



**Apply the lessons from
Europe's climate law countries
to strengthen & de-risk the
Commission's "Fit for 55"
proposals**

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Following the EU's decision to commit to a binding duty to achieve net zero greenhouse gas emissions by 2050 at the latest, the Union raised its 2030 target to 55% minimum reductions from 1990 levels and the European Commission was mandated to publish proposals for how the EU's climate policy architecture should be recalibrated to align with these increased climate objectives. The Commission released its 'Fit for 55' proposals on 14th July 2021. EJNI's work programme focuses on the issue of climate governance. This short briefing evaluates the 'Fit for 55' proposals in terms of their quality in supporting effective multi-level climate governance in Europe with reference to issues arising in the context of the Effort Sharing Regulation. It concludes by highlighting opportunities to improve the Climate Action Social Fund by making it more transparent and participative.

1. Introduction

Implementing the EU's newly increased climate objectives will require rapid, radical, and irreversible change across the economy. Change on this societal scale is, by definition, a deeply political process. At the heart of the Commission's vision for the future of the EU's climate architecture is the remarkable proposal that market mechanisms should be expanded while the EU's already limited provision for national ownership and leadership should remain limited and even shrink. This contrasts starkly with the approach already taken at national level by almost half of the EU's countries.¹ European countries who are serious about net zero have gone ahead of EU rules and put in place national climate laws and governance arrangements designed to foster sustained political leadership, sufficient public support for climate policy and a mission mindset within government about delivery of the long-term transition. While the drivers of political leadership in these countries are myriad, Europe's climate law countries have nevertheless recognised the need for a **strong national commitment** to the long-term climate objective and 'ownership' of the process by which it is achieved. They have also recognised that comprehensive Paris compatible national climate laws and governance play an important role in fostering these dynamics because they create a self-reinforcing 'policy management system' or feedback loop that **strengthens public trust in policy making** and drives sufficient policy ambition. Although the design of these national regimes varies, there is consensus about a core governance 'toolkit' that works.²

By adopting the EU Climate Law, the Union has recognised the value of applying at least some of these tools to climate governance at the EU level. Irrespective of the outcome of EU negotiations on the future of the EU ETS, the Fit for 55 review should be seized as the ideal opportunity to also apply these lessons to EU rules on national climate action. Doing so would ensure that the minimum standard of climate governance in all countries is fit for the **deeply political challenge** involved in getting to net zero. It would also protect the expansion of the EU ETS from a powerful public backlash and the destabilising of political leadership – protection that will not be assured sufficiently by the Commission's narrow proposal for a Climate Action Social Fund.

¹ See for example climate laws in France, Sweden, Austria, Denmark, Finland, Germany, Ireland, Spain and the Netherlands. For further information, see [Duwe, Matthais and Evans, Nicholas. *Climate Laws in Europe: Good Practices in Net-Zero Management* \(Ecologic, 2020\).](#)

² These components are calculated and set out in Muinzer, Thomas L. "Conceptualising and Formulating National Climate Change Acts", pp.227-257, in Muinzer, Thomas L. (ed.) *National Climate Change Acts: The Emergence, Form and Nature of National Framework Climate Legislation* (Hart, 2021).

2. PROPOSALS FOR AMENDING THE COMMISSION'S APPROACH TO THE EFFORT SHARING REGULATION

The societal transformation needed across the EU to deliver the EU's climate objectives renders it untenable to support the Commission's proposal to simply retain the core design of the ESR, leaving in place its negative and technical title, short-term focus and outmoded design. That design excludes citizens, concentrates oversight in the EU's institutions, concentrates compliance pressure on the end of the decade, and enables wealthy countries to buy compliance at the expense of domestic mitigation. It also overlooks the need for national accountability and trust-building measures. All of this ignores the lessons learnt by Europe's climate law countries about what works.

A credible overhaul of the ESR should lead to the following amendments to the Commission's proposals:

2.1 Give the ESR a name that communicates its purpose positively and clearly

WHY?

Legislators across the world have recognised the significant messaging power of legislative titles to reinforce a positive framing of the rules being adopted. This power is mobilised by the titles given to Europe's climate laws and governance arrangements, and it is reflected in the clear and positive title proposed by the Commission for the EU Climate Law. In sharp contrast, its proposal for the revision of the ESR persists in referencing a title that communicates national climate action negatively as a 'burden', and is meaningless to all those but the expert communities working in or on the Brussels bubble. At the launch of the package, Commissioner Timmermans emphasised that "we must also talk about the future climate action brings, which is healthier, more prosperous and cleaner." By replacing the usage of 'ESR' with a positive name, the EU would end this damaging dissonance within its own climate architecture, which officially communicates national climate action as an 'effort'. Replacing usage of the term ESR with a non-technical title would transform its relevance to citizens and contribute to closing the EU's national ownership gap.

HOW?

Entitle and refer to the ESR as the 'Climate Action Regulation'.

2.2 Expand the scope of the ESR to include a long-term *national* climate objective

WHY?

- i. **A binding national commitment to achieve the Paris objective is arguably the most common feature of the governance toolkit adopted by Europe's climate law countries.** Long-term targets are considered to have several important benefits, perhaps the most important being that they are the foundation of effective policy back-casting. Clarity about the long-term objective enables national governments, their independent expert advisory bodies and stakeholders to undertake more accurate and transparent assessments about real policy options, which in turn provides the 'cover' for more ambitious early action and fosters public trust in the choices made.
- ii. **The lessons learnt by Europe's climate law countries and the requirements of Article 4.4 of the Paris Agreement also strongly suggest that national long-term targets should cover the whole economy to reflect the reality that achieving net zero – even collectively as part of shared European action - will require change on a societal and whole economic scale in all Member States.** However, while Europe's climate law countries have adopted long-term and economy-wide targets, several EU countries have yet to do so, and are not required to do so under EU law. The ESR is an ideal legislative vehicle to enshrine

national long-term climate targets. Despite this, the Commission proposes that it should retain its limited focus on near-term (2030) targets, and that national targets should only cover half of the economy. The proposed expansion of the EU ETS into the ESR sectors could even lead to a shrinking of the space for national ownership and leadership of the transition.

- iii. **The absence of defined national long-term climate targets is likely to delay the building of national capacity for sufficiently ambitious policy making and mission-mindedness in countries that have not yet adopted comprehensive national climate laws.** It is also likely to undermine national political leadership just when it needs to ramp it up, potentially damaging public support for the EU's climate mandate. In the event of a public backlash to more ambitious EU climate and energy policies, disinterested governments who are not already committed to achieve the Paris objective could more easily disown more ambitious EU climate policies and regard themselves as justified in not committing national resources to mitigate injustice caused by policies they view as 'external' to national policy priorities. Equally, they could step back and enable the EU to be 'blamed' for forcing citizens to pay for climate action and allow climate action to be framed as elitist instead of investing political capital in representing it as being in the public interest.

HOW?

The revised ESR should as a minimum:

- a) **Define the long-term target by which each Member State must achieve net zero.** This could range from targets requiring net zero by 2045 for some or post-2050 for others provided collectively they ensure the EU can reliably achieve its 2050 target.
- b) **Define national net zero targets in whole economic terms,** bearing in mind that national governments are as a minimum bound legally and politically to the EU's long-term climate objectives.
- c) **Include a national carbon budget trajectory extending beyond 2030,** co-ordinated with the adoption of the EU trajectory but linked to the national deadline for achieving net zero and signalling the need to meet (even if as yet undefined) negative emissions thereafter.
- d) **Create a process for defining national 2040 targets,** co-ordinated with the EU Climate Law process but stimulating a transparent and timely national debate about the most cost-effective and fair distribution of mitigation action.

2.3 Strengthen ESR compliance arrangements to incentivise early action by Member States

WHY?

The combination of longstanding problems with national under-performance in delivering existing ESR targets and the need for national targets to increase in light of the EU's climate neutrality target makes it untenable to propose (as the Commission does) that the quality of the compliance arrangements within the revised ESR should not be significantly improved. It is essential that the revised ESR contains strengthened compliance mechanisms to deter the postponement of mitigation efforts and to increase opportunities for the Commission to take enforcement action during the 2020s and not only after 2030 when it is clear that targets have been breached.

HOW?

As a minimum the revised ESR should:

- a) Require Member States to undertake augmented and mandatory reviews of their National Energy and Climate Plans (NECPs) and Long-Term Strategies (LTSs) where there is a sustained breach (for two or more years) of their AEA's.

- b) The “safety reserve” in Article 11 of the ESR should be repealed because it provides unnecessary excess emissions units in addition to the substantial flexibilities and net removals capacities that already exist (and that are additionally proposed under LULUCF changes).
- c) Include monetary consequences in the event Member States breach ESR rules. This is already the case under the EU ETS and car CO₂ legislation.
- d) Corrective action plans under Article 8 ESR should be strengthened, by requiring transparency of both the plan and the Commission’s response to them. Member States should publicly explain if and why they deviate from the Commission’s opinion, as is the case under the Governance Regulation.

2.4 Empower citizens to challenge ESR non-compliance before national courts

WHY?

i. **Expert analysis commissioned recently by the European Commission makes clear that citizens in many EU countries do not have rights of access to their national courts to challenge government breaches of EU environmental law.**³ This includes the ESR, which can only be enforced by the Commission in countries where these rights do not exist. A requirement that all countries guarantee minimum standards of access to justice to enforce compliance with the revised ESR would transform both its national relevance to citizens, because they would be able to engage national courts in reviewing compliance, and enhance pressure to comply, because of the far greater likelihood of public interest litigation.

ii. **Empowering citizens to enforce the ESR before national courts follows the precedent already established in existing EU measures on the environment such as the Environmental Impact Assessment (EIA) Directive and Industrial Emissions Directive (IED).** It would also implement the commitment made by the European Commission’s 2020 Communication on access to justice, which promised to ramp up national compliance with the EU’s international law duties under the Aarhus Convention by proposing the integration of these rights in new or revised EU legislation on the environment.⁴

HOW?

Public rights of access to national courts equivalent to those pertaining to the EIA and IED Directives could be integrated into the revised ESR. The integration of similar rights should also be considered for all measures in the *Fit for 55* package, including the EU ETS. The right of environmental NGOs to contest certain acts in national courts under Article 9(3) of the Aarhus Convention and Article 47 of the Charter of Fundamental Rights should also be taken directly into account as a part of these changes.

2.5 Require Member States to take reasonable steps to enable a just transition

WHY?

i. **Public support for EU climate policy depends crucially on trust that the transition can be achieved fairly.** Since the launch of the Green Deal, the European Commission has demonstrated an increased willingness to support Member States in mitigating injustice. However, its approach is fragmented, non-transparent and does not guarantee effective national engagement with this issue.

³ [Report: Study on the EU implementation of the Aarhus Convention \(DG Environment & Milieu, 2019\).](#)

⁴ [communication improving access to justice environmental matters.pdf \(europa.eu\)](#)

- ii. There is no guarantee within the Commission's proposal for a CASF that Member States will commit the 50% of national matching funds needed to receive EU support to mitigate the impact of increased fuel prices. The EU's Just Transition Mechanism is not transparent, making it difficult to assess the quality and effectiveness of national engagement with this mechanism.
- iii. EU rules for NECPs and LTSs only address the just transition in a very limited and vague manner.

These weaknesses in EU rules exposes citizens to injustice and the EU's climate mandate to a potentially powerful public backlash. Best practice amongst Europe's climate law countries reflects a growing emphasis on creating dedicated governance arrangements to enable a just transition. The Fit for 55 review is an ideal opportunity to ensure consistent minimum standards so that the just transition is established as a strategic objective of the transition to net zero, and so that decision making is transparent, thereby fostering public trust.

HOW?

- a) Member States should be required to take all reasonable steps to enable a just transition within their territory. This approach would ensure governments retain national discretion over whether and how to engage with EU funding mechanisms in this context.
- b) To support transparency about what action is being taken, Member States should be required to publish an annual report setting out an integrated socio-economic assessment of the risks of an unjust transition at national level and the measures being taken by government alone or in collaboration with the EU to mitigate these risks. This would build on data already required by EU rules for national LTSs, limiting the administrative burden.
- c) Member States should be required to appoint an independent expert commissioner on the just transition to advise government on options for enabling a just transition.

2.6 Require Member States to publish a composite annual report on compliance progress

WHY?

- i. **National transparency about progress in meeting near-term and long-term climate targets is another consistent component of the toolkit put in place by Europe's climate law countries.** Transparency about the quality and effectiveness of policy making ensures accountability for progress while an annual reporting process can ensure there is more timely pressure for the adoption of remedial measures where they are needed. In many climate law countries the government is additionally required to present its report to national parliamentary bodies, creating a routine annual 'moment' in the country's political calendar for cross-party debate about the effectiveness of national climate action. This keeps climate to the foreground of national policy priorities, fostering political understanding of the need for climate action and political willingness to take sufficient action.
- ii. **National reporting under the ESR is exclusively to the European Commission.** The Commission, for its part, is also required to publish various reports under the ESR, EU Climate Law, the Governance Regulation and EU Semester concerning the quality of national compliance with EU climate objectives, and is empowered to issue Recommendations to national governments setting out the corrective action it advises should be

taken.

iii. **The weaknesses in these arrangements include as follows:**

- a) Progress reporting is remote to national political debate so the transparency achieved is slow to arrive;
- b) Recommendations do not have to be published; and, in any event, EU institutional debate about the content of Commission assessments is unlikely to influence the behaviour of disinterested national governments and foster national political will.
- c) Added to this, citizens must undertake a substantial 'paperchase' to track down and draw together the composite analysis contained in these reporting processes about the state of national compliance with national climate targets.

HOW?

As a minimum the revised ESR should:

- i. Require Member States to publish comprehensive annual reports communicated to the Commission under the ESR concerning national progress in meeting ESR targets and also including a range of other matters, as per (ii)-(iii) below.
- ii. These reports should include:
 - a) The information communicated by the government to the Commission under the ESR (so no additional effort)
 - b) Where they have been received, Recommendations issued by the European Commission under either the ESR, EU Climate Law, Governance Regulation or EU Semester that indicate insufficient national progress towards national and EU climate targets (2030 and 2050).
 - c) The government's (proposed) response to the Commission setting out what if any corrective action will be taken and if none, the reasons why.
- iii. Ideally government should also be required to present those reports annually to national parliaments.

2.7 Impose a duty on the European Commission to publish EU guidelines setting out best practice in the design and mandating of national climate advisory bodies.

WHY?

The important role played by independent expert advisory bodies in supporting sufficiently ambitious climate policy making is recognised by the EU Climate Law. These bodies have already been established in all of Europe's climate law countries, but approaches vary, and they do not exist at all in many countries. The revision of the ESR is an ideal opportunity to reinforce the invitation to Member States contained in the EU Climate Law to create these bodies by requiring the Commission to support Member States in unlocking their dividends to national climate governance.

HOW?

Impose a duty on the European Commission to publish EU guidelines setting out best practice in the design and mandating of national independent expert climate advisory bodies.

3. ADDITIONAL PROPOSALS TO MAKE THE CLIMATE ACTION SOCIAL FUND TRANSPARENT & PARTICIPATIVE

3.1 Amend the Climate Action Social Facility Regulation (CASF) to make decisions transparent and inclusive.

WHY?

Public trust that the EU's climate objectives can be achieved is crucial to public support for EU climate policy. Fostering that trust means that decision making about the just transition should be transparent and participative. Despite being created for the ostensible benefit of citizens, it is unclear from the Commission's proposal for a CASF whether the public will be empowered to participate effectively, or at all, in the development of draft national plans developed under the CASF, which would include decisions concerning crucial issues relating to the assessment of the scale of the social justice impact, the proposed size of the national and EU contributions and the means by which citizens will gain access to CASF funding. If adopted, the CASF would force citizens to become passive 'takers' of decisions made behind closed doors and remotely in Brussels rather than participants in decisions that would profoundly influence public trust in EU climate policy.

HOW?

Require Member States to consult with the public about their planned approach to mitigating the social impact of increased household and transport fuels and specifically their proposed approach to engaging with the CASF.

--END--

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