

# **From Effort Sharing Decision to Climate Action Regulation: the good, the bad and the ugly**

Taking stock of the legislative process of Europe's biggest Climate law

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## Executive Summary

The Climate Action Regulation (CAR), known previously as the Effort Sharing Regulation (ESR) will become part of European law in a few weeks. In December last year policy-makers reached a deal on what will be one of the key pieces of climate legislation in the decades to come. Fortunately, **the agreed deal is an improvement compared to the Commission's proposal of July 2016.** Unfortunately, the agreed text is not aligned with the commitments of the Paris Agreement.

This paper analyses the different elements agreed in the soon-to-become law, and assesses the role played by different parties involved in the process, with the objective of making public something that normally only a few have access to. While the European Parliament was very ambitious in its position, the Council of the European Union played a two-faced game, claiming to be very ambitious in public but trying to reduce ambition in comparison to the Parliament and what the Paris Agreement requires. The European Commission played a key role in pushing the European Parliament to reduce its ambition.

Now that the CAR will finally become law, it is time to use still open energy files, such as the renewable energy directive, vehicle CO<sub>2</sub> standards, and the energy efficiency directive, to increase the ambition to reduce emissions in the sectors included under the CAR. Simultaneously, countries should pledge to establish plans to increase ambition at national level beyond the targets included in the CAR. Finally, the European Commission should start the work to increase ambition in the CAR as soon as possible, aligning with the processes of the Paris Agreement.

# Table of Contents

1. Introduction	5
2. Timeline	5
3. Analysis of approved proposal	8
3.1. Overall impact	8
3.2. Detailed analysis	8
3.2.1. Starting point	8
3.2.2. Land use loophole	9
3.2.3. ETS surplus loophole	10
3.2.4. Governance	11
3.2.5. Ambition level	12
3.3. Role by different policy makers and other stakeholders	13
3.3.1. European Commission	13
3.3.2. European Parliament	14
3.3.3. Council of the European Union	15
4. Next steps needed	17

# 1. Introduction

The European Union (EU) largest climate tool, the now named Climate Action Regulation (CAR), covers almost 60% of all climate change causing gases (greenhouse gases [GHG]). It establishes annual carbon budgets between 2021 and 2030 for each EU country, covering sectors like surface transport, buildings, agriculture, small industry and waste.

The CAR is a follow-up of the [Effort Sharing Decision<sup>1</sup>](#) (ESD), which established targets between 2013 and 2020. The ESD had a target of reducing emissions by 10% compared to 2005.

In 2014, the European Council agreed on the overall GHG reduction target for the EU: reducing emissions 40% compared to 1990. To achieve that goal, a subtarget for sectors not included in the emissions trading system (ETS) was agreed upon: 30% reduction compared to 2005. The European Commission proposed the now called CAR to implement that target.

Under the CAR, each country has an individual target, to ensure that collectively the EU would meet its 2030 target. Even if the regulation might seem relatively straightforward because the final target is fixed, that is actually not the case. The fine-print of this regulation is key, because even if the final target is fixed, the annual budget is subject to many factors and considerations.

Transport & Environment (T&E) has spent the last two years and a half working on this file, trying to make it as compatible as possible with the EU long term targets and international commitments, such as the Paris Agreement.

Now that the CAR text is final, and it will **have implications on EU's climate policy in the next decade**, it is important to look back and hold accountable different stakeholders involved in the process. This document tries to answer two main questions:

- What is the impact of the approved proposal? Is it enough to put the EU on track with its Paris commitments?
- Who is responsible for the outcome, both the positive and negative elements?

## 2. Timeline

Below a short and summarized timeline of how the CAR came into being, for reference in the sections below:

- 10 October 2013: a Coalition of [NGOs<sup>2</sup>](#) write to the Hedegaard cabinet (Climate Action in the European Commission) on how to reform the ESD.
- 24 October 2014: the [European Council<sup>3</sup>](#) agrees on the overall target for sectors outside the ETS: 30% reduction by 2030 compared to 2005.
- 10 June 2015: [T&E<sup>4</sup>](#) publishes its first report dealing with the ESR.
- 26 March 2015: the [European Commission<sup>5</sup>](#) opens the new ESD to public consultation.

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<sup>1</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2009.140.01.0136.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2009.140.01.0136.01.ENG)

<sup>2</sup> <https://www.transportenvironment.org/publications/letter-hedegaard-cabinet-reform-eu-effort-sharing-decision>

<sup>3</sup> <http://data.consilium.europa.eu/doc/document/ST-169-2014-INIT/en/pdf>

<sup>4</sup> <https://www.transportenvironment.org/publications/road-2030-how-eu-vehicle-efficiency-standards-help-member-states-meet-climate-targets>

<sup>5</sup> [https://ec.europa.eu/clima/consultations/articles/0025\\_en](https://ec.europa.eu/clima/consultations/articles/0025_en)

- 17 June 2015: [T&E<sup>6</sup>](#) responds to the public consultation, presenting its views on the topic. 22 other NGOs do the same.
- 12 December 2015: the [Paris Agreement<sup>7</sup>](#) is adopted by consensus in COP21. The EU commits to reduce its GHG emissions 40% compared to 1990.
- 22 April 2016: a [coalition<sup>8</sup>](#) of NGOs and business ask European Commissioners to put on the table a new ESD proposal in line with the Paris Agreement.
- 27 April 2016: [T&E<sup>9</sup>](#) publishes a paper on how to improve governance in the ESD.
- 8 June 2016: Coordinators from seven political groups in the ENVI committee in the European Parliament ask ambition to the European Commission on the upcoming proposal.
- 14 July 2016: [T&E<sup>10</sup>](#), together with two other NGOs, publishes a paper on how the ESD after 2020 should be designed, accompanied by a short [infographic<sup>11</sup>](#).
- 20 July 2016: the [European Commission<sup>12</sup>](#) publishes its proposal. The ESD becomes the ESR. [T&E](#) asks to strengthen it during co-decision.
- 19 September 2016: [Gerben-Jan Gerbrandy<sup>13</sup>](#), from the Alliance of Liberals and Democrats for Europe (ALDE) in the European Parliament, is appointed rapporteur for the file.
- 30 September 2016: [T&E<sup>14</sup>](#) publishes a paper on how to improve the so-called starting point, a key issue in the proposed regulation. It accompanies it providing official [feedback<sup>15</sup>](#) to the European Commission.
- 17 October 2016: under Slovakian presidency, environment ministers meet for the first time to discuss the file. No major conclusions reached. Some days before [T&E<sup>16</sup>](#), together with other NGOs, ask ministers to increase ambition.
- 4 November 2016: the Paris Agreement enters into force after enough countries ratify it.
- 21 December 2016: [T&E<sup>17</sup>](#) publishes new report by Öko institut that shows that ESR sectors should reduce their emissions by 94% by 2050.
- 25 January 2017: [T&E<sup>18</sup>](#) and CMW publish their online calculator to help policy-makers understand the impact of different loopholes.
- 28 March 2017: [T&E<sup>19</sup>](#) and CMW publish a report explaining countries positions in the ESR. It gets cover in major media outlets across the continent.
- 2 May 2017: [T&E<sup>20</sup>](#) publishes a report about agriculture in the ESR, to counteract those that say that the sector cannot reduce emissions, and therefore the ESR should be weak.

<sup>6</sup> <https://www.transportenvironment.org/publications/public-consultations-effort-sharing-decision-and-land-use-land-use-change-and-forestry>

<sup>7</sup> [http://unfccc.int/paris\\_agreement/items/9485.php](http://unfccc.int/paris_agreement/items/9485.php)

<sup>8</sup> <https://www.transportenvironment.org/publications/esd-letter-commissioners>

<sup>9</sup> <https://www.transportenvironment.org/publications/5-ideas-improve-governance-effort-sharing-decision>

<sup>10</sup> <https://www.transportenvironment.org/publications/effort-sharing-decision-after-2020>

<sup>11</sup> <https://www.transportenvironment.org/publications/loopholes-2030-effort-sharing-decision>

<sup>12</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0482>

<sup>13</sup> <https://europa.d66.nl/2016/09/19/euoparlementarier-gerbrandy-gaat-belangrijkste-eu-klimaatwet-europees-parlement-loodsen/>

<sup>14</sup> <https://www.transportenvironment.org/publications/starting-point-banking-fatal-combination-esr>

<sup>15</sup> <https://www.transportenvironment.org/publications/feedback-effort-sharing-regulation>

<sup>16</sup> <https://www.transportenvironment.org/publications/ngos-call-eu-environment-ministers-show-commitment-esr-and-lulucf>

<sup>17</sup> <https://www.transportenvironment.org/publications/europe-needs-slash-its-transport-emissions-94-2050-effort-sharing-regulation>

<sup>18</sup> <http://effortsharing.org/>

<sup>19</sup> <https://www.transportenvironment.org/publications/eu-climate-leader-board>

<sup>20</sup> <https://www.transportenvironment.org/publications/agricultures-untapped-potential-contribute-effort-sharing-regulation>

- 29 May 2017: [T&E<sup>21</sup>](#) publishes a report about a new loophole being discussed in Council and Parliament, the so-called early action reserve.
- 30 May 2017: the ENVI committee of the [European Parliament<sup>22</sup>](#) agrees on a text way more **ambitious than the European Commission's proposal**. [T&E<sup>23</sup>](#) invites national governments to follow the same approach.
- 14 June 2017: the plenary of the [European Parliament<sup>24</sup>](#) adopts a position considerably more **ambitious than the European Commission's proposal**. [T&E<sup>25</sup>](#) welcomes it, even if it is weaker than ENVI's position.
- 19 June 2017: under Maltese presidency, environment ministers meet for a second time to discuss the file. No major conclusions reached.
- 6 October 2017: [T&E<sup>26</sup>](#) publishes a summary of different loopholes, as an input for the upcoming Council meeting.
- 13 October 2017: [Environment ministers<sup>27</sup>](#) reach a common position on the ESR under the Estonian presidency. [T&E<sup>28</sup>](#) is critical of the agreement reached.
- 26 October 2017: the so-called trilogues (negotiations between the European Parliament and the Council, where the European Commission also participates) start.
- 13 December 2017: during the third and last trilogue between the European Parliament and Council no agreement is reached.
- 15 December 2017: [T&E<sup>29</sup>](#), together with five other climate NGOs, support the European Parliament in its firm position during trilogues.
- 21 December 2017: [Council and European Parliament<sup>30</sup>](#) reach provisional agreement in side-negotiations, after the previous trilogue.
- 17 January 2018: EU ambassadors sign off on the provisional deal.
- 24 January 2018: ENVI Committee in European Parliament approves the deal. All groups support it, except S&D (abstains) and Greens (against), both for lack of ambition.
- Week of 16 April: the plenary of the European Parliament will vote on the CAR, and most likely the deal reached in December 2017 will pass.

<sup>21</sup> <https://www.transportenvironment.org/publications/frequently-asked-questions-esr-safetyearly-action-reserve>

<sup>22</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2017-0208&language=EN>

<sup>23</sup> <https://www.transportenvironment.org/press/environment-meps-strengthen-eu%E2%80%99s-key-climate-law>

<sup>24</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0256+0+DOC+PDF+V0//EN>

<sup>25</sup> <https://www.transportenvironment.org/press/governments-must-follow-meps%E2%80%99-lead-more-ambitious-climate-law>

<sup>26</sup> <https://www.transportenvironment.org/publications/what-impact-loopholes-effort-sharing-regulation>

<sup>27</sup> <http://www.consilium.europa.eu/en/meetings/env/2017/10/13/>

<sup>28</sup> <https://www.transportenvironment.org/press/ministers%E2%80%99-watering-down-climate-law-must-be-resisted-if-eu-meet-paris-commitments>

<sup>29</sup> <https://www.transportenvironment.org/press/two-faced-eu-governments-are-gutting-europe%E2%80%99s-key-climate-law-say-6-ngos>

<sup>30</sup> <http://www.consilium.europa.eu/en/press/press-releases/2017/12/21/provisional-deal-on-effort-sharing-emissions-another-big-step-towards-paris-targets/>

## 3. Analysis of approved proposal

### 3.1. Overall impact

The approved CAR doesn't guarantee that the EU will meet its obligations under the Paris Agreement. As described in the detailed analysis below, the CAR is full of loopholes that will allow countries to avoid meeting their "apparent" target by 2030. In the year 2030, countries will have access to the surplus they accumulated in the first years and that, in combination with other flexibilities, translates into a target below 30%. T&E, [Öko Institut](#)<sup>31</sup> and [Sandbag](#)<sup>32</sup> have estimated that the CAR will be a driver to reduce emissions in 2030 25-26% compared to 2005. In March 2018, Sandbag will publish a more detailed report on the specific efforts required by each member state.

The CAR, as approved, does not guarantee that the EU will reduce its emissions from sectors not included in the ETS by 30% in 2030 itself, compared to 2005. The CAR is a fundamental component to meet the EU commitment under the Paris Agreement. Therefore, the EU will meet its overall 2030 commitment of 40% greenhouse gas reductions compared to 1990 only if:

- Both the EU and national governments decide to implement measures that go beyond their CAR targets, either through higher targets in renewables and/or energy efficiency, or through more ambitious national measures
- The ETS goes beyond its 2030 target of 43% compared to 2005, so a less ambitious CAR is compensated with a higher achieving ETS.

In addition, the CAR does not provide the incentives to put the EU in line to fully decarbonise these sectors by 2050. However, despite all, this proposal is slightly better than the Commission's proposal. This is discussed in more detail in the section below.

### 3.2. Detailed analysis

The final approved CAR is quite complex. For this reason, it is important to analyse each individual element to know what the final agreement is.

#### 3.2.1. Starting point

*Why is it important?*

The starting point was the key issue on this file. A lower starting point from which the targets are applied means less pollution in the 2021-2030 period and a lower concentration of greenhouse gases in the atmosphere. The lower the slope of the curve, the smaller the carbon budget each individual member state would have each individual year. Making the starting point conditional was also important to try to avoid rewarding high compliance. Combining the starting point with banking limitations (preventing overallocations to be carried throughout the period) was of key importance to prevent the CAR from building a massive surplus, as was the case in the ETS.

For details on the starting point and banking limitations, read [T&E's](#)<sup>33</sup> report on the issue.

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<sup>31</sup> <https://www.oeko.de/en/publications/p-details/does-the-effort-sharing-regulation-require-sufficient-emission-reductions-to-meet-the-eu-2030-target/>

<sup>32</sup> <https://sandbag.org.uk/2017/12/21/esr-deal-eu-off-track-for-2030-targets/>

<sup>33</sup> <https://www.transportenvironment.org/publications/starting-point-banking-fatal-combination-esr>

### *The good:*

The agreed deal improves the trajectory in comparison to the option proposed by the European Commission by about 120 million tonnes CO<sub>2</sub>e in total. That is completely insufficient to stick to the Paris Agreement, but still better than the Commission proposal. There is also a cap on the banking of credits.

### *The bad:*

The limitation on banking is merely symbolic. The actual value agreed to limit banking from one year to the next was set at 30% of annual allocations, which is too high to have an impact. However, it sets a precedent in EU environment policy making. Counting past efforts for future requirements will be at least limited. This is in line with the Paris Agreement, which asks countries to enhance pre-2020 action and achieve an ongoing downward path to ensure emissions are constantly decreasing.

### *The ugly:*

Clearly the worst outcome of the selected starting point is that countries that will not meet their 2020 targets will be rewarded by being allowed to emit even more. It makes sense to start counting real emissions, but only when you meet your target. When a country does not to meet its target, starting the trajectory towards 2030 on real emissions means that they are rewarded for non-compliance.

The most scandalous example, by far, is [Ireland](#)<sup>34</sup>. From 2011 its emissions have steadily increased. This is a massive give-away to Ireland. Rather than starting from the 2020 target of -20% relative to 2005 levels, the target is “reset” to Ireland’s 2016-2018 failure level of only about -5% relative to 2005 emissions. Austria, Belgium or Finland could also be among the countries that would benefit from this starting point.

There were some options on the table to solve the problem of rewarding non-compliance. For instance, T&E, the Parliament and some countries put an option on the table: the starting point would be the lower of the two following: either real emissions or the 2020 target. However, the Council very strongly rejected this option during negotiations.

## 3.2.2. Land use loophole

### *Why is it important?*

The Commission included in its proposal the option to use the land sector as a way to compensate emissions from CAR sectors, to the detriment of taking climate action in the other sectors. Credits can be generated from planting trees (afforestation) or from managing cropland and grassland. However, relying on credits from planting trees is troublesome as the carbon removals can be reversed at any time when trees are cleared and burned. Emissions from fossil fuels, on the other hand, stay in the atmosphere for centuries. In addition, Europe should not choose between action in the forestry sector and in CAR sectors. Both are needed to stick to the Paris Agreement.

This provision was included under the assumption that agriculture cannot reduce its emissions. Countries with a higher percentage of agriculture emissions would have a bigger loophole than countries with relatively lower emissions. T&E [showed](#)<sup>35</sup> that action in the sector is possible.

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<sup>34</sup> <http://www.antaisce.org/articles/ireland%E2%80%99s-cop-out-on-effort-sharing-regulation-limits-climate-action-and-ensures-everyone>

<sup>35</sup> <https://www.transportenvironment.org/publications/agricultures-untapped-potential-contribute-effort-sharing-regulation>

#### *The good:*

Member states will need to report how they are intending to use this flexibility, in addition, the fact that wetlands will also be accounted for is something that was improved from the original proposal.

#### *The bad:*

The original Commission proposal allowed new trees to count, but not how existing forests were managed, under the so-called forest management category. Importantly the accounting rules for this category have been improved in the LULUCF Regulation. However, the chances of countries getting closer to their maximum limit is higher considering they can count existing forests, reducing the pressure on CAR sectors.

#### *The ugly:*

The very existence of this flexibility is **very problematic**. **Both under the Commission's proposal and the approved text**, up to 280 million LULUCF credits can be used during the 2021-2030 period to offset emissions in the transport, building, agriculture and waste sectors. To pursue efforts to limit global warming to 1.5 degrees, emissions in these sectors need to decrease almost to zero in 2050. Connecting them to the land use sector will just postpone measures to reduce emissions, undermining the overall ambition of the CAR. Some groups in the European Parliament tried to reduce it to 190 Mt, without success. Even if the very existence of the loophole is unfortunate, many stakeholders tried to increase this amount to 425 Mt<sup>36</sup>. At least the amount was not increased.

### 3.2.3. ETS surplus loophole

#### *Why is it important?*

This loophole allows nine countries to use a maximum of 100 million ETS allowances to offset emissions in the CAR sectors. This is problematic because it undermines the low-carbon transition of the CAR sectors, does not help reduce ETS emissions given the huge oversupply in the carbon market and hence leads to **higher EU overall emissions**. **The ETS allowances will be subtracted from the country's auctioning volumes**, leaving it with less auctioning revenues to invest in climate measures.

Under the **Commission's proposal and the approved text**, **Belgium, Denmark, Malta, Netherlands, Austria, Finland and Sweden** can use ETS allowances up to the equivalent of 20% of their 2005 non-ETS emissions in the 2021-2030 period, while Ireland and Luxembourg can use 40%.

#### *The good:*

The Commission proposal did not ensure that the credits removed from the ETS would not be counted towards the activation of the so-called market stability reserve (MSR). The MSR is a mechanism by which hot air is partially removed from the ETS. By removing credits into the CAR, the MSR could inject ETS allowances back into the system, translating into even more emissions in the atmosphere. However, this problem was solved during co-decision. In the final text, those allowances removed from the ETS to the CAR will be considered as allowances in circulation.

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<sup>36</sup> The lobby behind this push was strong, being lead by some forested countries, the agricultural sector and conservative groups. More details in later sections

In addition, under the original proposal countries could only notify once (by the end of 2019) their planned use of credits. Given the uncertainty about their emissions, most eligible countries would decide to benefit from this loophole. However, during co-decision a new provision was included: eligible member states can revise downwards their requested amounts by the end of 2024 and 2027. This is positive for the integrity of the ESR.

#### *The bad:*

Different stakeholders proposed to include a discount factor applied to the number of ETS allowances used **under the CAR. However, it didn't make it to the final text.** The cost-effective potential in the CAR sectors is based on a price of EUR 40 per tonne of CO<sub>2e</sub> mitigated. Given that current ETS prices are well below EUR 10, such discounting would have ensured that on average implementing mitigation measures in the CAR sectors were more cost effective than purchasing ETS allowances. It was also justified to add a premium to this since the member states using the flexibility have a lower than average cost effective potential and thus higher marginal abatement costs.

#### *The ugly:*

The very existence of this loophole is problematic for several reasons. First of all, it delays mitigation action in CAR sectors such as transport. Meeting the 2050 targets will require significant emissions cuts in these sectors which already accounts for almost 60% of EU emissions. Secondly, it is questionable if this ETS-linked measure will lead to additional abatement in ETS sectors, as the ETS itself suffers from a large surplus of allowances. Hence, the removal of ETS allowances is unlikely to have an impact on the carbon price and hence ETS emissions. Finally, it reduces demand for EU projects that could spur the low-carbon transformation of lower-income MS that have post-2020 CAR targets below their cost-effective potential. On the bright side, no new countries have been added to the loophole and the total amount has not been increased, compared to the Commission's proposal.

### 3.2.4. Governance

#### *Why is it important?*

The governance of the CAR is of vital importance to ensure that the Regulation delivers on its goals. When targets are to be reviewed, how compliance is ensured and the actual name of the regulation were some of the issues identified early on by [T&E<sup>37</sup>](#).

#### *The good:*

The former Effort Sharing Decision transformed into the Climate Action Regulation. Even if legally they are as **binding, a regulation carries a stronger symbolic weight.** At the same time, the words "Climate Action" have a stronger meaning than "Effort Sharing", which as such, are not related to the scale of the challenge needed.

#### *The bad:*

The Commission proposal included weak language about corrective action. During co-decision, the text has improved and new powers were given to the Commission regarding the review of corrective action plans.

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<sup>37</sup> <https://www.transportenvironment.org/publications/5-ideas-improve-governance-effort-sharing-decision>

However, even if countries “shall take utmost account” of the Commission’s opinion, the legal basis for the Commission to take action is non-existent.

In addition, several stakeholders, including T&E, suggested to give the European Environment Agency new powers to review the targets, or to oblige countries to create independent advisory committees to assess annual national carbon budgets. None of those measures were implemented.

*The ugly:*

Countries will only be subject to proper compliance checks once every 5 years. In practice, this means in 2027 and 2032. The first formal check would only happen in 2027, which is way too close to 2030. Annual compliance checks were suggested to be effective in ensuring that governments don’t postpone action and instead meet their annual climate targets. The European Parliament also suggested compliance checks every two years. However, the final text kept the original Commission’s proposal of having them once every 5 years. In addition, no specific fines were included as part of the regulation for non-compliance.

### 3.2.5. Ambition level

*Why is it important?*

The CAR should have set Europe on a path to meet the goals of the Paris Agreement. However, as explained below, this has not happened.

*The good:*

The original Commission’s proposal did not include any reference to the actual target of 30% compared to 2005. That implied that even if countries would meet their obligations, including the loopholes, the EU as a whole might not have been below 30% in 2030. However, during co-decision, a specific reference was included in the text. It is unclear what would happen if the EU, as such, does not meet its CAR 2030 target, while all countries independently meet it, after using all the flexibilities.

*The bad:*

In the Commission’s proposal, the Paris Agreement was only mentioned once in the articles. However, in the final text it is mentioned five times. It is not only about the number of mentions, but about the implications. In the final text, the Commission must report regarding every stocktake of the Paris Agreement, which is a step in the right direction. However, it falls short, as it doesn’t include a ratchet-up mechanism. An automatic review of the targets, in case of Paris increasing ambition, would have been a better solution. To include independent advice, for instance, from the EEA, would also have been a positive development.

Co-legislators also added a new provision to the text: the [safety reserve](#)<sup>38</sup>. Countries that are below the average GDP per capita and that overachieve their 2020 target will have access to this reserve, disincentivizing them to take measures at a national level. Countries might end up using pre-2020 efforts to weaken the post-2020 need for action. The Paris agreement, however, requires the complete opposite approach: pre-2020 action enhanced and an ongoing downward path to ensure emissions are constantly decreasing.

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<sup>38</sup> <https://www.transportenvironment.org/publications/frequently-asked-questions-esr-safety-yearly-action-reserve>

*The ugly:*

The 30% target is clearly insufficient. 45% reductions in the CAR would have aligned the EU more with its long term trajectory. A way to have solved the lack of ambition in the CAR would have been to include a trajectory to reach at least 95% emission cuts by 2050. This was tried by the Parliament, although only 80% reductions were mentioned. However, no 2050 trajectory was included in the final text. At least, the preambles include references to long-term targets to meet the Paris Agreement, including the importance of taking onboard the Agreement in post-2030 reviews of the CAR.

### 3.3. Role by different policy makers and other stakeholders

The CAR's legislative process has been marked by a strong influence of EU member states' governments, since it affects directly their carbon budget and "imposes" GHG targets on them. The European Parliament has been more ambitious throughout the process than the European Commission, among other reasons because the discussions within the Council and between Member States bilaterally are held behind closed doors, which prevents public scrutiny. T&E has in the past tried to expose the different public and private [positions](#)<sup>39</sup> of member states, and this report complements that effort.

#### 3.3.1. European Commission

The European Commission plays a fundamental role in climate policy and has the right of initiative. Even if the Commission does not have the power to adopt legislation, how an initial proposal is framed is fundamental to the final output.

*The good:*

The Commission proposed a text that, despite favouring specific member states, especially those that were the most behind in taking measures in CAR sectors, was not as bad as it could have been, as explained in previous sections. For instance, the connection with the forestry sector was limited, and CAR sectors were not fully linked to the ETS, as some stakeholders were asking. However, the proposal was based on a 2014 agreement between EU countries that was struck before the Paris Agreement was signed. The Commission's refusal to bring the proposal in line with the 2015 Paris deal was a defining moment for the climate action regulation.

*The bad:*

**The Commission's proposal was clearly beneficial to certain member states.** In T&E we tried to find the link between certain member states and specific, powerful commissioners, and requested access to specific documents, such as the minutes of the seven Interservice Steering Group meetings held before the proposal was launched. However, **this request was denied on the basis of protecting the Commission's right of initiative.** The Commission, and more specifically the Commissioners, should have remained neutral both before and after the proposal was published, especially when it comes to defending national interests.

*The ugly:*

During the negotiations, the European Commission tried to influence the output of the negotiations during co-decision. The Commission sided with less ambition (the Council) and applied heavy pressure on the

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<sup>39</sup> <https://www.transportenvironment.org/publications/eu-climate-leader-board>

European Parliament to accept the deal that the Council put on the table. The pressure went as far as several Commissioners calling shadow rapporteurs in the European Parliament to accept the deal. This clearly goes beyond the role of the Commission and calls into question whether it can still be seen as an “honest broker”. Even if the Commission has the power of initiative and it is normal practice to defend its own proposal, the level of pressure applied to democratically elected members of the European Parliament was excessive.

### 3.3.2. European Parliament

Different political groups tend to show different levels of ambition when it comes to climate policy, and the CAR has been no exception. Still, this debate has had a strong national component which has interfered with political beliefs and has been reflected in the position of the MEPs.

The lead committee in charge of the file was the ENVI committee. This was not straightforward, since the AGRI committee requested to have exclusive/shared competences on several articles, **but they didn't get** them. Still, several committees gave their opinions to ENVI: AGRI, ITRE and TRAN. AGRI and ITRE were rather unambitious; TRAN was moderate; and the ENVI report was quite ambitious as it greatly improved the Commission proposal. The final outcome was a bit weaker than the ENVI report once it was voted by the full house, but still was a good basis for discussions in trilogues.

The different key actors of the European Parliament played different roles at the end of the process, when the final deal was achieved with Council. The adopted text is lower in ambition compared to the **European Parliament's position (which at the same time was less ambitious than the ENVI Committee's position)**, and some MEPs stayed very strong defending their text. **It's worth mentioning the role of Miriam Dalli, on behalf of the S&D, who fought for it until the very end - supported by EFDD and GUE - and abstained in the final vote.** Furthermore, the Greens voted against the final deal. However, in the end, Gerben-Jan Gerbrandy gave **in to pressure from Council and from conservative groups' MEPs and accepted the final deal.** Gerbrandy had done a very good job all along the process, but in the end, because of political pressure coming from Council, conservative groups and members of his own group (Alde) he struck a deal with Council that was **well below the bar set by Parliament's negotiating mandate.**

*The good:*

The Greens (Greens/EFA - European Free Alliance), led by Bas Eickhout, the progressive side of the Socialists (S&D - Socialists & Democrats), led by Miriam Dalli, and the progressive side of the Liberals (Alde - Alliance of European Liberals and Democrats): these MEPs captained their groups bringing them together (or at least a progressive majority), asking for increasing ambition, closing loopholes and making the CAR more robust. **It's worth highlighting the role of the S&D group which, despite internal differences due to different national situations (notably Austrian, Spanish and Italian members) remained strong in the negotiations ahead of plenary vote as well as in trialogues.**

*The bad:*

Some delegations in S&D (as mentioned), some delegations in Alde and conservatives in general (EPP) - led by Pilar Ayuso. Although some members in EPP are rather on the progressive side, a Spanish EPP leader **wasn't expected to be too ambitious, due especially to the initial position of the Spanish government (same party).** This was particularly noticeable in the discussions related to the starting point.

*The ugly:*

Some delegations of the EPP (namely Austrian, Irish and Italian) and especially those belonging to the AGRI committee or with a strong interest/background in the agriculture sector - aiming at keeping business as usual in the industry. A particularity of these **discussions is that many of these “ugly” players in the Parliament** were heavily (influenced and) helped by the government officials in capitals and in the Permanent Representations. Finally, these countries played all their cards during trialogues, where they stood more chances.

### 3.3.3. Council of the European Union

The Council agreed its position through the discussions in the Working Party on the Environment (WPE) - representatives from national government discuss the different positions in this fora, and the rotating presidency proposes new possible versions of the text, trying to get a majority. Three presidencies have been involved in the process, in this order: Slovakia, Malta and Estonia, this last one which managed to close the deal with the European Parliament.

At the beginning of the process, the discussions in Council were far from ambitious. However, over time, **damage to the Commission’s proposal was controlled. The position agreed by environment ministers was less ambitious than the Commission’s proposal.** Only after fierce opposition by the European Parliament the Council slightly moved their position. However, if someone is to be blamed on the lack of ambition in the CAR, that is without doubt the Council.

In the paragraphs below some of the most **obvious examples are described, but it doesn’t include an exhaustive description of all countries.** However, T&E is available under request to comment on the position of any country during the negotiations. For a previous assessment of intermediate positions, you can find it [here](#)<sup>40</sup>.

*The good:*

Sweden was among the countries that consistently tried to increase the ambition of the CAR. Their own domestic targets go well beyond the provisions of this EU regulation. In addition, when others tried to undermine the proposal, they showed their opposition and tried to get support for ambition.

Hungary started the process with a very unambitious position. However, over time, they understood that the CAR could become an opportunity for the country. They estimated that they could benefit from a large surplus. By increasing the ambition of the system, the demand for their allocations would increase, potentially raising its price. The CAR was an interesting example where Visegrad countries (Poland, Czech Republic, Slovakia and Hungary) were quite split.

The Netherlands was also among the countries that kept an ambitious position throughout the process. This can be partially explained by the good position that came out from the Dutch Parliament on this topic. They also called for improving the starting point, which in turn was something agreed upon.

Belgium, despite being a country with difficulties to achieve the 2020 targets, has remained constructive **throughout the process. Even if they didn’t always support calls for more ambition, they always presented alternatives to try to improve the Commission proposal.** For instance, they were the ones that originally proposed the possibility to notify the use of ETS loophole more than once, as the Commission originally proposed. On the starting point, they also put on the table options to try to increase ambition.

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<sup>40</sup> <https://www.transportenvironment.org/publications/eu-climate-leader-board>

Germany was among the countries with the most Paris compatible position in the CAR negotiations. They wanted to limit the starting point to avoid rewarding countries not achieving 2020 targets, supported banking limitations and tried to find the links with other pieces of legislation. Towards the end of the process, trying to reach a deal with the European Parliament, Germany proposed a new starting point **together with Sweden. Unfortunately, weeks later Germany didn't support its own proposal anymore**, compromising its credibility during the negotiations.

*The bad:*

France's position has changed several times throughout the process. On one hand, they have supported positive elements of the proposal, especially towards the end, like appropriate starting points and a banking limitation. On the other, they tried to get access for themselves to at least two loopholes: the ETS one-off link and the safety reserve. **Fortunately, those moves didn't get support and were not implemented.** Otherwise the proposal would have been further undermined.

Spain's original proposal was far from perfect. Among other issues they supported the Polish proposal to change the starting point to 2021, which would have considerably affected the ambition of the CAR. Little by little, the Spanish position improved in several of the topics, ending up with a more balanced position. However, Spain was a strong supporter of the safety reserve, and tried to increase its size until the very end. Even if Spain will overachieve its 2020 targets, the reserve goes against the principles of the Paris agreement, which enhances 2020 action combined with a constant downward path to ensure emissions are constantly decreasing.

Italy saw itself like a victim of the Commission proposal, because they were given a target above the EU average of 30%, while their GDP per capita in 2013 was below the average. In order to get a fairer outcome of the negotiations, they initially pushed to change the starting point and to fully integrate LULUCF within the CAR. Italy was also behind creating the safety reserve, which goes against the ambition of the CAR. **If a country has a "way out" of 2030 targets, the incentives to reduce emissions evaporates.**

*The ugly:*

Poland has had the most unambitious positions by far. In November 2016 they submitted a paper to the working party that went as far as requesting to exclude the European Parliament from the decision-making process. If their proposal would have been approved, the ESR would have become a completely redundant piece of legislation. It is unfortunate that one presidency after the other decided to give concessions trying **to accommodate Poland's position. At the very last vote in Coreper, Poland abstained. It was a high price to pay for an abstention.**

**As mentioned in a previous section, Ireland is the most "benefited" country, in the sense that they got a CAR tailor-made for their lack of ambition in the included sectors. They have access to the ETS loophole (double that of most other countries), in the LULUCF loophole they have the largest relative access, and their lack of action is rewarded by the starting point. Despite all of these, they tried to further undermine the Commission's proposal, for instance by delaying the starting point and increasing the ETS one-off even more.**

Latvia and Lithuania were among the least progressive countries during the negotiations. They tried to weaken the starting point early on in the process, and worked hard to increase their loopholes. In the case of Latvia, they managed to increase the single additional adjustment in 2021. Throughout the process, they were close to the Polish positions.

Austria, an ambitious country on some climate-related issues, tried to undermine the Commission’s proposal from different angles. One of them was increasing the LULUCF loophole up to 425 Mt. When they saw that their idea didn’t gain enough traction, they tried to redesign it to ensure that the limit was achieved, undermining the ambition of the CAR. Fortunately, this idea didn’t fly.

## 4. Next steps needed

T&E has always highlighted the role of the CAR as the key driver for further decarbonisation measures in the sectors involved. Even if the result is not as we would have desired and it includes flexibilities that partly undermine the overall ambition, the final emissions reduction goal (-30% compared to 2005 levels) will indeed require that Member States and sectors do their fair share to reduce emissions.

The first and fundamental next step is adequate implementation and enforcement. The latter might be difficult down the line, but Member States must carefully study the implications and opportunities of this regulation and implement it accordingly. The potential of each involved sector to reduce emissions might be different in each country, and that must be factored in during the implementation process.

Also, there are other policy processes that we must keep an eye on as they’re very relevant for reducing emissions in the sectors. On transport, for instance, the EU is currently discussing CO2 standards for cars and vans, and soon there will be a proposal for standards for trucks. It is essential to get involved in this debate to foster transport emission reductions, which will give a strong push to innovation and at the same time help member states in achieving their climate goals.

More generically, in the absence of an ambitious enough CAR, the EU has two other overarching tools that could have a major impact in reducing GHG emissions in these sectors: the renewable energy directive and the energy efficiency directive. Both legislative files are currently under negotiation between the Council of the European Union and the European Parliament.

According to modelling of the European Commission, emissions in the CAR sectors would go down to the values included in the table below, if either renewables or efficiency targets are increased. The “default” values were 27% RES (renewables) and 30% EE (energy efficiency), the target agreed in 2014.

	30% RES / 30% EE	33% RES / 33% EE	35% RES / 35% EE	45% RES / 40% EE
GHG emissions in CAR sectors (compared to 2005 in % reduction)	-31.7%	-35.5%	-37.7%	-41.9%

Therefore, even if an increase in ambition in the energy efficiency directive or the renewable energy directive would make the CAR relatively irrelevant from a policy driver point of view, it is definitely desirable; the main goal is to reduce greenhouse gas emissions.

Finally, policy makers should make good use of all the review provisions included in the final CAR text in order to increase its ambition as soon as possible.