



Closing the national ownership gap: An EU 'Fit for 55' requires the EU-27 to be 'Fit for Zero'

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**A summary of this paper is available [here](#).*

*The EU's decision to commit to achieve climate neutrality in 30 years at the latest transforms the magnitude and complexity of the challenge posed to Europe's climate architecture. Implementing the EU Climate Law will require **rapid, radical and irreversible** change across the whole economy. Change on this scale is societal in nature. Policy making to deliver the national transformations needed to achieve climate neutrality in Europe will, by definition, need to be a deeply political process because it will require sustained political leadership and public ownership of the choices made. It will also require a national 'mission mindset' to drive the vast challenge of delivering policy implementation on the ground. This paper argues that while effective EU oversight and support is needed to achieve climate neutrality in Europe, this objective cannot be achieved unless it is also strongly 'owned' at national level. Although the EU Climate Law commits the Union to achieve net zero by 2050 at the latest, there is a 'national ownership gap' inherent in the Union's wider climate architecture. If the Union is to get onto a pathway consistent with net zero by 2030, the EU's Fit for 55 review must tackle this ownership gap so that the EU-27 is Fit for zero.*

1. Introduction

Public ownership, political leadership and a national mission mindset are the central enabling conditions for what this paper terms 'national ownership' of the climate neutrality or net zero agenda. These are, in effect, the pre-conditions for the quality of national commitment needed to facilitate a smooth transition, to drive policy making consistent with climate science and timely policy implementation on the ground.—Although the EU Climate Law clarifies the EU's collective direction of travel on climate and creates a framework of **EU level** governance to deliver this objective, the EU's climate architecture only creates **shallow national ownership** of the EU's climate neutrality objective. Some countries have taken unilateral action to make strong national commitments to the climate neutrality objective and have put in place robust climate laws and wider governance arrangements to ensure its delivery. But this is not the case in all countries and the quality of those commitments vary in strength. The EU Climate Law will therefore be implemented in the context of highly divergent levels of national ownership of and commitment to the climate neutrality objective and unprecedented economic and political headwinds created by the COVID-19 pandemic which pose significant risks to its implementation. This paper argues that getting the EU onto a pathway consistent with climate neutrality cannot be achieved by diminishing the role of the state. Nor can it be achieved by **only** raising national climate and sectoral targets. To create an EU climate architecture capable of delivering the quality of national policy making that is required across the EU-27 to implement the EU Climate Law, the EU must also tackle its national ownership gap so that national climate governance in all countries is 'fit for zero'. This paper readily acknowledges that many factors stimulate political leadership on climate; but it is nevertheless true that countries serious about climate neutrality have consistently recognised that it is essential to foster national ownership of this objective and moreover that national climate laws and governance¹ play an important role in stabilising and strengthening the enabling conditions for this dynamic. The 'Fit for 55' review is a unique opportunity for the Union to apply the lessons emerging from high ambition countries so that the EU's post-Fit for 55 climate architecture contains minimum standards for national climate governance designed to resolve the EU's national ownership gap. As a minimum, doing so would require revision of the EU's Governance Regulation², the EU Climate Pact, Just Transition

¹ It should be emphasised that the term 'climate laws' in this context refers to the long-term, whole economic 'framework' laws put in place to manage the *process* of policy making on climate for the purposes of achieving a defined and scientifically informed long-term climate objective. These laws differ in their function and impact on ambition from other laws relevant to climate action such as sector specific laws on energy efficiency, transport or renewables measures that are of course crucial to the transition but play a different role in climate governance. For further detail on the definition of framework climate laws, see Muinzer TL, (2021) *What are National "Climate Change Acts"?* (forthcoming) *Journal of Energy & Natural Resources Law*.

² Regulation (EU) 2018/1999. It should be noted that while the Governance Regulation has not been included by the Commission within the Fit for 55 review, which is regrettable, its provisions can nevertheless be amended through revisions adopted within the Fit for 55 process.

Mechanism and the Effort Sharing Regulation; more likely it will also require a more broad-ranging diagnosis of the options for strengthening national ownership of the EU's climate objectives. Tackling the EU's national ownership gap now will: (a) protect the EU's climate mandate from destabilising forces at national level, (b) prevent disinterested or distracted governments 'blaming' the EU for pressure to take climate action; (c) prevent countries being left behind while others accelerate towards net zero economies and (d) reinforce the EU institutions' roles in steering and overseeing delivery of the EU's climate objectives.

2. WHY 'NATIONAL OWNERSHIP' OF THE EU'S CLIMATE NEUTRALITY OBJECTIVE MATTERS

2.1 The EU's decision to commit to achieve climate neutrality in 30 years at the latest transforms the magnitude and complexity of the challenge posed to Europe's climate architecture because it will require nothing less than societal transformation affecting the whole economy and at a speed never before experienced in human history. Achieving the climate neutrality objective in Europe will require transformation of the fundamental conditions of how individuals and communities live and will impact on highly sensitive and deeply held individual and socio-cultural values and practices. Delivering this commitment will require an acceleration in the transformation of Europe's energy infrastructure, and even more rapid and radical changes affecting how individuals and communities travel, work, heat, cool, and light their homes and buildings, what they eat and levels of natural resource consumption, changes in attitudes and approaches to land use and a transformation in the prioritisation of biodiversity. Delivering the practical changes on the ground will also require national, regional and local authorities to successfully roll out an accelerated but effective retrofit of millions of homes and buildings and put in place EV infrastructure for transport and in parallel facilitate major public engagement processes to ensure public understanding of and support for the choices that must be made to deliver policy making consistent with climate neutrality.

2.2 Achieving climate neutrality will be, by definition, a deeply political process and nothing short of a national 'mission-like' experience. Consequently, translating the EU's climate neutrality objective into reality will require this transformational objective to be strongly 'owned' at national level. This paper contends that national ownership matters for three fundamental reasons.

- i. Transformational change is impossible to achieve without a stable societal consensus that the change is necessary and agreement about the pathways for achieving it - in effect 'public ownership' of the policies needed for climate neutrality.
- ii. Similarly, transformational change is impossible without stable political leadership that is resilient to electoral cycles and other economic and social disruption. In effect, this requires not only political willingness from the party or parties in government but also a robust cross-party consensus that policy action consistent with science is necessary, thus eroding the incentive to oppose climate action and building confidence and leadership by the party or parties in power.
- iii. The scale of change on the ground will also require national capacity for highly creative approaches to policy development and public engagement involving a willingness to take risks, a capacity for highly creative problem solving and policy innovation, the engagement of numerous public agencies and potentially the rapid realignment of powers between national, regional and local authorities so that action is taken at the most efficient level.

2.3 In effect, the enabling conditions for what this paper terms 'national ownership' are preconditions for the quality of national commitment that is needed to achieve a smooth transition, policy making consistent with a scientifically informed long-term objective and the policy efficiency and innovation needed to achieve practical delivery of the EU's climate objective on the ground.

2.4 This paper acknowledges that while the drivers of political leadership and public ownership are myriad,³ it argues that countries serious about climate neutrality have demonstrated a consistent tendency to put in place national frameworks for climate law and governance that function to foster public ownership of the agenda, political leadership and a national mission mindset.⁴ Though the quality of those arrangements varies, countries serious about climate recognise the important role climate laws and governance play in stabilising the enabling conditions for national ownership and creating a self-reinforcing feedback loop that continues to drive public support, ambition and delivery.

2.5 Despite the EU's considerable leadership in climate policies, national ownership of the EU's climate objectives is a neglected issue. Consequently, the EU's climate architecture is only designed to achieve a shallow level of national ownership of the EU's climate objectives. This lack of focus on fostering national ownership is not concentrated in a single aspect of the EU's climate architecture. It is reflected across the EU measures governing national climate action, namely, the Effort Sharing Regulation, Governance Regulation, EU Climate Law, the Aarhus Regulation, the Climate Pact and Just Transition Mechanism. A more detailed mapping of the ownership gap inherent in the EU's climate architecture is provided below.

2.6 This lack of focus on building the enabling conditions for national ownership was arguably justified when the EU's climate objectives were incremental, and its long-term objective was uncertain. But in an era of seriousness about achieving climate neutrality in 30 years at the latest, the EU's national ownership gap must be viewed as an important weakness and one that exposes the EU's climate mandate and objectives to significant risk; namely:

- i. Disinterested or distracted national governments would be encouraged to carry on believing they are justified in approaching EU climate negotiations as a race to the bottom.**

The EU's climate architecture enables disinterested and distracted national governments to view their national 2030 climate targets under the Effort Sharing Regulation (ESR) as 'external' to their core priorities and effectively to 'disown' them at a political level. This behaviour was floridly demonstrated by the statement made by the Irish Taoiseach (Prime Minister) at a press conference held during the 2015 Paris COP, during which he described Ireland's EU climate targets under the ESR as "unrealistic" and "unreachable".⁵ In effect, despite the Paris COP being a global moment when EU solidarity on climate action was at its most sensitive, the Irish Prime Minister evidently felt licensed to strongly distance himself from the national climate targets his government agreed with negotiations with the EU Commission and European partners; a disengagement clearly reflected in Ireland's persistent and serious failure to comply with its EU ESR targets.

The EU's climate architecture - and importantly the Commission's approach to its development through the design of the EU Climate Law, the roll out of the Green Deal and more latterly the Fit for 55 review - all combine to encourage national governments to carry on regarding the achievement of the EU's long-term target as the

³ These include bottom-up movements and grassroots pressure, public and formal education, proactive leadership, strong climate events and the existence of effective and organised civil society.

⁴ See for example within the EU: France, Sweden, Austria, Denmark, Finland, Germany, Ireland, Spain and the Netherlands. Countries outside the EU with equivalent legislation include principally: UK, Norway, Iceland, Switzerland, New Zealand. At sub-national level, see Scotland. For an overview and analysis of the Climate Laws adopted by these countries see: Matthias Duwe and Nick Evans, *Climate Laws in Europe* (Berlin: Ecologic Institute, 2020) and Thomas L Muinzer (ed.), *National Climate Change Acts: The Emergence, Form and Nature of National Framework Climate Legislation* (UK: Hart, 2021).

⁵ Andrew Jackson, "Ireland's Climate Action and Low Carbon Development Act 2015: Symbolic Legislation, Trojan Horse, Stepping Stone?" pp.129–152 in Thomas L Muinzer (ed.), *National Climate Change Acts: The Emergence, Form and Nature of National Framework Climate Legislation* (UK: Hart, 2021), p.143.

responsibility of other actors, be they more wealthy countries or markets.⁶ Taken together, it is clear that the Commission is consistently de-emphasising the importance of fostering national ownership and is apparently resistant to (or blind to) the enabling conditions associated with fostering a strong commitment to ambitious climate action. This is likely to encourage disinterested and distracted national governments to approach implementation of the EU Climate Law and negotiations within the Fit for 55 review with continued resistance both to the allocation of greater responsibility for delivering on the EU's climate objectives and EU measures that would level up the enabling conditions for stronger national ownership of that responsibility in all EU countries. In effect, the Commission's actions are serving to justify and consolidate the race to the bottom that has traditionally characterised EU climate negotiations.

ii. Political leadership and public support for the EU's climate mandate could be destabilised at precisely the moment these need to ramp up.

If the EU ETS is expanded without parallel reinforcement of the enabling conditions for robust national ownership of the EU's climate objectives, the EU's climate architecture will be incapable on its own of ensuring effective action by national governments to mitigate social injustice or other unintended outcomes arising from the expansion of carbon pricing. In the event that the EU ETS continued to malfunction, or if there was a strong public backlash to social injustice caused by the extension of the EU ETS, the problem of shallow national ownership of the EU's climate agenda will enable distracted or disinterested governments to continue distancing themselves from EU climate policy. Moreover, rather than experiencing a pressure to adopt mitigating national policies, disinterested and distracted national governments will be enabled to frame EU climate policies as 'imposed' and even to 'blame' the EU for any social injustice or wider policy cannibalisation caused.

In the context of national economies traumatised by the pandemic, the risks of social injustice will be considerably exacerbated as will the likelihood that opposition to climate policies will be rewarded politically. Proactive national ownership is necessary to counteract this risk and to avoid a political blaming of the EU. It is therefore essential that the EU takes action to create the minimum enabling conditions to foster this ownership where it might not otherwise exist. Thus far, it appears the Commission's Fit for 55 review will not include proposals to do so, creating the risk that political leadership and public support for policy making consistent with achievement of the EU's climate neutrality objective could be significantly destabilised, and at precisely the moment they need to ramp up – leaving little chance of fostering the national 'mission mindset' needed to drive policy implementation on the ground.

iii. EU solidarity could breakdown if some countries are left behind – potentially forever.

The EU Climate Law will be implemented against the backdrop of highly divergent levels of national ownership of the climate neutrality objective. Although their quality varies, nearly half of the EU's Member States and several countries in the EU's neighbourhood have already, or are in the process of going ahead of the EU and

⁶ For example: the Commission's proposal for the EU Climate Law did not propose that the EU's climate neutrality objective would also apply to Member States, nor did it propose the creation of an EU independent expert advisory body or a duty on Member States to do likewise. The Commission's public consultation and Impact Assessment for the Fit for 55 indicated its receptiveness to an even greater reduction in the role of national governments in responsibility for climate action – effectively limiting it to agriculture. The Just Transition Mechanism extends the Commission's de-emphasis on fostering transparent and participative policy making and the marginalisation of national parliaments in policy making about a crucial and highly sensitive dimension of the national transition. The design of the Climate Pact and Commission proposals for the revision of the Aarhus Regulation reflect the Commission's unwillingness to lead by example in embracing genuinely participative and accountable climate policy making.

creating comprehensive climate law and governance arrangements designed to ensure robust national ownership of the responsibility to deliver scientifically credible climate action.⁷ But several have not.

The countries that have either adopted or are in the process of putting in place national arrangements to ensure robust national ownership of the climate neutrality agenda are the EU countries who are already meeting and exceeding their ESR targets. Sweden, Luxembourg, Finland, Denmark, Spain, Portugal have already adopted national 2030 targets that will require their ESR sectors to deliver reductions consistent with a -55% EU wide 2030 target – in effect going ahead of the EU.⁸ Ireland is also in the process of doing likewise as a result of significantly strengthening its national climate law, which commits to a minimum 51% emissions reduction by 2030 and net-zero by 2050.⁹ In December 2020, prior to the end of the UK's Brexit transition period, the UK announced it would adopt a 68% 2030 target and include aviation and shipping within its national carbon budgets.

If the Fit for 55 review does not lead to meaningful EU action to level up the quality of national ownership of the Union's climate objectives, the EU's climate architecture will be unable to mitigate the risk of a breakdown in EU climate solidarity as some countries accelerate, leaving others behind – potentially irretrievably – undermining wider political and economic solidarity but also public support for the EU's climate mandate and objectives.

3. THE 'FIT FOR 55' REVIEW IS A UNIQUE OPPORTUNITY TO TACKLE THE EU'S NATIONAL OWNERSHIP GAP

3.1 The Fit for 55 review is a unique opportunity to address the EU's national ownership gap because it is fundamentally focused on the EU measures governing national delivery of the EU's new climate objectives. Although the EU Climate Law clarifies the direction of travel for the Union, its provisions are primarily focused on governance at the EU level and empowering the EU's institutions to steer and oversee collective delivery of the EU's climate neutrality objective; it does nothing meaningful to strengthen the quality or effectiveness of climate governance at the national level.

3.2 The Fit for 55 public consultation document and September 2020's Impact Assessment¹⁰ make clear the Commission recognises the need for policy renewal – even on a systemic level - across the EU's wider climate architecture in order to implement the EU Climate Law. However, these documents also make clear that two central assumptions underpin the Commission's thinking concerning the focus of this policy review, namely:

- i. **Any lack of capacity within the EU's climate architecture to deliver the higher levels of emission reduction needed to get the Union onto a pathway consistent with climate neutrality can be resolved, or compensated for, by expanding the role of market mechanisms** - even to the point that the Commission would consider repealing the

⁷ <https://www.ecologic.eu/report>

⁸ Öko-Institut and Agora Energiewende (2020): *How to Raise Europe's Climate Ambitions for 2030: Implementing a -55% Target in EU Policy Architecture*.

⁹ <https://www.gov.ie/en/publication/984d2-climate-action-and-low-carbon-development-amendment-bill-2020/>

¹⁰ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12656-Updating-Member-State-emissions-reduction-targets-Effort-Sharing-Regulation-in-line-with-the-2030-climate-target-plan>.

Effort Sharing Regulation¹¹ and limiting the state's responsibility for delivering EU climate ambition to a role for national government in adopting policy making on land use. This would, in effect, widen the EU's national ownership gap.

- ii. **The EU's arrangements (including those introduced by the EU Climate Law) for ensuring national policy consistency with the EU's 2050 objective will be sufficient to ensure an effective national commitment to that process across the EU-27.** The Fit for 55 review contains no recognition of the serious national ownership gap inherent in the EU's climate architecture, or the risks this poses to getting the EU onto a pathway consistent with climate neutrality by 2030. It also considers neither policy making quality in the years after 2030, nor does it contain an analysis of the lessons emerging from high ambition countries concerning the need for strong national ownership of the long-term objective or the value of designing national governance to foster the enabling conditions for achieving this dynamic.

3.3 This paper argues that the Commission's approach to the Fit for 55 review is in danger of profoundly ignoring the serious hazards posed to the EU's climate objectives by its national ownership gap, and risks turning the Fit for 55 review into a major missed opportunity for the Union to apply the lessons learnt by high ambition countries about the important role climate law and governance play in creating the enabling conditions for fostering national ownership.

Although the Resolutions of the European Council's Summit 24-25 May 2021¹² fail to provide a clear steer to the Commission concerning the recalibration of the EU's wider climate architecture, Commission President Von der Leyen's comments at the press conference following the Summit make clear that at the Summit, Heads of State resisted the option of reducing the role of the state in national climate governance. However, it is arguably not enough to focus only on national 2030 climate targets and sectoral measures. To provide a credible response to the challenge involved in delivering climate neutrality in Europe, the EU's post Fit for 55 regime must ensure a 'levelling up' of the minimum standards of national climate governance so that implementation of the EU Climate Law is more consistently owned – and thereby embraced and guaranteed – at national level, thereby ensuring that the EU-27 is genuinely 'fit for net zero'.

Achieving this will require a willingness to apply a holistic 'national ownership' lens to the revision of the EU's climate architecture as a whole, including even the measures created recently as part of the Green Deal and in particular the Climate Pact and Just Transition Mechanism. It is regrettable that the Commission has excluded the EU Governance Regulation from the scope of the Fit for 55 review, but that should not deter the European Parliament and Council from proposing its amendment – including through the adoption of provisions included in the revised Effort Sharing Regulation or other measures during the Fit for 55 process – if only as a device to exert pressure on the Commission to commit to a revision of the Governance Regulation as part of its 2022 Work Programme and to communicate the need for a comprehensive diagnosis of the options for resolving the Union's national ownership gap. In order to support the formulation of proposals for the amendment of the EU's climate architecture that could close the EU's national ownership gap, the authors have developed a series of specific potential amendments to existing EU legislative files into which the revisions could be integrated. These proposals can be accessed in the Annex to this paper, available [here](#).

4. LESSONS FROM HIGH AMBITION COUNTRIES ABOUT GOVERNANCE FOR NATIONAL OWNERSHIP

4.1 Differences between EU and national approaches to climate governance are inevitable and even necessary given the multi-level context of EU policy making. That said, the stark differences between the EU's climate architecture and that adopted by high ambition countries concerning their relative emphasis on the need to foster national ownership and

¹¹ Identified as Option 1 in the Impact Assessment. <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12656-Updating-Member-State-emissions-reduction-targets-Effort-Sharing-Regulation-in-line-with-the-2030-climate-target-plan>.

¹² <https://www.consilium.europa.eu/en/press/press-releases/2021/05/25/european-council-conclusions-24-25-may-2021/>.

the quality of national ownership needed for effective climate policy making have a direct relevance to the Fit for 55 review.

There is now a growing expert literature mapping and evaluating the design and impact of ‘home grown’ national climate laws and governance across Europe and further afield and their associated institutional and participative arrangements.¹³ This research shows that while these arrangements reflect a variety of approaches, the most effective reflect a shared consensus that it is necessary to put in place arrangements to foster deep national ownership of the responsibility to achieve a scientifically credible long-term climate objective. As already stated, political leadership in these countries has been, and continues to be stimulated by a wide range of factors, including bottom-up movements and grassroots pressure, public and formal education, proactive leadership, strong climate events and the existence of effective and organised civil society. However, high ambition countries have nevertheless recognised that climate governance and law play an important role in stabilising the enabling conditions for national ownership and can function to produce a positive, self-reinforcing policy dynamic that provides a bottom-up impetus for even greater ambition, fostering the mission mindset that is necessary for rapid delivery on the ground. More specifically, the consensus about what works in terms of building the enabling conditions for national ownership can be summarised as follows:

i. National government¹⁴ should assume explicit, binding and whole economy responsibility for achieving the long-term, scientifically credible climate objective.

This consensus stands in stark contrast to the central assumption reflected in the Commission’s Fit for 55 analysis that markets could potentially substantially replace national government as the critical player responsible for delivering the emissions reductions required to get the EU onto a pathway consistent with climate neutrality. It also stands in stark contrast to the EU’s decision in negotiating the EU Climate Law not to apply the Union’s collective duty to achieve climate neutrality to Member States as well.

¹³ See for example: Averchenkova A, and Lazaro L, (2020) *The design of an independent expert advisory mechanism under the European Climate Law: What are the options?* (London: Grantham Research Institute, London School of Economics and Political Science); Averchenkova A, (2019) *Legislating for a low carbon and climate resilient transition: learning from international experiences* (Elcano Policy Paper: Spain); Averchenkova A, et al (2018) *The role of independent bodies in climate governance: the UK’s Committee on Climate Change* (London: Grantham Research Institute, London School of Economics and Political Science); Duwe M, et al (2017) *“Paris-Compatible” Governance: Long-terms policy frameworks to drive transformational change* (Berlin: Ecologic Institute); Duwe M, and Evans N, (2020) *Climate Laws in Europe: Good Practices in Net Zero Management* (Berlin: Ecologic Institute); Fankhauser S, (2018) *10 Years of the UK Climate Change Act* (London: Grantham Research Institute, London School of Economics and Political Science); Jackson A, “Ireland’s Climate Action and Low Carbon Development Act 2015: Symbolic Legislation, Trojan Horse, Stepping Stone?” in Muinzer T, *National Climate Change Acts*; Menzies, N., et al (2020) *World Bank Reference Guide to Climate Change Framework Legislation* (English). Washington, D.C. : World Bank Group; Muinzer T, (2019) *Climate and Energy Governance for the UK Low Carbon Transition: The Climate Change Act 2008* (Palgrave: UK); Muinzer T, (2021), *National Climate Change Acts: The Emergence, Form and Nature of National Climate Legislation* (Bloomsbury Press: UK); Rüdinger A (2018) *Best practices and challenges for effective climate governance frameworks: A case study on the French experience* (IDDRI, Studies N°03/18, May); Rüdinger A, et al (2018) *Towards Paris-Compatible Climate Governance Frameworks* (Paris: IDDRI, Ecologic and Grantham Institute LSE); Torney D, (2019) *Climate Laws in Small European States: Symbolic Legislation and Limits of Diffusion in Ireland and Finland* (Vol 28(6) *Environmental Politics* pg 1124); Torney D, (2017) *If at First You Don’t Succeed: The Development of Climate Change Legislation in Ireland* (Vol 32(2) *Irish Political Studies* pg 247); Weaver S, et al (2019) *Overview of National Climate Change Advisory Councils. The Finnish Climate Change Panel Report*, available [here](#). 2050 Pathways Platform (2019) *Insights from the IPCC Special Report on 1.5°C for preparation of long-term strategies*, available [here](#). It is important also to note that evidence of the impact of national climate laws and governance is also provided by the ongoing momentum towards campaigning and the adoption of these arrangements, by the evidence that early adopters are now strengthening their national arrangements, and by the high-profile public interest litigation enforcing these arrangements. A mapping of this impact will be the subject of separate research by the present authors.

¹⁴ Usually expressed as a duty to be delivered by the minister or department tasked with responsibility for climate action and in co-ordination with the rest of government.

ii. An expanded role for the state is not perceived as diminishing the role of market mechanisms; there is a recognition that the state and markets play separate and complementary roles.

The UK was the first country to take the step of making the state formally responsible for delivering the whole economic, long-term climate objective. Despite the UK's more traditional leaning towards neo-liberal and 'small state' policies, Professor Anthony Giddens - one of then Prime Minister Tony Blair's special advisers during the period when the UK's Climate Act was adopted – explained its at that time highly unusual approach to climate governance as premised on a recognition that the 'enabling' or 'renewed' state is a crucial and potentially the only actor capable of re-shaping social behaviour, establishing new energy markets and investments and introducing and enforcing sufficiently ambitious policy standards.¹⁵ Giddens also explained the emphasis within the UK law on the central role of the state as a reflection of the crucial importance of cross-party consensus as a pre-condition for ambitious policy making over years and the need to build greater state capacity to lead both national and international economic decarbonisation. More latterly, the internationally acclaimed economist Professor Mariana Mazzucato has demonstrated that the state – when it is mission or purpose oriented – is a more efficient problem solver and an even more ambitious risk taker than the private sector and has the capacity not only to fix markets but also to create new ones and to quickly mitigate unintended outcomes of policy development.¹⁶ The political consensus concerning the need for an expansive role for national government was adopted with almost unanimous cross-party support and has not only endured but also been strengthened despite a decade of unprecedented political and economic upheaval in the UK. More recently, academic analysis advocating and demonstrating the unique problem solving and risk-taking capacity of the 'mission minded' state has become increasingly influential within policy and political communities internationally including the EU Commission itself. Although this theorisation of the state has not necessarily been an explicit feature of national debates leading to the adoption of other national climate laws, the consistent pattern of making the state responsible for achieving the whole economic, long-term objective nevertheless reflects a consistent reflex towards the same conclusion that comprehensive state responsibility is the foundation stone for ensuring effective national ownership of a scientifically credible climate policy agenda and moreover, is a necessary component for delivering this transformational public purpose.

However, in making this choice, none of these countries view an expanded role for the state as representing a rejection of, or a retreat from the EU ETS or market mechanisms. The mobilisation of the 'mission minded' state is considered to be a necessary step for efficient policy development and protecting the functioning of market mechanisms – indeed, in the UK it led to innovative action to introduce a carbon floor price to mitigate malfunction within the EU ETS to ensure the optimisation of carbon pricing.

iii. It is not enough to only engage national government in responsibility for climate governance.

The arrangements put in place by high ambition countries also explicitly and significantly empower national parliament and national courts as the two other central institutions of the state to hold national government to account for the quality and effectiveness of policy making - albeit using different strategies and creating different degrees of parliamentary empowerment and public access to national courts.

The rationale for engaging national parliament reflects a recognition that sustained political leadership is crucial to ensuring policy consistency with the long-term objective - therefore, it is not enough to only engage the party or parties in government. Stable and sustained political leadership requires climate governance to foster cross-party support so that political leadership becomes resilient to electoral cycles and the political incentive to oppose climate action is gradually removed through cross-party consensus building. Indeed, it is important to emphasise that cross-

¹⁵ Anthony Giddens, *The Politics of Climate Change* (Cambridge, 2009), p.91.

¹⁶ Mariana Mazzucato, *The Entrepreneurial State: Debunking Public v Private Sector Myths* (London: 2017). See more generally sources relating to her more recent work at: <https://marianamazzucato.com/>.

party support enabled the most ambitious national climate laws to be adopted and further strengthened, which reinforces the value of engaging national parliaments in climate governance. Political accountability moreover has not functioned as a barrier to the oversight provided by the EU's institutions; instead, they co-exist and function in a mutually reinforcing relationship.

By ensuring public access to national courts high ambition countries have also mobilised the judiciary to provide legal accountability for the quality of policy making and consistency with the long-term national climate target. Because the decisions of national courts cannot easily be ignored by national government, they provide important 'cover' for climate policies that would otherwise be considered too sensitive; in effect, judicial empowerment in climate governance functions to foster political confidence and leadership.

Examples of the robust relationship between effective public access to justice and more effective political leadership on climate are now becoming too numerous to list, but highlights include the *Urgenda*¹⁷ decision in the Netherlands which confirmed that the government was failing to take sufficient mitigation action to protect citizens from climate risk – in spite of compliance with EU ESR targets. The Supreme Court ruled that the government was subject to a positive obligation to reduce its greenhouse gas emissions by at least 25% compared to 1990 levels by the close of 2020. Similarly, in 2019 in the *Friends of the Irish Environment* decision, the Irish Supreme Court upheld a challenge taken by NGOs to the national climate plan on the basis that the plan failed to explain how Ireland would achieve its 2050 national transition objective. In 2018, even litigation that formally failed on its merits has had a beneficial impact in the UK. In the *Plan B Case*,¹⁸ an NGO challenge to the UK Climate Change Act's 2050 target, which then required an 80% greenhouse gas emissions reduction for 2050, failed on its merits but succeeded in galvanising UK Government to request advice from the UK's independent expert advisory body on the matter. The published advice recommended that the UK's 2050 target be raised to align with net zero. This was done by legislative amendment in 2019. Most recently, in February 2021 in the *L'Affaire du siècle* case a French court ruled¹⁹ that the French government had failed to take sufficient climate action to implement its legal duties under the Paris Agreement and French climate law – even though it had complied with its EU ESR targets. Within months of the French decision, the German Constitutional Court has ruled (May 2021) that the postponement of significant emission reductions until after 2030 under the national Climate Law violated the fundamental rights of the claimants (many of whom were very young) because achieving the temperature goals in the Paris Agreement would force future generations to achieve drastic emission reductions, which would affect every aspect of life and which the current Government should have taken precautionary action to mitigate.²⁰

- iv. **It is necessary to commit the state to achieve a scientifically informed, long-term national climate target in order to clarify the direction of travel at national level, establish the achievement of the long-term climate objective as a national policy priority, and create a sufficiently clearly defined long-term objective against which the quality of near term policy consistency can be rigorously assessed.** This is essential for meaningful accountability whether through the role of national parliament, or public debate or public interest litigation – in addition to accountability to the EU. This clarity is also essential to enable the national institutions created to guarantee transparency (discussed below) and provide sufficiently detailed advice to government about the real policy options and progress.

- v. **A national long-term target is not enough on its own. It is also necessary to put in place a framework that ensures transparency about the real policy options and political and legal accountability for ensuring that policy making is consistent with achieving the long-term objective.** These frameworks enshrine 2 key features:

¹⁷ *Urgenda Foundation v. The Netherlands* [2015] HAZA C/09/00456689 (June 24, 2015); aff'd (Oct. 9, 2018) (District Court of the Hague, and The Hague Court of Appeal (on appeal); *The Netherlands v Urgenda Foundation* [2019] ECLI:NL:HR:2019:2006 (December 20, 2019) (Supreme Court of the Netherlands).

¹⁸ *R (Plan B Earth and Others) v Secretary of State for Business, Energy and Industrial Strategy* [2018] EWHC 1892.

¹⁹ <https://earthcharter.org/laffaire-du-siecle-the-case-of-the-century-how-climate-justice-wants-to-force-the-state-to-fight-against-climate-change-in-france/>.

²⁰ <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html>.

- a. **Processes that enable national government to be held to account for policy consistency with the long-term objective.** Various strategies are used in this regard ranging from more general duties on government ministers to publish and importantly to present draft national climate plans and policy proposals to parliament - including routine reports on policy effectiveness – to much more highly structured carbon budgeting processes that require national government to set out in even greater detail the specific emission reductions that will be delivered in each budgetary cycle (either annual or 5-yearly) and how policy proposals will achieve those emissions reductions, including reports to parliament on compliance with the budget, an explanation of the reasons for non-compliance and government’s proposals for remedial policies. Best practice examples even require carbon budgets to be enshrined in legislation, thus involving national parliament in the process of their adoption and enabling inconsistent policies to be challenged more easily before national courts.
- b. **New independent expert advisory Institutions are mandated to underpin transparency and trust in the real policy options and in policy consistency.** In all countries the power of final decision concerning the climate policy remains with national government thereby ensuring decision making is democratic. However, there is a consistent trend amongst high ambition countries to create independent expert advisory bodies mandated to undertake a range of analytical activities designed to support political leadership, an informed public debate about the real policy options and trust in climate policy. Most commonly these bodies are mandated to publish reports on annual progress towards national and EU climate targets, the policy options for achieving those targets, and in some cases, to publish proposals for national carbon budgets and the policy options for ensuring emissions reductions consistent with those budgets. The strongest national arrangements also require national government to take account of and to respond to these proposals – including in some cases a duty to explain to parliament whether it is willing to adopt a particular recommended budget level and if not, the reasons why.

This neutral expert advice provides political ‘cover’ for policy making that might otherwise be perceived to be too politically sensitive or high risk – and thereby fosters political leadership by national government. This regular advice and annual progress reporting also builds the capacity of national parliaments, national citizens, the national media and ultimately national courts, to hold national government to account for the quality and effectiveness of climate policies and fosters public and political trust in and support for the policies adopted. The publication of reports by these bodies also creates predictable ‘national moments’ when national parliament, and by dint of this the national media, civil society and stakeholders, all focus on key junctures in climate policy making, thus ensuring that climate policy making remains a constant national policy priority and to the forefront of national political and public debate.

- vi. **To be effective, transformational policy making requires a strong and sustained societal consensus about the pathways for achieving the long-term objective.**

High ambition national arrangements reflect a strong focus on going beyond EU measures to create additional and substantial supports for participative policy making. On one level, national climate laws foster public participation by ensuring genuine transparency about the national long-term objective and the real policy options for achieving it through enshrining the long-term objective in law, mandating independent expert advisory bodies to publish policy advice and progress reports and requiring national government and advisory bodies to engage in a transparent process of mandatory carbon budgeting. This enables the public to be informed in a meaningful way. Public participation is furthermore enabled by empowering representative bodies such as national parliaments, and regional and local authorities to hold national government to account for the quality and effectiveness of policy making and by empowering citizens and NGOs to access judicial review to challenge policy making that is inconsistent with the long-term objective.

More latterly, climate governance in high ambition countries has also reflected a momentum towards highly visible deliberative processes designed to enable more nuanced holistic citizen understanding of the choices to be made

and importantly which also guarantee responsiveness by the legislative institutions of the state thus incentivising public engagement.²¹ Borrowing from other public policy spheres where citizen assemblies or juries have been used to clarify and implement societal consensus at moments of major national change, several European countries have recently established or are in the process of establishing citizens assemblies, juries or policy juries to discuss the direction of national climate policy. Although national practices vary, there is a growing consensus about the minimum conditions for best practice.²² These processes are frequently state sponsored and are widely viewed as enabling public participation to go beyond a more passive ‘public consultation’ approach, in which public engagement is largely one-way and where government is not required to engage with the recommendations emerging - to embrace a deliberative model of public engagement and which cannot be ignored by government and/or parliament. The momentum towards using deliberative processes in the climate context reflects on the one hand the strength of public demand for scientifically credible climate action and transparency concerning the real policy options. But it also reflects growing acceptance by governments and national parliaments that transformational policy making requires the perception and reality of state investment in meaningful public engagement about the various pathways for national transformation and that fostering public support for climate policy means it cannot be confined to technocratic processes or brokered by passive talking shops.

Countries serious about the need for societal consensus are now also combining a strong focus on inclusive decision making with an emphasis on the just transition – in effect, combining both procedural fairness with substantive fairness in climate policy making. For example, the just transition exerted a formative influence across the provisions of New Zealand’s Climate Change Act,²³ Scotland has gone so far as to embed a direct definition of “just transition principles” in its climate legislation, requiring all climate change plans to be crafted with reference the definition’s requirements,²⁴ and the new Spanish climate law requires the government to adopt a just transition strategy. These arrangements reflect a recognition that public ownership of the transition will require not only meaningful public engagement in policy making but also public confidence that the transition can be achieved fairly. To reinforce this dynamic high ambition countries are putting in place arrangements to ensure a transparent and informed public debate about the terms of a just transition. For example, Ireland has recently appointed a Just Transition Commissioner mandated to engage with stakeholders and to develop recommendations concerning the essential components of a national just transition.

4.2 It is also worth emphasising more general evidence concerning the impact of high ambition national arrangements because it is directly relevant to the challenging political and economic context into which the EU Climate Law will be implemented, namely:

- i. None of these national arrangements have been weakened or abandoned since their adoption;** in fact, the oldest and one of the strongest of these national arrangements - adopted by the UK – has ensured policy making consistent with net zero has continued despite a decade of unprecedented national upheaval since its adoption including the first financial crisis, Brexit and more recently the Coronavirus pandemic.
- ii. The process of establishing national ownership of the climate neutrality objective is not static and even appears to be self-reinforcing.** Expert analysis of these arrangements indicates that once established, they create positive feedback loops, functioning to create the impetus for a further ratcheting of ambition and strengthening of the arrangements for ensuring policy consistency with a scientifically informed long-term objective.²⁵ Indeed, this

²¹ E.g.: France, UK, Ireland and most recently Austria has declared an intention to do likewise.

²² See <https://knoca.eu/what-is-knoca/> and <https://www.westminster.ac.uk/news/professor-graham-smith-appointed-as-the-founding-chair-of-the-knowledge-network-on-climate>. See also D. Torney, Ireland’s Citizens’ Assembly on Climate Change: Lessons for Deliberative Public Engagement and Communication (2020) Environmental Communication A: Journal of Nature and Culture 14(2): 1-6.

²³ See: “I. Just Transitions”, p.222, P. Taylor, “The New Zealand Legislation: Pursuing the 1.5° Target using a Net Zero Approach”, in T Muinzer, (2021) *National Climate Change Acts* (Bloomsbury, UK).

²⁴ Climate Change (Scotland) Act 2009: s.35C (definition); ss.35(20), 35(22) and 35(24) (requirements).

²⁵ See for example at the national level: Climate Change Act 2008 (UK, amended to ‘Net Zero’, 2019); Law n° 2019-1147 on Energy and the Climate, and the Climate and Resilience Bill (France), Climate Action and Low Carbon Development (Amendment) Bill 2020

process of renewal and innovation has even continued despite the Coronavirus pandemic.²⁶ In effect, these national arrangements create a positive and robust ongoing cycle of governance innovation and ambition ratchetting, which in turn stabilises national commitment to credible climate action and facilitates greater national capacity for sustained acceleration.

- iii. **The EU's climate architecture has not played a significant role in stimulating national innovation or ambition in climate governance.** Unpacking the precise dynamics driving climate governance innovation in each country is beyond the scope of the present paper, but expert analysis of the drivers of high ambition national climate governance has not credited the existence of EU rules with creating the impetus for adopting or strengthening national commitment to climate action.

4.3 In this regard, the experience in Ireland is particularly instructive. Despite being one of the EU's most entrenched climate laggards, the Irish government is implementing a major overhaul of its national climate governance arrangements but neither its binding EU (ESR) climate targets or the threat of EU enforcement action or the risk of having to spend substantial sums of taxpayers' money on buying EU flexibilities played a significant role in stimulating this significant national reform process.²⁷ The impetus for Ireland's strengthening of its national climate law has come instead from the cumulative impact of reports published by Ireland's independent expert Climate Change Advisory Council concerning the lack of climate action in Ireland, successful NGO enforcement of Ireland's existing national Climate Law (and notably not Ireland's EU ESR targets) before the Irish Supreme Court, the strong support expressed by the Irish Citizens' Assembly (as distinct from the Multilevel Dialogue established under the Governance Regulation) for far more ambitious national action on climate, the government's duty to respond to those recommendations and a cross-party report by the Irish parliamentary body on climate change which set out ambitious proposals for policy and legislative reform. The reform process has continued despite the disruption of the pandemic, and despite attacks on commitments to increase carbon pricing by powerful political opponents. When implemented, Ireland's renewed climate law should also significantly disincentivise the use of EU flexibilities because the Irish government will face robust oversight by national parliament and a better resourced and more strongly mandated independent expert advisory body – and potentially the risk of further litigation by NGOs. In effect, national policy making should be more effective thereby removing the need to use taxpayers' money to pay for EU flexibilities without achieving emissions reductions in Ireland.

5. MAPPING THE EU'S NATIONAL OWNERSHIP GAP

The following provides an initial map of crucial features pertaining to the national ownership gap inherent in the EU's climate architecture. This aspect of the analysis is designed to clarify what is meant by the EU's ownership gap and to provide a baseline to inform our proposals for how and why this gap should be filled.

(Ireland); Lov om klima, LOV nr 965 af 26/06/2020 (Denmark's "Law on Climate", replacing 2014's "Klimalov"), Climate Change Response (Zero Carbon) Amendment Act 2019 (New Zealand) and the General Law on Climate Change 2012 (Mexico). Sub-nationally, see e.g. Climate Change (Emissions Reduction Targets) (Scotland) Act 2019 raising the 2050 target enshrined in the Climate Change (Scotland) Act 2009 (Scotland, UK).

²⁶ Ireland has continued to progress its revision of its national climate law while in March 2021 Austria announced plans to follow the UK, France and Ireland in having a citizens assembly on climate to advise the government.

²⁷ Diarmuid Torney and Roderic O'Gorman, "A Laggard in Good Times and Bad? The Limited Impact of EU Membership on Ireland's Climate Change and Environmental Policy", *Irish Political Studies* 34(4) (2019): 575–594.

5.1 The EU's climate architecture creates little pressure on national government to take ownership of the responsibility to engage with the process of policy making to achieve a long-term national climate objective and one that is consistent with a credible national contribution to achievement of the EU's climate objectives.

- i. Although the EU Climate Law commits the Union to achieve climate neutrality this duty will not bind individual countries, nor does EU law clarify or require national governments to clarify the scale of national contributions that will be made to the achievement of the EU's long-term objective or even to lead a national dialogue about this issue. National governments are only required to engage with policy making for the near term (2030) and only across the so-called non-ETS sectors (agriculture, housing, road transport, waste and smaller industry). In effect, they are not required to adopt the mission mindset required to deliver a national transformation.
- ii. The de-emphasis of national government engagement with the EU's long-term climate objective is further compounded by weak EU rules concerning governments' responsibility to engage with the process of developing national Long-Term Strategies (LTS).

5.2 EU rules on LTS send the weakest possible signal to national governments to build capacity for formulating a long-term national strategy on climate and to invest political capital in leading this process, because:

- i. The EU's rules are at best skeletal concerning the development of LTS and lack even basic benchmarks for what constitutes structural transformation.
- ii. EU rules require governments to adopt a LTS in a vacuum concerning its specific purpose, which is defined as an unspecified national contribution to the achievement of the Union's long-term objective – thus allowing disinterested national governments to believe that responsibility lies elsewhere.
- iii. Even if initially done badly, national governments are only required to review their LTS once every decade and even have a discretion not to undertake an earlier review if they receive Commission recommendations flagging national policy inconsistency with the EU's long-term objective under the Governance Regulation, or EU Climate Law or EU Semester processes. In effect, national governments are encouraged to adopt at best a minimalist approach to the development of the national LTS, allowing the party in power to disconnect from any meaningful responsibility for its quality.

5.3 EU rules and practices do not support national efforts to ensure policy making is consistent with the EU's or even a putative national long-term objective.

- i. The Governance Regulation requires National Energy and Climate Plans (NECPs) to be 'consistent' with the national LTS. The EU Climate Law empowers the Commission to rely on NECPs and national LTSs to monitor whether national policy making is 'consistent' with achieving the EU's 2050 objectives. However, the term 'consistency' is not defined by EU law in either of these contexts nor is the Commission required to produce EU guidelines setting out transparent indicators or benchmarks of, or even principles governing how it will evaluate policy consistency in the national context or between the national and EU objectives. Nor is it required to publish more detailed rules or guidance for national governments to assist them in ensuring consistency is achieved thus encouraging disinterested governments not to take this crucial duty seriously.
- ii. The lack of definition concerning the concept of policy consistency is compounded by the lack of clarity about the national long-term climate target, the lack of clarity about the long-term objective for which national LTSs are being developed and very loose EU rules concerning the formulation of LTSs. EU rules do not even ensure the appropriate sequencing in the formulation of NECPs and LTSs. Taken together these weaknesses undermine the incentive for national government to invest seriously in the process of understanding the real and near-term policy options for achieving policy consistency at national level, which undermines the quality of the NECP and its capacity to function as a ratchet for greater national ambition.

- iii. Even where national policy inconsistency is actually identified by the Commission, the EU Climate Law only requires Commission reporting to the EU's institutions in Brussels – not by national governments to national parliaments or to the public - and it is unclear how transparent that Brussels-based reporting will be in terms of identifying underperformance by individual Member States.
- iv. In any event, the EU's climate architecture will not empower the Commission to compel policy correction – only to issue non-binding Recommendations. National governments are not *required* to review or even update their NECPs or LTS until 2030 and will be aware that the Commission will have to wait until after the national 2030 target has been breached before enforcement action can be taken – enabling disinterested or distracted governments to disown or 'game' its EU consistency duty.

5.4 Despite their binding status, national 2030 targets do not fully or deeply engage the central institutions of the state.

- i. The process of setting the national share of the EU's 2030 target only engages the political party in power when the national target is being negotiated and does so in a non-transparent manner that does not build public or cross-party political ownership of the target agreed.
- ii. EU rules governing national climate action are enshrined in EU Regulations, which absolves national government of any duty to invest political capital in representing its purpose, value and importance in national political debate as would be the case were it required to implement them into national law and take implementing legislation through national parliament.
- iii. The process of accountability created by EU rules is oriented exclusively towards the EU institutions and permits national governments to essentially marginalise national parliamentary and representational bodies in the process of debating and scrutinising the quality of national policy making.
- iv. EU rules do not require national governments to guarantee effective public access to national courts so national courts are not necessarily engaged in providing legal accountability for the quality and effectiveness of national climate policy.
- v. Despite the complexity of climate policy making, EU rules place little emphasis on the value of independent, expert advisory institutions in supporting and guaranteeing transparency about the real policy options. Consequently, EU rules provide little support for ensuring genuinely informed public and parliamentary participation in policy making, and fail to build public, cross-party political and even national judicial capacity to share with the EU's institutions the responsibility for ensuring accountability for the quality of national policy making.
- vi. Even though EU targets can be enforced by the Commission, enforcement action can only be taken in 2031 at the earliest – this pressure will only be felt by the government in power when targets are being enforced and so the traction of their binding status is unlikely to influence government behaviour in this regard during the crucial intervening years.
- vii. In any event, the EU's climate architecture permits national governments to buy their way out of non-compliance using flexibilities but avoiding the need to deliver national emissions reduction – further undermining the impetus for national political leadership.
- viii. It is possible the Coronavirus pandemic will obviate the need to even purchase flexibilities and erode what remains of the latent traction of binding 2030 targets by enabling a viable basis for using the force majeure defence in the event of enforcement action. In any event, Commission action to seek the imposition of EU fines is highly unlikely in the context of pandemic recovery because it will easily be framed as 'oppressive' EU behaviour.

5.5 EU rules emphasise the engagement of executive policy communities at the expense of an equivalent emphasis on public and cross-party political engagement in policy making. Insofar as public participation is required, EU rules fail to foster the enabling conditions for building a robust societal consensus on climate action.

- i. With the exception of the EU Climate Law, the technical titles of EU measures governing national climate action are not designed to ensure the public understands their purpose; and are effectively directed towards the policy and administrative communities within national governments.
- ii. The frameworks created by the EU's climate architecture focus primarily on ensuring the engagement of officials within national governments in dialogue with their counterparts in the EU Commission.
- iii. EU rules concerning the participation of the public and their political or civil society representatives are at best minimal and effectively permit disinterested governments to pay lip-service to participative policy making and to virtually ignore the need to invest in the more deliberative processes required for strong public ownership and a resilient societal consensus.
 - a. Article 10 of the Governance Regulation sets down the minimum requirement that public participation in the development of NECPs and LTSs should be 'early and effective'; as a guarantee of meaningful public participation this standard is very weak in numerous important respects because:
 - Article 10 does not define 'early and effective' in granular terms, nor does it define what the public means for the purposes of participation in this context.
 - The Commission is not required to publish more detailed EU rules or guidelines setting down best practice benchmarks for what constitutes effective public engagement and importantly clarifying what would not amount to effective public engagement within the purposes of the law.
 - EU accountability is also weak; national governments are only required to provide the Commission with 'a description' of the consultation process undertaken and to notify the Commission of the summary recommendations made by the public in the NECP and LTS processes. There is no requirement to describe specific aspects of the process. National governments are not required to report on local capacity and willingness to engage in public participation processes for either the NECP or LTS or the action taken to mitigate barriers to effective public engagement despite the reality that there are wide divergences in participative capacity across the EU.
 - Importantly, although the template for NECPs asks national governments to report on whether key political stakeholders such as national parliament and regional and local authorities have been consulted, the template for the LTS only requires 'public' consultation. The failure to refer to the engagement of political stakeholders in the development of the LTS means they can arguably be excluded from early and effective participation in this crucial plan making context. Moreover, EU rules give national government complete discretion concerning the terms on which national parliaments can participate in NECPs.
 - The template for NECPs indicates that national governments should set out the 'outcome' of public consultation but does not require a report on whether and how the public's recommendations will be acted on, or if not, the reasons why.
 - Lax EU rules on what constitutes effective participation weakens pressure to take it seriously. EU enforcement is only likely where there is manifest breach, which will in any event take years; meanwhile, the opportunity for timely public and parliamentary engagement on crucial NECPs and the LTS is lost. Public enforcement will only be possible if access to justice is permitted under national law.
 - b. Although Article 11 of the Governance Regulation requires Member States to establish a 'Multilevel Dialogue' on climate and energy - thereby signalling the need to go beyond more passive forms of 'participation' to embrace deliberative forms of public engagement on national climate policy – Member States are given ample discretion to pay lip service to this crucial process because:

- Article 11 does not define the concept of ‘dialogue’ as opposed to the concept of ‘participation’ in Article 10. Nor is the Commission required to adopt EU guidelines or rules concerning best practice methodologies in the conduct of, or support for, meaningful deliberative processes, or the steps needed to build public capacity, confidence and motivation to engage in such processes.
 - National governments are not required to demonstrate their engagement with the dialogue, nor is any duty imposed on government to report to national parliamentary bodies or even the dialogue platform itself about whether any action will be taken by the government to implement the recommendations emerging from the dialogue process.
 - National governments are only required to make a minimal biennial report to the Commission concerning ‘progress in establishing’ the dialogue but they are not required to report on the subject matter of the dialogue discussions, what recommendations are emerging, how they will impact on or influence national plan making (either NECP or LTS or national targets), and if not why nor, or the nature and quality of the process that was undertaken to conduct the dialogue and whether any constraints in local capacity or willingness to engage in the dialogue process are being addressed.
 - In effect, the EU’s climate architecture sends a signal to national governments that it is acceptable to create a national dialogue in name only and to render that process a marginalised talking shop.
- c. The EU’s new Climate Pact is likely to compound the already very weak signal given to national governments concerning the importance of meaningful public engagement on climate policy and the transformation required for climate neutrality.
- Based on the planned arrangements shared for the conduct of the Climate Pact, it is not envisaged to have a mandate to make recommendations on EU climate action.
 - Nor would it appear are any of the EU’s institutions required to synthesise or report on how they will engage with the recommendations emerging from the Climate Pact.
 - It is difficult to escape the conclusion that the Climate Pact is simply a repetition of the ‘talking shop’ model of public participation

5.6 The perception and reality of a just transition is a crucial component to building public support for ambitious climate policy. Despite its importance to transition management, EU rules do not identify this issue as a pivotal ‘dimension’ within the NECP or LTS. Nor do EU rules require governments to meaningfully engage with an inclusive and transparent process for working out a consensus about the terms on which the national just transition will be achieved, nor is the Commission required to adopt EU rules or guidelines to support governments in undertaking policy making on this crucial issue.

- i. At present, the Governance Regulation only requires national governments to set out the implications for energy poverty in the development of NECPs – but does not require them to clarify what action will be taken to mitigate this issue.
- ii. The Regulation does not require governments to develop a comprehensive analysis of the social justice implications of the transition beyond energy poverty that would be subject to the requirements of public consultation and deliberative engagement, as is the case for the other aspects of NECPs and LTSs. Moreover, as is discussed below, it would appear that the EU’s Just Transition Mechanism (discussed below) will compound this problem because it is also unlikely to ensure that governments invest their political capital in leading a transparent national dialogue about how climate action can be delivered fairly and thereby foster cross-party and public support for the decisions reached by national government concerning the just national transition.
- iii. The template for the LTS requires national governments to provide ‘an impact assessment of the socio-economic aspects’ of the LTS but gives national governments complete discretion concerning the scope and quality of this analysis.

- iv. The Commission has no duty to adopt guidelines or indicators for working out the terms of a just transition so that the quality of policy making on this crucial issue achieves certain minimum standards across the Union.

5.7 Although the EU's Just Transition Mechanism represents an important advance in climate governance, it is likely to be a major missed opportunity for fostering national ownership of the terms of a just national transition and could even undermine it.

- i. National governments are provided with access to three new EU just transition funding mechanisms and an EU platform to provide a single point of information and technical support in developing the Territorial Transition Plans that must be prepared to receive funding. However, the arrangements for developing these plans once again reflect the consistent emphasis within the EU's climate architecture on the technocratic engagement between policy communities (EU and national) behind closed doors. The Just Transition Mechanism requires national governments to develop Territorial Transition Plans in 'dialogue' but only with the Commission – thereby excluding the need for any consultation with either citizens, trades unions, stakeholders, national parliaments or regional and local government concerning the definition of the national just transition agenda, the prioritisation of its constituent components whether by issue or by geography, and the proposed policy solutions.
- ii. The lack of transparency concerning the dialogue leading to the development of national territorial plans exposes the EU funding mechanism being used by governments in power to prioritise compensation to their political constituencies rather than ensuring public and cross-party support for the allocation of EU just transition funding, which will inevitably undermine trust in and ownership of climate policy making.
- iii. The Just Transition Mechanism even pre-identifies the social justice issues that will qualify for support under its scheme, apparently without consultation with the EU Climate Pact. Nor are there arrangements to ensure that national plans formulated with the Commission are consistent with or integrated into NECPs, LTSs, or their revision/updates.

5.8 As currently designed, EU rules do not guarantee public access to climate justice at EU or national levels. Inadequate public access to climate justice has multiple negative implications for national ownership because it seriously undermines the public's ability to participate effectively in the transition and its trust in decision making. The denial of effective access to justice also undermines political leadership because national court rulings upholding the duty to take climate action consistent with the long-term objective function to remove deeply entrenched political barriers to ambition and provide important 'cover' for more ambitious policies.

- i. National arrangements for public access to national courts diverge considerably across the EU. The Aarhus Convention enshrines access to justice standards and ensures the minimum standards needed for effective public access to environmental justice in order to ensure effective public participation in decision making about the environment. Member States and the EU are bound by the Convention, but do yet not apply its standards adequately.²⁸
- ii. In countries where access to climate justice at national level does not exist or is limited, it means national courts are poorly mobilised (if at all) to reinforce the enabling conditions for national ownership. This means that the capacity to provide legal accountability will be strongly – and in some countries exclusively – concentrated in the Commission and the CJEU with a consequent undermining of the conditions for fostering national ownership but also heightened risks to public support for the EU's climate mandate. When legal accountability is concentrated into the process of EU enforcement action, disinterested and distracted governments will be enabled to frame climate duties as 'external' and 'EU imposed', which is far more difficult to do when there are parallel climate precedents being delivered by national courts. The public is meanwhile forced to wait for the

²⁸ Milieu Report: Study on the EU implementation of the Aarhus Convention (Final Report: 2019) – available at: https://ec.europa.eu/environment/aarhus/pdf/Final_study_EU_implementation_environmental_matters_2019.pdf.

Commission to take enforcement action, which can take years if it occurs at all, and is in any event outside the control of citizens and civil society. This undermines public participation in climate action and public confidence in EU oversight of national climate action.

- iii. Last, but certainly not least, if the currently ongoing revision of the EU's Aarhus Regulation does not bring the EU itself into compliance with the Aarhus Convention and thereby ensure public access to justice at the EU level to ensure judicial oversight of EU level climate action, then public support for the EU's climate mandate will be progressively eroded. This will occur in large part because the EU will be seen to be unaccountable for the quality of its own climate action, thus strengthening the influence of political forces opposed to climate action within the EU itself.

6. CONCLUDING QUESTIONS & ANSWERS ABOUT THIS ANALYSIS

Q. Would the EU measures proposed here be inconsistent with the subsidiarity principle?

- A. **No.** In a policy context where centralised EU level governance is necessary but not enough on its own to achieve the EU's objectives, the subsidiarity principle is not a barrier to EU action and indeed arguably militates in favour of EU measures setting down minimum standards that harmonise the quality of national governance needed to ensure that national policy making is consistent with achievement of the EU's objective. In effect, the EU's climate architecture would evolve to ensure that action is being taken at the most appropriate level – *both* EU and national. Indeed, EU measures creating the minimum standards for more effective national climate governance would also replicate EU practice in energy policy, which is another area of shared competence. Here, EU measures have been adopted that allocate substantial powers to EU institutions but that also require a harmonisation in the standard of national governance, and include requirements for substantial institutional innovation at national level where it did not already exist.

Q. Would the proposed EU measures be inconsistent with EU oversight of national policy making?

- A. **No.** The EU measures proposed by this analysis would not replace the need for EU targets or EU oversight of national policy making. The proposed EU measures would strengthen public, political and legal accountability for national policy consistency with the EU's objectives and thereby compliment and reinforce the oversight provided by the EU's institutions. The proposed measures would also ensure greater public and political support for the EU's climate mandate and the Commission's role in monitoring progress and ensuring the quality and effectiveness of EU and national policy measures.

Q. Would greater EU controls of national climate governance be a barrier to national ambition?

- A. **No.** Greater EU controls on national climate governance would not act as a cap on or barrier to greater national ambition. These measures would only function to establish consistent minimum standards for the quality of national climate governance – which includes targets.

Q. Should the EU hope that the adoption of the EU Climate Law prompts countries yet to adopt national climate laws and governance to do so rather than adopt harmonising EU measures?

- A. **No.** Doing so would render implementation of the EU's climate objective hostage to a bottom-up process that is unpredictable in terms of both the timing and the quality of the arrangements put in place. Despite the considerable policy innovation that has been and is occurring at national level, some of these national arrangements are weak in important respects. Effective implementation of the EU Climate Law militates in favour of EU measures ensuring a timely and consistent 'levelling up' of the quality and effectiveness of national climate governance so that the EU's climate objectives are more consistently and more genuinely 'owned' at national level.

Q. Should the Irish Government care about the issues addressed in this paper?

A. Yes. Ireland was one of the first countries within the EU to recognise the need for dedicated national arrangements for climate governance and was an early adopter of the framework climate law paradigm. It has also experienced the benefits of this legislation and its supporting institutions – both the advisory council and national parliamentary bodies - in fostering political leadership and public understanding of and support for climate action aligned to the net zero objective. Five years after the adoption of this legislation, the Irish Government formally started the process of strengthening its commitment to the Paris objective and alongside this strengthening its national climate law, the mandate of the Irish Climate Advisory Council and the role of Ireland’s parliamentary bodies to hold government to account for delivering climate action consistent with net zero. Ireland was moreover a pioneer of deliberative processes for citizen dialogue about climate action with its Citizens Assembly which crystallised the strength of public support for more ambitious action and led to an important cross-party parliamentary investigation of the options for how to translate the outcomes of the Citizens’ Assembly into practical recommendations for government that have in turn shaped the Government’s approach to the reform process. Consistent with the message communicated at the recent Dublin Dialogue that Ireland wishes to ‘turn the page’ in its approach to climate action and to provide leadership, Ireland should deploy that new ambition to lead a coalition of ‘climate law’ countries making the case for closing the EU’s national ownership gap. There is also an important opportunity for Ireland and other climate law countries to share the lessons they have learnt about the value of Paris compatible governance in becoming fit for zero at national level, and stimulate a discussion within the EU’s institutions about how EU rules on national climate governance could and should be revised to apply those lessons so that the minimum enabling conditions for transformational policy making are in place in all countries. Doing so would represent a major contribution to realising the Union’s ambition to become the first climate neutral continent in the world.

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