



The proposed EU climate law: towards climate neutrality in 2050

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European Climate Law

The Commission's proposal for the first European Climate Law aims to write into law the goal set out in the European Green Deal – for Europe's economy and society to become climate-neutral by 2050.

This means achieving net zero greenhouse gas emissions for EU countries as a whole, mainly by cutting emissions, investing in green technologies and protecting the natural environment.

https://ec.europa.eu/clima/policies/eu-climate-action/law_en



EUROPEAN
COMMISSION

Brussels, 4.3.2020
COM(2020) 80 final

2020/0036 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
establishing the framework for achieving climate neutrality and amending Regulation
(EU) 2018/1999 (European Climate Law)

<https://europarl.europa.eu/legislative-train/theme-a-european-green-deal/file-european-climate-law>

[https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0036\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2020/0036(COD)&l=en)

Climate neutrality (art. 2)

→ “**Union-wide** emissions and removals of greenhouse gases regulated in Union law shall be **balanced at the latest by 2050**, thus reducing emissions to **net zero** by that date.”

→ “The relevant Union institutions and the Member States shall take the necessary measures at Union and national level respectively, to enable the **collective achievement of the climate-neutrality objective** set out in paragraph 1, taking into account the importance of promoting fairness and solidarity among Member States.”

(emphasis by author)

**No requirement for
national climate neutrality
in all Member States**

European Parliament:

Committee on the Environment, Public Health and Food Safety

draft report 29.04.2020

Amendment (12a):

All Member States have a responsibility to achieve national climate neutrality by 2050 at the latest.

https://www.europarl.europa.eu/doceo/document/ENVI-PR-648563_EN.pdf

- This would be a deviation from current EU climate legislation.
- It could make the regulatory context at EU level much simpler 😊
(no inter-state trading, and no ETS?)
- However, less cost-effective ?

Powers for the Commission

Setting a **trajectory** (article 3) that serves as a benchmark for assessing the collective progress of all Member States and for assessing the consistency of Union measures with the climate-neutrality objective (art. 4)

Shall assess the performance of Member States, and
May issue individual recommendations to Member States (art 6)

**Adds to the existing
Governance Regulation
(Regulation 2018/1999)**

The trajectory

Art. 3: Trajectory for achieving climate neutrality

The Commission is empowered to adopt delegated acts in accordance with Article 9 to supplement this Regulation **by setting out a trajectory at Union level to achieve the climate-neutrality objective set out in Article 2(1) until 2050**. At the latest within six months after each global stocktake referred to in Article 14 of the Paris Agreement, the Commission shall review the trajectory.

- **First global stocktake: 2023**
- **The 2030 target (to be decided) is the starting point of the trajectory (art 3(2))**

“Setting out a trajectory at Union level” too much power for the Commission?

It is not clear what setting out the trajectory entails, and the criteria are very general / vague

- > How does setting out a trajectory differ from target setting for the Union as a whole?
- > Target setting for the Union is an essential political choice, and hence a prerogative of the EU legislator
- > Thus far, the targets have been decided by the EU legislator (EU Effort Sharing approach)

Nonetheless, both the Council and the European Parliament can object to a Commission decision, and can revoke the delegation of power (art. 9)

See for a discussion:

<https://www.maastrichtuniversity.nl/blog/2020/03/european-climate-law-too-much-power-commission>

-> Meanwhile: non paper European Parliament

<https://www.youtube.com/watch?v=NVuLALYI35Y>

at 1:04:00 -> Timmermans is willing to find a compromise –
what would be an alternative option?



Tweede Kamer Debat: 11 juni 2020 - Gesprek met vicevoorzitter Timmermans

Assessment by the Commission of national measures – and the duty of MS to take due account of Commission recommendations

Article 6

Assessment of national measures

1. By 30 September 2023, and every 5 years, thereafter the Commission shall assess:
 - (a) the consistency of national measures identified, on the basis of the National Energy and Climate Plans or the Biennial Progress Reports submitted in accordance with Regulation (EU) 2018/1999, as relevant for the achievement of the climate-neutrality objective set out in Article 2(1) with that objective as expressed by the trajectory referred to in Article 3(1);
 - (b) the adequacy of relevant national measures to ensure progress on adaptation as referred to in Article 4.

2. Where the Commission finds, under due consideration of the collective progress assessed in accordance with Article 5(1), that a Member State's measures are inconsistent with that objective as expressed by the trajectory referred to in Article 3(1) or inadequate to ensure progress on adaptation as referred to in Article 4, it may issue recommendations to that Member State. The Commission shall make such recommendations publicly available.
3. Where a recommendation is issued in accordance with paragraph 2, the following principles shall apply:
 - (a) the Member State concerned shall take due account of the recommendation in a spirit of solidarity between Member States and the Union and between Member States;
 - (b) the Member State concerned shall set out, in its first progress report submitted in accordance with Article 17 of Regulation (EU) 2018/1999, in the year following the year in which the recommendation was issued, how it has taken due account of the recommendation. If the Member State concerned decides not to address a recommendation or a substantial part thereof, that Member State shall provide the Commission its reasoning;
 - (c) the recommendations should be complementary to the latest country-specific recommendations issued in the context of the European Semester.

Trajectory plays a role in view of mitigation:

Are Member State's measures (in)consistent with the "objective as expressed by the trajectory referred to in Article 3(1)"?

Moreover, also recommendations with regard to adaptation can be given –> assessment of the "adequacy of relevant national measures to ensure progress on adaptation" with reference to article 7 of the Paris Agreement

The legal relevance of recommendations: an uncertain (and sensitive?) issue

Both the Governance Regulation and the proposal for the Climate law rest on 'soft governance'

- -> To have a dialogue.
- > Recommendations shall have no binding force (art. 288 TFEU)

Will the governance be that soft?

- -> Enforceability at EU level -> infringement procedure if a MS does not reply or if it does not take "due account of the recommendation"

National courts!?

- -> The Commission recommendations (and the duty of MS to take due account) could get a legal weight in (some) national litigation.
- > However, the power of the Commission is rather uncontrolled.

Public participation

The Governance Regulation 2018/1999 (already) obliges Member States to carry out public participation procedures

Proposed Climate law: art 8 – public participation

-> “**..to enable and empower** [all parts of society] **to take action towards a climate-neutral and climate-resilient society**” (which – textwise – is not necessarily an approach that accommodates different views)

plus amendment of Governance Regulation (art. 11)

-> provides a basis for the Commission **to enforce Member States to establish a “multilevel climate and energy dialogue pursuant to national rules”**

Other issues

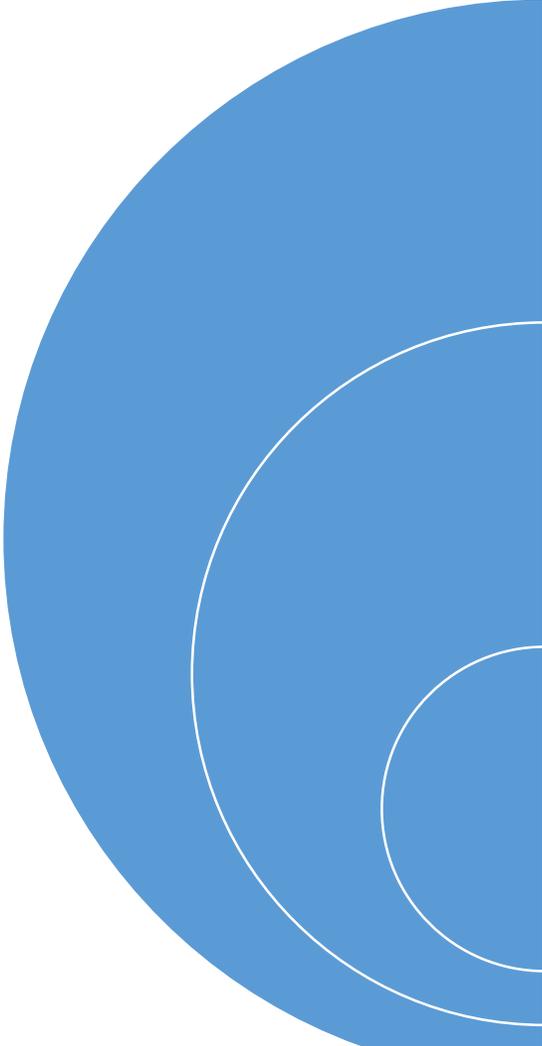
Adaptation (art. 4 jo art 6)

- legal basis - art. 191 / 192 TFEU?
- reference to art. 7 Paris Agreement -> also quite vague. Will COP-interpretations play a role in this respect?

Assessment of any other law in light of climate neutrality (art. 5 (4))

- recital 16 has a stronger text, referring to the European Council: 'all relevant Union legislation and policies need to be **consistent with, and contribute to**, the fulfilment of the climate-neutrality objective (...)'.
 - How ambitious, in what detail will this be done?
 - 'applies' already to proposed new financial laws?
 - to what extent will this be scrutinized by the CJEU?

Conclusions



The importance of the proposed law is to codify the collective objective of climate neutrality, and the path towards that objective

The path towards climate neutrality is regulated in a seemingly soft governance approach but the Commission recommendations could have (some) legal relevance in (some?) national courts

If recommendations become a powerful tool:
are there sufficient checks and balances to this important (indirect) legal power of the Commission?

Thank you!

Questions, comments are very much welcome 😊

