

NGO letter in support of a strong framework for national binding climate targets

02 July 2021

Dear Commission President von der Leyen,
Dear Commission Vice-President Timmermans,

With less than one month to go until the 'Fit for 55' package comes out, we - the signatories of the letter - would like to ask for your commitment to a revised Climate Action Regulation (CAR, also known as the Effort Sharing Regulation) that sets a strong and futureproof framework for binding national climate targets.

Since the CAR was last revised in 2018, the way we think about and act on climate change has changed drastically. Not only has the EU since adopted a higher 2030 target, the EU Climate Law has also set our joint commitment towards climate neutrality into law. The role of the CAR is to translate the EU's collective commitments into specific commitments for its Member States. The regulation must be revised to take account of the Union's changed climate objective, the Paris Agreement commitment on 1.5°C and the reality that implementation failure is not an option. More specifically, the following changes to the Climate Action Regulation are essential to make it fit for purpose:

1. **Revise the trajectory towards 2030 for the CAR sectors to as a minimum measure up to the 'at least' net -55% ambition, while also ensuring that the EU stays within a fixed emissions budget that presents a fair contribution to global efforts to achieve the 1.5°C target.** Depending on the design of the trajectory towards the EU's new 2030 target, the cumulative achieved emissions reductions can vary significantly. The best option for effective climate protection is therefore to draw a concave reduction line to the new 2030 target for the CAR sectors based on either the EU's 2020 real emissions level (moved on the time axis to 2022) or on the existing trajectory, whichever delivers the most emissions reductions per Member State. Member States should then be required to make the shift to that new trajectory in 2022 at the latest. To increase transparency, the new CAR should clearly set the overall amount of emissions eligible under this regulation (emission budget).
2. **Include a framework for continuing binding national climate targets beyond 2030, consistent with the EU's overall carbon budget.** Europe's commitment to the Paris Agreement and its own climate targets do not end in 2030. Because of this long-term dimension of effective climate protection, the CAR should include a process to set national reduction targets for 2050. Clarity now about Member States' individual long-term climate objectives would strengthen national commitment to and capacity for more accurate climate policy backcasting. Building on the process for setting the EU's new 2040 climate target under the EU Climate Law, the revised CAR should also contain a robust and predictable framework for committing Member States to legally binding reduction targets for 2040, to ensure national emissions reductions are consistent with achieving the EU's climate neutrality objective and the temperature goals in the Paris Agreement. To ensure high levels of predictability for Member States and societies, the new CAR should also set an overall amount of

remaining EU emissions (emission budget) as well as a time frame and criteria for the distribution of new EU-wide targets among Member States. In addition, a review mechanism should allow for adjusting targets swiftly as circumstances change, even during ongoing compliance cycles.

3. **Strengthen the compliance rules under the CAR.** A strengthened compliance framework should include monetary consequences in the event that Member States breach the EU climate rules. This is already the case under the EU ETS and the car CO₂ legislation. The corrective action plans should be strengthened, by requiring transparency of both the plan and the Commission's response to it. Member States should publicly explain if and why they deviate from the Commission's opinion, similar to requirements under the Governance Regulation. In addition, Member States should be required to undertake a mandatory review of their NECP and LTS if there is a breach of their annual emissions allocation in two consecutive years.
4. **Remove the 'flexibility' loophole with the LULUCF regulation.** Net removals in the land use sector are not only hard to measure, they are also inherently unstable and therefore reversible. Therefore they cannot be considered directly equivalent, tonne-for-tonne, to emission reductions in other sectors. The new EU Climate Law recognizes this reality, by limiting the amount of net removals eligible for 2030 target achievement to what is projected under the 'no-debit' rule. However the flexibility allowed for under the current LULUCF Regulation only relates to net removals that exceed this (no-debit) level. There is therefore no longer any legal basis for the offsetting loophole (euphemistically termed 'flexibility') between the CAR and the LULUCF Regulation and Article 7 of the revised Climate Action Regulation (and relevant provisions in the LULUCF Regulation) should be deleted.
5. **Remove the so-called safety reserve.** To achieve required emission reductions and to stay within rapidly shrinking emission budgets, the EU cannot afford loopholes like the so-called safety reserve enshrined in Article 11 of the Climate Action Regulation. The formula for distributing national targets already takes account of different circumstances in Member States, making such loopholes obsolete.
6. **Include legal rights for the public to access national courts to enforce compliance with the CAR.** Last year the Commission published a Communication¹ on improving access to justice in environmental matters at EU and national level. It recognised that compliance with the Aarhus Convention standards was inconsistent across the Union and called on co-legislators to include proposals for rights of access to national courts when developing or revising EU legislation. We therefore call on the Commission to propose access to national courts within the CAR so that the interested public can seek judicial review of national compliance with its provisions. The proposal should also make clear its purpose is to implement the Aarhus Convention. In principle, this approach would follow the precedent already established by Article 11 EIA Directive and Article 25 of the Industrial Emissions Directive. It would also help facilitate the right of the interested public to

¹ COM (2020) 643 final

challenge certain acts in national courts, as enshrined in Article 9(3) of the Aarhus Convention and Article 47 of the Charter of Fundamental Rights and established by the European Court of Justice.

7. Finally, we would urge you to **stop referring to this regulation as the ‘Effort Sharing Regulation’**. Sharing the ‘effort’ towards the Union’s climate goals frames climate action as an unnecessary burden, rather than an essential response to an urgent and existential threat. It also ignores the many positive developments that this transition will have in terms of human health and wellbeing and therefore risks misleading the public as to the purpose of this legislation. The name or title given to legislation matters, because it can communicate either a positive or negative message as regards the action being taken by the EU. The title should make the purpose of the legislation clear to the general public. The revised regulation should be clearly identified by a name that answers to the above criteria.

If we address these seven points, the framework of the CAR will both enable us to reach our common and individual 2030 targets, as well as laying the groundwork for continued national action towards climate neutrality and beyond.

Yours sincerely,

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European Environmental Bureau (EEB)

Deutsche Umwelthilfe (DUH)

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