Since its creation, the EU has sailed across a series of overlapping crises that questioned its stability. Today the climate crisis shows some unprecedented features, making its effects on the EU polity and legal order unpredictable.

Climate change is an existential threat, leading to other - economic, social, ecological or health - systemic failures. But climate change is also a crisis of imagination.[1] This is because it challenges our assumptions about the world and the ways in which we interpret it. This is not only visible in literature but also in law. Climate change is a ‘legally disruptive’ phenomenon because existing legal tools are ill-equipped to the type of issues raised by it.[2] This builds on a mismatch between law as an ordering force and climate change as a dis-ordering one, resulting in fragmented approaches and a struggle to deal with the invisible issues.

The last decades of EU climate policy offer an example of this mismatch. The EU has structured its response to climate change through three main axes: the market, technology, and legislative development. First, since early 2000, the EU created an internal market for carbon emissions as ‘both the crown jewel and the work horse of the EU Climate Policy’[3] . Today its Emissions Trading Scheme (ETS) is the most developed in the world. The second axis is technology. The EU strategy combines decarbonisation with energy efficiency and renewable energy technologies objectives. Alternative technologies and energy sources (e.g. CCS, geoengineering, and hydrogen) are also key for supporting the climate transition. The third and overarching axis is legal. The 2019 European Green Deal (EGD) adopts a legally binding EU-wide climate neutrality target – i.e. no net carbon emissions – by 2050 and makes it legally binding under the European Climate Law. The Fit for 55% package implements the EGD through new and existing legislation in virtually all EU policy areas.
The EU does not ignore the socio-economic impact of its climate policies, stressing that ‘the transition must be just and inclusive. It must put people first, and pay attention to the regions, industries and workers who will face the greatest challenges.’[4] “Leaving no one behind” is the EGD’s just transition mantra and dedicated funds are available to the most carbon intensive regions in the member states to support workers and vulnerable households.

Overall, the EU is assuming a world where investment and economic redistribution, technology and legal standards will do the job. But here is where a crisis of imagination manifests itself. There is a potential mismatch between the linearity of those assumptions, and the complexity of climate change. Can the climate transition coexist with current understandings of growth and innovation? Many ecological economists doubt it.[5] Is the EU vision of just transition sensible to multiple climate inequalities – from unequal contribution to climate change to unequal suffering of its consequences, from spatial to participatory inequalities? Many political and social scientists question that too.[6] How are those decisions taken? Today, many European citizens are taking legal action or resort to civil disobedience to challenge process and outcome. What is the weight of those voices within this framework? Many other critiques arise as the climate transition challenges assumptions about the EU societal and legal order built over the last 60 years.

EU law is generally ill-equipped to deal with these questions in an integrated and systematic way. But better legal imagination can help. In 1945, JB White described law as ‘an activity of mind and imagination’.[7] Legal imagination means rethinking the normative and interpretative tools of law to see more clearly the challenges ahead. Imagination is unescapable in dealing with climate change. It ‘not only shapes the perception of the climate change but co-fabricates it in ways that effect the possibilities to act on it’. [8] This is why the climate crisis demands an extraordinary ‘expansion of legal imagination’.[9]

We can think about at least two ways in which the EU can widen its legal imagination in climate policy. First, the EU could strengthen law’s ability to create bonds between ideas, tools and actors. For instance, EU institutions can explore ways in which social and climate law principles, tools and actors can be better integrated through legal and institutional mechanisms and decision-making processes.

Second, EU institutions and actors – including citizens - could ask new questions to law (and lawyers) opening new fields to legal imagination. How can we bridge the gap between scales of action? How can we envisage new forms of access to land and resources? How does law shape and is shaped by social concerns in e.g. agriculture, participation, labour? What are the potential and limits of law here? What about legal ideas for post-growth? As climate change requires system change, legal imagination can shape how ambitious ideas and debates can be operationalised to challenge our assumptions.

Widening legal imagination is an invitation to dare, to create new links and ask uncomfortable questions. The EU should take this invitation seriously in shaping a better climate future.

8] K Yusoff and J Gabrys, ‘Climate Change and Imagination’ (2011) WIRES Climate Change 520.