Implementing new EU climate targets – Why Member State responsibility must continue

Policy Brief

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Summary

Legally binding reduction targets for Member States have been the backbone of EU climate policies since 2009. At a moment where the EU increases its climate ambition significantly, reduction targets for Member States must continue – until climate neutrality is achieved. They should be the unequivocal starting point of reforms to make EU climate rules fit for the EU's new climate targets – for four main reasons:

1 As co-legislators and implementers of EU policies, Member States shape climate policies more than any other player. Consequently, they must remain responsible and accountable in a transparent and politically meaningful way. Only national targets are capable of holding Member States accountable for their overall mitigation efforts in such a manner. Unlike other EU policies, they invite public scrutiny, make headlines and feature in election manifestos.

2 Legally binding national targets are subject to infringement procedures, the EU's strongest enforcement mechanism. In contrast, collective EU targets cannot be enforced by infringement procedures.

3 As a tested and established system, national targets are immediately operational. This is not the case for expanding emission trading to buildings and road transport. As the 2020s are crucial for achieving new climate targets, this is not the right moment to replace a proven system with a new system that has many unknowns.

4 National reduction targets maintain national ownership of climate policies and prevent freeriding at the same time.

Introduction

To achieve its new climate targets for 2030 and 2050, the EU has to reform its climate policies. To this end, the **Commission will table a number of legislative proposals in June 2021**. One of the most consequential proposals concerns the future of the Climate Action Regulation (CAR)[1]. The Commission sees important benefits in expanding emission trading to the sectors that are currently covered by the CAR. It also stated that the system of national targets should continue[2]. One Member State expressed its preference to discontinue national targets and replacing it with a system where emission trading is extended to buildings and road transport and remaining emissions are covered by a new instrument.[3] Other Member States are in the process of formulating their positions.

Tempting as it may be to avoid difficult negotiations on distributing new reduction targets among Member States, **national targets should continue after 2030 – for the following reasons**.

Member States must remain responsible for taking action at home

EU climate policies have many players but no single player is as important as Member States. As co-legislators, they set EU laws. Member States are the implementers of EU rules, and have considerable discretion in applying them. The success of EU climate policies depends entirely on action at the national level.

Clearly, Member States would remain obliged by EU rules – even if national targets were abandoned. The EU's various **sectoral rules** – for example on energy performance of buildings or energy efficiency – will continue to apply to Member States, regardless of national targets. The political weight of these sectoral rules, however, is low. The public hardly takes note of them.

National reduction targets are different. They generate greater public scrutiny, make headlines and feature in election manifestos. In political terms, they are an essential tool to hold Member States accountable for the overall performance of the sectors outside the EU emission trading scheme. They are the single most important benchmark for national climate policies, and the key reference point of national climate discourse. As no other instrument of EU climate policies is capable of performing these functions, national targets must continue until the EU has achieved climate neutrality in 2050 or earlier.

[1] Regulation (EU) 2018/842) of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013. Parts of the public debate calls this regulation "Effort Sharing Regulation (ESR), resembling its processor, the Effort Sharing Decision. This terminology is factually incorrect – the CAR does not use the term "effort sharing" once –, and it choose the wrong framing of the debate. The Regulation 2018/842 is primarily about the EU's climate action, less about sharing efforts among Member States.

[2] European Commission: Stepping up Europe's 2030 climate ambition, Brussels, 17.9.2020 COM (2020) 562 final: "Corresponding targets need to be set in the Effort Sharing Regulation and under the EU ETS, to ensure that in total, at least the economy wide 2030 greenhouse gas emissions reduction target of 55% will be met", p. 17.

[3] Submission of Denmark to the public consultation on the Effort Sharing Regulation: "An extension of the ETS to heating in buildings and road transport will consequently reduce the role of the Effort Sharing Regulation significantly and it should therefore be phased out".

Safeguarding national climate targets

A number of Member States have enshrined climate targets in their laws. Germany, France, Finland, Denmark, or Ireland, for example, have legally binding targets in national law.[4] Luxembourg, Slovakia, Slovenia and Sweden even have targets for their non-ETS sectors that are more ambitious than what is required by the CAR.[5]

Although these national targets perform the same function as reduction targets required by EU law, they do not make the current EU rules under the CAR obsolete – for two reasons:

- **Not all Member States have targets:** A large number of Member States do not have climate targets in national law and have no intention of adopting them – unless EU rules require them to adopt such targets;
- **Safeguarding national targets:** Requiring targets by EU law makes national targets more robust. If enshrined in EU law, changes in Member State governments cannot alter national climate targets, enhancing investment security.

Enforcing a collective target

If the European Climate Law (ECL) is adopted as proposed by the Commission and currently supported by the Council, **there would be no individual obligation on the part of Member States** to achieve climate neutrality by 2050. According to these proposals, the ECL would not include national targets adjusted to the EU's new 2030 targets. Instead, the ECL would only establish a **collective obligation for the EU** to become climate neutral by 2050 and to reduce emission by 55% or 60% in 2030. The ECL would also stipulate that the Commission assesses whether Member States' measures are consistent with the collective EU climate neutrality objective – as expressed by an indicative reduction trajectory. If this assessment suggests that national measures are inconsistent with the trajectory, the Commission may issue recommendations to Member States.

Such a system is considerably weaker than the current system:

- **No infringement procedures:** The current system allows holding individual Member States to account, either through the specific enforcement rules of Article 9 CAR – so-called corrective action – or infringement procedures. Infringement procedures are the EU's strongest enforcement system because they can lead to imposing significant fines on Member States. In contrast, the ECL – as proposed by the Commission and the Council – provides no ground for infringement procedures against individual Member States. Only legal obligations on individual Member States are possible subject to infringement procedures.
- **No robust benchmarks:** In the absence of national targets, the new system would not provide the Commission with benchmarks capable of assessing the individual performance of Member States in a robust manner.

[4] Duwe, Matthias and Evans, Nicholas (2020): Climate Laws in Europe: Good Practices in Net-Zero Management.

[5] https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1600328628076&uri=COM:2020:564:FIN

- **No legally binding consequences:** The Commission's recommendations are non-binding. Consequently, Member States are free to implement them or not.

As the EU scales up its climate policies considerably, it is essential that its **enforcement system is strengthened, not weakened**. The proposed system of collective responsibility could become a system of collective irresponsibility. This would undermine target achievement.

Maintaining Member State ownership and level playing field

Member States have discretion in designing and implementing EU climate policies. This system will continue – not only because it is a basic feature of the EU and its constitutional order, but also because it is the best way to take account of different national circumstances and to ensure national ownership.

At the same time, **EU rules must ensure that all Member States contribute adequately to the EU's overall reduction efforts**. Freeriding must be prevented. Legally binding targets for Member States are a proven and reliable mechanism to ensure adequate contributions from all Member States. They are an established way to avoid freeriding and to safeguard a level playing field among Member States. In other words, legally binding targets and national ownership are two sides of the same coin.

Litmus test for genuine commitment to new climate targets

If Member States are genuinely committed to achieving the EU's collective targets, they should be ready to increase their contributions to the EU's overall reduction efforts. It is the **litmus test** whether Member States are genuinely committed to the EU's new climate targets, or not.

National targets are a tested and established system

The Effort Sharing Decision (ESD) and its successor, the CAR, established a robust system to hold Member States' governments to account. According to an assessment by the Commission, the ESD was instrumental for adopting national policies and measures without putting significant administrative burden on Member States.[6] It was also an important driver for more stringent EU measures. [7]

These achievements are significant and make a strong case for maintaining the existing system. It should be noted, however, that the existing system has significant shortcomings, including insufficient reduction targets, an inadequate long-term perspective and an enforcement mechanism that requires reform.[8] While these shortcomings are important impediments for target achievement, they only make an argument for improving the current system, not for abandoning it.

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[6] Ricardo Energy & Environment: Evaluation of Decision No 406/2009/EC (Effort Sharing Decision), 2016

[7] Ricardo Energy & Environment: Evaluation of Decision No 406/2009/EC (Effort Sharing Decision), 2016

[8] Meyer-Ohlendorf, Nils; István Bart 2020: Climate Action Regulation 2.0 - EU Framework for Making Non-ETS Sectors Climate Neutral. Ecologic Institut. Berlin.

Risky experiment when time is of the essence

As a tested and established system, a reformed **CAR is immediately operational**. This is not the case for expanding emission trading to buildings and road transport. Extending emission trading to these sectors is a challenging, time-consuming and politically sensitive process, and its implementation is complex. It is very likely that **extending ETS to road transport and buildings will not be operational before the mid-2020s**. As this period is crucial for achieving the EU's new 2030 and 2050 targets, it is questionable whether the EU should replace a proven system with a new system that has many unknowns. The benefits of extending emission trading to buildings and transport are not yet well understood. While it is correct that the EU ETS has reduced emissions significantly, it is questionable whether this analogy holds as the sectors covered by EU ETS are structurally different from buildings and road transport.

An extended emission trading scheme could complement increased national targets

The strong case for national targets does not mean that extending emission trading to new sectors is off the table. An extended EU emission trading scheme or a new separate emission trading scheme for buildings and transport can support and complement the achievement of national targets. It is probably the only viable way to introduce **meaningful carbon prices** at EU level for road transport and buildings – because the EU can adopt rules on energy taxation only by unanimity. In addition, an extended emission trading scheme could generate **substantial additional revenues** – if allowances are auctioned.[9] These revenues can support achieving climate neutrality and addressing the regressive effect of carbon pricing on low-income households

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[9] According to some estimates, a scheme based on auctioning could generate up to € 179 bn per year if about 70 % of the 2018 emissions under the Effort Sharing Decision were covered and the carbon price were between € 50 and € 100. Umweltbundesamt: Raising the EU 2030 GHG Emission Reduction Target, Implications for ETS and non ETS sectoral targets, 2020, https://www.umweltbundesamt.de/en/publikationen/raising-the-eu-2030-ghg-emission-reduction-target