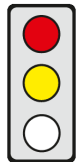


## KEY ISSUES

**Objective of the Regulation:** The “European Climate Law” establishes the objective of “climate neutrality” in the EU by 2050 as well as the assessment of a further tightening of the emission reduction requirements for 2030 from 40% to 50–55%, and the procedure for achieving the objective of “climate neutrality”.

**Affected parties:** Whole economy.



**Pro:** The early development of a long-term EU strategy to reduce greenhouse gas (GHG) emissions may increase planning certainty for companies.

**Contra:** (1) Before the EU establishes the objective of climate neutrality by 2050, it should be able to estimate what impact the necessary reductions in GHGs will have in the EU. A comprehensive impact assessment – particularly in view of the Corona crisis – is therefore imperative.

(2) An expansion of the EU Emissions Trading System (EU ETS) to all sectors, or the creation of a separate Emissions Trading System for sectors not covered by the EU ETS, will allow efficient and cost-effective compliance with EU climate objectives and avoid conflict-prone coordination proceedings.

(3) Empowering the Commission to set out a GHG trajectory for the gradual achievement of the EU 2050 climate objective, by way of delegated acts, is in breach of EU law.

The most important passages in the text are indicated by a line in the margin.

## CONTENT

### Title

**Proposal COM(2020) 80** of 4 March 2020 for a **Regulation** of the European Parliament and of the Council **establishing the framework for achieving climate neutrality (European Climate Law)**

### Brief Summary

#### ► Background

- The UN Climate Agreement concluded in Paris in 2015 [“Paris Agreement”; [cepPolicyBrief 2016-13](#)] provides that
  - the increase in global average temperatures will be limited, in the long term, to well below 2°C – if possible to 1.5°C – as compared with pre-industrial levels [“Paris Climate Targets”; Paris Agreement, Art. 2];
  - the signatories to the Agreement will establish their own measures to limit or reduce their greenhouse gas emissions [“nationally determined contribution” (NDC, “climate contribution”); Paris Agreement, Art. 3];
  - every five years there will be a “global stocktake” of the climate contributions [Paris Agreement, Art. 14].
- Current EU climate policy
  - stipulates, for the purpose of achieving the Paris climate targets at EU level, that EU-wide emissions of greenhouse gas emissions (GHG) must be reduced by 40% by 2030 as compared with 1990 levels [“EU-2030 climate target”; see [cepInput 02/2015](#)];
  - regulates, for the purpose of achieving the EU-2030 climate target, the coordination, regular monitoring and assessment as well as, where applicable, modification of the climate-policy measures of the EU and its Member States by means of the “Governance System for the Energy Union” [Governance Regulation (EU) 2018/1999; see [cepInput 02/2019](#)];
  - specifies the climate-policy measures of the EU and its Member States up until 2030 in EU legislative acts inter alia on the EU Emissions Trading System [EU ETS, see [cepInput 03/2018](#)] and on energy efficiency, renewable energy and CO<sub>2</sub> limits for vehicles [see [cepInput 04/2018](#)].

#### ► Objectives

- As the EU’s long-term “climate contribution” to achieving the Paris climate targets, making Europe the first climate-neutral continent by 2050 will be mandatory at EU level [“EU-2050 climate objective”; p. 1].
  - “Climate neutrality” means that, on balance, GHG emissions and GHG reduction by means of natural “GHG sinks” – such as forests which remove GHGs from the atmosphere and bind them – and technical processes – such as carbon capture and storage – are equal [“net zero GHG emissions”; Recital 1].
- As the current EU climate policy is “only expected to reduce greenhouse gas emissions by 60%” by 2050 as compared with 1990 levels, “additional action needs to be taken” to achieve climate neutrality [p. 2].

- The “European Climate Law” will
  - establish the “irreversible, gradual” reduction of GHG emissions and enhancement of GHG removals by means of GHG sinks by 2050;
  - regulate the review of an increase in the EU 2030 climate target;
  - create planning certainty for companies;
  - enhance the Governance System so that it is geared towards achieving the EU 2050 climate objective.
- ▶ **Mandatory imposition of EU-2050 climate objective of “climate neutrality”**
  - The balancing of GHG emissions and GHG removals at EU level by 2050 at the latest, thus reducing GHG emissions “to net zero” [“climate neutrality”; Art. 2 (1)] is mandatory.
  - To “enable the collective achievement” of the EU-2050 climate objective, the EU and its Member States must take the necessary measures at EU and national level whilst observing “fairness and solidarity” among the Member States [Art. 2 (2)].
- ▶ **Review the increase in the EU 2030 climate target**
  - By September 2020, the Commission will review an increase in the existing EU-2030 climate target in order to “explore options” for reducing GHG emissions “by 50–55% compared with 1990 levels” [Art. 2 (3); Recital 17].
    - The review will be based on a “comprehensive impact assessment” and the analysis of the “integrated national energy and climate plans” of the Member States [Art. 3 Governance Regulation].
    - Where the Commission considers that it is “necessary” to increase the EU-2030 climate target in order to realise the EU-2050 climate objective, it will submit a legislative proposal [Art. 2 (3)].
  - By June 2021, the Commission will assess how the applicable EU climate legislation should be amended in order to achieve a GHG reduction of 50 to 55 % as compared with 1990 levels, and the EU-2050 climate-neutrality objective [Art. 2 (4)].
- ▶ **GHG trajectory 2031–2050 for achieving the EU-2050 climate objective**
  - In order to ensure the irreversible reduction in GHG emissions, the Commission is empowered to set out for the period 2031–2050 a “trajectory for the gradual achievement” of the EU-2050 climate objective by way of delegated acts [“GHG trajectory 2031–2050”; Art. 3 (1) et seq. in conjunction with Art. 9 (2); Art. 290 TFEU].
  - In setting out the GHG trajectory 2031–2050, the Commission must consider the following aspects: the “economic efficiency” of climate measures; the EU’s international competitiveness; energy costs (“energy affordability”); security of the energy supply; “investment needs and opportunities” regarding climate measures; climate policy in third countries; the most recent scientific evidence [Art. 3 (3)].
  - The Commission will review the GHG trajectory 2031–2050 every five years, at the latest within six months after each global stocktake of climate protection contributions under the Paris Agreement [Art. 3 (1)].
- ▶ **Assessment of the EU-wide progress and EU measures**
  - By September 2023, and every 5 years thereafter, the Commission will, as part of the Governance System, make an assessment based on the GHG trajectory 2031–2050
    - of the EU-wide “collective progress made by all Member States” towards achieving the EU-2050 climate objective [Art. 5 (1)];
    - of the “consistency” of EU measures with the EU-2050 climate objective [Art. 5 (2)].
  - If EU-wide progress and the EU measures are not adequate to ensure achievement of the EU-2050 climate objective, the Commission will take “the necessary measures” including legislative proposals [Art. 5 (3)].
  - The Commission must examine these measures, by way of impact assessments, as to whether they are consistent with the EU-2050 climate objective [Art. 5 (4)].
- ▶ **Assessment of national measures**
  - By September 2023, and every 5 years thereafter, the Commission will, as part of the Governance System, carry out an assessment, based on the GHG trajectory 2031–2050, of the consistency of national measures with the EU-2050 climate objective, with consideration of the EU-wide “collective progress of all Member States” [Art. 6 (1)].
  - If the national measures of a Member State are not consistent with the GHG trajectory 2031–2050, the Commission may issue a recommendation to that Member State [Art. 6 (2)].
  - The Member State must (Art. 6 (3))
    - “take due account” of the recommendation and set out how it has done so, or
    - give reasons why it has not addressed the recommendation.

## Main Changes to the Status Quo

- ▶ New: the EU-2050 objective of climate neutrality, mandatory at EU level.
- ▶ Until now, EU-wide GHG emissions had to be reduced by 40% by 2030 as compared with 1990 levels. Now, by September 2020, the Commission will assess based on a “comprehensive impact assessment” whether GHG emissions have to be reduced by 50–55% by 2030 as compared with 1990 levels.
- ▶ New: empowerment of the Commission to set out for the period 2031–2050 a “trajectory for the gradual achievement” of the EU-2050 climate objective, by way of “delegated acts”.
- ▶ New: Member States whose measures are not “consistent” with the EU-2050 climate objective must “take due account” of recommendations from the Commission.

## Statement on Subsidiarity by the Commission

Climate change is a trans-boundary problem which cannot be solved by national action alone. Measures to combat climate change must be agreed at EU and if possible even global level [p. 4].

## Policy Context

The Commission set out its “vision” for a “climate-neutral economy” by 2050 in November 2018 so that the EU could develop an “ambitious strategy” for the long-term reduction of GHG emissions in accordance with the Paris Agreement [Communication COM(2018) 773; see [cepPolicyBrief No. 2019-5](#)]. In December 2019, in its “European Green Deal”, the Commission announced that it would be proposing the “first European ‘Climate Law’” which would establish climate neutrality as a mandatory long-term EU-2050 climate objective and would assess whether to raise the EU-2030 climate target [Communication COM(2019) 640; see [cepAdhoc](#)].

The European Parliament approved the objective of EU climate neutrality by 2050 [Resolution of 14 March 2019]. Although the European Council basically “endorsed” the objective of EU climate neutrality by 2050 [Conclusions of 12 December 2019], at the same time, in view of Poland’s opposition, it also expressly asserted that “[o]ne Member State, at this stage, cannot commit to implement this objective as far as it is concerned”. The European Council therefore wants to come back to this question in June 2020.

## Legislative Procedure

4 March 2020	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force.

## Options for Influencing the Political Process

Directorates General:	DG Climate (leading)
Committees of the European Parliament:	Environment (leading), Rapporteur: Jytte Guteland (S&D Group, SE)
Federal Ministries:	Environment (leading)
Committees of the German Bundestag:	Environment (leading)
Decision-making mode in the Council:	Qualified majority (acceptance by 55% of Member States which make up 65% of the EU population)

## Formalities

Legal competence:	Art. 192 TFEU (Climate change)
Type of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

## ASSESSMENT

### Economic Impact Assessment

**The early development and publication of a long-term – beyond 2030 – EU strategy to reduce greenhouse gases (GHG)** is appropriate not only due to its international obligations under the Paris Agreement, but also because it **may** in principle also **increase planning certainty for companies**. In order to make forward-looking investment decisions, companies require reliable information on what EU climate policy is going to look like in the future. **Before the EU establishes the mandatory objective of climate neutrality by 2050, however, it should be able to estimate the concrete impact that the required GHG reductions will have on citizens and companies in the EU** (see [cepPolicyBrief No. 2019-5](#)). **Thus, it is imperative to first carry out a comprehensive impact assessment – also particularly in view**

of the probably severe economic consequences of the **Corona crisis**. Thus, first and foremost, **a comprehensive impact assessment, particularly in view of the probably severe economic consequences of the Corona crisis is imperative**. This is rightly envisaged for the assessment of an increase in the EU-2030 climate target but not for the establishment of the mandatory EU-2050 climate objective.

In view of the lack of knowledge and major uncertainty regarding long-term economic and technological developments, it is appropriate that the Regulation – contrary to the expectations which its title “European Climate Law” has produced among some sections of the public – does not itself lay down any climate policy measures for the EU and its Member States for the period 2031-2050, but essentially only regulates the procedure for their coordination, regular monitoring and assessment as well as, where required, modification according to the Governance System.

The continued fragmentation of EU climate policy – with its various instruments for the different sectors – prevents the systematic detection of the best ways to reduce GHGs in the EU across all sectors and national borders. As of no later than 2031, therefore, the reduction of GHG emissions should primarily take place by means of trans-sectoral and transnational emissions trading systems within which there is uniform pricing for GHG emissions (see [cepPolicyBrief No. 2019-5](#)). **An expansion of the EU Emissions Trading System (EU ETS) to all sectors, or the creation of a separate Emissions Trading System for sectors not so far covered by the EU ETS, will allow efficient and cost-effective achievement of EU climate objectives** (see [cepInput 01/2017](#); [cepStudy Effective Carbon Pricing](#)). Thus, piecemeal, individual regulatory measures and subsidies can be dispensed with and conflict-prone coordination proceedings between the Commission and the Member States under the Governance System are avoided.

## Legal Assessment

### Legislative Competency

Unproblematic. The EU is empowered to issue measures to protect the climate (Art. 191 et seq. TFEU).

### Subsidiarity

Unproblematic. Climate change is not only a cross-border problem but a global one which cannot be solved by individual countries. EU action is therefore justified.

### Compatibility with EU Law in other respects

**Establishing EU climate objectives for reducing GHG emissions by 2030 and creating climate neutrality by 2050, that are only binding at EU level and are not further defined by means of binding national targets, is not only unrealistic but also inconsistent in terms of policy and the law** (see [cepInput 02/2019](#)). On the one hand – in line with the principle of subsidiarity [Art. 5 TEU] – climate policy measures of the EU and its Member States can only at EU level be coordinated, and where necessary legally enforced, in a way that self-imposed targets can be achieved. On the other hand, however, due to a lack of binding national requirements, the Commission has no possibility of forcing the Member States to carry out the measures that are necessary to achieve these objectives.

In this respect, attempts to achieve the EU climate objectives for 2030 and 2050 by means of conflict-prone coordination proceedings within the framework of the Governance System, are no more than a procedural stopgap solution. It is doubtful whether the Commission’s non-legally-binding recommendations [Art. 288 AEUV] to the Member States and the weak requirements for them to “take due account” of recommendations from the Commission and to provide reasons for not doing so, will help to achieve the objectives. Ultimately, these provisions are simply an expression of the major conflicts between the Member States regarding the nature and extent of action on climate policy. There are already signs that these conflicts will be further amplified by the economic consequences of the Corona crisis.

**Empowering the Commission to set out a GHG trajectory for the period 2031-2050 for the gradual achievement of the EU 2050 climate objective, by way of delegated acts, is in breach of EU law** because delegated acts can only contain “non-essential provisions” [Art. 290 (1) TFEU]. This is clearly not the case for the requirement of a GHG trajectory 2031-2050 as compliance with this provision is the standard for assessing EU-wide “collective progress of all Member States” and the “consistency” of EU and national measures with the EU-2050 climate objective. For reasons of democratic legitimacy, such an “essential” provision cannot be laid down by the Commission but must be passed by the EU legislative itself – the European Parliament and the Council [Art. 290 TFEU].

## Conclusion

The early development of a long-term EU strategy to reduce greenhouse gases (GHG) may increase planning certainty for companies. Before the EU establishes the objective of climate neutrality by 2050, it should be able to estimate what impact the necessary reductions in GHGs will have in the EU. Thus, a comprehensive impact assessment, particularly in view of the Corona crisis is imperative. Empowering the Commission to set out a GHG trajectory for the gradual achievement of the EU 2050 climate objective, by way of delegated acts, is in breach of EU law.