



NGO statement: the ESR legislative revision must strengthen rules on national climate action and planning

The Effort Sharing Regulation (ESR) is the EU’s most significant climate regulation, covering 60% of its emissions, and is therefore essential to collective EU efforts to help stop runaway climate change. It is also critical to Member States ownership of – and accountability to citizens for – the transition to a zero emissions society. For these reasons, **we call on you as co-legislators in the revision of the ESR to make significant improvements to the Commission’s proposal**, both to ensure that governments firmly commit to their targets, to bring EU efforts in line with the 1.5C goal of the Paris Agreement and to use it as a vehicle to **strengthen the national planning and governance mechanisms in the Governance Regulation** that are central to meeting the EU’s climate targets. The 5 main improvements needed to the ESR are:

1. **Protect the integrity of the 2030 target.** The cumulatively achieved emissions reductions (i.e. emissions budget) in the ESR sectors vary depending on the design of the trajectory towards the 2030 target and the flexibilities allowed to Member States in achieving those targets.
 - **The trajectory design should be revised** - The Commission’s trajectory sets a far too generous emissions budget. Drawing the trajectory instead from the most recent real emission levels data towards the EU’s new 2030 target would lead to higher cumulative emission reductions between 2021 and 2030. Member States would then be required to comply with these new Annual Emission Allocations (AEA) already from 2021, as emissions projections¹ will be even below this new trajectory.
 - **The loopholes must be repealed** - The ETS & LULUCF flexibility, the Safety and Additional Reserve and the Adjustments inject extra credits into the ESR system and prevent sufficient emissions reductions in the ESR sectors.
 - **The use of flexibilities (banking, borrowing and trading) should be limited** - to avoid a Covid dividend² that would delay or even prevent climate action.

2. **Set processes for strengthening long-term national climate responsibility in both the ESR and Governance Regulation:**

¹ With the measures of the old National Energy and Climate Plans in place.

² Because of Covid, emissions will be well below the trajectory in 2021. With the current rules, in that year Member States could bank all of their unspent emissions allocation and use it for compliance later on. It is crucial to limit banking in 2021, otherwise this surplus would be a “Covid dividend” with which countries would meet their 2030 target while doing the minimum.

- **National targets in the ESR must continue after 2030** - in recognition of the critical role of ensuring clear national responsibility for achieving mitigation in a number of economic sectors, which can be complemented but not simply replaced by EU-level carbon pricing.
- **Compliance cycles for ESR sectors should shift from 10 to 5 years** - so that the next ESR targets would be set for 2035. This is in line with the recent COP26 decision at Glasgow on 5-year common time frames. In fact, the EU's NDC and EU-wide climate targets set in the EU Climate Law should also shift from 10 to 5 years.
- **Amend the Governance Regulation to establish a binding EU process for Member States to adopt national economy-wide climate-neutrality targets** - in order to enable alignment of short-term action with long term goals and to ensure the collective achievement of the EU's new long-term climate neutrality objective. This could for example involve Member States including their proposals for national climate neutrality targets in their updated national Long-Term Strategies (nLTS) combined with a review process in which the Commission would assess whether these add up to collective achievement of the EU-wide goal and propose corrective legislative measures, including adjustments to Member State climate neutrality targets, if they do not.

3. Strengthen the framework for national compliance with the ESR targets:

- **The quality and transparency of the corrective action plans should be improved** - National policies are currently inconsistent with ESR targets, which led many Member States during the previous compliance period to rely on flexibilities - that in three instances were not even sufficient to put them in compliance with their emissions budget.
- **A higher multiplier than the ESR's current one of 1,08 should apply** - if, during the ESR compliance check, a country is found non-compliant. This multiplier effect should set in before the use of flexibilities.
- **Individuals and NGO must be provided with the explicit right of access to national courts** - to seek judicial review for non-compliance with their ESR emissions budget or with acts or omissions set under the Governance Regulation, in line with the Union's commitment under the Aarhus Convention.

4. Bring the Governance Regulation into line with the EU's new climate targets:

- **Re-design National Energy and Climate Plans (NECPs) and national Long-Term Strategies (nLTS)** towards the achievement of the ESR and other climate targets - the substantial changes in the EU's climate objectives for 2030, the new 2050 climate neutrality goal and the content of the Glasgow Climate Pact mean we need a significant upgrade of the Governance regulation in so far as it applies to NECPs and nLTS. The delivery of the ESR targets depends on the quality of these national planning documents, and also of the scrutiny they are given at national and EU levels.
- **Establish a binding EU process for Member States to adopt national economy-wide climate-neutrality targets.** As explained in point 2 above, the Governance Regulation should be amended through revision of the ESR in order to ensure that Member States have national

economy-wide climate neutrality targets, both to facilitate strategic planning and to deliver on the EU's new climate neutrality goal.

- **Require that the Commission updates the EU-level long term strategy ('Clean Planet for All Europeans')** to provide guidance on the changes and policies required for ESR and other sectors after 2030.

- 5. Ensure all sectors covered by the ESR contribute fairly to the overall emissions reduction target.** In the period between 2005 and 2019, all ESR sectors have reduced their emissions, except for the transport and agriculture sectors which have only reduced theirs by less than 2% each (their emissions were even higher in 2019 than in 2010). This points to a gap in the Regulation to drive emissions cuts across all the sectors it covers. Transport emissions are tackled by sectoral legislation (like the CO₂ emission performance standards for vehicles), but agricultural emissions remain under-regulated. To solve this, it should be considered setting in the ESR a minimum threshold for emissions reductions in the agriculture sector at EU-level.

In addition, we ask that **the commonly used term "Effort Sharing Regulation" be abandoned and the Regulation be renamed the 'Climate Action Regulation for Europe' (CARE).** The name we give to legislation matters because it shapes our understanding of and attitudes to its purpose. Renaming the Regulation is crucial to end the negative framing of national climate action as being solely an 'effort', when it is in fact a policy that is both critical to avoiding catastrophe for humankind and that will bring numerous co-benefits.

Finally, we urge you to explore alternative ways to stimulate convergence beyond what the Commission is proposing. Changing the distribution key of national targets would divert political attention away from these much needed changes. Instead, a more stringent trajectory, the introduction of a stimulus mechanism for Member States to overachieve their ESR's 2030 targets and the repeal of the Safety Reserve would be effective to achieve more convergence. Additionally, the inclusion of a process for setting economy-wide climate-neutrality targets would make the gap between some countries' 2030 targets and the required effort over the next decades much more visible and allow for better policy planning.

Transport & Environment (T&E)
Climate Action Network Europe (CAN-E)
European Environmental Bureau (EEB)
World Wide Fund for Nature (WWF)
Centre for Transport and Energy (CDE)
Clean Air Action Group
Deutsche Umwelthilfe (DUH)
Environmental Justice Network Ireland (ENJI)
Inter-Environnement Wallonie (IEW)
Institute for Agriculture and Trade Policy (IATP)
Legambiente - European Policy Office

Genç Düşünce Enstitüsü
Germanwatch
Polish Ecological Club Mazovian Branch
Protect Our Winters Europe (POW)
The Climate Reality Project, Europe (TCRP)
ZERO - Associação Sistema Terrestre Sustentável