



# Multi-actor, multi-level governance for the transatlantic climate and energy dialogue

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*Quel  
avenir  
pour la  
coopération  
transatlantique ?*

**ARNAULT BARICHELLA**

*Multi-actor, multi-level governance for the transatlantic climate and energy dialogue*

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**ARNAULT BARICHELLA**

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Within Europe and around the world, a populist upsurge is threatening the liberal international order. Following the Brexit referendum and Donald Trump's election as US President, multilateral cooperation appears to be in jeopardy and transatlantic relations have reached an historic low point. Indeed, Trump's nationalist ideology has led him to embrace an insular foreign policy under the slogan 'America first', criticizing key allies in Europe for taking advantage of the United States. This has led

Trump to suspend negotiations with the EU regarding the Transatlantic Trade and Investment Partnership (TTIP), and sharply rebuke NATO allies for not contributing their fair share on defense spending. Likewise, Trump's decision to withdraw from the Paris Agreement on climate change represents a significant challenge to transatlantic relations, given Europe's strong commitment to the accord and to environmental policy more generally. It is representative of the erosion in international cooperation and the breakdown of entrenched alliances, highlighting current tensions in the transatlantic dialogue. Trump's announcement has opened a breach in the global climate regime, given that the US is the second largest greenhouse gas (GHG) emitter and had pledged a substantial amount of funding to support implementation of the Paris Agreement.

Nonetheless, the rest of the international community has decided to continue without the US federal government. This was made clear during the latest G20 summit in Hamburg when all parties confirmed their commitment to the Paris Agreement. Moreover, Europe has sought to position itself as a guardian of the climate regime, building a strong network of international climate partnerships with other world powers such as China or India to compensate for US withdrawal.<sup>1</sup> Despite the resurgence of nationalism that feeds on opposition to multilateralism, international cooperation remains more vital than ever to tackle genuinely global challenges such as climate change. Indeed, even within the US, a broad coalition involving cities, states, the private sector and civil society has vowed to continue implementing American climate pledges under the Paris Agreement regardless of the Trump administration. Hence, this paper aims to examine the potential for climate change to strengthen the transatlantic dialogue under a multi-actor, multi-level governance approach. Indeed, the legal structure of the Paris Agreement allows for a flexible framework on climate change. The national level, while important, can be bypassed through cooperation between cities, states, businesses and civil society groups (including NGOs and universities) on both sides of the Atlantic. How these instances interact and implement their commitments to the Paris Agreement, through non-formal mechanisms such as 'parallel pledges', provides an innovative legal framework for more robust transatlantic dialogue and cooperation.

## **I. CONTEXT**

The Paris Agreement represents the most ambitious attempt ever made to tackle climate change at the global level. The 21<sup>st</sup> Conference of the Parties (COP), held in Paris in late 2015, achieved a historic success by breaking decades of diplomatic deadlock, establishing a structure for global climate governance signed by 195 countries. The Agreement represents a milestone in climate negotiations, as it included for the first time a commitment to contain global mean temperatures to a

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<sup>1</sup> A. Barichella, *How Europe can and should become the guardian of the Paris Agreement on climate change*, Robert Schuman Foundation (November 2017), pp.6-8. Available at: <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-450-en.pdf>

1.5 °C increase over the course of the century. It also established a new ‘transparency framework’, whose purpose is to review the ‘intended nationally determined contributions’ (INDCs) of all parties, and includes differences in expected efforts between developed and developing countries. The adequacy of national efforts is to be appraised during ‘global stockades’ to be held every five years starting in 2023. Although it is not perfect,<sup>2</sup> the Paris Agreement represents the best chance to address climate change, and the US played an instrumental role in rendering the COP21 a success. Former US President Barack Obama ended a period of US disengagement from the climate regime that dated from President George W. Bush’s decision not to ratify the Kyoto Protocol in 2001. Obama sought to position his country at the heart of the global climate regime, with the US providing key contributions to all the COP’s under his eight years as President. Despite an initial setback at Copenhagen, he developed a strong partnership with Chinese President Xi Jinping, and the US-China relation was critical in rendering the Paris Agreement a universal and comprehensive accord. As the two largest economies in the world, the US and China galvanized the international community, putting pressure on reluctant countries to sign on. Moreover, Obama committed the US to providing the largest amount of climate financing to support the implementation of the Paris Agreement, and launched ambitious internal environmental legislation to meet US climate pledges such as the Clean Power Plan.<sup>3</sup>

As a result, Donald Trump’s decision to withdraw from the Paris Agreement in June 2017 sent shockwaves across the international community, and within the US itself. This withdrawal threatens the viability of the climate regime, given America’s position as the world’s second global GHG emitter (after China). Following recent natural disasters, including hurricanes that have hit Texas, Florida and the Caribbean, and that many scientists believe are linked to global warming, Trump has faced more pressure to reverse his decision over the Paris Agreement. It is true that there have been contradictory declarations over the accord. However, the Trump administration is very unlikely to enact any meaningful action on climate change, either domestically or internationally.<sup>4</sup> This is because the US Republican Party as a whole remains unconvinced on climate change, subject to the influence from powerful lobbying groups. The Trump administration has launched a policy to disempower the US Environmental Protection Agency, and has scrapped the Obama era Clean Power Plan. For all these reasons, the US federal government has in all likelihood

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<sup>2</sup> Despite the 1.5°C commitment, it has been estimated by scientists that the INDCs of all parties taken together would probably still cause an increase in global temperatures of 2.7°C by the end of the century. This is why the five-yearly ‘global stockades’ (scheduled to begin in 2023) are important in order to progressively enhance INDCs over time.

<sup>3</sup> The Clean Power Plan had established state targets for reducing GHG emissions, with the final version planning to reduce national electricity emissions by about 32% before 2030 (from a 2005 baseline).

<sup>4</sup> During an interview, US Secretary of State Rex Tillerson said that Trump could change his mind over the Paris Agreement, “if we can construct a set of terms that we believe is fair”. Interview on CBS News (September 17, 2017).



relinquished its former leadership role in the climate regime, at least until the next presidential election in 2020.<sup>5</sup>

This does not mean that the United States as a whole is abandoning the fight against climate change. Indeed, opinion polls consistently indicate that a majority of Americans are in favor of remaining in the Paris Agreement and believe that climate change is a serious issue that needs to be addressed.<sup>6</sup> Therefore, regardless of the Trump administration, many different levels in the American political system, as well as a variety of different types of actors, remain strongly committed to addressing climate change. This is why the transatlantic climate dialogue must adapt to the changing situation and evolve towards a multi-actor, multi-level governance framework. It is essential for Europe to respond pragmatically and soberly by not allowing the attitude of the Trump administration to result in a confrontational situation that would damage transatlantic relations.

## **II. TRANSATLANTIC COOPERATION WITH US STATES AND CITIES**

The US Constitution sets out the legal framework for a federal system whereby states enjoy a high degree of autonomy. The American political system is sometimes referred to as ‘cooperative federalism’, as the central government shares powers with its constituent units, and states retain sovereignty in a variety of different areas. In order to compensate for the federal gridlock in Washington over environmental policy, states have gradually sought to enhance their mandate and move beyond the strict wording of the Constitution. Over time, states and cities have acquired a significant range of competences regarding climate and energy issues, and progressive parts of the US, such as California and the northeastern states, have become world leaders in green legislation. States may be nimbler, whereas Washington is often blocked by powerful lobbying groups from the fossil fuel industry generally opposed to any type of environmental regulation. Although they are present in local legislative processes, these lobbying groups invest far fewer resources at the state and municipal levels, which means they are less able to influence environmental policies. Moreover, partisanship is weaker at the local level, where state and municipal representatives are more likely to vote according to the wishes of their constituencies and are less subject to a rigid party line like in the federal Congress.<sup>7</sup>

Cities and local entities play a vital role in addressing climate change, forming the essential building blocks of the climate regime. As urban population density continues to increase, cities are ideally situated to create more environmentally

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<sup>5</sup> A. Barichella (November 2017), p.6.

<sup>6</sup> C. Clement and B. Dennis, *Post-ABC poll: Nearly 6 in 10 oppose Trump scrapping Paris agreement*, The Washington Post (June 5, 2017). Available at: [https://www.washingtonpost.com/news/energy-environment/wp/2017/06/05/post-abc-poll-nearly-6-in-10-oppose-trump-scrapping-paris-agreement/?utm\\_term=.38cd6a87005a](https://www.washingtonpost.com/news/energy-environment/wp/2017/06/05/post-abc-poll-nearly-6-in-10-oppose-trump-scrapping-paris-agreement/?utm_term=.38cd6a87005a)

<sup>7</sup> D. R. Fisher, “Understanding the relationship between subnational and national climate change and politics in the US”, 31(5) *Environment and Planning: Government and Policy* (2013), pp.769-84.

efficient infrastructure with a lower carbon footprint, since urban infrastructure planning impacts a greater number of people. Moreover, mayors and state governors have the power to take immediate and more direct action on climate change compared to national governments. For example, one third of US states introduced innovative policies to reduce their GHG emissions over the last decade, including carbon capture and storage techniques, new types of renewable energies, as well as carbon markets. Hence, cities and states are sometimes seen as ‘laboratories of democracy’, whereby new types of environmental policies can be tested and, if successful, applied by other states and the federal government (under Obama). Moreover, states and cities have also relied on the court system to sue the federal government, acting through state attorneys to file lawsuits and claim damages for inadequate protection of the environment. For example, the Bush administration was sued by states following withdrawal from the Kyoto Protocol,<sup>8</sup> and many lawsuits have recently been filed following Trump’s rollback of Obama era federal environmental regulations.

Regardless of the Trump administration, many progressive American states and cities have indicated that they remain committed to implementing their climate pledges and have vowed to enhance their policies in defiance of the federal government. This is significant, as several of these states, such as California and New York, have larger economies than many European countries, and can thus make substantial contributions to reducing GHG emissions. The same day that Trump announced his intention to withdraw from the Paris Agreement, a bipartisan coalition of states was formed. Called the ‘United States Climate Alliance’, this coalition made clear its commitment to upholding the objectives of the Paris Agreement within state borders by continuing efforts to achieve the US objective of reducing GHG emissions between 26 to 28% by 2025 (from a 2005 baseline), meeting or even exceeding the targets of the Obama era Clean Power Plan. As of late November 2017, the Climate Alliance had been joined by 15 states that comprise 36% of the US population and close to 40% of national GDP (\$7 trillion), representing about one fifth of total American GHG emissions.<sup>9</sup> Likewise, the bipartisan ‘US Mayors National Climate Action Agenda’, often referred to as ‘Climate Mayors’, was founded in 2014. Many American cities have joined the ‘Climate Mayors’ network since Trump’s withdrawal announcement, which now represents 384 cities and about 20% of the US population (68 million people).<sup>10</sup> The ‘Climate Mayors’ signed a bipartisan letter to Trump underlining their determination to uphold and reinforce municipal climate policies. All of these various networks have been brought together under two national frameworks that provide unity to the coalition of US actors seeking to remain engaged with the Paris

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<sup>8</sup> Notice of Intent to Sue Under Clean Air Act § 304(b)(2), addressed to The Honorable Christine Todd Whitman, Administrator, US Environmental Protection Agency, from the Attorney Generals of the States of New York, Connecticut, Maine, Massachusetts, New Jersey, Rhode Island and Washington (February 20, 2003).

<sup>9</sup> See ‘US Climate Alliance’: <https://www.usclimatealliance.org>

<sup>10</sup> See ‘Climate Mayors’: <http://climatemayors.org>

Agreement. The first is known as ‘We Are Still In’ and the second is referred to as ‘America’s Pledge’; they include states, cities, and many private sector and civil society actors. Although separate networks, they work closely together and claim to represent more than 127 million Americans and \$6.2 trillion of the U.S. economy, spanning all 50 states in a bipartisan coalition.<sup>11</sup>

As a result, there are clearly many opportunities for the EU to continue cooperating with the US on environmental issues through a multi-level framework. ‘We Are Still In’ has already sent more than one hundred ‘climate champions’ to represent the US during the COP23 conference in November 2017 in Bonn; these ‘champions’ included mayors, governors, academics, business and NGO leaders. ‘We Are Still In’ and ‘America’s Pledge’ announced at Bonn their ambitious goal of fully upholding the commitments made by the Obama administration under the Paris Agreement. Moreover, many American cities and states also form part of larger international climate networks, together with their European counterparts. A prominent example includes the ‘Under2 Coalition’, which regroups subnational governments (regions or cities) from around the world, including many in Europe and the US, such as California and New York, as well as Bavaria (Germany), Brittany and Alsace (France). Members of this coalition have committed to reducing GHG emissions from 80 to 95% by 2050, which many scientists believe will be necessary for global warming to remain below the 2°C threshold.<sup>12</sup> Another example is the ‘C40 network’, which brings together 90 of the world’s largest cities committed to addressing climate change, representing over 650 million people and one quarter of the global economy.<sup>13</sup> C40 focuses on a range of global initiatives that are specifically adapted to the urban context. Many European and US cities form part of the C40 network, with the Mayor of Paris Anne Hidalgo serving as Chair, and former New York Mayor Michael Bloomberg serving as President of the Board. Furthermore, the ‘Global Covenant of Mayors for Climate & Energy’ is a broader platform and the largest global alliance committed to climate leadership. It brings together 7400 cities and local governments from six continents, representing 121 countries and over 600 million people.<sup>14</sup> The board of the ‘Global Covenant of Mayors’ is co-chaired by the EU Commissioner for Energy Union Maroš Šefčovič, along with Michael Bloomberg, underlining the possibilities for transatlantic cooperation.

All of these international networks will become essential if Europe and the US are to implement the Paris Agreement through a multi-level governance framework. They

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<sup>11</sup> See ‘We Are Still In’: <https://www.wearestillin.com/us-action-climate-change-irreversible>  
See ‘America’s Pledge’: <https://www.americaspledgeonclimate.com>

<sup>12</sup> The ‘Under2 Coalition’ brings together 177 subnational jurisdictions from around the world, representing about 1.2 billion people and one third of the global economy (\$28.8 trillion). See: <http://under2mou.org/coalition/>

<sup>13</sup> See ‘C40’ network: <http://www.c40.org>

<sup>14</sup> The ‘Global Covenant of Mayors’ was formed in January 2017 following the merger of the two previous largest global climate networks, including the ‘EU Covenant of Mayors’ and the ‘Compact of Mayors’. See: <http://www.globalcovenantofmayors.org>



provide a platform for cities and regions to exchange best practices and information, as well as potentially coordinate the implementation of their climate objectives. Moreover, there is also a role for national governments and the EU, since some US states such as California have acquired non-negligible foreign policy competences. For example, the Governor of California Jerry Brown took the initiative to travel to Beijing in June 2017 to sign an agreement with Chinese President Xi Jinping for cooperation on clean energy, which includes increasing trade between China and California over green technologies. This should inspire the EU and its member states to negotiate similar arrangements with US sub-national actors in order to support their efforts in implementing American pledges under the Paris Agreement. Nevertheless, while such efforts are essential, the reality is that international law remains state-centric. The foreign policy competences of sub-national entities such as states and cities cannot match those of national governments. For instance, California does not have the legal authority to sign an international treaty with a foreign nation. The state-centric nature of international law means that only national governments have the ability to sign the Paris Agreement, and sub-national actors must rely on a system of 'parallel pledges'. The latter are monitored by the Non-State Actor Zone for Climate Action (NAZCA, created at the COP20 in 2014), a UN global platform that has a mandate to register the pledges of non-state actors and ensure coordination for their implementation. NAZCA provides another mechanism for US sub-national actors and their European counterparts to continue cooperating on climate issues. However, 'parallel pledges' are limited from an international legal perspective and are not a substitute for the absence of an official national American pledge. There is a trend in international law regarding the growing role of non-state actors, and former New York Mayor Michael Bloomberg has publically asked the UN to consider allowing sub-national actors to sign the Paris Agreement. This is unlikely to succeed, at least in the near term, given that national sovereignty remains a cornerstone of international law and the UN system.

### **III. TRANSATLANTIC COOPERATION WITH THE US PRIVATE SECTOR AND CIVIL SOCIETY**

The private sector plays a key role in ensuring that the economy transitions towards a more sustainable form of capitalism. Businesses must make long-term decisions about their investments that have a profound impact on markets and how the economy develops. For a long time, the costs of renewable energies were prohibitively high, in part due to expensive technologies, which hampered their widespread adoption. Over the last few years, however, a number of technological breakthroughs have allowed for a dramatic fall in the cost of most types of renewable energies and clean technologies around the world. For example, the cost of batteries in electric vehicles has decreased by nearly 80% since 2008; that for offshore wind energy has more than halved during the last three years in areas such as Northern Europe. Likewise, solar energy has also experienced a dramatic fall in cost, becoming an

attractive and cheap alternative source of energy compared to coal and gas.<sup>15</sup> These represent very significant changes in the structure of global energy markets that are set to continue. As a result, international investments in green sectors of the economy are likely to accelerate in the next few years. Many governments around the world are providing a supportive framework for businesses to invest in clean technologies and renewable energies as part of their policies to implement the Paris Agreement. Thus, there are global market forces at work which the Trump administration does not have the power to stop and that are leading towards a more sustainable form of economic development.

This also applies within the US, where American businesses are likely to continue investing in the green economy. Because energy investments are long term, most American firms are betting that future US administrations will not stick to Trump's unconditional embrace of fossil fuels and that the renewable energy and clean technology transition is irreversible. In fact, the economic realities within the US are likely to block many aspects of Trump's fossil fuel agenda. For instance, Trump's desire to initiate a 'coal renaissance' will probably be thwarted by the rise of shale gas and renewable energies as cheap alternatives, with the solar energy industry already employing almost four times more people than the coal industry in the US.<sup>16</sup> A majority of American businesses and investors have openly voiced their opposition to the decision to withdraw from the Paris Agreement, which they believe will hurt the US economy, thus discrediting Trump's rationale for withdrawal. Many of the largest American companies signed an open letter urging Trump not to withdraw, including Apple, Facebook, Google, Microsoft and Morgan Stanley.<sup>17</sup>

Therefore, there are many opportunities for the transatlantic environmental dialogue to continue at the level of the private sector. Since the EU remains America's largest trading partner and vice versa, this means that transatlantic business exchanges, including in green economic sectors, are set to continue. More importantly, the EU has often relied on the fact that it represents the largest single market in the world to influence international standard setting in a variety of fields, including the environment. The EU has established the rule that anyone wanting access to its internal market must comply with European standards.<sup>18</sup> Therefore, many American businesses will be under pressure to conform with EU environmental rules in order to continue transatlantic trading. Moreover, since the Paris Agreement has now been

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<sup>15</sup> The Economist, *The burning question: with or without America, self-interest will sustain the fight against global warming* (November 26 – December 2, 2016), p.9.

<sup>16</sup> L. Schalatek and N. Löhle, *With or without the Paris Agreement – Trump won't have the last word on US climate policy*, Henrich Böll Stiftung Foundation (June 2, 2017). Available at: <https://www.boell.de/en/2017/06/02/or-without-paris-agreement-action-climate-policy-under-trump-not-last-word>

<sup>17</sup> D. Victor, 'Climate Change Is Real': Many U.S. Companies Lament Paris Accord Exit, The New York Times (June 1, 2017). Available at: <https://www.nytimes.com/2017/06/01/business/climate-change-tesla-corporations-paris-accord.html>

<sup>18</sup> European Commission (2015) *A deeper and fairer Single Market – Factsheet*. Ref. Ares (2015)4681912.

signed by all countries in the world except the US, American companies that trade internationally will be forced to adopt at least a minimum level of environmental standards. Thus, many US firms have joined international business networks that focus on addressing climate change through green investments, where they work in cooperation with their counterparts in Europe and around the world. This includes the 'World Business Council for Sustainable Development' (WBCSD), a global CEO-led network of over 200 major businesses that work together to accelerate the transition towards sustainable development. Members come from many different business sectors and include several of the largest firms in Europe and the US, representing a combined revenue of \$8.5 trillion and 19 million employees.<sup>19</sup> As a result, structures such as the WBCSD will allow for businesses in Europe and the US to continue cooperating on climate and energy issues regardless of the political situation.

International carbon markets represent another pathway for advancing transatlantic cooperation on climate change at the level of the private sector. Since 2005, the EU has developed the Emissions Trading System (ETS), which has become its main tool for delivering on climate pledges. It is based on a 'cap and trade' principle establishing a carbon market in rights to emit and, despite initial difficulties, the third phase of the ETS from 2013-2020 has been more successful. Likewise, in 2006 California passed the 'Global Warming Solutions Act', which was updated in 2016,<sup>20</sup> establishing a state cap and trade system that has since been linked with similar carbon markets in Canadian provinces such as Quebec, Ontario and Manitoba. Provinces in Brazil and Mexico are also planning to join in the next few years. In a similar way, the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont launched the 'Regional Greenhouse Gas Initiative' in 2009, representing the first mandatory carbon market system in the US.<sup>21</sup> Therefore, it may be possible to build links between US carbon markets and the EU's ETS in order to develop a transatlantic cap and trade system. This would help to reinforce trade in green economic sectors between the EU and the US, as well as potentially develop common transatlantic environmental standards. However, this will not be without difficulties. If European regulators attempt to link the ETS with California's carbon market for example, carbon credits will begin to flow between the EU and the US. The problem is that the status of US generated carbon credits would not be clearly defined from an international legal perspective, given that the US will no longer be bound by the rules set out in the Paris Agreement. Moreover, as seen above, sub-national actors such as US states are not able to ratify international environmental treaties. Their 'parallel pledges' offer no substitute under

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<sup>19</sup> The WBCSD works through almost 70 national business councils, which allows for direct international private sector cooperation.

<sup>20</sup> SB-32 California Global Warming Solutions Act of 2006: emissions limit. See: [https://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160SB32](https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB32)

<sup>21</sup> The aim of the 'Regional Greenhouse Gas Initiative' was to reduce emissions from each state's electricity generation sector to 10% below 2009 levels by 2018.

international law, and while it is still possible in theory to link the ETS with its sub-national counterparts in the US, the legal implications will need to be carefully considered.

Civil society actors and organizations such as NGOs, universities, think tanks, foundations and various types of citizens groups, also have an increasingly important role in addressing climate change. The United States has a vibrant NGO community working on environmental issues that has played a key role in advancing grassroots efforts to tackle climate change. Some of the most prominent include Ceres, the Sierra Club, the Environmental Defense Fund and Friends of the Earth. Such organizations work to bring environmental concerns to public officials, advocate and monitor climate policies at the local, national and international levels, contribute to information sharing and provide expertise and analyses that can help advance climate objectives. Following Trump's announcement of withdrawal from the Paris Agreement, the American community of environmental NGOs vowed to redouble efforts and work with cities, states and the private sector to continue implementing US climate pledges. Indeed, a number of environmental NGOs such as Greenpeace, the World Wildlife Fund for Nature (WWF), the Climate Action Network and the World Resources Institute, have grown into international networks, extending their reach with offices in both Europe and the US.

Following the 1992 Rio Earth Summit, the UN provided greater recognition for the contributions of non-state actors. There is a growing tendency amongst legal scholars to see international law as undergoing a transition.<sup>22</sup> Although national sovereignty remains of fundamental importance in the world order, the last few decades have seen sub-national and non-state actors becoming subjects and agents under international law. Non-state actors such as NGOs have increasingly been able to influence the drafting of international treaties and conventions. For example, NGOs have become more active in the Conferences of the Parties to the UNFCCC and international climate negotiations. The 1992 Rio Earth Summit officially established the status of NGOs as 'observers' in international organizations, giving them a role in climate negotiations. Likewise, the 'Lima Paris Action Agenda' in 2014 took measures to associate NGOs more closely with the COP process. Nevertheless, the reality is that, like federal states and cities, NGOs and private companies cannot sign onto the Paris Agreement and their legal status remains limited under international law. Indeed, 'observer status' does not allow full participation, which means that NGOs and private actors can only influence the outcome of negotiations, but not directly take part in them and make decisions.<sup>23</sup> Moreover, national courts have not been receptive to international environmental legal arguments regarding horizontal litigation.<sup>24</sup> However, private companies have the ability to voluntarily adhere to environmental

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<sup>22</sup> See: M. N. Shaw, *International Law*, Cambridge University Press (7<sup>th</sup> edition, 2014), p.31.

<sup>23</sup> See: C. Redgwell, "International Environmental Law", taken from M. D. Evans (ed.), *International Law*, Oxford University Press (3<sup>rd</sup> edition, 2010), pp.692-93.

<sup>24</sup> *Ibid.*

standards, and there is a growing trend towards self-regulation through concepts such as ‘corporate social responsibility’, where environmental issues have featured prominently. For example, three out of the ten principles in the UN ‘Global Compact’ focus on corporate environmental issues, which constitutes a non-binding framework for corporate social responsibility. Furthermore, private companies and NGOs are also entitled to register their parallel climate commitments with NAZCA under the classification of “civil society organizations, investors and companies”.<sup>25</sup> This provides another framework for NGOs and businesses in Europe and the US to continue cooperating on climate and energy issues.

#### **IV. TRANSATLANTIC COOPERATION OVER ENERGY SECURITY**

Finally, while it may not be possible for Europe to work with the Trump administration on climate change, there are other related subjects where the transatlantic dialogue with the US federal government might be able to continue. Indeed, promoting greater energy security in Europe has been a long-standing priority for successive US administrations, especially in terms of reducing dependence on Russian imports. Although the EU has made progress over the last few years in diversifying its energy supply, there remains a need for stronger US involvement to counter Gazprom’s still dominant position within Europe’s gas market. While the Trump administration has yet to clearly set out its energy policy, the topic of energy security has already featured prominently in the transatlantic dialogue between US Secretary of State Rex Tillerson and his EU counterparts. Tillerson has made it clear that the US would be interested in increasing its exports of liquefied natural gas (LNG) towards Europe over the next few years.<sup>26</sup> Moreover, during his visit to Poland before the July 2017 G20 summit, Trump underlined his desire to increase US cooperation with European countries over energy issues. This would potentially include working more closely with the ‘Three Seas Initiative’, a group of Central and Eastern European states that seek to enhance energy cooperation, including LNG transits, between the Adriatic, Black and Baltic Seas. In addition, the EU Commissioner for Energy oversaw in June 2017 the signature of a memorandum of understanding between Croatia and Hungary regarding the construction of new infrastructure to enable bi-directional gas flows between them. This will make it possible to accelerate the construction of the Krk LNG terminal in Croatia, with the aim to create a North-South energy corridor in order to increase energy security for the Visegrad Group, which includes Poland, the Czech Republic, Slovakia and Hungary.<sup>27</sup>

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<sup>25</sup> See ‘NAZCA portal’: <http://climateaction.unfccc.int>

<sup>26</sup> The first American LNG shipment to Northern Europe arrived through the Netherlands in late May 2017, followed closely by the first LNG exports to central Europe on June 7 via Poland.

<sup>27</sup> D. Livingstone and E. Brattberg, *Beyond Fatalism: Transatlantic Energy and Climate Cooperation After the Paris Announcement*, Carnegie Endowment for International Peace (July 2017). Available at: <http://carnegieendowment.org/2017/07/05/beyond-fatalism-transatlantic-energy-and-climate-cooperation-after-paris-announcement-pub-71443>



As a result, there are clearly opportunities for the EU to increase energy security cooperation with the US under the Trump administration regarding LNG exports. However, two obstacles remain. First, much will depend on the evolution of US-Russian relations under Trump. The US President and Russian President Vladimir Putin have expressed a desire to re-establish diplomatic relations following a sharp deterioration under the Obama administration. However, initial European fears about a 'grand bargain' between Trump and Putin, which would involve a potential relaxing of sanctions, have so far not materialized. This is mostly due to the US Congress, which succeeded in reaching a bipartisan agreement on a bill that broadened and enhanced current US sanctions against Russia, passed in August 2017.<sup>28</sup> The second obstacle comes from the European side, and revolves around the Nord Stream 2 project led by Gazprom. This involves constructing an offshore natural gas pipeline that would connect the city of Vyborg in Russia with Greifswald in Germany. The expected quantity of natural gas that would flow through Nord Stream 2 is equivalent to that currently coming through Ukraine. As a result, concerns have arisen that this would allow Russia to potentially cut off gas access to Ukraine while continuing to supply Central Europe, thus increasing Moscow's geopolitical leverage and Kiev's vulnerability. Under Obama, the US had strongly opposed the Nord Stream 2 project, due also to concerns that it would jeopardize American LNG exports to Europe. This approach has been followed under Trump, with Secretary Tillerson expressing disapproval of the Nord Stream 2 pipeline to the European countries involved. Therefore, much will depend on how the EU handles this situation over the next few years. Nevertheless, irrespective of whether or not the plan goes ahead, projects such as the Krk LNG terminal in Croatia will be implemented regardless of the fate of Nord Stream 2.

LNG is not the only issue where the transatlantic energy dialogue can continue under the current US administration. Trump has expressed an interest early on in extending the lifespan of US nuclear reactors, including for example restarting the construction of the Yucca Mountain nuclear waste storage facility, which had been put on hold due to political gridlock in Washington. Hence, there is an opportunity for the EU to cooperate with the Trump administration on nuclear energy, since many European countries possess advanced nuclear infrastructure.<sup>29</sup> Nevertheless, the main issue is that nuclear energy has become controversial in Europe, especially since the Fukushima incident, and several member states are currently engaged in a policy of reducing their dependence on nuclear energy. French President Macron, for instance, has made a campaign promise to decrease nuclear energy to 50% of France's energy mix by 2025, and German Chancellor Merkel is engaged in a policy to shut down

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<sup>28</sup> A. Phillip, *Trump signs what he calls 'seriously flawed' bill imposing new sanctions on Russia*, The Washington Post (August 2, 2017). Available at: [https://www.washingtonpost.com/news/post-politics/wp/2017/08/02/trump-signs-bill-imposing-new-sanctions-on-russia-but-issues-a-statement-with-concerns/?utm\\_term=.22fadae086a8](https://www.washingtonpost.com/news/post-politics/wp/2017/08/02/trump-signs-bill-imposing-new-sanctions-on-russia-but-issues-a-statement-with-concerns/?utm_term=.22fadae086a8)

<sup>29</sup> In France, for example, nuclear energy represents 75% of its energy mix, and Hungary has sharply increased the construction of nuclear reactors over the last few years.

many German nuclear reactors.<sup>30</sup> Nevertheless, the US and the EU could increase cooperation over a set of less ambitious targets. This may include discussions about common transatlantic regulatory reforms in order to enhance the competitiveness of the Western nuclear industry. At present, a majority of prospective nuclear facilities in Europe and the Middle East are meant to be built by Russian or Chinese state-owned companies. This should encourage greater transatlantic collaboration over nuclear energy. Finally, the paradox is that transatlantic cooperation over LNG and nuclear energy will inadvertently yield positive results for mitigating climate change, as both energy sources involve a decrease in GHG emissions compared to conventional fossil fuels. Nuclear energy itself is nearly carbon-free, even though GHG emissions occur for the building and dismantling of reactors, and nuclear waste remains radioactive for centuries. Likewise, natural gas has the lowest GHG emission rate per unit of energy compared to other fossil fuels, and emissions for the transportation of LNG are lower compared to piped natural gas.

In conclusion, there is great potential for the transatlantic climate and energy dialogue to evolve towards a multi-actor, multi-level governance framework over the next few years. Although the Trump administration has abdicated federal responsibility in this area, the US comprises a diverse and very active network of groups that are committed to implementing US climate pledges under the Paris Agreement and redouble efforts in defiance of Washington. The US Constitution provides for a system of 'cooperative federalism', whereby progressive states and cities have been able to develop their own climate and environmental policies over the last few decades to compensate for national gridlock. US states and cities have organized their own national networks on climate change, and many are also part of broader international coalitions of cities and regions, together with their European counterparts. Moreover, a majority of US companies support remaining in the Paris Agreement, as there are global market forces pulling the economy towards more sustainable development following the fall in costs for clean technologies and renewable energies. Many US firms that trade internationally, and especially those trading with Europe, will also be pressured to adopt higher environmental standards to maintain access to the EU's internal market. Likewise, a vibrant American civil society community made up of NGOs, universities and various types of citizens' groups, many of which have extensive international networks and links with Europe, remain highly committed to addressing climate change. Finally, while not expressing any interest in climate change, the Trump administration is considering reinforcing cooperation with Europe on certain energy issues such as nuclear energy and LNG trading, which may inadvertently have a positive impact on reducing GHG emissions.

Therefore, there are clearly many opportunities for the transatlantic climate and energy dialogue to continue and evolve towards a multi-actor, multi-level governance framework over the next few years. However, it is equally important to acknowledge

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<sup>30</sup> See: D. Livingstone and E. Brattberg, Carnegie (2017).

the limitations of this framework from an international legal perspective. Indeed, only nation states have the right to sign the Paris Agreement and take on official pledges, since non-state actors are limited to ‘parallel pledges’ and ‘observer status’ during climate negotiations. This already represents a significant improvement from the traditional state-centric conception of international law, where non-state actors are acquiring an increasingly important role as subjects and agents for international treaties and conventions. However, ‘parallel pledges’ cannot fully compensate for the absence of an official national American pledge following Trump’s decision to withdraw from the Paris Agreement. Moreover, ‘observer status’ means that non-state actors can at best influence the outcome of international negotiations, but are not able to take any binding decisions in the same way as national governments. Therefore, while the transatlantic climate and energy dialogue should evolve towards a multi-actor, multi-level framework under the Trump administration, this represents a palliative and temporary strategy to compensate for and mitigate the damage caused by Trump’s decision to withdraw from the Paris Agreement. As a result, Europe should do everything it can to encourage Trump to reverse his decision, and leave the door open for a future US administration to rejoin the Paris Agreement in the years to come.

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