

EURACOAL Position Paper

on the proposed European Climate Law and 2030-2050 targets in a regulation to establish the framework for achieving climate neutrality by 2050 (COM(2020) 80)

Summary

EURACOAL respects the European Union's commitment to achieve the long-term objectives of the UNFCCC Paris Agreement as part of an international effort that also takes into account economic and social needs. In this respect, a European Climate Law can be contemplated, subject to certain conditions that should be addressed at the EU level by Member States and the European Commission:

- 1. After the Covid-19 crisis has ended, set a realistic timetable for recovery and then assess any new EU climate targets.*
- 2. Promote a united global climate response with a level playing field, especially among the G20 countries.*
- 3. Agree and adhere to an effective, market-driven EU industrial strategy.*
- 4. The trajectory to meet 2030 and 2050 climate targets is of fundamental importance to the economies of EU Member States and should not be subject to change by delegated act.*
- 5. Let the EU ETS do its job of cost-effectively reducing CO₂ emissions below politically agreed targets in an economically efficient manner.*
- 6. Determine the potential economic and social impacts of the EU 2030 climate target.*
- 7. Carry out a comprehensive, EU-wide impact assessment to determine how energy security, economic competitiveness and social cohesion can be assured during the mammoth task of transforming every aspect of life in the EU to achieve the 2050 climate-neutrality target.*
- 8. Targets in the European Climate Law must not be legally enforceable as such, because no sovereign legislature shall bind future legislatures.*

Preamble

As a core part of the European Green Deal, the European Commission has presented a draft European Climate Law, a regulation to achieve climate neutrality by 2050. An important aim of the new EU growth strategy is to decouple economic growth from resource use and thus **transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy.**

The proposed law includes measures to keep track of progress against National Energy and Climate Plans and respond accordingly based on European Environment Agency reporting and the latest scientific evidence. Progress will be reviewed every five years, in line with the global stocktake exercise under the UNFCCC Paris Agreement.

Climate change is, by its very nature, a transboundary challenge that cannot be solved by national or local action alone. Co-ordination of climate action is necessary at the European level and, where

possible, at the global level. EU climate action is justified by the European Commission on subsidiarity grounds and aims to provide cost-effective delivery of long-term greenhouse gas (GHG) emission reduction targets, while ensuring fairness and environmental integrity (Ares(2020)119545).

The draft regulation will amend an extant regulation (EU) 2018/1999. Unlike directives, its provisions will apply directly on Member States which will thus not be required to transpose the regulation into national law, but comply immediately. As proposed, the European Climate Law will cover all greenhouse gases (GHG).

Summary of the proposed European Climate Law regulation

The aim of the proposed European Climate Law is to ensure that the transition to climate neutrality by 2050 is **irreversible**, with a defined pathway that provides predictability for investors and businesses:

- By September 2020, once the European Commission has completed an impact assessment and explored options for a new GHG emission reduction target for 2030 of 50% to 55%, it will propose a new target in an amendment to the European Climate Law.
- By June 2021, the European Commission will review, and where necessary propose to revise, all relevant policy instruments to achieve the additional emission reductions for 2030.
- The European Commission proposes to establish an EU-wide trajectory for GHG emission reductions from 2030 to 2050.
- By September 2023 and every five years thereafter, the European Commission will assess EU and national measures against the 2030-2050 trajectory. The European Environment Agency will assist with GHG emission data collection and Member State GHG emissions will be further monitored using the Copernicus satellite system.
- The European Commission will be empowered by means of delegated act to review the 2030-2050 trajectory and Union-wide measures, and take the necessary further measures in accordance with the Treaties to ensure progress. The European Commission will issue recommendations to Member States which fall behind, based on the best available science and EU legislation.
- Member States will be required to develop and implement climate adaptation strategies.

To implement these points, the European Commission proposes amendments to the Energy Union governance regulation (EU) 2018/1999 that came into force on 24 December 2018.

EURACOAL Position I: General statement

We respect the UNFCCC Paris Agreement and EU efforts to comply with that agreement ...

EURACOAL members acknowledge the long-term goals of the UNFCCC Paris Agreement on climate change to limit global warming to below 2°C compared with pre-industrial levels and to pursue efforts to limit the rise to 1.5°C. Also, we respect the European Council conclusions of December 2019 which offer our industry a new direction with ambitious targets for a transition to climate neutrality by 2050. In this respect, we support the efforts of the European Union to

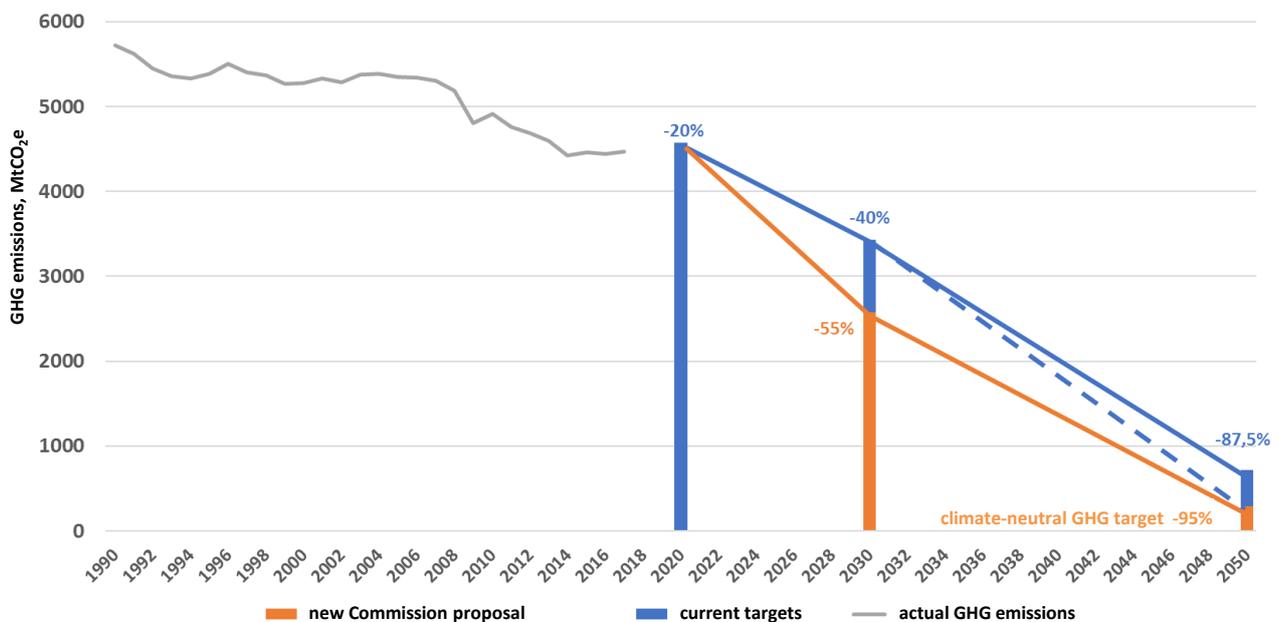
contribute to the achievement of the global climate objectives as part of an overall EU policy to create a “a fair and prosperous society, with a modern, resource-efficient and competitive economy” (European Green Deal, COM(2019) 640).

93% of EU citizens see climate change as a serious problem and many want to see increased climate action.¹ However, such social research should also explore the potential impacts of regulatory action. Without sufficient knowledge of the impacts on future energy prices, regional development and employment, citizens are unaware of the many tradeoffs. For the coal and lignite sector, this means meeting EU environmental objectives, while providing reliable, secure and competitive energy and electricity supplies, AND diversifying its activities in support of regional economies.

... and will continue to reduce emissions from coal- and lignite-fired power generation in the EU.

Those EU Member States who depend heavily on coal, such as Bulgaria, Czechia, Germany, Greece, Poland, Romania and Slovenia, have all submitted to the European Commission their draft national energy and climate plans, including assumptions on their future energy mixes. Following the cessation of subsidised hard coal mining in Germany and Spain at the end of 2018, as required under EU law (2010/787/EU), a growing number of countries are now expected to largely exit from coal and lignite use for electricity generation: France in 2021, the United Kingdom in 2025, Greece in 2028 and Germany in 2038. Other countries are likewise considering how and when to exit, but this will take time, two decades in some cases. Any tightening of climate policy would greatly impact EU industry and energy suppliers who must bear the high costs of transition. This applies particularly to the coal-using Member States which is why it is so important to ensure a *just transition* at the right pace.

Figure 1 – Greenhouse gas emissions and future targets for the EU-28, 1990-2050



¹ Special Eurobarometer 490, “Climate Change” Report, a survey conducted by Kantar on behalf of Kantar Belgium at the request of the European Commission, Directorate-General for Climate Action (DG CLIMA), Wave EB91.3, April 2019.

Replacing coal with renewable energy sources or nuclear power will take time, but progress is being made. Replacing the advantages of coal – its abundance, its affordability and its availability – also presents a challenge, but one that could be met with enormous investment in renewable energy sources and large-scale energy storage technologies. The EU coal sector has already contributed massively to GHG emission reductions in the EU – a reduction in CO₂ emissions alone of more than 50% since 1990. With the now reformed EU ETS, this reduction trend will continue in the future, as shown in Figure 1, helping the EU to meet the objectives agreed in Paris at the UNFCCC COP 21 climate conference held in December 2015.

The energy transition should not compromise energy security or industrial competitiveness: an overdependence on fossil gas or non-commercial renewable energies must be avoided. An overly ambitious approach, without proper consideration of impact assessments at the EU and Member State levels, would have unknown socio-economic consequence, perhaps leading to an irreversible economic downturn. Studies and analyses are needed to assure citizens, along with credible regional development programmes.

EURACOAL Position II: Specific points

1. After the Covid-19 crisis has ended, set a realistic timetable for recovery and then assess any new EU climate targets.

The Covid-19 crisis was not over when this response was prepared. It is unclear for how long and to what extent Member States will maintain the now significant interruption to public life, commerce and industry. Many of the economic, fiscal and social consequences of the pandemic have yet to be quantified and are far from being resolved. However, it is already clear today that this will be one of the most severe economic crises of the last three centuries.

It is therefore important that the impacts of the Covid-19 crisis are understood, analysed and taken fully into account in the climate target impact assessments. Before the crisis is successfully resolved, the EU must not take any decisions that could lead to further burdens on the economy. Furthermore, it should be recognised that lower emissions due to lower economic output during the Covid-19 crisis are an unwelcome, *one-off* event. Finally, when discussing the European Green Deal and its related legislative proposals, it should be remembered that the current social-distancing measures hinder all public dialogue on the European Green Deal and prevent proper stakeholder involvement.

EURACOAL asks the Commission to reflect, take stock of the dire economic situation that we now face in Europe and consider its policy priorities. The two most pressing concerns are health and employment.

2. Promote a united global climate response with a level playing field, especially among the G20 countries.

The European Commission’s highest priority should be a diplomatic effort to engage with the world’s top carbon emitters – say the G20 countries – to agree a united, international response to the climate challenge. We note that this is the intent of Article 6 of the UNFCCC Paris Agreement on a global carbon trading mechanism which came into effect at the beginning of 2020 and **which EURACOAL supports**. In this way, the long-term temperature rise limits, set out in Article 2 of the Agreement, can be achieved; noting, however, that the Agreement does not specify any absolute GHG emission levels, target dates or conditions on climate neutrality.

So long as climate efforts elsewhere lag behind the EU's, and without fair competition on a level playing field, carbon-leakage protection will be necessary to avoid the further offshoring of EU industry as a result of unilateral climate action in the EU. And yet, it is not clear how the proposed carbon border adjustment (CBA) mechanism can be designed in such a way that it is WTO compliant. Moreover, if the EU introduces a CBA mechanism, then it risks a trade war which could damage the export-oriented economies of the EU. Without substantive action on carbon-leakage protection, the proposed European Climate Law would be a leap of faith that non-EU regions and countries profit from at our expense.

3. Agree and adhere to an effective, market-driven EU industrial strategy.

The European Green Deal needs to be flanked with a strong and tangible, market-driven industrial strategy that delivers results by preventing the loss of industrial value added from the European Union. **EURACOAL supports the Industry4Europe initiative.** State-aid rules must be significantly reformulated in light of the unprecedented challenges that the European Green Deal sets out to address.

The Green Deal Investment Plan would mobilise at least €1 trillion of investments in the economy, moving the EU towards climate neutrality. The headline announcement of January 2020 included €7.5 billion to assist a total of 108 regions with a Just Transition Fund (JTF) – not just the thirty-one coal regions directly affected by EU climate policy. This sum is inadequate. Leveraging European Investment Bank (EIB) funds faces the same challenge of making a material impact in the regions where support is most needed. More recently, the European Commission has proposed emergency funding that would see the JTF grow to €40 billion – a welcome recognition of the magnitude of the challenge in the coal regions.

4. The trajectory to meet 2030 and 2050 climate targets is of fundamental importance to the economies of EU Member States and should not be subject to change by delegated act.

Any proposed revision of climate targets raises concerns about the fundamental right, under the Treaty on the Functioning of the European Union, for Member States to determine their own energy mixes (TFEU Article 194). The scope of the delegated powers proposed by the Commission in the European Climate Law – namely to set and revise the 2030-2050 trajectory for GHG reductions – raises deep concerns about their compatibility with the Treaty, in particular with Article 290(1): *“The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power.”*

However, according to Articles 3 and 9 of the draft European Climate Law, the European Commission wishes to be granted delegated powers whereby it *can* adapt, every five years, the trajectory to meet the EU climate targets for 2030 and 2050 on the basis of the criteria set out in Article 3(3), including the *“the best available and most recent scientific evidence, including the latest reports of the IPCC.”*

If this draft regulation is adopted at EU level, then Member States will no longer have due influence on the setting of revised, interim targets and thus on a central plank of the EU policy that determines national prosperity. The European Parliament and the Council of the European Union would have only limited powers to object within a short period of time, respectively by simple majority or by qualified majority. In view of the scope of the proposed delegated act, this would be a massive and unwelcome shift of competences in an area that demands more democratic oversight. **It is not compatible with the subsidiarity principle.**

5. Let the EU ETS do its job of cost-effectively reducing CO₂ emissions below politically agreed targets in an economically efficient manner.

To meet EU climate targets in the sectors it covers – including power generation – the EU emissions trading system (ETS) is a cost-effective and targeted mechanism. The sectors falling under the EU ETS have a clear pathway ahead that leads to zero emissions around 2050. These sectors should not therefore be the target of any additional measures for environmental or climate reasons. The EU ETS should remain the only instrument used to drive down CO₂ emissions from the energy sector: it delivers on the politically agreed climate-neutrality target set for 2050. Adjustments to the market stability reserve or a CO₂ floor price are unnecessary and, in our view, inappropriate.

The potentially very large increase in EU ETS allowance prices, resulting from any tighter 2030 targets, is of grave concern as it would impact coal use in the short and medium term. Higher electricity prices would become an unwelcome drag on the EU economy, and value-added production lost due to carbon leakage.

All sectors – ETS and non-ETS – must reduce their emissions, so effort-sharing legislation must be adapted to ensure all sectors of the EU economy carry the GHG emission reduction burden equally.

6. Determine the potential economic and social impacts of the EU 2030 climate target.

Under the European Green Deal, the European Commission proposes a tightening of the GHG emission reduction target for 2030 from 40% to a very ambitious 50% or even 55%, compared with 1990. This is necessary, “*to have a more balanced reduction pathway from 2020 to 2050*”. To implement any revised target, a proposal to amend the yet-to-be-adopted European Climate Law would be tabled by June 2021, alongside amendments to extend the Emissions Trading System Directive and its carbon-leakage measures, recast effort-sharing legislation, amendments to the Land Use, Land Use Change and Forestry Regulation, and reviews of the CO₂ emission performance standards for cars and vans, the Energy Efficiency Directive, the Renewable Energy Directive, and the Energy Taxation Directive, as well as other policy measures related to the European Green Deal.

It is precisely because such a tightening of the 2030 target is intrinsically linked to the proposed European Climate Law that an *a priori*, transparent and comprehensive impact assessment is essential. Such an assessment must ensure the socio-economic viability and security of EU energy supplies and determine the negative impacts on regional development, including in the mining regions, as well as identify real projects and concrete initiatives **to create new jobs of equivalent standing in those regions.**

The 2030 climate targets proposed by the European Commission would require an additional emission reduction of 30 to 35 percentage points compared with 1990 in just ten years. In the twenty-eight years from 1990 to 2018, and excluding the UK, the reduction was just 21% (Ares(2020)1631599 p.1). Hence, the targets envisaged by the Commission would require a four- to five-fold increase in the rate of emission reductions to date – without any repeat of the large emission reductions that came from the economic collapse of the former Eastern Bloc in the 1990s.

Accordingly, the impact assessment will be very important: to what extent can the 2030 climate target be tightened and what compensatory measures are necessary to protect the economy and households? It will be crucial also to know to what extent the existing EU regulatory framework has to be adjusted to reach any new target. This should all be examined in the impact assessment, based on National Energy and Climate Plans.

EURACOAL therefore welcomes the European Commission's intention to assess the impacts of a revised 2030 target on energy affordability, sustainability and security. Social aspects must also be considered. The impact assessment should use **open-source models with all code and data inputs publicly available and assumptions fully reported** so that the Commission's assessment can be fully replicated and properly scrutinised by independent experts. **The proposed impact assessment should include the option of retaining the 40% target.**

The focus should be on a proper assessment of all the positive and negative impacts in terms of expected costs for each region and each Member State. Given the current Covid-19 crisis, and with a significant part of EU economic activity in stagnation, it is vital to understand the impacts of any tightening of the 2030 climate target. It is our opinion that this assessment work will not be possible this year or in the near future. When it is undertaken, the assessment must determine the likely impacts on EU prosperity, on regional development, including in the coal mining regions, as well as identify projects and initiatives that would see jobs transformed and social tensions eased.

The impact assessment should assess how any new 2030 targets affect the price of EU ETS allowances and the consequent increase in the cost of transition for those Member States that rely on more carbon-intensive power generation and industries where coal cannot be easily phased out. Moreover, to ensure a *just transition* points to the need for an impact assessment that addresses the costs of transition for each Member State and identifies the sources of funds to cover the huge investments envisaged in new, post-mining economic activities.

7. Carry out a comprehensive, EU-wide impact assessment to determine how energy security, economic competitiveness and social cohesion can be assured during the mammoth task of transforming every aspect of life in the EU to achieve the 2050 climate-neutrality target.

EU climate and energy policy, especially when expressed as *targets*, such as climate neutrality by 2050, has a fundamental impact on energy affordability, sustainability and security, as well as on social conditions. Energy system costs, infrastructure needs and the role of an effective and efficient internal energy market should all be considered alongside climate targets as part of a comprehensive impact assessment that the European Commission is mandated to carry out according to EU law. Given the scope of the proposed European Climate Law, which aims to map out the next thirty years, this impact assessment must consider the whole economy and all society.

Strict, long-term climate targets, introduced unilaterally by the EU, can significantly impair the EU's international competitiveness and could lead to the de-industrialisation of Europe, simply displacing emissions elsewhere.

8. Targets in the European Climate Law must not be legally enforceable as such, because no sovereign legislature shall bind future legislatures.

Climate targets must be formulated in such a way that they do not directly limit the rights of legal persons (citizens, corporations or interest groups) nor give them the opportunity to derive any enforceable rights. A specific risk here is the refusal to grant or the withdrawal of permits for installations that would be otherwise permissible under current EU environmental law.

Legal actions against individual projects on the grounds of a claimed incompatibility with the proposed European Climate Law would further impede and even prevent long-term investments in the energy sector. The only requirement should be that installations comply with the secondary legislation adopted on the basis of the proposed law (*e.g.* the EU emissions trading system).

Only with politically agreed targets, that are politically binding but not legally enforceable, can policymakers be sure that they retain all options and powers to shape future climate policy. If this fundamental point is not respected, then EU sovereign law could slip out of the hands of elected politicians and into the hands of unelected policymakers.

Conclusion

EURACOAL members, and the many professionals and workers in the coal regions who we represent, look forward to a future of good co-operation to ensure that the coal industry’s extensive value chains form the basis of new economic growth and prosperity, leaving nobody poorer and nobody behind.

Annex: Legal basis

The legal basis for the proposed European Climate Law is Article 192(1) of the Treaty on the Functioning of the European Union which grants powers to the EU institutions acting by qualified majority voting in order to achieve the objectives referred to in Article 191 of the Treaty.

Article 191

1. Union policy on the environment shall contribute to pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilisation of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

2. Union policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Union. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.

In this context, harmonisation measures answering environmental protection requirements shall include, where appropriate, a safeguard clause allowing Member States to take provisional measures, for non-economic environmental reasons, subject to a procedure of inspection by the Union.

3. In preparing its policy on the environment, the Union shall take account of:

- available scientific and technical data,
- environmental conditions in the various regions of the Union,
- the potential benefits and costs of action or lack of action,
- the economic and social development of the Union as a whole and the balanced development of its regions.

4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.

The previous subparagraph shall be without prejudice to Member States’ competence to negotiate in international bodies and to conclude international agreements.