

Outcome of the European Council meeting of 21-22 October 2021

The regular European Council meeting of 21-22 October 2021 dedicated significant time to discussing the rule of law and the rise in energy prices – which have become particularly salient topics at national and European level – as well as to migration. On the rule of law, EU leaders had a political discussion, underlining the importance of the issue for the Union, but did not adopt concrete conclusions. Regarding the recent spike in energy prices, they agreed on pursuing short-term, tailored and targeted national measures, and will continue to look for a consensus on long-term measures at the next European Council meeting, on 16-17 December.

Migration took up a greater part of the agenda than originally planned, with the meeting notably addressing how to combat the instrumentalisation of migrants in hybrid attacks. EU leaders also took stock of the coronavirus pandemic, reviewed progress on the digital agenda and related key legislative files, and held a strategic debate on international trade. As for external relations, discussions focussed on the preparation of the ASEM and the Eastern Partnership summits, as well as of the UN Climate Change Conference (COP 26) and the outcome of the UN Biodiversity Conference (COP 15). On the environment and climate, leaders reaffirmed the Union's ambition to be a lead player. The European Council also welcomed the recently adopted EU strategy on combating anti-semitism and fostering Jewish life.

1. General aspects

Since David Sassoli was still [recovering from illness](#), for the first time in many years, this formal European Council meeting did not open with an address by the President of the European Parliament; his written [speech](#) was nevertheless distributed to EU leaders. As president-in-office of the Council, the Slovenian Prime Minister, Janez Janša, reported on the follow-up to previous European Council conclusions.

This was most likely to have been the last regular European Council meeting for the outgoing Chancellor of Germany, Angela Merkel, who has been a member of the European Council since [2005](#). EU leaders held a small [ceremony](#) for Chancellor Merkel [and](#) for the outgoing Swedish Prime Minister, Stefan Löfven, another long-time member of the club. Chancellor Merkel's departure will mean the Prime Ministers of the Netherlands, Mark Rutte, and of Hungary, Viktor Orbán, are the [two longest serving members](#) of the European Council.

2. European Council meeting

Rule of law

As [outlined](#) before, the issue of the rule of law has reached the European Council's agenda repeatedly over the past year; it was raised at three of the last four regular meetings. In [December 2020](#), the rule-of-law conditionality regulation was addressed in relation to the MFF; in June 2021, EU leaders expressed concern on the rule of law in Hungary; and this time, they discussed developments in Poland following the ruling of the Polish Constitutional Tribunal, which states that

some parts of the EU Treaties are incompatible with the Polish Constitution, and they [also](#) addressed the issue of [judicial independence](#) in the country more broadly.

The discussion in the European Council started with interventions from the President of the European Commission, Ursula von der Leyen, and the Prime Minister of Poland, Mateusz Morawiecki, who had already exchanged views on the subject in a [plenary debate](#) in the European Parliament on 19 October. President von der Leyen expressed her deep concern, warning that the Polish court's ruling 'calls into question the foundations of the European Union and is a direct challenge to the unity of the European legal order'. She announced that the European Commission will take action and legally challenge the judgment of the Polish Constitutional Court. Ahead of the discussion, Mr Morawiecki had published a [letter](#) outlining his view of the relationship between national and European law. The European Parliament's [resolution](#) of 21 October 'deeply deplores the decision of the illegitimate "Constitutional Tribunal" as an attack on the European community of values and laws as a whole, undermining the primacy of EU law'.

During the Parliament's [debate](#) of 20 October on the preparation of the October European Council, many MEPs expressed concern at the European Council's reluctance to carry out its role as outlined in Article 15 TEU, which is to provide the general political direction for the EU, in relation to the rule of law, and called on the European Council to act in this respect. While no concrete decisions were made, some EU leaders, such as the Prime Minister of Belgium, Alexander De Croo, [stressed](#) that, in the past, discussions on the rule of law had not taken place in the European Council; the fact that this discussion had effectively taken place was therefore significant in itself. [Reports indicate](#) that many EU leaders had expressed concern on the situation in Poland and [underlined](#) the importance of dialogue with the country concerned. While most EU leaders stressed that it was up to the European Commission to launch the relevant procedures, some however, notably Mark Rutte, also [indicated](#) that the Council and the European Council also had their responsibilities on this issue.

Charles Michel summarised the EU leaders' conviction of the fundamental character of the rule of law and the independence of the judiciary. He recalled that the European Union had institutional and legal tools, some of which had already been activated and others which could still be activated. He [stressed](#) the importance of continuing a political dialogue, including within the Council and the European Council, in order to deliver solutions.

Chancellor Merkel [indicated](#) that behind the issue of the rule of law, there was a wider debate on the EU Member States' understanding of the future of the EU: as an ever closer union, or rather as [a Europe] of the nation states. This question is, in her opinion, not just relevant for Poland but also for other Member States; she sees the [Conference on the Future of Europe](#) as a good place to discuss it.

Main message of the President of the EP: President Sassoli stressed that the values of democracy, freedom and the rule of law were not negotiable, and reiterated Parliament's demand that the Commission should launch the procedures set out in the rule-of-law conditionality legislation.

Coronavirus pandemic

EU leaders discussed Covid-19 in the context of rising cases in a number of Member States and the low levels of vaccination in certain parts of the EU and the rest of the world. The European Council acknowledged the central role of vaccination campaigns in tackling the virus, but urged vigilance with regard to possible new variants. EU leaders highlighted the need to combat disinformation, which they believed was contributing to vaccine hesitancy – this possibly being one of the factors behind the varying levels of vaccine uptake across EU Member States.

EU leaders also discussed ways of bolstering future preparedness, calling for several actions to be taken forward in the sphere of EU health policy, as outlined in the [EPRS outlook](#). The European Council also called for greater EU coordination and action to ease travel within, and into, the EU.

The European Council reiterated its commitment to the international pandemic response. EU leaders focused on how the EU can support the roll-out of vaccines worldwide, namely through removing obstacles and supporting production. As [anticipated](#), EU leaders endorsed the role of the

World Health Organization in global health governance and outlined their aim of agreeing an international treaty on pandemics.

Main message of the EP President: President Sassoli focussed on the importance of reducing vaccine disparities both in Europe and globally as well as delivering on promised donations.

Energy prices

EU leaders addressed the recent spike in energy prices in a rather [heated](#) debate, disagreeing on the assessment of the current situation and hence on the need for and the nature of a long-term response. They however stressed their willingness to review the issue at future meetings, and acknowledged that the European Commission's [communication on energy prices](#) offered a useful 'toolbox' of short-term measures. EU leaders invited Member States, which are impacted quite differently by the current rise, to use the suggested tools to address immediately the growing risk of energy poverty for households and mitigate the impact on vulnerable businesses in the post-pandemic recovery period.

Views of EU leaders diverged as to the nature and the potential length of the current spike in energy prices. While some Member States, including the [Netherlands](#), considered the increase in prices to be temporary, determined by a transitory market situation, which could be addressed by applying the measures in the European Commission's 'toolbox', others, including France and Spain, warned that energy prices might continue to rise globally. The Prime Minister of Spain, Pedro Sánchez, [called](#) for an analysis of energy price formation, which in his view was 'distorted' by the gas price, as well as for the monitoring of speculative behaviour. He also suggested that possibilities of jointly buying gas on the market should be explored in order to bolster the EU's negotiation capacity. Consequently, the European Council invited the European Commission to 'study the functioning of the gas and electricity markets, as well as the EU ETS market'.

Considering the Member States' diverse energy mixes, EU leaders also had diverging views as to the long-term response to the energy price rise, which, if prolonged, could hamper the EU's [competitiveness](#). President von der Leyen [confirmed](#) that work would continue on strengthening resilience, by exploring the possibility of establishing common strategic gas reserves and joint procurement. She also stressed that the EU's energy mix should contain more renewables, which are cheaper, 'carbon free' and 'home grown'.

Two points proved rather divisive. First, the European Council conclusions do not [mention](#) nuclear energy despite pre-summit dynamics indicating that nine EU countries would [support](#) France in its request that nuclear be included in the list of green energies in the European Commission's 'taxonomy'. Ms von der Leyen [stressed](#) that nuclear was a 'stable source' which could feature in the European Commission's 'taxonomy' alongside natural gas and could be considered for the transition period. Second, several Member States, including Poland and Hungary, used the energy price debate to call into question the 'Fit for 55' package, whereas Chancellor Merkel [stressed](#) that this package should be kept separate from the energy price debate.

Main message of the President of the European Parliament: David Sassoli [underlined](#) that the social impact of the green transition needed to be addressed to ensure 'that no one is left behind'.

Digital policy

In line with the EU's goal of ensuring that Europe's digital transformation underpins its growth, job creation, competitiveness and resilience, the European Council briefly discussed the EU's digital policy. As flagged up in the EPRS [outlook](#), EU leaders called for the swift examination of the Commission's Digital Compass, reviewed progress made on key legislative files, such as the Digital Services Act, the Digital Markets Act and the Artificial Intelligence (AI) Act, and urged progress on future initiatives. They reiterated their ambition regarding creation of a cutting-edge microchip ecosystem, from design to production, which is particularly important not just for the digital policy objectives, but also from a single market perspective. As [identified](#) by the Commission in the context of its update of the [industrial strategy](#) in May 2021, limited production capacity, high entry costs and

lack of a level playing-field in semiconductors are threatening the EU's capacity in digital transformation, also in light of persisting [global shortages](#). In this context, the Commission launched the [alliance on processors and semiconductors](#) in July 2021. The Commission is planning further action next year, including through [proposing](#) a European Chips Act.

Migration

EU leaders held a more lengthy debate on migration than originally anticipated, covering not only the implementation of its [conclusions of June 2021](#) on the external dimension of migration, but many other aspects too. In their [conclusions](#), the leaders reiterated that they will 'not accept any attempt by third countries to instrumentalise migrants for political purposes', and condemned all hybrid attacks at the EU's borders. EU leaders also invited the Commission to propose any necessary changes to the EU's legal framework and concrete measures to ensure an appropriate response. In the context of the hybrid attack launched by the Belarusian regime, EU leaders indicated that the EU would adopt further sanctions, as a matter of urgency.

The European Council reiterated its call to Turkey to fully implement the EU-Turkey Statement, including vis-à-vis Cyprus, and stressed its determination to ensure effective control of its external borders. It also called for effective returns to be ensured, the reduction of secondary movements and for a fair balance between responsibility and solidarity among Member States. Charles Michel [reported](#) on a positive migration discussion, seeing indications of convergence in positions, regarding both the external and internal dimensions of migration, and a window of opportunity to make progress. President von der Leyen [reiterated](#) her call to make progress on the new pact on migration and asylum.

Trade

Since the European Council did not discuss trade at its [informal dinner in Brdo](#) as originally planned, it was discussed over dinner during the formal October meeting. The dinner format provided EU leaders the possibility of a strategic discussion on trade, without the need to reach unanimous agreement on written conclusions.

With 'strategic autonomy' being one of the buzzwords of the moment in the EU, President Michel [placed](#) clear emphasis on trade, by designating it as the EU's 'most effective tool' to exert global influence. The European Council is [reported](#) to have discussed the challenges of ratifying trade agreements that have struggled to obtain the necessary support from Member States and/or the European Parliament (such as [Mercosur](#) and [CAI](#)). [There were suggestions](#) that the Commission should be more transparent during the negotiation process and improve communication on the benefits of trade and its ability to export EU values globally, in order to counter ratification difficulties. However, the [Commission retains the legal right](#) to negotiate EU trade deals on behalf of Member States and an attempt by EU leaders to influence how trade deals are negotiated appears to be a [further example](#) of the European Council's overstepping its Treaty-based role.

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eprs@ep.europa.eu (contact)

www.eprs.ep.parl.union.eu (intranet)

www.europarl.europa.eu/thinktank (internet)

<http://epthinktank.eu> (blog)

