation. Research must therefore continue to reflect on how the EU can reinforce its commitment to transparent, representative, and knowledge-based policymaking without delaying regulation towards ambitious climate action. We further argue that research is required on making this tension between efficient policymaking and democratic policymaking explicit, especially in a political context in which the Parliament is a less ambitious climate actor following the 2024 European elections.

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1. Introduction

EU climate policy development has often been studied through analysis of political action plans like the European Green Deal (EGD) (Buzogány, et al., 2025; Domorenok & Graziano, 2023; Dupont & Torney, 2021) and climate policy packages that pass through the Ordinary Legislative Procedure (OLP), such as the 2020 climate and energy policy Package, the 2030 Climate and Energy Framework, and the Fit-for-55 Package (Gheuens, 2025; Dominioni & Vesa, 2025; Oberthür & Kulovesi, 2025; Rosamond & Dupont, 2025).

However, many climate acts adopted by the EU do not pass through the OLP, but are rather adopted via non-legislative processes (Brandsma & Blom-Hansen, 2017). The most prominent of these processes, in which the European Commission (hereafter: Commission) plays the lead role, are delegated and implementing acts (Brandsma & Blom-Hansen, 2016; 2017). Under these non-legislative, Commission-led decision-making mechanisms, the Council of the European Union (hereafter: the Council) and the European Parliament (hereafter: the Parliament) play only limited roles unlike under the OLP, which is a process of co-legislation with the Council and Parliament. The purpose of implementing and delegated acts is to make minor, technical amendments to Regulations, Directives and Decisions (in the case of delegated acts) or provide guidance on the uniform implementation of legislation (in the case of implementing acts) (Bast, 2015; Craig, 2011; Englisch, 2021). Research has already shown that from the late 1990s until 2015, environment and climate policy followed the general trends of other policy fields, with an increasing number of decisions taken through delegated and implementing procedures (Burns & Tobin, 2020).

A less well known non-legislative mechanism by which EU policy is made is the Council emergency procedure, as outlined in the so-called “solidarity clause” in article 122 of the Treaty on the Functioning of the European Union (TFEU). This mechanism, to be applied in emergency situations only, such as responding to the economic threats of COVID-19 and the energy crisis in the wake of Russia’s invasion of Ukraine, gives the Council power to adopt Commission proposals without the involvement of the Parliament.

While delegated acts, implementing acts, and the Council emergency procedure can allow for policymaking efficiency and may improve uniform policy implementation, there may be implications for democracy. The democratic challenges of the non-legislative procedures may be particularly present in the green transition, a highly turbulent (Dobbs et al., 2021; Dupont & Torney, 2021; von Homeyer et al., 2025) and politicised policy domain (Bocquillon, 2024; Dupont et al., 2024a; Dupont et al., 2024b). Questions around these procedures’ democratic quality arise in scholarship because they are adopted with limited transparency and in a process that provides fewer opportunities for citizen participation and input to the decision-making procedure than normal policymaking processes such as the OLP.

One example of a highly salient and controversial non-legislative process is the adoption of acts associated with the EU’s Taxonomy Regulation (Regulation EU 2020/852), intended to classify green investments. Under the Taxonomy Regulation, the co-deciding institutions delegated the power to the European Commission to establish criteria and a list of financial and economic activities that would be regarded as environmentally sustainable. One of the delegated acts adopted to list these activities in July 2022, called the Complementary Climate Delegated Act (Delegated Regulation 2022/1214), faced some controversy. A follow-up act was adopted with natural gas and nuclear energy both listed as ‘sustainable’ investments under certain conditions. Unusually, the process leading to the adoption of this particular act was politicised and mediatised (see e.g. Simon & Taylor, 2022; Esposto & Nupieri, 2025; Fontan, 2025), and it highlighted the limited opportunities for Parliament engagement in such non-legislative processes (Burns & Tobin, 2020; Tettamanzi et al., 2024). This particular case also highlights the potential far-reaching effects of non-legislative measures for both climate action and democratic governance. As of yet, there has been limited research on the climate and democratic impacts of the rise in the use of these procedures, and this report advances our understanding of their use and their usefulness in the context of the need to strengthen democracy and achieve climate action.

The purpose of this report is to study the evolution of non-legislative EU acts in the field of climate policy and reflect on what their use means for EU climate democracy. Our time frame of analysis is from the start of the first von der Leyen Commission until September 2025, covering the entirety of Ursula von der Leyen's first term as Commission President and several months of her second term. While the Commission President has remained the same, the priorities of the two Commissions have changed considerably. The first had the EGD as a flagship priority and saw the passage of key climate legislation through the OLP, including the European Climate Law and the Fit-for-55 Package. The second von der Leyen Commission, by contrast, no longer has the EGD as one of its priorities but rather places greater emphasis on economic competitiveness and defence policy, while the EGD and climate policy have been entrenched within the priorities "A new plan for Europe's sustainable prosperity and competitiveness" and "Sustaining our quality of life: Food security, water, and nature." The focus on climate policy has further shifted from policy development under the EGD umbrella during the von der Leyen I Commission to a strong focus on the implementation of these policies under the von der Leyen II Commission (Bocquillon, 2024). With the notable exception of the ongoing policy process to adopt a climate target to 2040 (and related implementing legislation), the focus on implementation may lead to a continued frequent use of implementing and delegated acts in this second von der Leyen Commission term, compared to OLP procedures advancing new climate policies.

The central aim of this report is to answer the following questions:

- (1) How have EU non-legislative acts contributed to climate policymaking efficiency since the first von der Leyen Commission and;
- (2) How has this impacted the democratic nature of EU climate policy development?

To answer the first question, we created and analysed a database of climate-related non-legislative acts adopted between 2020 and 2025. We counted the total number of climate-related acts and assessed the frequency of their use and the length of time it took to reach agreement. To answer the second question, we assessed the extent of input from stakeholders into the processes and sought further insight from interviews with policymakers. Through the interviews with officials involved in policymaking at the Commission, Parliament and Council, we gained knowledge pertaining to the perceived usefulness and democratic nature of the non-legislative processes (particularly concerning accountability, representation, participation, and knowledge).

This report proceeds as follows. First, we present our review of the literature on the use of delegated acts, implementing acts, and the Council's emergency mechanism. Here, we map out the differences between these non-legislative acts, and provide an overview of how scholars have assessed their impact on both the democratic nature of EU policymaking and their role in EU climate policy development. Second, we outline our analytical framework that guides the analysis of our empirical results. We draw on the RETOOL analytical framework (Brawley-Chesworth et al., 2024) to lay out the core features of EU democracy that we focus on: accountability, representation, evidence/knowledge, and participation, paying particular attention to their relationship with the need for rapid and just decarbonisation. Third, we present our methodological approach. Fourth, we present the results of our analysis. Finally, we discuss our results in the context of strengthening democracy for the climate transition in the EU.

2. State of the art: what is the role of non-legislative acts in EU decision-making?

Since the adoption of the EGD in 2019 (European Commission, 2019), the EU has faced a series of overlapping and interlocking crises that have affected decision-making processes (Zeitlin et al., 2019; Rosamond, 2023). The COVID-19 pandemic, Russia's full-scale invasion of Ukraine, and related energy crises, have led to a perceived need for an increased use of non-legislative and emergency decision-making procedures in the EU with the aim of ensuring swift and efficient policy responses (Dupont et al. 2025; Kuzemko et al., 2022; Rosamond & Dupont, 2025).

While the EGD and its climate policy measures have been seen as resilient to the wider crisis context (Dupont et al., 2020; Rosamond, 2023; von Homeyer et al, 2025), environmental measures have historically faced backlash during times of crisis (Burns & Tobin, 2020). Politically, environmental and climate policies have faced increasing challenges (Dobbs et al., 2021). Protest movements like the farmers protests of 2022-2023 have criticised the EGD, and at the same time, increasing political success by far-right politicians elected in both the European Parliament and national legislatures could indicate that some citizens feel disenfranchised from Europe's green transition (Boquillon, 2024). At the same time, natural disasters continue to increase in frequency and intensity across the continent (European Environment Agency, 2025), while scientists warn that urgent decarbonisation is required to limit global temperature increase to below two degrees Celsius (Kuebler, 2025).

Scholarship on EU decision-making is mainly focused on the OLP, involving the Commission as the initiator of policy proposals, and the Parliament and Council as co-legislators. This process leads to the adoption of the EU legislation, including Regulations, Directives, Decisions. While this is the main means by which new climate-related legislation is proposed, negotiated and adopted in the EU, in this report, we focus on studying the non-legislative processes that occur outside, but in connection with, the OLP.

The current classification of EU non-legislative acts was laid down in the Lisbon Treaty, which entered into force in 2009, as a means for the EU to advance policies in an efficient manner. The objective of these acts is to ensure that policies are implemented uniformly across the EU, and to make small adjustments to technical and administrative aspects of legislative measures adopted under the OLP to ensure ease of uniform implementation, without the need to re-open and revise the underlying legislation. These are processes that adjust limited aspects of the adopted legislation for specific purposes. However, in practice their use has increased over time, and questions have been raised by civil society and in the academic literature about their scope and democratic quality.

In this section, we provide an overview of each of the three non-legislative decision-making procedures that we study in this report: implementing acts, delegated acts, and the Council's emergency mechanism. We introduce each of these procedures in turn, before reflecting on the main themes that emerge from research on non-legislative procedures in the EU. We focus on insights from scholarship on the democratic quality of these procedures, while reflecting their success or use in climate-policy contexts.

2.1 Implementing acts

Article 291 of the Treaty on the Functioning of the European Union (TFEU) lays down the purpose of implementing acts and the procedure for their adoption as follows:

Article 291

1. Member States shall adopt all measures of national law necessary to implement legally binding Union acts.

2. Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.

3. For the purposes of paragraph 2, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall lay down in advance the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

4. The word "implementing" shall be inserted in the title of implementing acts.

In essence, an implementing act aims to ensure that EU laws are applied and implemented uniformly across all member states. The decision to grant implementing powers to the Commission, through implementing acts, must be laid down by the Parliament and Council during the OLP.

The Commission is responsible for drafting and adopting implementing acts, but there is oversight by member states in this process. Once the Commission has drafted an implementing act, it is submitted to a committee in the comitology system, allowing experts from member states to review the draft. Comitology is a system of hundreds of issue-specific committees composed of representatives of each member state. These representatives usually have expertise in the specific topic of the committee. The relevant committee reviews the Commission's proposal for an implementing act, with the aim of making sure that national interests are taken into account in their adoption.

The process also may include a period of public consultation, in which other stakeholders and citizens can provide feedback on the draft act. In practice, there is limited public feedback on implementing acts, and public consultation is not a feature of many acts (see section 4 below). Furthermore, emergency contexts may allow the Commission to bypass the public feedback process entirely.

Once the draft has been reviewed by the committee, the committee votes to reject or approve the draft. If it is approved, the Commission formally adopts the implementing act. Both the act and a summary of the review process are published. The overall process usually can be quite rapid, and often takes just several months, but emergency situations can shorten the procedure further.

Implementing acts are seen as a preferred option for the Council, which retains oversight via the expert committees. Given the speed at which they can be adopted, implementing acts are seen as particularly efficient means for updating and refining the means for implementing legislation (Fernandez Pasarin et al. 2021; Campo 2021).

2.2 Delegated acts

Article 290 of the TFEU lays down the purpose of delegated acts and the procedure for their adoption as follows:

Article 290

1. A legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

The objectives, content, scope and duration of the delegation of power shall be explicitly defined in the legislative acts. The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.

2. Legislative acts shall explicitly lay down the conditions to which the delegation is subject; these conditions may be as follows:

(a) the European Parliament or the Council may decide to revoke the delegation;

(b) the delegated act may enter into force only if no objection has been expressed by the European Parliament or the Council within a period set by the legislative act.

For the purposes of (a) and (b), the European Parliament shall act by a majority of its component members, and the Council by a qualified majority.

3. The adjective "delegated" shall be inserted in the title of delegated acts.

As highlighted here, delegated acts differ from implementing acts in their focus on supplementing or amending certain 'non-essential elements' of an act. This means that delegated acts help in refining or slightly adjusting acts without the need to re-open the original act for revision under a new Ordinary Legislative Procedure. The delegated acts are therefore designed to keep decision-making efficient and ensure that decisions are not delayed, when the required amendments are deemed non-essential (meaning they do not change the key objectives or key mechanisms of the original act).

As with the implementing acts, the decision to grant the Commission the power to adopt delegated acts lies with the Parliament and the Council during the OLP.

The procedure for adopting a delegated act differs from that of the adoption of an implementing act. The Commission is again in charge of drafting a delegated act, usually also consulting expert groups, which consist of member state representatives and, in many cases, other stakeholders (e.g. business representatives, NGOs, academics). The Commission can also open a four-week public consultation before finalising the delegated act. Once the Commission has adopted the act, it submits the act to the Parliament and to the Council for scrutiny – this is an extra layer of scrutiny that implementing acts do not pass through. The Parliament and Council then have two months, extendable to four months, to review the act and decide whether or not to object to it. If neither institution objects to the act, the delegated act then enters into force. If one of the institutions objects, then the delegated act does not enter into force.

Given the role played by the Parliament in the scrutiny of delegated acts, it tends to prefer delegated acts over implementing acts in the negotiation of secondary legislation (Campo, 2021). Although implementing acts and delegated acts are designed with different purposes in mind, in practice the choice of type of powers to assign to the Commission may be subject to inter-institutional bargaining in the process of adopting acts under the OLP (Tanasescu, 2009).

2.3 Emergency mechanism

Article 122 of the TFEU lays down the purpose of the emergency mechanism as follows:

Article 122 (ex Article 100 TEC)

1. Without prejudice to any other procedures provided for in the Treaties, the Council, on a proposal from the Commission, may decide, in a spirit of solidarity between Member States, upon the measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy.

2. Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the

Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

The emergency mechanism is an entirely separate procedure to the implementing and delegated acts, as it is not intended as a measure to aid in the implementation of, or to adapt some aspects of, a previously adopted legislative act. Instead, the emergency mechanism is a non-legislative procedure that allows for new measures to be adopted for the purposes of responding to emergency situations. It is a mechanism that bypasses the OLP, and therefore is only intended to be used in situations where urgent action is required.

The emergency measures adopted by the Council are to assist with serious economic challenges, including energy issues, for example, and can include financial assistance to member states in response to disasters. A measure is adopted by the Council under qualified majority voting rules, on a proposal from the Commission. Unlike implementing and delegated acts, there is no opportunity for public consultation. While the Parliament may be consulted in an informal capacity, it has no formal role in the adoption of emergency measures. Once a measure is adopted, the Parliament is notified and informed. It quickly enters into force as a regulation or a decision of the Council.

The emergency mechanism has been used only a few times. It was used in 2016 in response to the migration crisis to adopt Council Regulation 2016/369 on the provision of emergency support within the EU. It was used again in 2020 during the COVID-19 pandemic to activate emergency support, to adopt the SURE instrument designed to mitigate unemployment effects of the pandemic (Council Regulation 2020/672 on the establishment of a European instrument for temporary support to mitigate unemployment risks in an emergency, SURE), and to establish the Next Generation EU financial mechanism (Council Regulation 2020/2094 establishing an EU Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis). It was also used in 2022 in response to the energy crisis, adopting several Council Regulations, including Council Regulation 2022/1369 on coordinated demand-reduction measures for gas, a Regulation that is no longer in effect. Finally, it was used in 2025 to adopt Council Regulation (EU) 2025/1106 establishing the Security Action for Europe (SAFE) financial instrument through the reinforcement of the European Defence Industry Instrument - a measure responding to the ongoing security threats due especially to Russia's war on Ukraine.

Although the short-term measures adopted in response to the energy crisis could be seen as related to climate policy, none of the emergency measures adopted by the Council are climate policy measures in and of themselves. Even the measures adopted in response to the energy crisis were short-lived and temporary with no connection made to the climate crisis. As a result, these emergency measures do not feature in our empirical results. However, we do provide some insights from interviewees and from the literature on these processes later in the report.

2.4 Democratic quality of non-legislative processes

The non-legislative processes that are the focus of this report serve specific purposes to ensure the efficient and uniform implementation of EU legislation. They aim to avoid unnecessary delays in negotiations, and can therefore be regarded as fulfilling objectives of good governance in general (Mendes, 2015). Although they were laid down officially in the Lisbon Treaty, they are not new phenomena, with a long history of consultative committees in place in the EU prior to the agreement on the Lisbon Treaty (Christiansen & Dobbels, 2013).

However, they raise questions with regard to the democratic robustness of these non-legislative measures, given the increase in their use over time, and the means by which they are adopted (Gallinella & Christiansen, 2024). These criticisms can be summarised as covering two main themes:

1. Non-legislative acts may be adopted on topics or issues that go beyond the intentional technical scope (Burns & Tobin, 2020; Gallinella & Christiansen, 2024);

2. Non-legislative acts may challenge democratic legitimacy as they are adopted without the usual transparent checks associated with democratic policymaking (Gallinella & Christiansen, 2024; EPRS, 2023).

The first criticism is levelled against non-legislative measures for their scope. Although most non-legislative procedures follow the scope and limits assigned to them, this is sometimes a complicated and challenging exercise. The example of the delegated act associated with the EU's Green Taxonomy Regulation (see above) illustrates this challenge well: the delegated act listing gas and nuclear as sustainable investments proved highly controversial and faced considerable political and media questions. This example suggests that non-legislative acts may be highly political and subject to the political context of their time. This may also offer the opportunity for altering the original ambition and scope of policy (Burns & Tobin, 2020).

The second criticism highlights the limited opportunities for input and scrutiny from the Parliament, and for the limited opportunities for public feedback, questions that align with broader understandings of representation, participation and deliberation in decision-making for legitimate governance (Brawley-Chesworth et al., 2024). Furthermore, emergency measures adopted by the Council face the criticisms laid at the door of any emergency mechanism: that they are adopted without democratic scrutiny, and lead to executive aggrandizement that is difficult to roll back once emergencies have subsided (Dupont et al., 2025; EPRS, 2023). Together, these two criticisms may lead to questions about whether or not such non-legislative procedures actually contribute to policy effectiveness and good governance on policy outputs, as they were intended to (Mendes, 2015).

Given the increased complexity and density of EU climate policy and its spillovers into other policy domains over time (Dupont et al., 2024a), combined with the turbulent (geo)political context of the mid-2020s (von Homeyer et al. 2025), we expect to find evidence of an increase in the use of non-legislative measures in our own analysis.

3. Analytical approach

Here we present our conceptual, analytical and methodological approaches.

3.1 Conceptual and analytical framework

Our report draws on the RETOOL analytical framework (Brawley-Chesworth et al. 2024) to structure our analysis and reflections. Non-legislative measures are intended to promote policy efficiency, by updating technical aspects of legislative measures as necessary without opening a new OLP, and uniform implementation, which supports the climate transition in Europe.

When understanding policy efficiency in the context of this study, we study the frequency of the adoption of climate-related non-legislative measures and the speed at which they are adopted (Steinebach & Knill, 2016; Burns and Tobin, 2020). Speed pertains to how quickly an act passes from proposal through adoption to publication.

To study the democratic quality of the climate-related non-legislative measures, we explore their interaction with four key features of democracy, building on the RETOOL analytical framework (Brawley-Chesworth et al. 2024): *representation*, *accountability*, *knowledge*, and *participation*.

When assessing representation in the non-legislative procedures, we consider in particular the roles played by the directly elected European Parliament, and by the representatives of national governments in the Council. Representation is about ensuring the wishes of the electorate (EU citizens) are reflected in the policymaking process (Lidskog & Elander, 2007). This includes opportunities for the input of the diverse political views which are held by the electorate.

Accountability can be understood as elected officials fulfilling their roles and responsibilities as entrusted to them by the electorate (Grant & Keohane, 2005). Accountability mechanisms in decision-making procedures rely on a degree of transparency by decision-makers. It is impossible to assess the logic and legitimacy of a decision if the means by which it was reached is unknown. The EU has previously faced criticisms for 'acting behind closed doors', especially in the intergovernmental fora of the Council and the European Council (Puetter, 2014; Novak & Hillebradt, 2020). Given the role and objectives of non-legislative processes, we cannot expect the same degree of accountability and transparency as with the OLP, but we will be able to assess the extent to which information on the procedures are in the public domain during their development.

The role of knowledge in policy-making is particularly important for the democratic quality of climate-related measures, including whether a decision-making process draws on research, science, and the consultation of expert knowledge (Dupont et al., 2024b). Whether or not knowledge feeds into the non-legislative climate policy development can contribute to the democratic nature of such procedures.

Finally, participation refers to the ability of citizens, stakeholders and civil society to engage with the policymaking process. While there are several mechanisms that facilitate this process in the EU, such as citizens' initiatives, public consultations for policymaking under OLP, Strategic Dialogues, and EU Citizens' panels (Oberthür et al., 2025), the degree to which citizens, stakeholders and civil society can provide input into non-legislative policy mechanisms remains underexplored.

Taken together, our analytical framework allows us to highlight the opportunities and tensions for non-legislative acts to strengthen or weaken both climate transitions and democracy in the EU.

3.2 Methodological approach

We use a blended methodological approach to study climate-related non-legislative procedures in the EU, adopted between 2020 and 2025 under the von der Leyen Commission.

Following the literature review (see above), we, first, developed a dataset of climate-related implementing and delegated acts. To build this dataset, we drew on publicly available data in the EU Register of Delegated and Implementing Acts, collecting information on non-legislative measures and the speed at which they are

adopted. We also gathered information from the Commission website related to different aspects of the process (e.g. public feedback). The dataset therefore reports data on the acts under the following categories: status of act (ongoing, published, cancelled); the legislative basis of the non-legislative act; timeline of act (from date proposed to date published); whether there was a public feedback process (including length, actors involved); and, in the case of delegated acts, whether Commission expert groups were consulted.

For this report, we identified relevant material by downloading implementing and delegated acts led by either DG CLIMA or DG ENER. We then supplemented this list by searching the full titles and the titles of the underlying EU legislation for a number of keywords, including *climate*, *renewable*, *CO₂*, and *ecodesign*. Next, we screened the delegated and implementing acts we had found and excluded those that were adopted before the first von der Leyen Commission took office in December 2019. At the end of this process, we had identified 133 implementing acts and 74 delegated acts that fit our criteria, which we then included in our analysis.

Second, we gathered information on the emergency procedures adopted in the Council under Article 122. Information on these procedures is not registered in the same way in the EU as the registered delegated and implementing acts. We searched for a list of the adopted and proposed measures, relying particularly on studies carried out by the European Parliament Research Services, information from the Official Journal of the European Union (EUR-LEX) and a search of Press Releases on the Council website to gather information on these procedures. Since the adopted procedures were not climate policy-related, we did not include them in our empirical analysis or dataset. These procedures were reported in section 2.3 above, and we later reflect on responses from interviewees on their use, as relevant.

Third, we took our analysis a step further by carrying out interviews with EU policymakers. The perspectives of officials working at each of the institutions provided us with important insights into how policy practitioners view the use, efficiency and democratic quality of non-legislative acts.

We conducted interviews with policymakers working in each of the EU's institutions involved in legislative and (to some degree) non-legislative processes: the Commission, the Council and the Parliament. Three interviewees were senior officials working at the Commission, five were policy assistants to Members of the Parliament, and two were member state attachés who sit in the Council working groups. For a list of interview participants, see Table A3 in the appendix. Interviews were transcribed using Whisper AI (a program developed by the Flemish government and licenced to all Flemish Universities) and coded using the software MAXQDA. We conducted a thematic analysis of interview transcripts. The themes, namely the frequency and speed of the adoption of non-legislative measures, and representation, participation, accountability, and use of knowledge in the procedures, were identified in this coding effort through a process of induction, deduction and abduction. We developed our understanding of the elements of each theme from the literature, as outlined in the literature review and presentation of the analytical framework. Next elements of each theme were added to the interview coding scheme inductively. Finally, we worked abductively, going between the literature and dataset to develop further understanding of each theme. For an overview of the themes and their elements coded, see *Table 1*.

Table 1. Thematic coding scheme of interview transcripts.

Theme	Speed	Frequency	Accountability	Representation	Participation	Knowledge
Elements of Theme	Length of process	Frequency of use	Transparency of process	Degree of involvement of institutional stakeholders	Ability of non-governmental actors and citizens to participate in process	Output based on knowledge and research
	Delays or setbacks	Increases or decreases over time	Institutions fulfilling or failing to fulfil prescribed roles in process	Opportunities for political debate	Mechanisms for citizen /stakeholder involvement	Impact assessments
	Responding to urgency	Changing political priorities and effects on frequency of employment of process	Political actors disrupting process	Political pluralism expressed in process	Salience of process in politics/media	Stakeholder consultations and Research services involved

4. Results

4.1 Climate-related non-legislative procedures

In this section, we present the results of the analysis. We describe overall trends in the frequency of the use of implementing and delegated acts. We do not include the Council emergency mechanism under Article 122 in our analysis, as it was found not to have been used for climate policymaking (see above for an outline of emergency mechanisms adopted). In a first step in the analysis, we examine climate-related non-legislative acts in our dataset, studying aspects of speed and participation, including participation of elected representatives, knowledge actors, citizens, and civil society. In a second step, we draw on interviews to further study the relationship with pillars of democracy, as outlined in our analytical framework.

4.1.1 Implementing Acts

There was a long delay between the entry into force of the Lisbon Treaty in December 2009 and the use of implementing acts by the Commission (as reported in the EU Register of Delegated and Implementing Acts). Implementing acts were very rare before 2017, when their use began to increase (Figure 1). The Juncker Commission adopted approximately 300 implementing acts. In contrast, during the first von der Leyen Commission more than 3,400 implementing acts were adopted, with a total of 4,099 between 2010 and mid-2025. This means that fully 93% of the implementing acts listed in the register were adopted under the two von der Leyen Commissions. The Commission's Directorate-General (DG) for Climate Action (DG CLIMA) and DG Energy (DG ENER) show a less pronounced increase in the use of implementing acts over time, although their use was still high (Figure 2). DG CLIMA's use of implementing acts increased approximately fourfold between the Juncker and von der Leyen I Commission (from 12 to 50 acts), while DG ENER's use increased about threefold (from 15 to 45). In total, 85% of DG CLIMA's and 79% of DG ENER's implementing acts have been adopted since 2020.

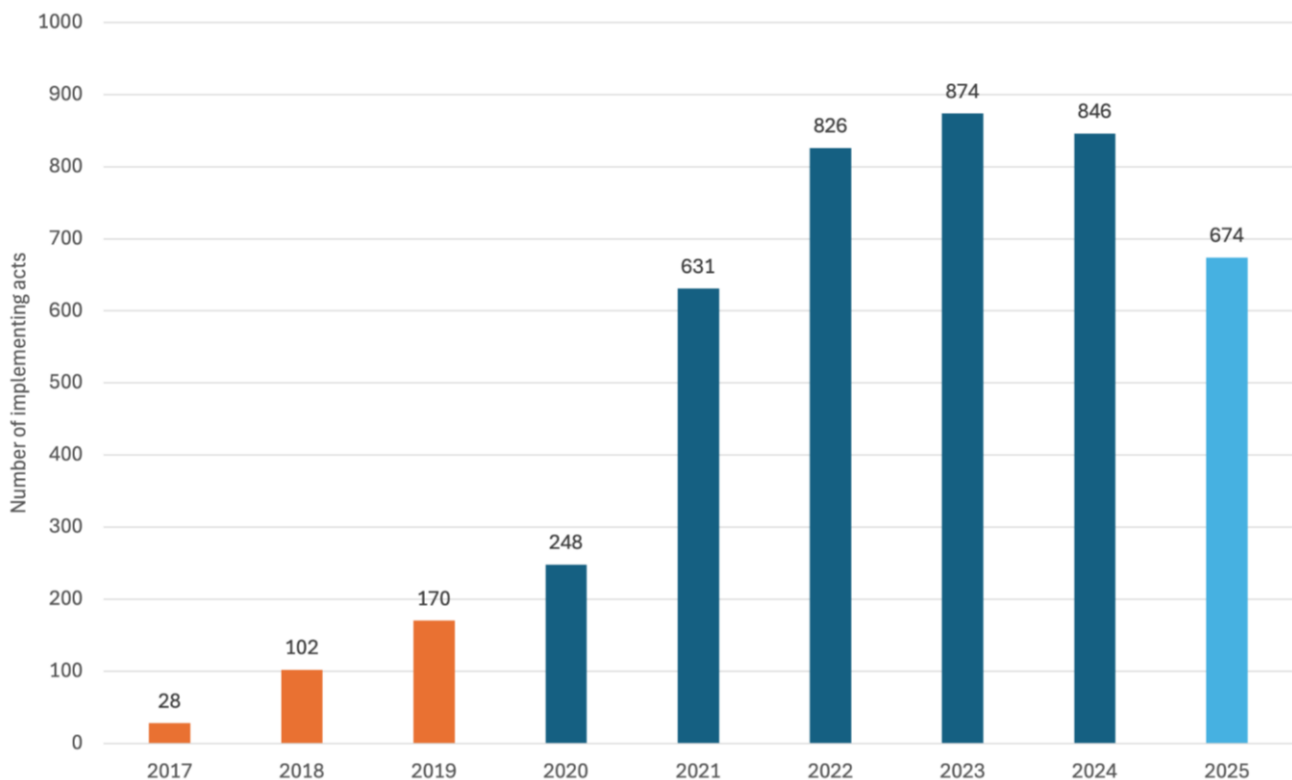


Figure 1. Adoption of implementing acts (all DGs and other services) between 2017 and 2025.

Orange = Juncker Commission; Dark Blue = von der Leyen I Commission; Light Blue = von der Leyen II Commission.

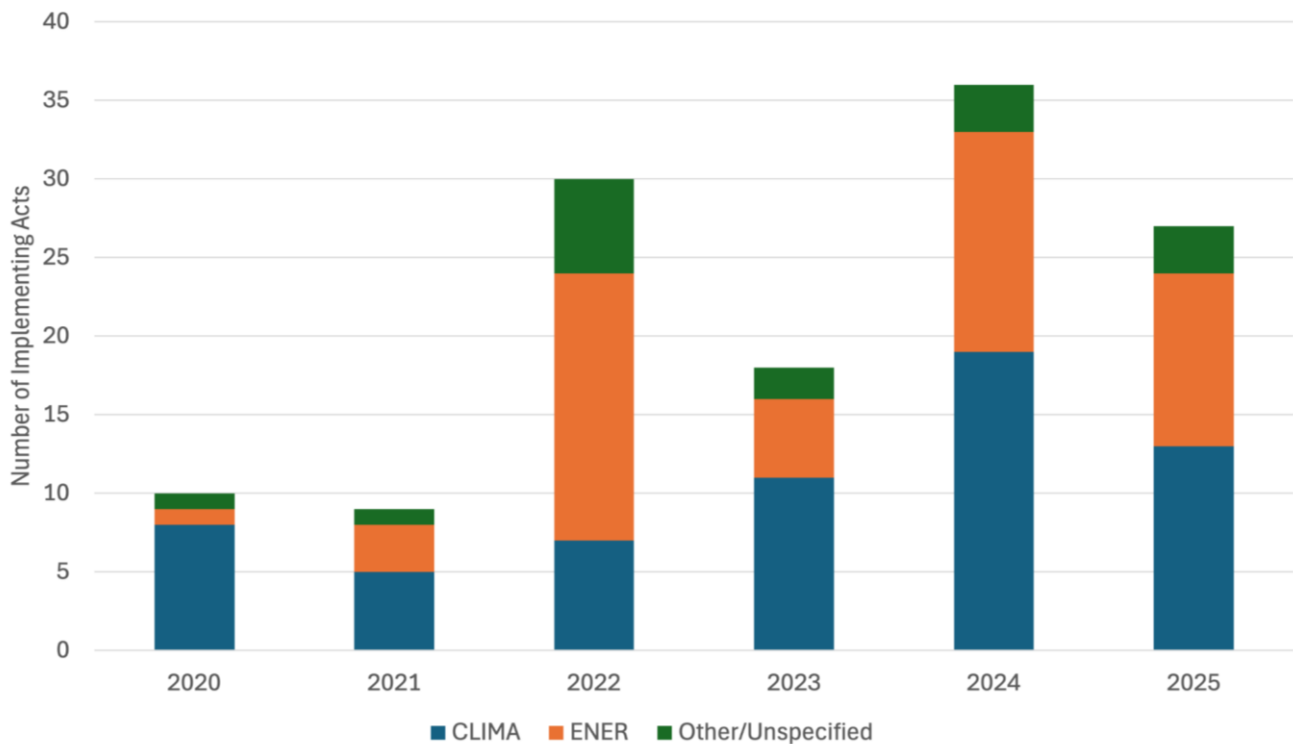


Figure 2. Implementing acts related to climate change adopted between 2020 and 2025.

Includes acts adopted up to 19 September 2025.

The authority to adopt implementing acts derives from a wide variety of underlying EU legislation. Twenty-seven pieces of legislation underpin the acts examined in this report (Table 2 and Table A1 in Appendix A). Only three pieces of legislation account for 60% of all implementing act authorizations: the RED II Directive on renewable energy, the Emissions Trading System (ETS) Directive, and the Fluorinated Gases Regulation. However, these acts differ considerably. For example, implementing acts under the RED II Directive largely address the narrow issue of certifying voluntary certification schemes for biofuels and biomass. In contrast, implementing acts under the ETS Directive focus on revising a range of detailed rules related to the carbon market itself, which has undergone numerous reforms since its adoption in 2003.

Table 2. Most frequent underlying legislation for climate-related EU implementing acts (2020-2025).

For a full list see Appendix A (Table A1).

Underlying Legislation	Frequency	% of total
REDII Directive	39	29%
ETS Directive	25	19%
F-Gas Regulation	16	12%
Ecodesign Directive	8	6%
Car CO2 Regulation	7	5%
Effort Sharing Regulation	4	3%
GHG Monitoring Mechanism Regulation	4	3%
Governance Regulation	4	3%
HDV CO2 Regulation	4	3%
Heavy-Duty Vehicles Emissions Regulation	3	2%
FuelEU Maritime Regulation	3	2%

Our analysis identified two distinct types of policy processes used to adopt climate-related implementing acts (excluding the three acts that were cancelled before adoption). The first type is made up of 74 acts (56% of the total) that were adopted using short-term processes that did not include a planned start date in the implementing act register. These processes had a short period between adoption by the Commission and publication, typically between one and ten days. They also did not include any public feedback. These short-term processes were used in the adoption of 90% of the implementing acts authorized under the RED II Directive.

The second type of policy process, seen in the 59 remaining implementing acts, involved longer time periods between when the Commission announced its plan to adopt an implementing act and when it was published. Measured in months, these processes lasted an average of 9.7 months, ranging from one month (for the GHG Monitoring Mechanism Regulation and others) to 63 months (for one of the Ecodesign Directive implementing acts). Several of these longer processes also include a longer period between adoption and publication. In some cases, such as the Regulation on Ecodesign requirements for smartphones and other devices, this extended timeframe may be due to multiple stages of public feedback. In that case, feedback was sought on an initial roadmap, during a public consultation similar to those carried out on EU legislation, and on the draft act itself. This lengthy process likely required additional time for the Commission to consider comments before final publication.

There is a clear relationship between the type of process and whether public participation occurs. None of the shorter processes included a public feedback session, while 73% of the longer processes did (the overall figure was 31%). Within these public feedback processes, 41% of the responses came from business associations or companies. Around 13% came from civil society (NGOs, consumer organizations, trade unions, and academic institutions). Two percent came from other public authorities, and 41% came from EU (40%) and non-EU (1%) citizens. There was also a strong concentration of feedback in a small number of cases. This is most evident in the 2023 Commission Regulation on Ecodesign requirements for phones, which received 752 comments—mostly from EU citizens—accounting for nearly 40% of all public feedback comments across the 133 implementing acts examined.

4.1.2 Delegated Acts

Since the Lisbon Treaty entered into force in December 2009, the Commission's use of delegated acts has expanded rapidly (see Figure 3). Looking at the 31 DGs and other services (e.g., Eurostat) that made use of delegated acts since 2010, adoption has increased by almost four times between the Barroso II Commission (2010–2014) at 238 acts and the first von der Leyen Commission (2020–2024) at 926 acts. Directorates-Generals related to climate policy show large increases as well (see Figure 4). DG CLIMA has seen 4.6 times more delegated acts in the von der Leyen Commission than it did in the Barroso II Commission, rising from 7 to 32 acts. DG ENER has a smaller relative increase of 60% between those two time periods, in part because it was a first mover with delegated acts in the early years of this process. DG ENER's adopted acts made up 100% of the total in 2010 and 50% of acts in 2010 and 2011 combined.

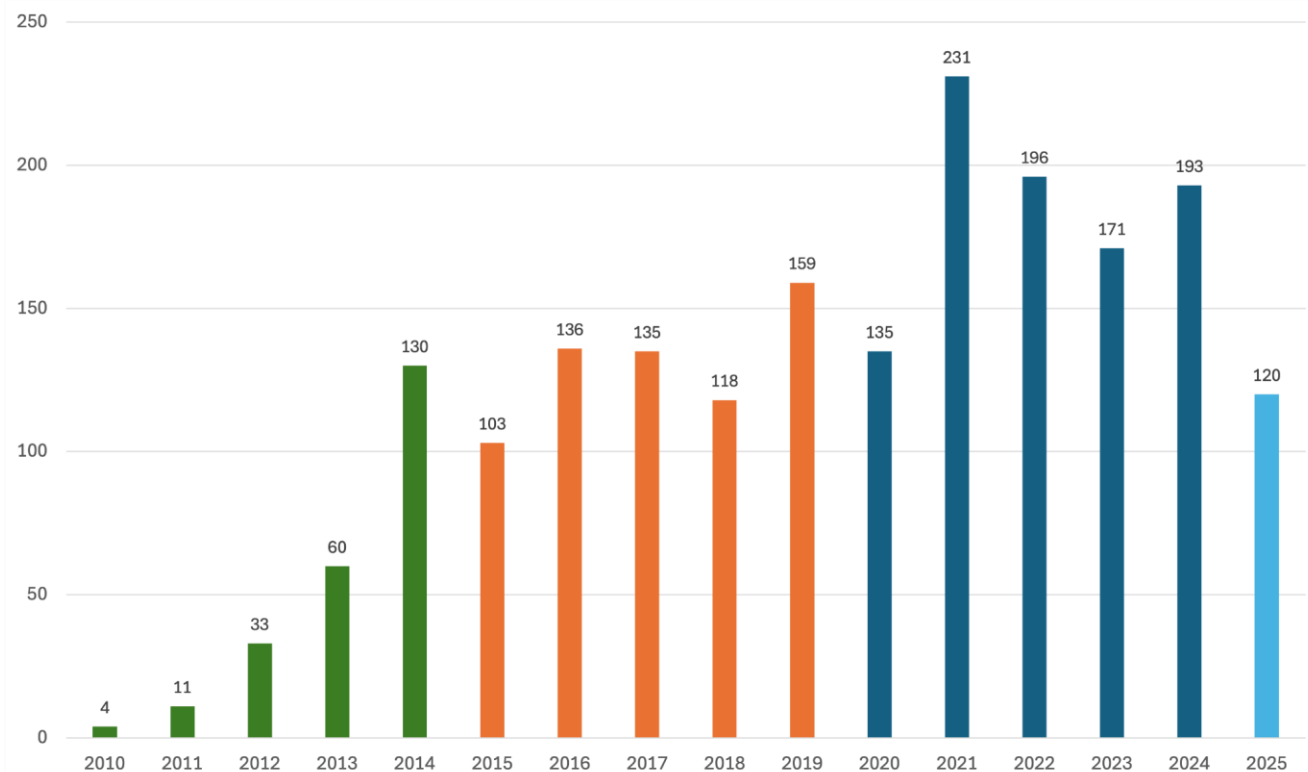


Figure 3. Adoption of delegated acts (all DGs/services) between 2017 and 2025.

Barroso II (green); Juncker (orange), von der Leyen I (dark blue); von der Leyen II to September 2025 (light blue).

If we look at the overall universe of these acts, DGs (and other services) differ greatly in how much they make use of this type of non-legislative process. Half of the DGs covered by the EU's register of delegated acts have adopted fewer than 15 acts in the 16 years since the Lisbon Treaty came into force (including five DGs with only one delegated act, e.g. DG Competition). At the other extreme, DG AGRI and DG FISMA, the two most prolific users, have together adopted 37% (731) of all delegated acts during this period. In this broader context, DG CLIMA and DG Energy are relatively moderate users, with 66 acts adopted by DG CLIMA and 64 by DG ENER, for a combined total of 130 adopted acts since 2010.

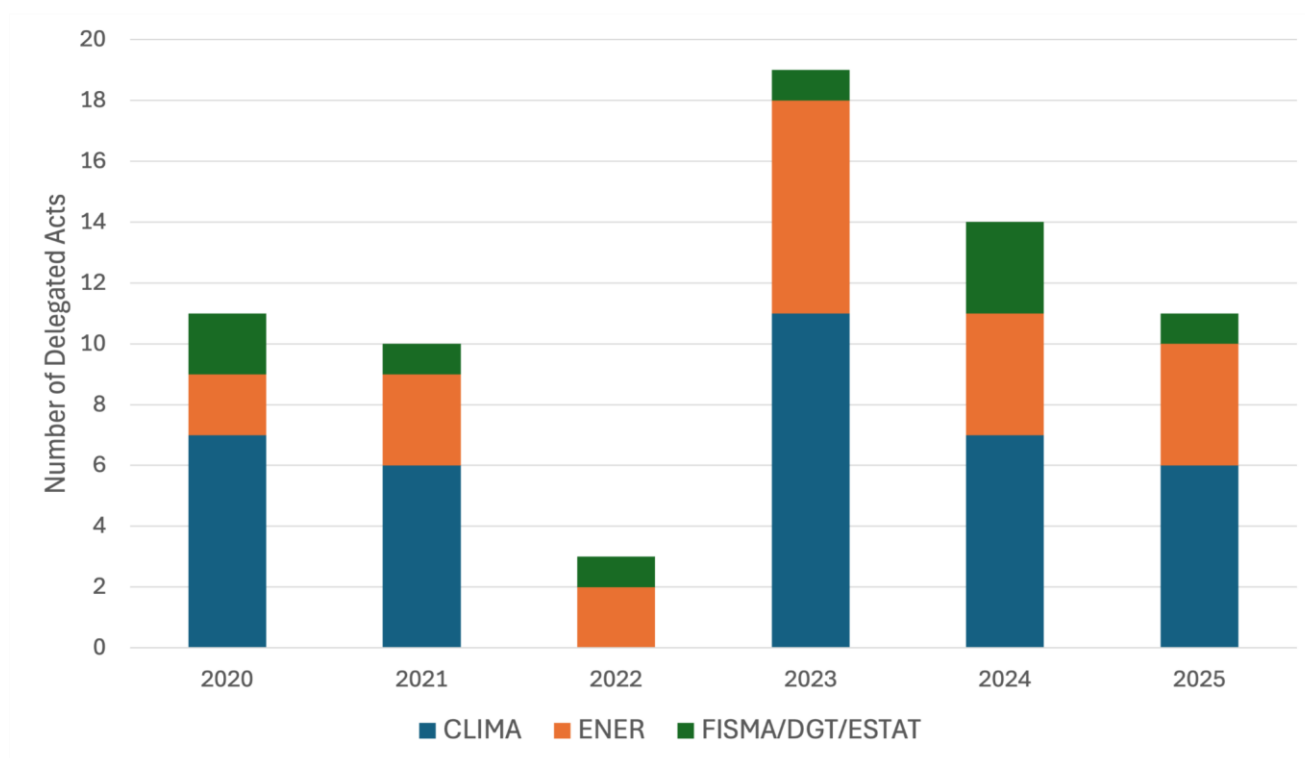


Figure 4. Delegated acts related to climate change between 2020 and 2025.

Acts adopted up to 19 September 2025, as well as three ongoing processes and three cancelled acts.

Here we focus on the 74 climate-related delegated acts adopted by CLIMA, ENER, and other DGs since the start of von der Leyen I Commission in December 2019 (Figure 4). The scope and purpose of these climate-related delegated acts is wide-ranging and complex. Overall, 22 pieces of EU legislation form the basis for the 74 delegated acts we are examining (see Table 3 and Table A2 in Appendix A). By far the most common underlying legislation is the Emissions Trading System Directive (16 delegated acts), which relates to acts concerning aviation, the Innovation Fund, amendments to the ETS based on the Fit for 55 package, as well as extensions of the ETS2 for buildings/transport to additional sectors in countries such as Austria and Finland. After the ETS Directive, several other pieces of legislation underpin a large number of delegated acts, including the 2019 CO₂ Regulation, the Renewable Energy Directive II, the Energy Label Regulation, and regulations related to monitoring, review, and verification.

Table 3. Most frequent underlying legislation for climate-related delegated acts (2020-2025).

For a full list see Appendix A (Table A2).

Underlying Legislation	Frequency	% of total
ETS Directive	16	22%
Car CO2 Regulation (2019)	8	11%
Renewable Energy (REDII) Directive	7	10%
Energy Labelling Regulation	6	8%
Connecting Europe Facility Regulation	5	7%
Heavy-Duty Vehicle MRV Regulation	5	7%
Maritime MRV Regulation	4	5%
Taxonomy Regulation	4	5%
LULUCF Regulation	3	4%

Among the climate-related delegated acts that we studied, 55 documents had information about when the act was planned, adopted, and published. This allowed us to estimate the length of the formal policy process. This represents 75% of the acts that we examined. Overall, the average length of the process was 15 months (median: 11 months). This average conceals substantial variation in process lengths. For example, the shortest process in our database was a project list related to the Connecting Europe Facility (C(2023)6133), which went from planned to published in three months. In contrast, the longest process we found was for a regulation on the energy labelling of windows, which was in process for 89 months before it was cancelled in October 2022. Among successfully completed acts, the longest processes were found during the adoption of three energy-related acts (on RED II, Energy Labelling, and the Connecting Europe Facility).

Regarding public feedback and participation in delegated act policy processes, 47 acts (64%) included opportunities for public feedback. Feedback was sought through online consultations similar to those held for draft EU legislation being proposed through the OLP. Respondents included businesses, companies, NGOs, public authorities, academic and research institutions, and individual citizens from both within and outside the EU.

Of these consultations, 22 (47%) received 10 or fewer responses from stakeholders. Overall, businesses sent 1,851 responses to the Commission, compared to civil society and academia, which together sent only 540. Business responses were therefore more than three times more common than those from civil society and academia, which is in line with other policy processes such as public consultations related to EU legislative proposals (Dupont et al., 2024b; Tanasecu, 2009).

The overall number of responses varied greatly from process to process. Two acts and their public feedback sessions received only one response. In contrast, the 2021 act related to the Taxonomy Regulation (C(2021)2800), which defined the activities that would be eligible for certain types of EU funding received unprecedented attention. The consultation received 47,000 responses, the vast majority (97%) of which were from individual EU citizens responding as part of organized campaigns around this issue. These 47,000 responses make up 97.5% of all responses to all public feedback consultations related to delegated acts that we examined. Despite the heavy preponderance of citizen responses in the taxonomy feedback, responses from other categories were still heavily weighted on that single delegated act (e.g., 40% of business association and 60% of NGO responses were made then).

The register of delegated acts lists an expert group (a committee in the comitology system) in connection with 60 (81%) of the acts we examined. However, only 20 acts (27%) had meetings listed that explicitly dealt with the delegated act in question. Table 4 shows the number of times an expert group was connected to a delegated act, as well as the number of meetings that took place. Altogether, there were fifteen expert groups listed, ten of which were connected to only one or two delegated acts. The Climate Change Policy Expert Group accounted for nearly 35% of all affiliations in the register, followed by the Expert Group on Carbon Dioxide from Road Vehicles, which accounted for 24%.

Table 4. Expert groups and meetings related to delegated acts.

Expert Group Name	Overall	% of Groups	Meetings	% of Meetings
Climate Change Policy	20	34%	3	15%
CO2 from Road Vehicles	14	24%	2	10%
Renewable/Low-Carbon Fuels	5	8%	4	20%
Energy Labelling	4	7%	2	10%
CEF Renewables	3	5%	2	10%
Sustainable Finance	3	5%	1	5%
Connecting Europe Facility	2	3%	0	0%
Innovation Fund	2	3%	1	5%
Carbon Removals	1	2%	0	0%
Energy Efficiency Directive	1	2%	1	5%
EPBD	1	2%	1	5%
European Securities Committee	1	2%	1	5%
Geological Storage of Carbon	1	2%	0	0%
LULUCF	1	2%	1	5%
Net-zero Technologies and Supply Chains	1	2%	1	5%
	59		20	

In terms of meetings, while the Climate Change Policy group was the most commonly affiliated expert group, it held only three meetings listed in the register of delegated acts. The Expert Group on CO₂ from Road Vehicles held two meetings. In contrast, the Renewable and Low-Carbon Fuels Group held meetings for four out of the five delegated acts it addressed, all of which fell under the Renewable Energy Directive II.

Table 4 shows the underlying legislation for the delegated acts affiliated with an expert group. For example, in the Expert Group on Climate Change Policy – which, as its name suggests, has a broad mandate across several policy areas – the ETS Directive was the most common underlying legislation. The ETS Directive was also addressed by the Innovation Fund Expert Group. Other commonly cited pieces of legislation include the Maritime MRV Regulation, the 2019 Car CO₂ Regulation, and the Regulation on MRV for Heavy-Duty Vehicles.

Table 5. Expert groups (top 5) and the underlying legislation of their related delegated acts.

Expert Group Name	Overall	Underlying Legislation
Climate Change Policy	20	ETS Directive (13) Maritime MRV (4) Effort Sharing Regulation (1) LULUCF (1) Governance Regulation (1)
CO ₂ from Road Vehicles	14	2019 Car CO ₂ Regulation (8) Heavy-duty Vehicles MRV Regulation (5) Heavy-duty Vehicles CO ₂ Regulation (1)
Renewable/Low-Carbon Fuels	5	REDII Directive
Energy Labelling	4	Energy Labelling Regulation
CEF Renewables	3	CEF Regulation

4.2 Policymakers' perspectives on the use of non-legislative processes in EU climate policymaking

The following section details results from semi-structured qualitative interviews conducted with senior officials working at the Commission, the Parliament, and the permanent representations of member states to the EU. The interviews provide in-depth insights into policymakers' understandings of the role played by non-legislative processes in contributing to policymaking efficiency and possible trade-offs for democracy. Interview data is particularly useful in shedding light on potential democratic strengths and deficiencies of these processes which cannot be obtained from documentary sources. All interviewees commented on the relationship between speed, frequency of use, and elements of democracy as they pertain to delegated and implementing acts. However, no interview participants had experience working on emergency procedures in which the Council has sole authority in amending Commission proposals. As such, the bulk of interview analysis details policymakers' perspectives on delegated and implementing procedures as per the analytical framework while a separate section at the end of the results section outlines policymakers' anecdotal insights on Council emergency mechanisms.

4.2.1 Speed

Five EU officials noted that delegated and implementing acts are efficient instruments for policymaking in short political cycles (Interviews 1-3, 5 & 8). One Commission official noted that implementing acts can pass "tremendously quickly" while delegated acts take more time, with both the Parliament and Council having a scrutiny period (Interview 3). Another Commission official noted that 5-year political cycles are too short for everything to be worked out through interinstitutional negotiations; implementing acts are thus necessary for working out technical details within the 5-year political mandate (Interview 5). According to one Parliament official, delegated and implementing acts move faster than legislative processes because fewer stakeholders are involved. They emphasised that this is an acceptable practice due to the technical nature of the amendments being made (Interview 7). Another Parliament official made the point that the technical amendments made through delegated and implementing acts are often urgent and provide clarity for a variety of stakeholders. They said "you have people waiting for this. Sometimes you have adjustments that are not being made because there is uncertainty. And you stop industry from attracting private capital. They believe this is very important so you don't want to stop this process." (Interview 8).

4.2.2 Frequency of use

Three interviewees indicated that the frequency of use of delegated and implementing processes may increase further during the von der Leyen II Commission, as implementation of legislation under the EGD is unfolding (Interviews 1 & 6-8). According to one official at the Parliament, “I mean the devil is in the details and I think now that green transition is struggling a bit, that focus is going to be also on the details” (Interview 8). This interviewee indicated that delegated and implementing acts may increase in number and also increase in political salience in the Parliament on politically contentious issues. Another official at the Parliament noted that politically contentious files like the ETS2 and CBAM will require many technical amendments and calculations to assure stakeholders that they are fit for purpose (Interview 8). A Commission official similarly echoed the idea that a large number of delegated and implementing acts are required for the ETS systems in order to give industries long-term stability (Interview 1). Interestingly, a member state official noted that several member states have pushed for the inclusion of a high number implementing acts in the basic legislation of the Fit for 55 package in the previous term to give the Commission a mandate to provide uniform guidance to the member states on complex policy frameworks (Interview 6). In this context, the interviewee indicated that member states in the Council prefer to secure more mandates for implementing acts than delegated acts as the member states have greater oversight via the comitology system than they do in the two-month scrutiny period of delegated acts where authority is shared with the Parliament (Interview 6).

4.2.3 Representation

All sources noted that the European Parliament plays a lesser role in delegating and implementing act processes than the OLP, therefore causing deficiency in political representation. For delegated acts, the Parliament and Council are only able to object to the process during a 2-month scrutiny window, while the Parliament plays no role at all in implementing acts.

However, several interviewees indicated that the lack of parliamentary representation in these situations is justified (Interviews 1, 2, 7 & 8). Two of these officials from the Parliament itself expressed that the institution has a political role and that the mandates given in the basic legislation for delegated and implementing acts are for technical issues best left to Commission civil servants and experts (Interviews 7 & 8). Two other sources from the Parliament similarly acknowledged that technical amendments should not be covered in Parliament due to a lack of expertise but that if there are political implications of such amendments, these should be addressed through legislative processes involving Parliament (Interviews 9 & 10). Furthermore, one source from the Parliament and one member state official indicated that giving more power to the Parliament on delegated and implementing acts would risk watering down climate ambition during the von der Leyen II political term. The member state official indicated that it would be “dangerous” to trust the current Parliament with providing technical updates to fundamental climate legislation (Interview 4) while an official at the Parliament indicated that entrusting greater power to the Parliament would enhance “accountability and transparency but wouldn’t play into the favour of those that want to be more progressive on climate action” (Interview 2). Two other sources further acknowledged that giving Parliament more scrutiny power in delegated and implementing act processes would enhance democracy but may cause disruptions to the climate programme during the 2024-2029 political term because of the strong representation of the far right political groups sitting in Parliament (Interviews 9 & 10). Several interviewees corroborate the perspective that the 2024-2029 European Parliament stands as the least ambitious climate actor (Interviews 2, 4, 6 & 9).

All member state attachés interviewed similarly argued that the Parliament should not have a larger role in scrutinising delegated and implementing processes (Interviews 4 & 6). According to one source, “MEPs are politicians and these are technical, not political, processes” (Interview 6). They further commented that they feel transparency is “respected” as the Commission publishes all delegated and implementing act processes online and allows for sufficient stakeholder input (Interview 6). A second member state attaché similarly stated that the Parliament is not accountable for the outcome of delegated and implementing processes as there are no “negotiating factors here” but also stated that if these files do become political, then the Parliament should

play a role in negotiations (Interview 4).

4.2.4 Accountability

All EU officials interviewed addressed issues of accountability as they pertain to delegated and implementing act procedures. Officials at the Parliament noted that more parliamentary debate on delegated acts and the opportunity to scrutinise and debate implementing acts would make the decision-making processes more transparent (Interviews 2 & 7-10). According to one official at the Parliament, “the OLP is definitely more transparent. There are so many more stakeholders and so many more opportunities for deliberative democracy, to you know, debate these issues in Parliament and even in Council” (Interview 2). Commenting on how delegated and implementing acts are drafted by the Commission, another Parliament official indicated “for me, it’s a black box” (Interview 7). A third parliamentary official noted that even for delegated acts, the Parliament does not allow for much space for these to be debated in committees or plenary, except for the most politically sensitive files (Interview 8). A fourth official noted that the most politically salient delegated acts are debated while others do not receive wide-spread attention (Interview 9).

Commission officials indicated that transparency concerns are taken into consideration when they plan and draft delegated and implementing acts through various channels (Interviews 1, 3 & 5). According to one Commission official “quite frankly, in terms of transparency, I think [delegated and implementing acts are] sometimes more transparent than, for instance, what’s going on in the last stages of the co-decision process, which is conciliation. Where in conciliation, there are a number of meetings going on. It’s very difficult to know exactly what’s going on there...while everybody knows exactly what is being decided on the Delegated Act and has months to look at it to see if it would be considered problematic or not...” (Interview 1). In drafting delegated acts in the field of carbon removals for example, an official from the Commission stated that “All our meetings were web streamed, we put publicly out all the technical papers that we had, we invited other experts, we’re always very open to feedback” (Interview 3). Data on web-streamed meetings, however, was not available via the Register of Delegated and Implementing Acts studied for our own dataset. Another Commission official indicated that while some delegated acts allow for semi-public meetings, with registration required to attend these meetings, expert group meetings are never held in public (Interview 5). Sources importantly noted that accountability in Commission decision-making on drafting both delegated and implementing acts flows from the mandate clearly provided in the basic legislation (Interviews 1 & 5).

4.2.5 Knowledge

Two Commission officials indicated that delegated acts are sometimes accompanied by an impact assessment (Interviews 1 & 5). According to one Commission official, “when a certain delegated act requires more public consultation or an impact assessment, the Secretary-General of the Commission actually demands that this is happening. So where it is more difficult, where the mandate is perhaps more broad, where it can be more subject[ive] where the impacts might be, you know further reaching, it is not just a question of the technical work, but it’s indeed of making certain political choices that there is indeed an impact assessment” (Interview 1). A second Commission official also indicated that impact assessments sometimes occur for delegated acts but that these are “relatively few” and often there is “nothing to assess” when making these minor amendments (Interview 5). Another Commission official indicated that consultations with stakeholders from industry, NGOs and other private sector actors is part of the process in drafting delegated acts (Interview 3).

Both Commission and member state officials indicate that expert groups and the comitology system provide technical expertise to the drafting of delegated and implementing acts (Interviews 3-6). These experts from the member states help refine methodologies and ensure acts work within the context of each member state situation (Interview 6). A Commission official indicated that within these expert groups, there can be “a very high degree of involvement of both science and civil society” (Interview 3). However, one member state attaché stressed that expert group meetings do not match the amount of work that goes into the consultations and impact assessments that take place for OLP acts (Interview 4), while a Commission official indicated that it is not possible to compare the research that goes into delegated and implementing processes with the

“better regulation bible” that characterises OLP proposals (Interview 5).

4.2.6 Participation

Interviewees indicated that citizens can participate in the process of delegated and implementing acts through the “have your say portal” (Interviews 1-3 & 5). In our analysis above, however, we’ve found that this is the case for around 42% of processes. Interviewees also indicate that these mechanisms are: 1) not well known by the public (Interviews 2, 7 & 9) are often about highly technical issues, which the general public cannot understand (Interview 5). A Commission official also indicated that public feedback received often does not apply to the specific delegated or implementing act in question and, therefore, the Commission ignores the feedback (Interview 5).

Beyond public feedback, NGOs and civil society are sometimes able to participate in these processes (Interviews 1, 3, 5 & 7). Feedback from civil society is more often sought in the process of drafting delegated acts and less so during implementing acts where the closed-door comitology meetings act as the principle fora for policy input and negotiations (Interview 5).

4.2.7 Council Emergency Mechanisms

No interview sources have had experience working on the emergency mechanism contained under Article 122 TFEU in which the Council acts as sole legislator to a Commission proposal. Several sources indicated that they do not expect this procedure to be used in climate policy because of the less urgent nature of the climate crisis as compared to other crises like COVID-19 or the energy crisis which have a more immediate impact on human life and the economy (Interviews 1, 9 & 10). According to a Commission official, “Well, of course, we speak about the climate emergency. But climate effects are not felt two days later, they are felt 20 years or 30 years later, which is part of the big problem, why it's so difficult sometimes to take action. But that, I also think, makes it less likely that this kind of procedure would be used in the field of climate.” (Interview 1). Other sources indicate that, similar to delegated and implementing acts, removing the role of Parliament provides less opportunity for transparent scrutiny of the proposal (Interviews 1, 3, 6, 9 & 10). The same sources stressed that the emergency mechanism should be reserved for emergencies and that otherwise, the Parliament should be involved in the process of scrutinising a Commission proposal.

5. Discussion

Our analysis clearly shows an increase in the use of non-legislative decision-making procedures in EU climate policy over time. Our study analysed the number of non-legislative procedures occurring since 2020, and their speed of adoption, with a focus on climate-relevant procedures. By building a dataset of such non-legislative acts, we were able to collate data that provided insights on the frequency of use, the speed of adoption, the transparency and opportunities for participation of the different procedures, together with an overview of the use in practice in the context of wider evolutions of EU decision-making outside the climate sector. We found that the use of non-legislative acts also increased for climate-relevant decisions, and that the possibilities for participation of citizens, stakeholders, and others outside expert groups was uneven. In addition, even when opportunities for participation existed, their uptake varied widely from one process to another.

We complemented our analysis of the dataset with interviews with policymakers, aiming to assess their perception of the use and usefulness of these non-legislative procedures, both for climate action and democratic governance.

With regard to the increase in the use of these procedures, our interviewees expected further increases in their use in the future, especially as the EGD policy measures, adopted under von der Leyen's first mandate as Commission President, need to be implemented. Policymakers are also quite positive about the procedures' efficiency, which they regard as an important pillar of good governance. This refers in particular to the speed at which these acts are adopted. The mean time of completion for implementing acts is 9.7 months (median: 6 months).¹ For delegated acts, the mean time of completion is 15 months (median: 11 months). Beyond achieving efficient policymaking, interviewees also highlighted that the speed of these procedures can serve to respond more adequately to the challenges of making complex policies within a single political cycle of five years. With the option to delegate the elaboration of technical details of a policy and its implementation to the European Commission, EU co-deciders are seen as having greater chances of adopting legislation under the Ordinary Legislative Procedure within a single political cycle.

While delegated and implementing acts appear to be embraced by the von der Leyen I and II Commissions as an efficient motor of making technical amendments to the fundamental climate change programme, there seem to be democratic deficits in using non-legislative mechanisms to develop policy (Burns & Tobin, 2020; Gallinella & Christiansen, 2024). In terms of participation, it is clear that the Commission's "have your say" portal does not always allow for robust, meaningful participation. The highly technical nature of the amendments being made through delegated and implementing acts combined with a general lack of political salience of many of these processes means that public feedback is often minimal. Moreover, according to Commission interviewees, the feedback received regularly does not align with the content of the delegated or implementing act, which leads to the Commission ignoring the input. Findings also make it clear that consultations with NGOs and civil society vary per delegated and implementing act. While we do not have interviews with these actors to support the findings, which is a limitation of our data, our database shows that even in cases of high political salience, with high levels of feedback from NGOs, civil society and citizens (e.g. the taxonomy act), these actors still only provide limited relative input. Delegated acts, which provide for a mandatory scrutiny period by the Parliament and Council tend to provide for a longer planning phase and sometimes include consultations with NGOs and civil society representatives. Implementing acts, however, seem to provide for the lowest level of civil society involvement, with consultations happening to a lesser degree and comitology negotiations always being closed to external stakeholders and the public. Similarly, expert groups are generally not open to the public and often require participants to sign confidentiality agreements (Esposto and Nupieri 2025, p. 325). Participation, therefore, is not optimal from a democratic governance point of view (Oberthür et al., 2025), although many interviewed policymakers highlight the

¹ The completion time for implementing acts is based on the 59 cases where this information was available.

efficiency gains for such acts with speedy processes.

In non-legislative procedures, we also find deficiencies with regard to representation and accountability (Gallinella & Christiansen, 2024; Mendes, 2015), although an emphasis on speed and technical expertise is acknowledged as necessary by officials interviewed. When it comes to representation and accountability, implementing acts are particularly weak. For delegated acts, both the Parliament and Council receive a two-month scrutiny period where they can object to act while implementing acts provide for no Parliamentary scrutiny and member state oversight occurs through comitology rather than through the Council. Clearly, representative democracy is least present through implementing act processes where no opportunities for deliberative debate to occur in Parliament. Interestingly, sources from the Parliament also indicate that while the Parliament has the opportunity to object to delegated acts, these are rarely discussed in committees or in plenary, except for the most politically salient procedures. As such, both non-legislative processes provide far fewer opportunities for political scrutiny than the legislation passing through co-decision. In terms of accountability, the Parliament is a far more transparent actor than the Council and as such, reducing its involvement in implementing procedures has implications for democracy. Interestingly, interviewees from all institutions argue that this accountability trade-off is necessary in the name of efficiency, as long as the mandate for conducting a delegated or implementing act is clearly laid out in the basic legislation and that the amendments are minor and technical in nature rather than political.

One stark finding is that, despite the fact that parliamentary scrutiny provides for strengthening political representation and accountability of decision-making processes, interviewees from all institutions do not believe that the Parliament should be given a greater role in non-legislative processes. Several factors come to the fore, including: 1) that this would slow down the efficiency of these processes and the need to make policy effectively within 5-year political cycles; 2) that the Parliament is a political actor and delegated and implementing acts are supposed to be non-political, technical processes; and 3) that the Parliament for the 2024-2029 political term is the least ambitious climate actor among the EU institutions and increasing their involvement risks undermining the objectives of the EU's green transition. These beliefs highlight the inherent tension between making policy efficiently versus enhancing principles of democracy. They also highlight the challenges with making climate policy in politicised contexts (Paterson et al., 2022), and the general fear among climate ambitious political groups in the Parliament and member states that enhancing democracy by assigning a greater role to Parliament may in fact disrupt the work being done by expert groups and the comitology system, given the political make-up of Parliament after the 2024 elections. This last point is one that falls outside the scope of our report, but warrants further research.

In sum, we find that criticisms raised in literature about the weak democratic standing of non-legislative procedures are supported by our report (Burns & Tobin, 2020; Campo, 2021; Dupont et al., 2024b; Gallinella & Christiansen, 2024; Oberthür et al., 2025). Participation opportunities are relatively limited, and where they exist, they are obscure. Representation is limited to a few actors and experts. Accountability is difficult to establish, given limited transparency on the drafting process. Opportunities for knowledge to enter the processes exist, but mainly through established means, and less so with robust impact assessments or through time dedicated to knowledge-gathering to the likes of which exist for the OLP. At the same time, the aim for policymaking efficiency means that many of these democratic pillars are purposely set aside, with the understanding that technical updates and uniform implementation is a necessary dimension of good policymaking. While our study does not resolve the tension between efficiency and democratic principles, we argue more attention is required, in both scholarship and policy practice, to ensure that this tension is both acknowledged and explicitly addressed.

6. Conclusion

This report has provided an in-depth analysis of the use of non-legislative policymaking procedures at the EU level on climate-related policy measures. Our study highlights the increased frequency in the use of these non-legislative measures over time. While we find little evidence of climate-related Council emergency measures adopted under Article 122, both delegated and implementing acts have been widely used for climate-related policy measures. Some of these acts have been highly politicised (e.g. on the EU's green taxonomy), but the majority have been mostly technical issues that have seen limited participation or political engagement.

The objective of these non-legislative acts is to adopt updates that allow for uniform implementation of basic legislation, without the need for full amendments through the OLP. They thus aim for policymaking efficiency. At the same time, criticisms levelled against these non-legislative acts highlight that not all acts are narrow in scope, and not all acts allow for correspondingly sufficient levels of democratic oversight. Our results and analysis corroborate these findings.

Our central conclusion is that the tension between efficient policymaking and democratic decision-making is encapsulated by these non-legislative processes. While delegated and implementing act processes conclude relatively quickly, there are democratic deficiencies in the areas of representation, accountability, participation, and knowledge. These democratic tensions further exist in emergency mechanisms found under TFEU Article 122, although the emergency mechanism procedure has not yet been used for climate policy-related measures.

The tension between policymaking efficiency and democracy epitomised by the non-legislative procedures in the EU deserves further attention, both in research and in policy practice. This may be especially urgent, given the political context in which democratic institutions, including the Parliament, place lower emphasis on climate action since the 2024 European elections. As the Parliament, the Council, and member state governments shift to the right, further research analysing implications for the EU's climate programme as developed via the OLP and the non-legislative processes investigated in this study is of paramount importance.

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Appendix

Table A1. Underlying legislation for implementing acts related to climate change (2020-2025).

Underlying Legislation	Frequency	% of total
Car CO2 Regulation	7	5%
CEF Regulation	1	1%
Ecodesign Directive	8	6%
Effort Sharing Decision	1	1%
Effort Sharing Regulation	4	3%
Electricity Market Regulation	2	2%
Energy Labelling Regulation	1	1%
EPBD Directive	1	1%
EPBD Directive (recast)	1	1%
ETS Directive	25	19%
EU Standardisation Regulation	1	1%
Executive Agencies Regulation	1	1%
F-Gas Regulation	16	12%
FuelEU Maritime Regulation	3	2%
Gas/Hydrogen Internal Market	1	1%
GHG Monitoring Mechanism Reg.	4	3%
Governance Regulation	4	3%
HDV CO2 Regulation	4	3%
HDV MRV Regulation	1	1%
Heavy Vehicle Charging Directive	1	1%
Heavy-Duty Vehicles Emissions Reg.	3	2%
Maritime MRV Regulation	1	1%
Natural Gas Networks Regulation	1	1%
Net-Zero Industry Act	1	1%
REDII Directive	39	29%
Third Country Imports Regulation	1	1%

Table A2. Underlying legislation for delegated acts related to climate change (2020-2025).

Underlying Legislation	Frequency	% of total
Benchmarks Regulation	1	1%
Car CO2 Regulation (2019)	8	11%
Carbon Removals/Farming Regulation	1	1%
CEF Regulation	5	7%
Crypto Market Regulation	1	1%
Effort Sharing Regulation	1	1%
Energy Efficiency Directive	2	3%
Energy Labeling Regulation	6	8%
Environmental Accounting Regulation	1	1%
EPBD Directive	1	1%
EPBD Directive (Recast)	1	1%
ETS Directive	16	22%
Fuel Quality Reporting Directive	1	1%
Gas/Hydrogen Internal Market	1	1%
Governance Regulation	1	1%
HDV CO2 Regulation	2	3%
HDV MRV Regulation	5	7%
LULUCF Regulation	3	4%
Maritime MRV Regulation	4	5%
Net-Zero Industry Act	2	3%
REDII Directive	7	10%
Taxonomy Regulation	4	5%

Table A3. List of interviewees.

Interview reference number	Interview date	Interviewee position	Interview type (In-person, video call...)	Interview Length (Minutes)
1	25 August 2025	Commission Senior Official	Video Call	29.54
2	29 August 2025	European Parliament MEP Assistant	Video Call	23.43
3	29 August 2025	Commission Senior Official	Video Call	23.20
4	5 September 2025	Member State Attaché	Video Call	21.31
5	10 September 2025	Commission Senior Official	Video Call	41.36
6	6 October 2025	Member State Attaché	Video Call	31.07
7	9 October 2025	European Parliament MEP Assistant	Video Call	25.11
8	9 October 2025	European Parliament MEP Assistant	In-Person	23.52
9	27 October 2025	European Parliament MEP Assistant	Video Call	16.42
10	28 October 2025	European Parliament MEP Assistant	In-Person	17.36