Environmental Justice Network Ireland

Climate Governance Observatory
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What is the Effort Sharing Regulation and why does its revision matter?

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Thomas L. Muinzer, Sharon Turner and Ciara Brennan

1. What is the so-called 'Effort Sharing Regulation' – 'aka' the Climate Action Regulation (CARE) for Europe?

The Effort Sharing Regulation is a crucial component of the EU's climate policy architecture because it sets out the amount of greenhouse gas (GHG) emissions reduction each Member State (plus Iceland and Norway) must achieve for the period between 2021-2030. The Regulation breaks down the EU's collective 2030 emissions reduction target into specific national targets for each Member State, shared out according to GDP. Although this Regulation has been traditionally referred to by the Commission as the 'Effort' or Burden Sharing Regulation – this title is flawed for two important reasons. First, by framing national climate targets as an 'effort' or a 'burden' the EU is communicating national climate action in negative terms. We believe this negative perception - of what is in reality essential national action - has contributed to the race to the bottom that has consistently characterised negotiations in Brussels between the Commission and Member States about the setting and revision of these targets. Secondly, the term 'effort' or burden does not even appear in formal title of the Regulation. The authors take the view that the revision of this Regulation should be used as an opportunity to re-set the framing of EU rules on national climate targets in an appropriately positive light and also to adopt a title that makes the purpose of the legislation readily understood by citizens, which is crucial if citizens are to support this legislation. As is discussed below, the authors propose that the title of the legislation is true to its purpose – which is to drive climate action across Europe. With this objective in mind the remainder of this briefing will refer to the Regulation as the Climate Action Regulation for Europe (CARE).

2. What is the scope of the CARE?

The CARE does not apply to the whole economy; it only requires Member States to take responsibility for achieving emissions reductions in specific sectors – namely buildings, transport, agriculture, waste, and some sections of industry. The CARE does not cover, for example, emissions from power stations or energy intensive steel, cement and chemical works. The Regulation only imposes national targets until 2030. National climate targets are expressed as an end point in a linear reduction trajectory. The Commission then adopts a separate measure setting out the 'annual emissions allowances' (AEAs) – effectively the emissions reductions required by each country to achieve its 2030 target. In addition to targets, the Regulation enshrines the rules that govern flexibilities allowed to governments in meeting their emissions reductions, including processes for banking, borrowing, buying, selling AEAs between Member States and a safety reserve. The CARE also contains powers for the Commission to control national compliance with targets.

3. Why is the CARE being revised?

The CARE is being revised as part of the 'Fit for 55' review to take account of the EU's decision to commit to the Paris Agreement objective of achieving climate neutrality by 2050. The revision of the CARE is therefore a crucial opportunity to put in place the arrangements to ensure sufficient national climate action is taken to put the Union onto a pathway consistent with net zero by 2050. When the EU committed to climate neutrality the EU's institutions also recognised the need to increase the Union's 2030 target. This has now been confirmed as requiring a reduction of 55% from 1990 levels, a substantial increase in ambition from the original target of a 40% reduction. The Commission was also mandated to propose how the EU's wider climate acquis (i.e., policy framework) should be amended to ensure delivery of the Union's new 2030 target. As part of its 'Fit for 55' package of proposals the Commission has proposed that the sectors covered by the CARE should deliver greater emissions mitigation – specifically by raising their existing 30% target to 40% from 2005 levels. This means national climate targets must also increase under the CARE. The Commission is also proposing to allow Member States to use a limited amount of 'credits' accumulated under the EU's Land Use, Land Use Change and Forestry Regulation (LULUCF) during the period 2021-2030 towards achievement of their CARE targets - the rationale being to stimulate greater climate action in the land use sector. 'Credits' refer to amounts of extra emissions removals achieved (as opposed to 'debits' – in effect, extra emissions reductions).

4. Why does the revision of the CARE matter?

The CARE covers almost 60% of total domestic EU greenhouse gas emissions. It is also the only EU measure that explicitly requires state action to reduce GHG emissions and therefore to provide national leadership on climate action, albeit only within specific sectors. The transformation required to achieve climate neutrality across Europe will involve profound change on a societal scale, affecting the economy as a whole and at an unprecedented pace. Delivering change on this scale will, by definition, be a deeply political process requiring political leadership and public consent – public processes that cannot be induced by or outsourced to market mechanisms. The Commission's proposal to expand the EU ETS (carbon pricing) to fuel prices in the housing and transport sectors has been in large part motivated by its concern that Member States are not willing to deliver their CARE climate targets. Indeed, in its Impact Assessment for the revision of the CARE signaled a strong desire to get rid of the Regulation altogether. In response to strong push back by Member States, the Commission has proposed the retention of the CARE – at least until 2030. However, its proposals for this crucial Regulation fall considerably short of the legislative framework that would be needed to properly unlock the quality of political leadership, national policy development and public support needed for policy making consistent with net zero. The authors of this briefing argue that whatever the role of carbon pricing as a policy tool, it is not a replacement for national ownership of the responsibility to achieve climate neutrality and to achieve net negative emissions thereafter. In fact, if the EU's Member States are properly mobilised to view climate neutrality as an essential national mission – in just the same way they acted to respond to the Covid 19 pandemic - the need for steep rises in the costs of housing and transport fuels could significantly recede. EU rules on national climate action must therefore clearly position the state a permanent and indispensable actor to effective the EU's climate objectives and targets. While market measures such as the EU Emissions Trading Scheme play an important role in driving change, it is essential that the revision of EU climate rules does not incentivise national governments to step back from climate action and to perceive climate neutrality as the responsibility of markets (as a result of EU ETS expansion) or the responsibility of other more wealthy or larger countries. The responsibility to provide effective political leadership on national climate action must be robustly 'owned' by each Member State.

5. How should the Commission's proposal to revise the CARE be strengthened to ensure Member States deliver sufficient climate action?

With the support of the European Climate Foundation, the Environmental Justice Network Ireland's Climate Governance Observatory is working in close co-ordination with civil society partners in Brussels and across the EU to develop proposals for legislative amendments to the Commission's proposals and supporting policy briefings explaining why it makes sense to support these changes. Based on research undertaken to date, we have identified 5 key priorities for revision of the CARE, all of which are designed to ensure national action is compatible with the scale of national ambition required to get the Union on track for net zero. These 5 key priorities are to:

(1) Ensure the integrity of the EU's 2030 target by closing loopholes, such as LULUCF flexibilities, the safety reserve or ETS flexiblities, while maintaining credible flexibilities such as banking and borrowing.

(2) Establish mechanisms for setting post-2030 national climate targets for Member States to make clear the long-term responsibility of the state for delivering national climate action; this would include, establishing a process for adopting MS 2040 targets, and a process (potentially inserted by amendment into the Governance Regulation) establishing a process whereby Member States all clarify the date by which they will achieve zero GHG emissions for the economy as a whole. Establishing national climate neutrality targets would in particular level up political ownership of the climate neutrality objective in countries that have not already committed to the Paris objective and ensure far greater transparency about national convergence with the climate neutrality objective, which is not provided by reliance only on 2030 targets.

(3) Guarantee more robust national transparency and accountability for compliance with 2030 targets through the introduction of national emission budgets to remove the current 'blackbox' approach to monitoring emissions reductions, create duties to amend National Energy and Climate Plans where AEAs are breached in successive years and create rights of access to justice rights for NGOs and citizens in all countries to empower them to challenge non-compliance with any aspect of the CARE at national level.

(4) Change the name of the Regulation to one that is positive and makes its purpose clear to citizens - we suggest the 'Climate Action Regulation for Europe (CARE)' .

(5) Use the revision of the CARE as a vehicle to amend the Governance Regulation. This Regulation has been excluded from the Fit for 55 review process, which is a mistake because it means EU rules on national climate planning for 2030 and 2050 have not been adjusted to take account of the far higher ambition and far greater level of public support needed in each country to ensure each Member State contributes in a meaningful way to achieving net zero across Europe. The national plans already submitted are viewed by the Commission as weak which has been a significant factor in motivating its proposal to further expand carbon pricing.

6. What is the relationship between the CARE and EU ETS?

The EU institutions consider the EU's ETS to be a major leading-edge mechanism in combatting climate change. Although it plays an undeniably significant role at present, non-ETS sectors that fall outside of the ETS scheme amount to around 60% of total domestic EU emissions. The 'non ETS sectors' are regulated by the CARE. Although the EU ETS has tended to be characterised as the EU's flagship climate policy – in reality the CARE is just as - if not even more important. First and foremost, the CARE regulates the majority of emissions. Secondly, it regulates the most hard to reach sectors because they are so politically sensistive. These are the sectors that require citizens to accept now highly intrusive changes to how they live, use transport and eat. Mitigation in these sectors also creates the potential for unfairness and public opposition to climate action because of concerns about that unfairness but also because public unease can be harnessed by populist and fragmenting polticial forces. Agriculture – one of the CARE sectors – is also strongly associated with highly senstivie socio-cultural values in some countries such as Ireland which adds yet further to the need for polticial leadership and public support. In effect, decarbonising these sectors will be a highly political process requiring strong public support and effective political leadership and policy action at national level.

The CARE is the EU's only instrument requiring national governments to meet specific GHG emissions reductions targets. Consequently, the CARE (alongside the Governance Regulation and LULUCF) plays a pivotal role in ensuring governments' take sufficient action and provide political leadership on climate at home. The Commission's proposal to simply expand carbon pricing into the sectors currently regulated by the CARE (the so-called 'EU ETS 2' proposal - discussed below) without *ALSO* proposing a significant strengthening of the EU rules governing national responsibility to take action is – in the authors' opinion - an approach destined to failure. It is also one that exposes the EU's climate policies to a powerful public backlash, which could destabilise political leadership and be exploited by populist and fragmenting political forces.

Irrespective of how the EU ETS is designed, the need for state led climate action to correct market malfunction in the EU ETS and to overcome the many non-market barriers to delivering the emissions reductions needed in the CARE sectors is overwhelmingly clear. In the CARE sector for example - public consent to the profound changes needed in these sectors and removing barriers caused by vested interests will require highly transparent national strategies setting out how the change will be paid for, how unfairness will be mitigated, and how responsibility for achieving EU climate targets will be apportioned between sectors across the national economy and the consequences for other sectors of some sectors doing less. There is little doubt that delivering the societal transformation required to achieve the EU's climate neutrality objective will need both the state and markets to be mobilised effectively. It is already clear from the experiences of climate ambitious countries that they recognise the pivotal role of the state in delivering climate neutrality. Over half of the EU's Member States have already moved ahead of the EU to put in place credible national Climate Laws committing the state to achieve net zero and creating national policy management systems designed to ensure accountability for achieving the net zero objective. Those countries are already meeting and exceeding their EU CARE targets. It is crucial that the Fit for 55 process creates legal frameworks that send the right signals to both national governments and to markets. This major revision process is the ideal opportunity for the EU to apply the lessons learnt by Europe's climate law countries to achieve a levelling up of the standard of national climate governance by strengthening the CARE and (as discussed below) the Governance Regulation. Doing so would more securely guarantee the achievement of the EU's climate targets, derisk the expansion of the ETS 2, protect public support for the EU's climate mandate, and unleash the power of the mission minded state as a highly innovative policy entrepreneur.

7. What does the EU ETS do that the CARE doesn't?

The EU ETS applies an important 'cap and trade' system to thousands of substantial installations that emit GHGs in the EU. The cap and trade system is designed to drive emissions down by placing a limit (i.e., a 'cap') on the maximum amount of GHGs that individual installations (as opposed to Member States) are permitted to release. The limit is steadily reduced over time, bringing down emissions in a gradual way. GHGs are converted to emissions allowances within the level permitted by the cap. The allowances have a carbon price and can be traded between installations. The scheme is administered by the Commission directly, reducing the active role played by Member States in this area. The ETS currently covers installations that require heavy energy usage, including power stations and industrial installations like steelworks, cement works and oil refineries. As part of the Fit for 55 package, the Commission is proposing expanding the ETS to cover emissions from fuels used in road transport and buildings because it is considered that more steep emissions reductions will be required in these sectors - the so-called 'ETS 2' proposal. It is proposed that a cap and trade system would be applied to fuel suppliers to these sectors - rather than to households and consumers directly; in parallel it is proposed that a Climate Action Social Fund would also be established to mitigate social hardship caused when fuel suppliers pass on the increased costs to consumers – in effect to support a just transition.

8. Why is the Governance Regulation relevant to the Fit for 55 review?

The [Governance Regulation](#) is a crucial component of the EU's policy framework governing national climate action. Like the CARE, the Governance Regulation focuses directly on action by Member States (unlike the EU ETS which is administered by the Commission and applies directly to industrial installations). The CARE sets down national GHG emission reduction targets for Member States whereas the Governance Regulation sets down common rules for national climate planning (National Energy and Climate Plans for 2030, NECPs and Long-Term Strategies, LTSs for 2050). These plans create the process whereby each Member State must clarify the policy and investment framework they will implement to meet their CARE (and energy) targets. The plans also require governments to collate data on the social justice implications of national climate action. The Governance Regulation also controls how Member States report on their GHG emissions reductions under the CARE and gives the EU Commission powers to monitor implementation of these plans and to require corrective action. In effect, the Governance Regulation and the CARE are co-equal pieces of legislation governing the state's role in delivering climate action but with each containing different elements of an integrated governance system – one sets the level of ambition through targets, while the other establishes binding duties to produce national plans; both create EU monitoring processes. Together they set out the EU's arrangements for national climate governance.

The central difference between these two pieces of legislation is that whereas the Governance Regulation applies to the whole economy and includes a focus on the long-term climate objective - the CARE only applies to 60% of national emissions and is confined to a short term (2030) climate objective. The rules contained in the Governance Regulation therefore have a fundamental role in driving the quality and ambition of climate policy at national level and the likelihood that national climate targets will be achieved. These planning processes also have a major role in building public consent and cross-party political understanding of the policies needed because they are required to be adopted as a result of participative processes. However, the Governance Regulation was adopted before the EU Climate Law was adopted and before the EU's 2030 and 2050 targets were significantly raised. We already know that the NECPS and LTS submitted are weak. And this was one of the reasons the Commission proposed the expansion of carbon pricing to the CARE sectors – because it fears Member States will not deliver the policies needed. By excluding the Governance Regulation from the Fit for 55 review the Union has missed an important opportunity to ensure EU rules on national climate action are fit for purpose and meet the new levels of ambition committed to by the EU. The Commission has not included revision of the Governance Regulation in its forward work plan therefore the inclusion of amendments to the Governance Regulation into the revised CARE is essential so that the Regulation is strengthened in the early part of this decade and is rendered fit for zero. The authors will follow up with a dedicated briefing on our proposals for how the Fit for 55 process could be used to strengthen the Governance Regulation.

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* Dr Thomas Muinzer is a senior lecturer at Aberdeen University and is Co-Director of the Aberdeen University Centre for Energy Law. Sharon Turner is a self-employed consultant specialising in providing strategic advice on climate law and governance and is Visiting Professor at the University of Sussex. Dr Ciara Brennan is a lecturer at Newcastle University and the Director of the Environmental Justice Network Ireland. Thanks to Sofie Defour (Transport & Environment) and Dr. Nils Meyer-Ohlendorf (Ecologic Institute) for their help in preparing this policy note, all errors are the authors' own.

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