



**Climate laws:
Europe's new hope?**

The power of environmental law –
Experiences from the past and perspectives for the future
ELNI 30th birthday conference

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Part II

The EU regulatory perspective

Marjan Peeters

The EU regulatory approach on climate change -> two features

Largely uncharted legal territory: a complex package of laws, being a challenge for scholars, but, more importantly, for practice too ..

Past -> Future:

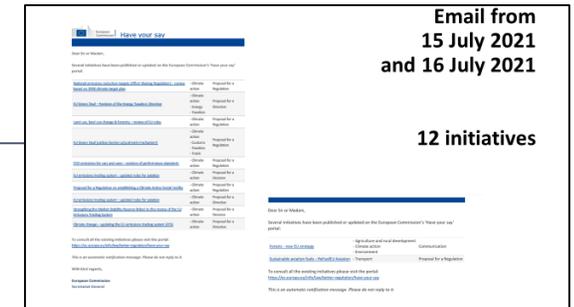
EU climate law was already complicated, and the proposals from the 14th of July 2021 make the (necessary) package even more complex, if not uncomprehensible. Attention to proper mix of instruments is necessary.

The EU relies on the rule of law, and has succeeded in setting legally binding targets for 2030, 2050 and a trajectory for setting a target for 2040 and hence, *imposes on itself*, and on Member States, (individual and collective) legal obligations

Past -> Future:

In the past, emission reduction targets also existed in the form of the EU wide ETS cap and the Effort Sharing Decision targets- > in principle enforceable by means of holding industries and member states to account.

Now an intensified collective target for 2030 and a collective climate neutrality target for 2050. Issues of enforceability ? Yet to be further examined.



The European Climate Law

REGULATION (EU) 2021/1119 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 June 2021

establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law')



a governance approach

Current main legislation for achieving greenhouse gas emission reductions in the EU (hard law)

Effort sharing:

Binding emission reduction **targets** for member states (are in fact national greenhouse gas budgets)

Emissions trading:

Gradual emission reduction (by means of a declining cap) obligatory for major industries and aviation (in Europe)
-> an EU wide greenhouse gas budget for EU Ets emissions

Land Use, Land Use Change and Forestry:
no debit rule at Member state level

Other targets and measures

Funding

The objective



Article 2

Climate-neutrality objective

1. Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and the Union shall aim to achieve negative emissions thereafter.
2. 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 both fairness and solidarity among Member States and cost-effectiveness in achieving this objective.

New!

**an unprecedented challenge
for the next 28 years**

The objective

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-548563_EN.pdf

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**In final text: no requirement for
national climate neutrality in every Member State:**

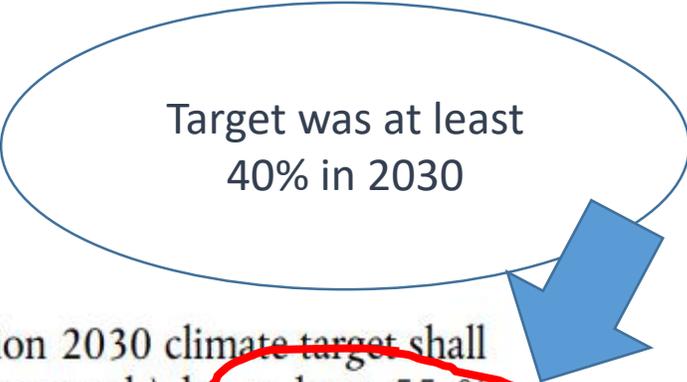
instead, a “collective achievement”

**“shall” obligation :
but what are
“the necessary measures” in light of
the criteria?
Enforceability?**

Article 4

Intermediate Union climate targets

Target was at least
40% in 2030



1. In order to reach the climate-neutrality objective set out in Article 2(1), the binding Union 2030 climate target shall be a domestic reduction of net greenhouse gas emissions (emissions after deduction of removals) by at least 55 % compared to 1990 levels by 2030.

When implementing the target referred to in the first subparagraph, the relevant Union institutions and the Member States shall prioritise swift and predictable emission reductions and, at the same time, enhance removals by natural sinks.

In order to ensure that sufficient mitigation efforts are deployed up to 2030, for the purpose of this Regulation and without prejudice to the review of Union legislation referred to in paragraph 2, the contribution of net removals to the Union 2030 climate target shall be limited to 225 million tonnes of CO₂ equivalent. In order to enhance the Union's carbon sink in line with the objective of achieving climate neutrality by 2050, the Union shall aim to achieve a higher volume of its net carbon sink in 2030.

Limit to the contribution of sinks to the net target for 2030 -> hence, priority to emission reduction

Taking climate change into account in every other Commission action or proposal...

(art 6(4))

-> resembles (and strengthens) the general external integration approach from article 11 TFEU, but with a specific focus on climate change

- * consistency assessment of new measures with the climate-neutrality objective
- * to be published at the time of adoption

4. The Commission shall assess the consistency of any draft measure or legislative proposal, including budgetary proposals, with the climate-neutrality objective set out in Article 2(1) and the Union 2030 and 2040 climate targets before adoption, and include that assessment in any impact assessment accompanying these measures or proposals, and make the result of that assessment publicly available at the time of adoption. The Commission shall also assess whether those draft measures or legislative proposals, including budgetary proposals, are consistent with ensuring progress on adaptation as referred to in Article 5. When making its draft measures and legislative proposals, the Commission shall endeavour to align them with the objectives of this Regulation. In any case of non-alignment, the Commission shall provide the reasons as part of the consistency assessment referred to in this paragraph.



Establishment of the

“European Scientific Advisory Board on Climate Change”

(art 3 and art 12 EU climate law – art 12 contains an amendment of the Regulation 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network)

Collective and individual assessments by the Commission by sept 2023 (and later)

- Art 6 -> assessment of collective progress made by all Member States
- Art 7 -> assessment of “the consistency of national measures identified, on the basis of the integrated national energy and climate plans, national long-term strategies and 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) of this Regulation with that objective”

Commission recommendations to individual member states (in light of the collective progress)

Recommendations are not binding (as such) – but will they still play a role in court procedures – together with the advices from the scientific board??

2. Where the Commission finds, after due consideration of the collective progress assessed in accordance with Article 6(1), that a Member State’s measures are inconsistent with the climate-neutrality objective set out in Article 2(1) or inconsistent with ensuring progress on adaptation as referred to in Article 5, it may issue recommendations to that Member State. The Commission shall make such recommendations publicly available.

3. Where recommendations are issued in accordance with paragraph 2, the following principles shall apply:

- (a) the Member State concerned shall, within six months of receipt of the recommendations, notify the Commission on how it intends to take due account of the recommendations in a spirit of solidarity between Member States and the Union and between Member States;

**Due account to be taken by the MS
“in a spirit of solidarity” – note that
according to article 2, Member States
“shall take the necessary measures at
national level”**

The spirit of solidarity – from a vague notion to an enforceable one?

C-848/19 - Poland v Commission, appeal - the spirit of solidarity as codified in 194 TFEU
the principle of solidarity ... is one of the fundamental principles of EU law... (38)
(and is also codified in the European Climate Law....)

“the principle of solidarity underpins the entire legal system of the European Union ... and it is closely linked to the principle of sincere cooperation, laid down in Article 4(3) TEU, pursuant to which the European Union and the Member States are, in full mutual respect, to assist each other in carrying out tasks which flow from the Treaties. In that regard, the Court has held, inter alia, that that principle (...) obliges the Member States to take all the measures necessary to guarantee the application and effectiveness of EU law” (41)

Concluding perspective on the past and the future of EU climate law (emission reduction)

PAST

Hard law (EU ETS and Effort Sharing)

NOW

Existing hard law complemented with the LULUCF, and proposed amendments

AND

Governance approach,
With climate consistency test
+ Massive funding

FUTURE

Hard law stays key? Respect for the rule of law ?

Will the Governance approach be “hardened” - also in national courts?

Will national litigation be the most important driver ?

Is funding the most powerful steering instrument?

What voluntary action is taken?

Adaptation matters too!



This presentation was based on our
forthcoming chapter

The European Union and its rule creating
force at the European continent for
moving to climate neutrality in 2050



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Thank you & Take care!