



A European Climate Law – Draft

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Content

1	Introduction	4
2	Key provisions of the European Climate Law	5
2.1	Article 1: Objectives and goals	5
2.2	Article 2: (selected) Definitions	6
2.3	Article 3: Legally binding reduction targets.....	6
2.4	Article 4: Union's emission budget	8
2.5	Article 5: Enhancement of natural sinks for emission removals.....	8
2.6	Article 6: Permanent climate and energy dialogue platform	9
2.7	Article 7: EU Advisory Council on Climate Policy.....	10
2.8	Article 8: National Independent Climate Councils	12
2.9	Article 9: Ending fossil fuel subsidies	12
2.10	Article 10: Policy Mainstreaming	13
2.11	Article 11: Review and target adjustment.....	14

1 Introduction

The European Commission announced that it would propose a 'European Climate Law' in early March 2020. This proposal is to include a legally binding EU target of climate neutrality by 2050. This target can build on broad political consensus in the EU. The European Council endorsed the target on 12 December 2019 – noting that one Member State, at this stage, cannot commit to implement this objective as far as it is concerned. Parliament has been supporting the target since early 2018.

As an input to the discussion on the upcoming proposal, this paper presents draft provisions of selected elements of a European Climate Law that are critical to a credible legislative proposal to achieve the European transition to climate neutrality. A credible European Climate Law should be designed to close gaps in EU rules that currently operate to prevent the EU from becoming climate neutral by 2050.

The paper takes a conservative approach. It is not innovative in that it builds on the rapidly growing number of climate laws in Member States.¹ It also uses legislative approaches already being used in existing EU rules, not only within the EU climate acquis but also other areas of EU policy making. The paper's ideas will develop further as the political discussion progresses.

European Climate Law in EU law

The European Climate Law would build on the existing EU acquis. It would not replace it. The European Climate Law would be the missing 'roof' of EU climate action. The laws and policies that comprise the rest of the EU's climate acquis should be considered as the implementing measures or 'pillars' supporting that roof. These pillars will need to be strengthened to support the roof, i.e. the EU's climate acquis is set to be reformed to implement the new climate law.

The European Climate Law could be adopted in the form of an EU regulation or directive. It is expected that the "law" will be adopted in the form of a Regulation and the drafting of this paper reflects that assumption. In the event that the Climate Law is adopted as a directive, the core legislative proposals contained in this paper would not be altered. In its roadmap on the up-coming legislative process, the Commission announced on 9 January 2020 that its proposal will be based on Article 192.1 of the Treaty on the Functioning of the EU.

¹ : by the end of 2019, eleven Member States had adopted national climate laws, while six are in the process of adopting them or considering them in government. The UK, France, Denmark, Ireland, Finland, Sweden, the Netherlands, Germany, Austria, Bulgaria and Malta have climate laws, while Spain, Croatia, Latvia, Belgium, Portugal, Slovenia are in the process of adopting or considering them.

2 Key provisions of the European Climate Law

2.1 Article 1: Objectives and goals

The purpose of this Regulation is to create a framework that is designed, together with the rest of the Union's climate acquis, to ensure the achievement of the following objectives:

- to ensure a fair and credible contribution by the Union to global efforts to comply with the Paris Agreement temperature goal (Art 2.1(a));
- to implement the Union's climate targets and to enhance sinks;
- to transform the way EU policies are made and to set the long-term direction of travel for meeting the 2050 climate-neutrality objective through all policies, in a socially-fair and cost-efficient manner.
- to clearly set out the conditions for an effective and fair transition, to provide predictability for investors and other economic actors, including employers, workers and consumers, and to ensure that the transition to climate neutrality is irreversible.
- to lay down fundamental elements that guide all policies, such as the wellbeing of citizens, the prosperity of society, the competitiveness of the economy, energy efficiency and security, health, protection of vulnerable consumers, fairness and solidarity across society and regions, and a science-based approach.
- to support the Union's welfare, prosperity, health, eco-systems and biodiversity against the threat of anthropogenic climate change as set out in the Communication on the European Green Deal
- to set and, if necessary, facilitate adjusting the EU's 2050 climate objective in line with scientific findings of the International Panel on Climate Change (IPCC)
- to ensure that all EU policies are consistent with the climate-neutrality objective and that all sectors play their part. All other relevant policies should contribute to reaching the climate goals. This includes for example consistency of Union funding with the objectives of the Paris Agreement, climate proofing of investments to prevent vulnerabilities to long-term climate impacts and taking into account climate costs, strengthening incentives for developing climate-friendly and sustainable practices, products and technologies, integration into the European Semester process as the climate and energy transition as well as climate resilience are important elements of macro-economic stability and growth for the EU.

Explanation

These objectives reiterate largely the aims set out in Commission's roadmap on the up-coming legislative process of the Climate Law (published on 9 January 2020).

2.2 Article 2: (selected) Definitions

For the purposes of this Regulation, the following definitions apply:

‘Greenhouse gas emissions’ means emissions in terms of tonnes as defined in Regulation (EU) No 525/2013;

‘Greenhouse gas emissions covered by the Regulation’ means domestic greenhouse gas emissions that arise from the territory of the Union (alternative: that are covered by Regulation (EU) 2018/842 and Directive 2003/87/EC), including emissions from kerosene sales in the Union for aviation purposes and emissions from shipping pursuant Regulation 2015/757.

‘Climate neutrality’ means a balance, on the Union’s territory, between greenhouse gas emissions covered by this Regulation by sources and removals by sinks of such greenhouse gases, as set out in Article 4 of the Paris Agreement. A balance is achieved when greenhouse gas emissions covered by this Regulation are fully and safely stored by sinks. The accounting of these emissions and removals shall be carried out in the same way as for national greenhouse gas inventories reported to the European Commission and under the United Nations Framework Convention on Climate Change, without taking into account international carbon offsets.

‘Fossil fuel subsidies’ mean any financial contribution by a government, or agent of a government, that confers a benefit on its recipients as a consumer, producer or seller of natural gas, coal, or oil.

2.3 Article 3: Legally binding reduction targets

(1) This Regulation obliges the Union to reduce the emissions covered by this Regulation compared to 1990 levels:

1. by at least x percent by 2030.
2. by at least y percent by the year 2040.
3. by at least z percent by the year 2050.

(2) In addition, this Regulation obliges the Union to achieve a balance between the remaining greenhouse gas emissions and the removal of greenhouse gases from the atmosphere (climate neutrality) by 2050 primarily by reducing emissions covered by this Regulation as set out in paragraph 1 and – as an auxiliary means – by sequestering a maximum of y percent through primarily the enhancement of natural sinks. Removals of emissions covered by this Regulation through technical sinks shall be an eligible means of achieving climate neutrality if these technical sinks ensure sustainable, permanent and safe removals of greenhouse gas emissions covered by this Regulation from the atmosphere. By x date, the Commission shall adopt a guiding document (alternative: delegated act) defining the technical sinks that are eligible for this purpose.

(3) The emission reduction targets set out in paragraph 1 shall ensure that the total amount of emissions covered by this Regulation will not exceed the Union's emission budget set out in Article 4.

(4) Partial achievement of the targets set out in paragraph 1 in the framework of internationally transferred mitigation outcomes according to Article 6 of the Paris Agreement shall not be eligible.

(5) By x date, the Commission shall present a report with options for amendments to Regulation (EU) 2018/842 (Climate Action Regulation), amendments to Directive 2003/87/EC (ETS) and amendments to Regulation (EU) 2018/841 (LULUCF) which shall ensure meeting the greenhouse gas emission reduction commitment of the Union set out in paragraph 1 and 2.²

(6) If the latest scientific evidence, particularly as set out in relevant IPCC assessments, suggests that adjustments of the Union's climate targets set out in paragraphs 1 and 2 and of the Union's emission budget set out in Article 4 are required to ensure a fair contribution by the Union to global efforts to achieve the objectives of the Paris Agreement, the Commission or the Council set out in Article 8 shall initiate the process pursuant to Article 11 paragraphs 2 and 3.

Explanation:

- **Legally binding targets:** The EU has no overall legally binding climate target, neither for 2030, 2040 nor for 2050. These are critical gaps that have undermined the seriousness and predictability of EU climate policies for a long time. Climate targets need to be sufficiently high to ensure that the EU stays on a realistic path toward mid-century climate neutrality at the very latest and within its remaining overall emission budget.
- **ETS, Climate Action Regulation, LULUCF and other relevant EU rules:** Maintaining the EU's current target architecture, amendments of the Climate Action Regulation, the ETS, the LULUCF Regulation and other relevant EU rules, notably in the energy acquis, will help implement the targets of the European Climate Law. The Commission is requested to start the legislative process.
- **Targets for removals:** The 1.5 LIFE scenario under the EU long term strategy, for example, assumes that sinks account for 6-9% of the EU's overall efforts to achieve climate neutrality by 2050. This could suggest domestic reductions of 95% (compared to 1990) and removals by 5%.
- **International offsets:** As international offsets are not an option for credible climate action, the international offsets should not be a means of target achievement (similar to the French energy transition law).
- **Technical sinks:** Technical sinks are possible but at this stage still deficient and only secondary to restoring degraded ecosystems, which is capable of sequestering much larger amounts

² In light of the timeframes set out in the Commission's communication of 11 December 2019 on the European Green deal, it is possible that this provision becomes obsolete. According to this communication, the Commission will present "proposals for revision of relevant legislative measures to deliver on the increased climate ambition" by June 2021.

of CO₂ and which holds many co-benefits for protecting biodiversity, water and soils. Given persisting uncertainties around technical sinks, a guiding document or a delegated act by the Commission should specify the sinks that are eligible to achieving the climate neutrality goal.

- **Priority of emission reductions:** Restoration of degraded ecosystems and emission removals are essential, but not the most effective climate solutions. First, the estimated potential of restoring degraded ecosystems varies considerably and can decline drastically because of the expected and unexpected impacts of climate change on natural sinks. Second, carbon removal through sinks is less safe than leaving gas, coal and oil in the ground.

2.4 Article 4: Union's emission budget

To ensure that the Union effectively contributes to achieving the objectives of climate neutrality and the Paris Agreement, the total amount of emissions covered by this Regulation shall not exceed x Gt until 2050 (Union's emission budget).

Explanation:

- Reduction targets only require specific reductions at a certain point in time, but alone say nothing about the overall quantity of admissible emissions. Yet, it is this aggregated amount of emissions over time and corresponding concentration of greenhouse gases in the atmosphere that matter for the global climate. Quantified emission budgets address this problem. Unlike reduction targets, they clearly limit the amount of admissible greenhouse gas emissions.
- Currently, the EU only has an emission budget until 2030, which is – problematically – non-transparent and politically impossible to communicate. It is not based on an assessment of the EU's share of the world's remaining emissions. In fact, the existing EU budget is the sum of emission budgets under specific instruments, calculated on the basis of trajectories defined by political decisions – based on the achievement of near-term targets (2030). This is a major shortcoming of the EU's climate framework. It hides the need for immediate reductions behind a political focus on targets, and it is dishonest about the EU's remaining emissions.
- The EU's emission budget should represent the EU's 'fair share' of the remaining global emission budget. A number of criteria, such as cost effectiveness and equity, and a combination thereof can define the EU's fair share of the remaining global emissions. To agree on the size of the Union's emission budget, the legislative process needs to decide which criteria apply.

2.5 Article 5: Enhancement of natural sinks for emission removals

To support achieving the targets set out in Article 3.2, the Union shall restore at least x% of degraded ecosystems, in particular forests and wetlands, by 2030, y% by 2040 and z% by 2050. By x date, the

Commission shall adopt a guiding document specifying the restoration of degraded ecosystems that are eligible for this purpose.

Explanation

- **Negative emissions will be essential:** All scenarios that keep global temperature increase well below 2°C or below 1.5°C rely on removals of emissions from the atmosphere, so-called negative emissions. Currently, the EU has no targets on removing CO₂. The EU only has the so-called “no debit rule”, which stipulates that accounted LULUCF emissions may not exceed accounted removals. The “no debit rule” is not sufficient for the EU to achieve climate neutrality by 2050.
- **Restoring degraded ecosystems:** Addressing this gap, the European Climate Law should include a percentage share of removals in the overall reduction efforts (see above Article 4.2). To support this target, the European Climate Law should include a legally binding commitment to restore a certain amount of hectares of degraded ecosystems in an effort to remove CO₂ from the atmosphere – and to protect biodiversity, water and soils. These restoration targets can be inspired by Target 2 of the Nagoya Biodiversity Plan and Target 2 of the EU Biodiversity Strategy. According to these targets, countries commit to restore at least 15% of degraded ecosystems by 2020. This option can also build on SDG goal 15.3 (Land Degradation Neutrality) and the Aichi Biodiversity Target 15. The Commission could issue guiding documents to define the terms “restoration” and “degraded”.
- **Sustainability and resilience:** The European Climate Law should express a clear preference for the restoration of degraded ecosystems because it is essential that removal strategies take sustainability concerns fully into account, in particular biodiversity, food security, water quality and soil protection. This is also essential because healthy ecosystems are ultimately more resilient towards the impacts of changing climates than degraded ecosystems.

2.6 Article 6: Permanent climate and energy dialogue platform

- (1) Each Member State shall establish a permanent multilevel climate and energy dialogue platform established under national legislation, in which sub-national authorities, civil society organisations, business community, investors and other relevant stakeholders and the general public are able to engage actively and discuss the different scenarios envisaged for energy and climate policies, including for the long term, unless it already has a structure which serves the same purpose.
- (2) The dialogue platform shall provide for a holistic societal debate of climate policies, whereby citizens and stakeholders discuss the full range of policies to achieve climate policies and not only specific instruments. To support implementing the objectives of this Regulation, the dialogue platform shall design discussions in a manner that requires participating citizens and

stakeholders to discuss alternative instruments, if proposals for specific instruments were rejected.

Explanation:

- The EU already has a relatively strong legal framework for involving its citizens in decision-making, but the European Climate Law could improve it further. The European Climate Law should clearly stipulate that the new energy and climate dialogues under the Governance Regulation are permanent and holistic. A holistic approach ensures that the rejection of specific instruments will require agreement on alternatives, if the agreed emission reductions are to be achieved.
- This proposal builds on Article 11 of the Governance Regulation. It is possible that the suggested amendments feature only in this provision of the Governance Regulation.

2.7 Article 7: EU Advisory Council on Climate Policy

(1) An independent EU Advisory Council on Climate Policies is hereby established (Council). The Council shall consist of x experts from different disciplines. Members of the Council shall have outstanding scientific knowledge and experience in one of the areas of climate sciences, economics, law, environmental sciences and social issues. Equal representation of women and men shall be ensured. Members may not represent special interest groups.

(2) Following proposals by Member States and European based IPCC observer organizations for nominations, the Commission shall nominate the members of the Council. Based on the Commission's nomination, the European Parliament shall elect the members for a period of five years. Members may be re-elected only once. Following a request by the European Parliament, the European Court of Justice may dismiss a member of the Council in cases of continuous absence, conviction of a crime by a court, gross misconduct or serious conflict of interests.

(3) The Council shall elect from among its members, by secret ballot, a chairperson and a substitute for the chairperson. The Council shall adopt its own rules of procedure. The decisions and minutes of meetings of the Council shall be made public.

(4) The Council is only bound by the mandate established by this Regulation and is independent in its activity. Members of the Council shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public body or private entity.

(5) The Union bears the costs of the Council in accordance with the Union's budget.

(6) The Council shall be assisted by a secretariat in the performance of its work.

(7) The Council shall have the following tasks:

- a) The Council shall act to support the achievement of the fulfilment of the targets and objectives of this Regulation.
- b) On the basis of the data transmitted by the EEA, the Council shall submit an annual report on the implementation of the objectives of this Regulation to the European Parliament, the Commission and the Council of Ministers by 31 March of the following year. This report shall be made public.
- c) On the basis of the data transmitted by the EEA, the Council shall provide independent advice on achieving of the climate targets set out in Article 3, the Union's emission budget set out in Article 4 and measures designed to implement the objectives of this Regulation. The Council's advice shall be published.
- d) The Council shall submit preparatory reports to the Commission which may recommend the adjustments of targets and the Union's emission budget. Preparatory reports may also recommend additional measures that the Council deems necessary for the implementation of existing and adjusted targets and emission budgets. Within 2 months of receipt of the preparatory report, the Commission shall decide whether to endorse it and to propose those measures and/or target and emission budget adjustments as recommended in the preparatory report. Where the Commission does not endorse a preparatory report, it shall coordinate with the Council. If disagreement continues after coordination, the Commission shall publish its reasons for disagreement.
- e) The Council shall support climate mainstreaming and the ending of fossil fuel subsidies as set out in Articles 9 and 10 respectively. By 31 March of the following year, the Council shall publish an annual report on the effectiveness of climate policy mainstreaming and progress towards ending fossil fuel subsidies in the Union.
- f) The Council shall, at the request of an organ of the Union or a Member State, provide advice, analysis, information or other assistance on climate change issues.

Explanation

- **Independent advisory bodies:** Given the long timespan of climate action, its urgency and implications for societies and economies, independent advisory institutions are essential features of effective climate governance. Experience from Member States shows that independent bodies can support consistency between long-term goals and short-term action, enhance the role of science in decision-making, help build and maintain the necessary political will to decarbonize economies and strengthen public confidence in climate policies. There are also numerous examples where the EU bases its policies on the review and advice of independent bodies. The European Food Safety Authority and the European Chemicals Agency are examples. The European Securities and Markets Authority (ESMA) is another. The rules on the EU Ombudsman provide for an example of ensuring high levels of independence (article 228 of the Treaty on the Functioning of the EU).

- **New body:** The European Climate Law should establish a new body. The EEA is different from an independent climate advisory body. It has no mandate to propose measures. It is not independent because its board consists of Member State representatives. The board also includes representatives from non-EU countries. Equally, the Climate Change Council as well as the Energy Union Council under the Governance Regulation are not independent (they consist of Member States representatives) and have only a limited mandate (which does not even include contributions to reviewing the EU's climate policies).
- **Preparatory reports:** The Council should be entitled to publish preparatory reports that put forward proposals for measures, emission budgets and target adjustments. These reports should be the basis for the Commission's proposals for measures or legislation. As public documents, they would also inform debates within and between all of the EU institutions and at national level.

2.8 Article 8: National Independent Climate Councils

Member States should establish under national legislation independent Climate Councils to advise national governments and parliament on climate change issues and progress towards meeting the objectives of national climate policies and laws unless they already have a structure which serves the same purpose. Member States should ensure that national structures are capable of providing independent, public and scientific advice, and are financed accordingly.

Explanation:

To complement and reinforce the work of the EU independent advisory body, the Member States should set up independent advisory institutions. Acknowledging the administrative differences and traditions in Member States, the European Climate Law should not prescribe the institutional set up of such a body but should only define minimum criteria for its functioning, in particular the importance of operational and strategic independence, scientific excellence, political authority and adequate resources.

2.9 Article 9: Ending fossil fuel subsidies

To support the implementation of this Regulation, Member States and the Union shall phase-out all fossil fuel subsidies by x. To this end, by y, Member States and the Union shall adopt and publish comprehensive action plans designed to end the use of fossil fuel subsidies in an efficient and socially fair manner.

Explanation

Currently, there are no legal obligations on the EU and Member States to end subsidies for fossil fuels. Legal obligations relevant for fossil fuel subsidies are primarily procedural, requiring Member States to report on these subsidies. In political terms, the EU is only committed to phasing out *inefficient* fossil fuel subsidies by 2025 in the G7 and G20 context. Sustainable Development Goal 12 contains a similar commitment. ECOFIN has welcomed initiatives promoting the phasing out of environmentally and economically harmful subsidies and rapid phasing down of financing for emission-intensive projects. These political commitments are vague and have not helped reduce fossil fuel subsidies. Addressing these gaps, the European Climate Law should include a legally binding target for ending *all* fossil fuel subsidies. The European Climate Law should also require Member States and the EU to provide detailed plans to this end, building on National Energy and Climate Plans.

2.10 Article 10: Policy Mainstreaming

- (1) All relevant legislation, policies and funding instruments of the Union shall be consistent with, and contribute to, the fulfilment of the objectives of this Regulation. To this end, the Union should take fully into account the obligations and targets of this Regulation in all its decision making and their implementation.
- (2) When defining and implementing its spending and its procurement decisions, the Union shall take fully into account how these decisions can most directly and efficiently contribute to achieving the objectives of this Regulation. If several options are available for the definition and implementation of spending and procurement decisions, preference shall be given to those that are deemed to have the greatest potential for reducing greenhouse gas emissions.
- (3) The budgetary policy objectives of the Union shall be consistent with the objectives of this Regulation.
- (4) All institutions of the Union shall organize their operations in a climate-neutral manner by 2030. In order to achieve this goal, institutions of the Union shall present and publish comprehensive actions plan in 2020.

Explanation

- Mainstreaming is already a general principle of EU environmental policy-making, enshrined in the Treaty.³ This general principle of primary EU law has been an important reference point of environmental policy making in the EU, but achieving climate policy mainstreaming in practice remains a challenge.

³ Article 11 of the TFEU states that “environmental protection requirements must be integrated into the definition and implementation of the Union’s policies and activities, in particular with a view to promoting sustainable development”.

- For this reason, the European Climate Law should sharpen the principle of policy mainstreaming. To this end, the European Climate Law should specify that climate policy mainstreaming is an overarching principle that applies to the development and implementation of all EU policy.

2.11 Article 11: Review and target adjustment

- (1) The Commission shall report to the European Parliament and to the Council by 31 October 2023 and every five years thereafter on the operation of this Regulation, progress towards meeting the targets contained herein and the Union's emission budget set out in Article 3 and 4, respectively, its contribution to the goals of the Paris Agreement.
- (2) If latest scientific evidence, particularly as set out in relevant IPCC assessments, suggests that the Union's targets and emission budget constitute an insufficient contribution to global climate action, the Commission shall present proposals for adjusting the Union's reduction targets, the Union's emission budget and its implementing measures, as appropriate.
- (3) The Commission's report and proposals in paragraph 1 and 2 shall be informed by the preparatory report and process set out in Article 7.7. c).