



Eduskunnan maa- ja metsätalousvaliokunta

19.5.2020

Asia: WWF Suomen lausunto valtioneuvoston U-kirjelmästä (U 11/2020 vp) komission ehdotuksesta Euroopan parlamentin ja neuvoston asetukseksi puitteiden vahvistamisesta ilmastoneutraaliuden saavuttamiseksi ja asetuksen (EU) 2018/1999 muuttamisesta (eurooppalainen ilmastolaki)

WWF Suomi kiittää lausuntopyynnöstä ja toteaa lausuntonaan seuraavaa.

Kuten valtioneuvoston kannassakin todetaan, on hyvä, että lakiehdotuksen mukaan EU:n hiilineutraaliustavoite on sitova. Hyvää on myös se, että sekä EU:n että jäsenmaiden ilmastotoimien etenemistä tarkasteltaisiin viiden vuoden välein, jotta kurssia voidaan tarvittaessa korjata. Mutta EU:n ilmastotavoitteiden pitää olla linjassa ilmastotieteen kanssa ja tämän vuosikymmenen teot ovat ratkaisevia tulevaisuuden kannalta. Tämän suhteen komission ehdotuksessa on suuria puutteita.

On tärkeää muistaa, että hiilineutraalius ei ole lopullinen tavoite, ei EU:ssa eikä Suomessa. Tärkeää on merkittävästi negatiivisten päästöjen puolelle pääseminen. Vuoden 2050 jälkeen EU:n nettopäästöjen tulisi olla negatiiviset, mitä ei komission ehdotuksessa mainita. Ilmastolakiehdotus ei myöskään velvoita komissiota valmistelevaan EU:lle pitkän tähtäimen strategiaa, joka olisi linjassa hiilineutraaliustavoitteen ja vuoden 2030 päästövähennystavoitteen kanssa, ja jota tulisi päivittää viiden vuoden välein.

Valtioneuvoston kannassa korostetaan tarvetta rajoittaa ilmastomuutos 1,5 celsiusasteeseen. Samalla todetaan, että komission ehdotus olisi linjassa Pariisin sopimuksen velvoitteiden kanssa. Ilmastolaissa mainitut päästövähennysprosentit eivät kuitenkaan ole linjassa ilmastotieteen ja 1,5 asteen lämpenemisrajan kanssa ja ovat näin ollen riittämättömiä.

Jotta EU kantaisi oikeudenmukaisen vastuunsa ilmaston lämpenemisen rajoittamisesta 1,5 asteeseen, tavoitteen pitäisi olla vähintään 65 prosenttia. EU:n on hyvin vaikea vaatia muiltakaan mailta parempia toimia, jos ei EU itse tee sitä, mihin on Pariisin sopimuksessa sitoutunut. Suomen tulisi selkeästi vaatia EU:lta riittävien ilmastotieteen mukaisten päästövähennystavoitteiden asettamista. Vaikka YK:n seuraavaa ilmastokokousta on lykätty ensi vuoden puolelle, sen ei tule vaikuttaa EU:n vuoden 2030 ilmastotavoitteen kiristämisen aikatauluun. Aivan kuten Suomi on vaatinut, asiassa tulee edetä ripeästi.

Uskottavaan ilmastopolitiikkaan kuuluu ja hiilineutraaliuden saavuttamiseksi tarvitaan riittävä taso sekä päästövähennyksille että luonnon hiilinieluille. Päästöt ja nielut eivät ole suoraan vaihdettavia, joten EU:n ilmastolaissa tuleekin olla ilmastotieteen mukaisten päästövähennysten lisäksi oma erillinen tavoitteensa hiilinieluille (sama pätee tietysti myös parhaillaan päivitettävänä olevaan Suomen ilmastolakiin). Valtioneuvoston kannassa käsitellään myös neutraaliustavoitteiden määrittelyä. Ilmastopaneelilla on tähän selkeä näkemys¹, johon

¹ https://www.ilmastopaneeli.fi/wp-content/uploads/2020/03/Hiilineutraalius_ilmastopaneeli_2019_FINAL.pdf



Suomenkin kannan tulisi nojata: *Jos halutaan olla varmalla pohjalla hiilineutraalisuuden saavuttamisessa, niin LULUCF-nettonielun käytössä tulisi ottaa huomioon epävarmuutta kuvaava korjauskerroin eli LULUCF-nettonielun pitäisi olla selvästi suurempi kuin jäljellä olevien päästöjen hiilineutraaliuden saavuttamisessa. Tällaiselle varmuuskertoimelle ei ole selkää yleisarviota ja sen pitäisi heijastaa aina tarkasteltavan maantieteellisen alueen LULUCF-arvion ja nielujen pysyvyyden epävarmuutta."*

Olennaista kokonaiskuvan kannalta olisi ollut se, että EU:n kaikki politiikkatoimet olisivat mahdollisimman nopeasti linjassa ilmastotavoitteiden kanssa, muuten ei riittäviä toimenpiteitä saada aikaiseksi. Nyt lakiehdotus velvoittaa tarkastelemaan tätä vasta vuoden 2030 jälkeen, mikä on auttamattoman myöhään. Esimerkiksi nykyiset bioenergialinjaukset ja maakaasuinfrastruktuuriin investointi ovat ristiriidassa ilmastotavoitteiden kanssa.

Ilmaston lämpenemistä ei saada rajattua, jos fossiilisista polttoaineista ei luovuta. Fossiilisista polttoaineista luopumista pitää vauhdittaa sillä, ettei niiden käyttöä enää tueta eikä niihin investoida. Tämän tulisi näkyä myös ilmastolaissa. Eli kyse on hiilestä, öljystä ja kaasusta, Suomen kohdalla tietenkin myös turpeesta.

Lisäksi EU:lla pitäisi olla oma riippumaton tieteellinen neuvoa-antava Ilmastopaneelin kaltainen toimielin, jonka avulla voidaan varmistaa se, että EU:n ilmastotavoitteet ja -toimet ovat ilmastotieteen mukaisia ja tarvittavalla tasolla.

Liitteenä WWF:n tarkempi analyysi komission ilmastolakiehdotuksesta, jossa punnitaan yllä olevien päähuomioiden lisäksi vielä tarkemmin eri kohtien vahvuuksia ja heikkouksia ja annetaan parannusehdotuksia.

Maailman Luonnon Säätiö (WWF)
Suomen rahasto

A handwritten signature in black ink, appearing to read "Jari Luukkonen".

Jari Luukkonen
Suojelujohtaja

A handwritten signature in blue ink, appearing to read "Mia Rahunen".

Mia Rahunen
Ilmastoasiantuntija

Liite 1: The EU climate law - WWF's initial assessment of the European Commission's proposal
https://d2ouvy59p0dg6k.cloudfront.net/downloads/wwf_briefing_paper_eu_climate_law_inital_assessment_of_european_commission_proposal.pdf



BRIEFING
PAPER

MARCH
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The EU climate law

WWF's initial assessment of the European Commission's proposal

The draft EU climate law that has been [proposed](#) by the European Commission is a long overdue step forward in implementing the Paris Agreement, and would constitute a significant improvement in EU climate governance.

However it is not commensurate with the scale of the climate emergency we face and omits features widely understood to be essential to the effectiveness of climate laws.

This briefing paper provides a detailed assessment of the Commission's proposal and discusses what the European Parliament and the Council of Ministers should change or add during the co-decision process.

SUMMARY

The draft EU climate law that has been [proposed](#) by the European Commission is a long overdue step forward in implementing the Paris Agreement, and would constitute a significant improvement in EU climate governance. It would enshrine in legislation a legally binding objective of reaching climate neutrality by 2050, and require the Commission to review the EU's 2030 emissions reduction target and associated legislation in that light – including the need for changes to Member State 2030 targets.

Beyond 2030 it would empower the Commission to set an EU trajectory toward the climate neutral goal – although the Commission says that it does not intend this trajectory to be the means by which the EU will set future targets, for example for 2040. The law imposes an obligation on the Commission to review the trajectory every five years – and to propose or recommend changes to any policies that are inconsistent with either the trajectory or the long term target. The proposed climate law would therefore set a predictable long-term policy direction and go some way toward ensuring that nearer-term policies were consistent with climate goals (the principle of 'backcasting'). It would also provide a clear long term signal to investors and set a powerful example to the EU's international partners.

However the draft law contains a number of important omissions, particularly as regards the science and the nearer term – something that has led to it being branded "[surrender](#)" by youth climate activists. For example, while it would require the European Commission to consider increasing the EU's 40% emissions reduction target for 2030, and to adjusting EU climate legislation accordingly, it defers the former to September 2020 (and implies any increase should be to no more than 50-55%) and defers proposals on the latter to June 2021. It therefore falls short both on ambition (WWF is calling for a 65% reduction) and timing (an NDC increase well before COP26) compared to what is required. It is also far from clear that it will prompt any changes in the next decade to EU policies that actively undermine climate goals, for example the billions spent supporting gas infrastructure, unsustainable levels of livestock production and types of bioenergy that increase emissions compared to fossil fuels.

The draft fails to make provision for a number of other features that [WWF and Greenpeace have called for](#) and that are widely understood to be essential to the effectiveness of climate laws. These include the creation of an independent EU level scientific/expert advisory body to provide oversight and scrutiny of the Commission, provisions on access to climate justice for citizens, a requirement that the Commission develop (and update every five years) a proper EU long term strategy, and a separate 2030 target for carbon dioxide removal.

The draft law will now be discussed by the European Parliament and the Council of Ministers, both of which are likely to table significant amendments. Given the coronavirus epidemic the timetable for that process – and for any debate on the subject of the 2030 target amongst EU leaders – is unclear.

DETAIL

The European Commission has just [published](#) its long-awaited proposal for an EU climate law, the flagship policy of the [European Green Deal](#) and something that Commission President Ursula von der Leyen had committed to presenting within her first 100 days in office. This document sets out what the draft law contains, how it compares with best practice in the design of climate laws adopted in other countries, and how it should be improved upon as it goes through the ‘co-decision’ negotiations in the European Parliament and the Council of Ministers. The assessment is grouped under the following headings, which refer to the relevant articles in the draft law:

- 1) The climate neutrality target (art. 1 and 2)
- 2) The 2030 emissions reduction target (art. 2(3))
- 3) The post-2030 trajectory (art. 3 and 9)
- 4) Assessment and reporting progress, and remedial action (art. 5 and 6)
- 5) Policy consistency for climate (art. 5(4), art. 2(4), art. 2(2))
- 6) Independent scientific/expert scrutiny and oversight of the Commission
- 7) Adaptation (art. 4)
- 8) Public participation and access to justice (art. 8)
- 9) What else is missing? (provisions on carbon dioxide removal, a long term strategy)

1) The climate neutrality target (art. 1 and 2)

What the EU climate law says

The subject matter of the Commission’s legislative proposal is to establish a “*framework for the irreversible and gradual reduction of greenhouse gas emissions and enhancement of removals by natural or other sinks in the Union*”. Climate neutrality by 2050 is deemed to be “*in pursuit of the long-term temperature goal set out in Article 2 of the Paris Agreement*”. The proposal states that “*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 binding climate-neutrality objective is to be achieved collectively.

In addition, the text includes a general obligation according to which “*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... taking into account the importance of promoting fairness and solidarity among Member States*”.

WWF assessment

By December 2019, the European Council had already endorsed the objective of reaching [climate-neutrality by 2050](#)¹. Enshrining this objective in law is nonetheless an important step forward as it clarifies and makes mandatory the long term direction for the Union and commits all MS and the EU’s institutions to achieving it. It also provides a strong signal to businesses, investors and policy makers at national, European and international levels.

¹ The EUCO conclusions note that one Member State (understood to be Poland): “at this stage, cannot commit to implement this objective as far as it is concerned”.

The long term goal of climate neutrality in the Union by 2050 is described as being “*in pursuit of the long-term temperature goal set out in Article 2 of the Paris Agreement*”. However there are two temperature goals in the Paris Agreement and the EU only reaching climate neutrality by 2050 is not consistent with its obligation under the Paris Agreement to make efforts to achieve the lower of them, namely 1.5°C. Similarly, given that staying below 1.5°C and avoiding multiple potential tipping points requires very rapid (rather than “*gradual*”) cuts in emissions, the subject matter and scope of the law should focus more clearly on accelerating climate action before 2030. Article 1 of the climate law should include specific reference to the 1.5°C goal and to the principle of equity in the Paris Agreement, should commit the EU to reaching zero net emissions by 2040, and should provide for this target to be reviewed every five years in future.

The reference to a balance between “*Union-wide emissions and removals*” would seem to preclude the use of international offsets, which is welcome. However it is not made explicit whether emissions from international aviation and shipping are included. It is assumed that they are not, which makes this a key weakness in the legislation that must be resolved if it is to be considered consistent with the Paris Agreement. The reference to “*natural and other sinks*” meanwhile can be understood as a desire to leave open the option of more technological options such as BECCS (which WWF does not rule out, but at this stage [does not endorse either](#), on the grounds that the balance between costs and benefits, and the potential risks, are not yet clear).

Finally, and as regards the collective obligation to achieve the climate neutrality objective, it is not clear exactly what the legal effects of this would be and whether it could be relied upon by the European Commission, Parliament or Member States to challenge failures to act (or inconsistent laws – see below) at EU or national level. While the climate law does not impose obligations directly on individual countries, it’s possible that the EU Court of Justice might later interpret it to mean that, for example, it requires Member States to desist from action or inaction that would materially impact on the Union’s capacity to achieve the 2050 target. These and the other issues above are all ones on which clarification should be provided during the negotiations between the European Parliament and Council.

2) The 2030 emissions reduction target (art. 2(3))

What the climate law says

The Commission’s legislative proposal would require the Commission to review – by September 2020 – the EU’s 2030 emissions reduction target and “explore options” for increasing this from 40% compared to 1990 levels to 50% or 55%. The proposal does not actually compel the Commission to propose an increase in the 2030 target or to publish its review, but the Commission has stated publicly that it will propose an amendment to the EU climate law to include a new 2030 target – together with an impact assessment – in September.

WWF assessment

The issue of the EU’s 2030 target emissions reduction target is likely to be one of the most hard fought in the climate law debate. Although the proposal does not yet include the target, the fact that it will do so in future is welcome, as this should in principle mean that it and any other potential intermediate targets will be set through the ordinary legislative process (qualified majority voting in the Council of Ministers

and co-decision with the European Parliament) rather than by unanimity in the European Council, which is the current practice.

The law creates the impression that the 2030 target will be reviewed in light of the climate neutrality goal – i.e. an example of policy ‘backcasting’ from the longer to the nearer term, which is a fundamental prerequisite for effective long term planning and delivery of the Paris Agreement’s objectives. But in reality the scope for backcasting is inherently constrained, because the 2030 target will be raised to no more than 50-55%. That range is not something that has been derived from any impact assessment of how best (or how cost effectively) to reach the EU’s chosen 2050 climate neutrality goal, or of what would be consistent with 1.5°C – i.e. it’s not based on genuine backcasting or the scientific evidence.

The text of the law should therefore be amended to require revision of the 2030 target not just in light of the climate neutrality goal but also the 1.5°C target – and potentially other factors, such as those listed in article 3 on the post-2030 trajectory (which should start in 2021 not 2030 – see below). As the [UNEP Emissions Gap Report 2019](#) makes clear, global emissions need to be cut by 7.6% per year, starting now, in order to limit global warming to 1.5°C. For the EU – even without taking into account equity-related issues such as per capita emissions or responsibility for historical emissions – this means a cut of 68% by 2030 relative to 1990 levels. WWF’s position is that the EU should be aiming to cut emissions by 2030 by at least 65%, and to review this target following the global stocktake in 2023 (see below).

Given the need to increase the EU’s NDC well ahead of the COP 26 deadline, and ideally by the time of the EU-China summit, the timing set out in the climate law for the 2030 target increase is also inadequate. While by September the European Parliament may have voted to include a new 2030 climate target in the law, most likely at a level of 55%, the trilogue negotiations with the Council and Commission seem unlikely to be finalised before the COP, and this means that the European Council remains the only option for an early increase. EU leaders should therefore start discussing the issue as soon as possible, but if the Commission’s impact assessment isn’t published until September, they are unlikely to be able to agree on an NDC increase in time, or to influence international partners ahead of the summit. [12 EU Member States](#) have warned against such a delay to the impact assessment and have called on the Commission to bring forward publication to June 2020 at the latest.

Finally, while the law would require the Commission to review the post-2030 trajectory (see below) every five years, there is no suggestion that the current ten-year cycle of climate and energy legislation will change beyond 2030. And so the expectation would be that the next EU emissions target (and NDC) will be proposed by the Commission for 2040, not 2035. This is something that it would be helpful for the Parliament and Council to clarify in the legislation – in a way consistent with the five yearly cycle in the Paris Agreement.

3) The post-2030 trajectory (art. 3 and 9)

What the climate law says

For the period between 2030 and 2050, the climate law would give the European Commission delegated powers to set a trajectory for the EU as a whole, starting from the 2030 target (which presumably will by then have been increased to either 50 or 55%) and ending at climate neutrality in 2050. In setting the trajectory, the European

Commission would be required by the law to “*consider*” a number of factors, including cost-effectiveness, competitiveness, solidarity between Member States, the need to ensure a just and socially fair transition and, finally, the scientific evidence.

The trajectory would be adopted by a delegated act (art. 9) – legally-binding documents on which the Commission is obliged to carry out a four-week public consultation and which are deemed to enter into force within two months if not rejected by an absolute majority in the European Parliament (a majority of all MEPs) or a qualified majority in the Council. The trajectory would be reviewed every five years, within six months of each global stocktake under the Paris Agreement.

WWF assessment

The alignment of the review of the post-2030 trajectory with the five yearly global stocktake is welcome. As is the principle that the trajectory should be based on objective evidence and not dependent on political unanimity in the European Council. Given that Member States have collectively endorsed the climate neutrality goal, it is reasonable to argue that decision making on the trajectory towards it (including the 2030 target) become a less politicised process, and thereby involve a higher degree of efficiency and certainty.

Although this is not clear from the Commission’s proposal, the Commission does not intend the post-2030 trajectory to be the means of setting future EU targets, for example for 2040 (see above). Instead it is intended to provide a benchmark for the Commission to use in assessing EU and Member State progress, as provided for in Articles 4 and 5 (see below) – and it would be the trajectory that would be amended if legislators subsequently set a post-2030 target that were not on the line it established. However the trajectory would clearly send a signal as to what the Commission thinks such post-2030 targets should be, and will therefore be (and indeed is already) politically contentious.

For example although the proposed delegated act process would give the European Parliament – for the first time – a formal role in decisions relating to the EU’s future emissions reduction targets, and thereby enhance democratic control of the process, the conservative EPP group have already expressed their opposition. Other groups may also have concerns, for example because the delegation would present Parliament and Council with a binary decision on whether to approve or reject, rather than opening up the issue for democratic debate and hence political buy-in. Six Member States in the Council have criticised the proposed approach – despite Executive Vice-President of the Commission Timmermans hinting that a full impact assessment would be involved.

The very legality of the proposed delegation might even be challenged, since the trajectory is likely to be an influential part of EU climate policy and Article 290 of the Treaty on the Functioning of the European Union states that: “*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*”. Given the above there is a very real possibility therefore that the delegation will be deleted from the proposal by the Parliament and/or Council, perhaps to be replaced with an approach based on the ordinary legislative procedure. This might be no bad thing given that:

It is far from clear that the European Commission – which operates in a fundamentally political policy context – would set a trajectory that strongly reflected the requirements of science. Prior to the adoption of the delegated act that set the Union trajectory, the Commission would be required to consult experts designated by

Member States (art. 9), but there are no requirements as regards the expertise of these experts, any potential conflicts of interest they may have, or the need for them to consider the interests of the EU in meeting the 2050 target rather than simply the national interest. There is also no requirement that the advice provided be published. For these reasons, and in common with other features of the law, there is a strong argument for the advice and scrutiny that would be provided by an independent scientific/expert advisory body (see below).

As regards the factors listed in Article 3 to be considered by the Commission when setting the trajectory, it would be welcome if certain of these were explicitly prioritised, rather than simply being listed as one of a number of potentially conflicting factors to be considered. In particular, the factors relating to science should be specifically prioritised for consideration by the Commission. Point f) in the list of factors (“*the need to ensure environmental effectiveness and progression over time*”) should also be amended to make clear what it means (a charitable interpretation might be that this is a commitment only to tighten the trajectory in future not weaken it, but if so then that should be made explicit).

Finally, the draft law does not specify the date by which the trajectory would need to be adopted or enter into force – despite a first review of progress against the trajectory being foreseen for September 2023. And there is no explanation of why the trajectory only starts in 2030. It would be more logical (and desirable – particularly given its use in assessing progress and policy consistency – see sections 4 and 5 below) for it to start in 2021, and for the 2030 emissions target to be derived from it, taking full account of the science and the cost effectiveness of early action, rather than being set separately as a largely political decision (the Commission is carrying out an impact assessment on the 2030 target but has already excluded any increase higher than 55%).

4) Assessment and reporting progress, and remedial action (art. 5 and 6)

What the EU climate law says

For the purposes of this document the assessment of *progress* against targets (and any remedial action needed to address deficiencies, whether at EU or national level) is distinguished from the *consistency* of EU or national policies with those targets. The two issues are somewhat blurred, and both are addressed in Articles 5 and 6, but the assessment of progress and remedial action (this section) is here separated from the assessment of policy consistency (the section below).

As regards progress by the EU as a whole (Article 5 paragraphs 1 and 3) the climate law requires that by 30 September 2023, and every 5 years thereafter, the Commission assess the collective progress made by all Member States towards “*the achievement of the climate-neutrality objective as expressed by the trajectory*”, and the collective progress made by all Member States on adaptation, and report on those matters to the European Parliament and the Council. Where it finds that “*progress towards either the climate-neutrality objective or on adaptation...is insufficient*”, the Commission “*shall take the necessary measures in accordance with the Treaties*” (this could of course include changes to EU-level policies, something discussed in the section below on policy consistency).

As regards progress by individual Member States (Article 6), the draft law says that the Commission will assess, to the same schedule as for progress by the EU as a whole, and on the basis of the National Energy and Climate Plans (NECPs) and

biennial progress reports prescribed by the Governance Regulation, whether national measures are consistent with the climate neutrality objective, as expressed by the trajectory, and adequate in relation to progress on adaptation, and to report on its conclusions in that year's State of the Energy Union Report. Where the Commission is not satisfied (taking "*due consideration of the collective progress*" by the EU as a whole) it has the option to issue recommendations. Member States must then within a year "*take due account of the recommendation in a spirit of solidarity between Member States and the Union and between Member States*" or explain why they have not done so.

WWF assessment

It is welcome that the assessment of EU progress is aligned with the five-year timescale of the Paris Agreement. But progress should be assessed and reported on not just in relation to climate neutrality in 2050 and a trajectory starting in 2030, but also in relation to the 2030 target itself (or ideally a trajectory starting in 2021 – see above). While there exists detailed climate and energy legislation covering the pre-2030 period, it is important that the pre-2030 process be integrated into the journey towards 2050, and not function as a separate climate governance regime. It is also curious in the proposed climate law that while EU *progress* is to be assessed in relation to both the 2050 goal and the trajectory (Art. 5.1), remedial *action* (Art. 5.3) is only to be taken in relation to the former – the 2050 goal. It is not clear what the precise legal implications of this difference may be – if indeed it is intentional.

As regards the national level, it is surprising and a cause for serious concern that there is reference to the NECPs but not to the national Long Term Strategies (LTSs). And it is not clear how the approach set out in the climate law, based on a post-2030 trajectory and non-binding 'recommendations' to Member States, relates to the pre-2030 approach, which is based on the ETS and binding national targets under the Climate Action and LULUCF Regulations. While the Commission does not intend the trajectory and recommendations approach to replace the setting and enforcement of binding national targets, or to replace climate and energy legislation adopted through the ordinary legislative procedure, it would be helpful if the climate law made this explicit.

More generally, it is clear that the proposed framework for assessing progress and taking remedial action depends on the European Commission's own political judgement, both as regards the efficacy of its own EU-level measures and as regards the performance of EU Member States. This is therefore another area in which the existence of an independent EU level scientific/expert advisory body (see below) would provide essential challenge to and scrutiny of the Commission, and facilitate it being held to account in the exercise of its powers and obligations. Indeed, it is highly unlikely that the Parliament and Member States will agree to cede additional powers to the Commission without it being subject to greater accountability – nor should they.

5) Policy consistency for climate (art. 2(2), 2(4) and 5(2-4))

What the EU climate law says

The law proposes to introduce a mandatory process of climate policy backcasting from the 2050 objective and creates a mechanism for assessing policy consistency, things which are in line with best practice at national level and welcomed in principle as significant advances in EU climate governance. But there are important concerns

that need to be resolved about the way in which the backcasting process is constrained, and the traction that the consistency mechanism will have.

With regards to the consistency of EU level policies with climate objectives, the climate law proposes a number of different approaches. Firstly, as discussed above, it proposes a review of the EU's 2030 emissions reduction target.

Secondly, the European Commission has proposed to make binding (in Art. 2.4) its political commitment in the Green Deal communication to assess by 30 June 2021 *“how the Union legislation implementing the Union's 2030 target would need to be amended in order to enable the achievement of 50 to 55 % emission reductions compared to 1990 and to achieve the climate-neutrality-objective”*. Although the law does not specify which legislation it may be necessary to amend, the Commission's [inception impact assessment](#) for the 2030 target increase suggests that this could include the ETS, Climate Action and LULUCF Regulations, the Energy Efficiency, Renewable Energy and Energy Taxation Directives and the CO₂ emissions performance standards for cars and vans. However the Commission is only required to 'consider' taking *“the necessary measures, including the adoption of legislative proposals, in accordance with the Treaties”*.

Thirdly, and in some ways more significantly, the climate law (in Articles 5.1 and 5.3) would require the Commission to assess, by 30 June 2023 and every five years thereafter, whether (existing) EU measures were consistent with the climate neutrality objective, as expressed by the trajectory (Art. 5.1). And where they were not consistent with the climate neutrality objective or with progress towards it (Art. 5.3) to *“take the necessary measures in accordance with the Treaties”*, at the same time as the five-yearly review of the trajectory (i.e. six months after each global stocktake). This could theoretically include changes to pre-2030 policies, for example on agriculture, but the fact that the trajectory to climate neutrality starts in 2030 not 2021 unfortunately makes this less likely. As with the case of progress and remedial action (see above) it is curious that the trajectory is mentioned in Art. 5.1 but not in Art. 5.3.

A fourth form of consistency check (set out in Art. 5(4)) is that any draft measure or legislative proposal must be assessed by the Commission in light of the climate neutrality objective, as expressed by the trajectory. Unlike in the other cases described above the analysis must in this case be made public at the time of adoption.

As regards the consistency of national level measures with climate targets, the Commission is required to conduct a consistency check and to report on that in the relevant State of the Energy Union Report. Once again, the Commission is not obliged to publish this assessment. Instead it retains a discretion to issue recommendations to the Member State in question – recommendations that must however then be published.

More generally, and as mentioned above, article 2(2) requires the *“the relevant Union institutions and the Member States [to] take the necessary measures at Union and national level respectively, to enable the collective achievement of the climate-neutrality objective”*.

WWF assessment

A key test – perhaps the acid test – of the EU climate law is whether it has a material impact on policy development in other areas. Given that the transition to climate neutrality (zero net emissions) will involve far-reaching changes in almost every

sector of the economy, it is essential that the EU climate law have sufficient traction to ensure policy consistency for climate at EU and national levels. This means the alignment of sectoral policies with climate goals, or, at the very least, a situation in which EU and national policies do not actively undermine their achievement.

Ensuring this policy consistency is one of the most important functions of long-term climate laws and is one of the central reasons for their adoption.

The draft EU climate law proposed by the Commission contains a number of welcome provisions in this regard, notably the fact that it covers all of the EU *acquis*, not just legislation relating directly to climate and energy, and the requirement on the Commission to address any inconsistencies identified. The issues that are inadequately addressed in the proposal, or not clear and in need of clarification by Parliament and Council, include the following:

- The review of the 2030 emissions reduction target is inherently constrained, and not based on the science (this is discussed in more detail in section 2) above).
- The concept of ‘consistency’, which is very loosely defined, and what it is measured against. Assessing the consistency of policies with the 2050 climate neutrality target alone could result in very different conclusions from assessing consistency with the 1.5°C goal in the Paris Agreement – or with a trajectory to climate neutrality that started in 2021 and were based on science and other factors, for example the cost effectiveness of early action. The absence of any requirement for an EU long term strategy (see below) is another key failing in this regard.
- Article 5(3), on measures to be taken by the Commission if Union measures are “*inconsistent with the climate-neutrality objective*”. As drafted, and as mentioned above, this curiously makes no mention of the trajectory, only the climate neutrality goal and the progress towards it. Given this discrepancy with the text in article 5(2a) on the Commission’s five-yearly review – which *does* mention the trajectory – this could be interpreted to mean that there will be no requirement to change policies at all until nearer to the 2050 date. Conversely, and more optimistically, it could be interpreted to mean that even pre-2030 policies will need to be changed if they are judged inconsistent with “*progress*” towards the 2050 goal.
- Whether the consistency assessment due in 2023 will (or could) result in changes to EU sectoral policies in the pre-2030 period – or indeed to the 2030 target itself. As the law is drafted that seems unlikely, meaning that the next decade could see billions of euro continuing to be spent on EU policies that actively undermine climate goals, for example subsidies for gas infrastructure, for unsustainable levels of livestock production and for types of bioenergy that increase emissions compared to fossil fuels. The climate law should make clear that EU policies (and the 2030 target) are to be assessed against the 1.5°C goal and/or a trajectory starting in 2021, and then revised accordingly.
- The failure by the proposed climate law explicitly to require the Commission to publish its assessments – either of the consistency of EU measures with the 2030 target, or of the consistency of other measures identified during the 2023 or subsequent five-yearly assessments. This failure to require the publication of vitally important ‘environmental information’ flies in the face of the EU’s obligations under the Aarhus Convention and of the EU’s stated commitment to enabling and empowering public participation in effective climate action – at least insofar as that applies to action taken by the Commission itself. This in turn risks undermining public confidence in the

Commission and creating the impression of an institution that wishes to be trusted but not meaningfully held to account, even as regards its role in addressing what is now an existential threat to Europe and its citizens.

- What legal rights the climate law might create for citizens or other stakeholders to participate in decision-making or to challenge the Commission's assessment of policy inconsistency – whether at EU or MS level. Or to challenge any 'necessary measures' proposed by the Commission, or its recommendations (or failure to issue recommendations) to Member States. As with access to information, the right of access to environmental justice is a key part of the Aarhus Convention.

In addition to future policy changes, WWF and others have argued that the EU climate law should also make some immediate changes as regards policy consistency – for example by banning fossil fuel subsidies and the use of advertising by fossil fuel companies. There are also, in common with other sections of the law discussed above, no provisions relating to independent oversight or accountability. This is again a further argument for an independent, apolitical scientific/expert advisory body, to scrutinise EU policies and make recommendations as to the consistency of EU policies with the achievement of climate goals.

6) Independent scientific/expert scrutiny and oversight of the Commission

What the EU climate law says

Recital (2) of the preamble is devoted to IPCC and IPBES reports, and mentions the need to limit climate change to 1.5°C. However there is no specific article on the need for a scientific approach to decision making, whether as regards EU targets or the policies needed to deliver them. The requirement in article 3 that when setting the Union's post-2030 trajectory the Commission consider "*the best available and most recent scientific evidence, including the latest reports of the IPCC*" does not apply to the pre-2030 period.

WWF assessment

As discussed in other sections of this assessment, the absence of independent/expert oversight of the Commission and scrutiny is a major shortcoming in the Commission's proposed climate law, for the reasons given above and in the WWF and Greenpeace '[12 asks](#)' paper. The draft law proposes to concentrate significant power in the Commission to deliver climate governance, but fails to balance this shift with appropriately robust mechanisms for ensuring the Commission can be held to account for the exercise of its powers and obligations. This in turn weakens the legitimacy of the governance framework, and a failure to resolve this issue is likely to erode public trust in EU climate governance.

There is now abundant evidence concerning the important role played by independent scientific/expert bodies in supporting the functioning of national and regional climate laws adopted across Europe. These bodies have been found to play a vital role in ensuring that climate science is consistently and appropriately represented in the process of decision making concerning the pace of the national trajectory, in ensuring that the scientific discussion is transparent, and ensuring decision makers take due account of the science – thereby ensuring public confidence in the decisions made and ultimately protecting the legitimacy of the entire transition management process.

If the Commission is to learn from the experiences of early adopters of the climate law concept and ensure that the Union harnesses the benefits of best practice in climate governance, it is essential that the EU climate law provide for the creation of an EU level, independent scientific/expert climate body. Such an independent scientific/expert advisory body – not a representative stakeholder body – is a ubiquitous feature of existing Member State climate laws and would be tasked with reporting to the Parliament and Council – reports that should be published and responded to by the Commission.

7) Adaptation (art. 4)

What the EU climate law says

The climate law contains an article dedicated to adaptation (art. 4) that would require the relevant EU institutions and the Member States to ensure continuous progress on adaptation and resilience and to develop and implement adaptation strategies and plans. No specific timeline is given in this regard.

8) Public participation and access to justice (art. 8)

What the EU climate law says

The law contains a general article on public participation (art. 8), which would require the European Commission to “*engage with all parts of society to enable and empower them to take action towards a climate-neutral and climate-resilient society*” and to “*facilitate an inclusive and accessible process at all levels, including at national, regional and local level and with social partners, citizens and civil society, for the exchange of best practice and to identify actions to contribute to the achievement of the objectives [of the climate law]*”. The article also provides that: “*the Commission may also draw on the multilevel climate and energy dialogues as set up by Member States in accordance with Article 11 of [the Governance Regulation]*”. The European Commission may expand further on such public participation in its proposal for a European Climate Pact – currently the subject of a Commission public consultation.

WWF assessment

The fact that there is a specific article (article 8) dedicated to public participation is welcome, but the article does not include any specific commitment or means of implementing the objective of engaging citizens or civil society organisations. This is compounded by the signal lack of transparency in relation to the Commission’s own arrangements for consistency checking and of any strengthened arrangements for independent expert scrutiny. It is important that the public be enabled and empowered to engage with national and sub-national authorities, but the same can be said in relation the Commission, particularly given the enormous concentration of policy power in that institution.

The presence of an article on public participation in the climate law is an opportunity for the European Parliament and/or Council to add improvements to the content on this subject, in order to involve EU citizens in shaping climate policies through deliberative democracy. How exactly this should be done requires further analysis, including of best practice examples at Member State level. But one possibility might

be to create an EU level equivalent to the national permanent multi-level dialogues, thereby creating a venue for citizens and stakeholders to discuss scenarios for climate and energy policies, review progress (including on NECPs) and debate potential policy measures. Alternatively, fostering public debate on EU climate policies and reporting on the results is something that an independent scientific/expert advisory body could be tasked with.

Another issue that merits further discussion, particularly given that litigation is now widely recognised as a valid and necessary part of citizen action in pursuit of climate objectives, is the extent to which the climate law should provide an opportunity to embed and/or strengthen effective access to environmental justice at EU and national level for citizens and their representatives, something required by the Aarhus Convention (see above). The EU is a party to this convention and [has already been found in breach of its obligations](#) thereunder by preventing access to EU courts in environmental matters. The EU climate law should fully implement the convention insofar as it relates to climate change, both as regards national and EU-level institutions.

9) What else is missing? (provisions on carbon dioxide removal, a long term strategy)

There are a number of things missing from the legislative proposal as compared with the contents of the joint WWF and Greenpeace '[12 asks](#)' paper. As already discussed above, the creation of an independent scientific/expert advisory body is one, along with provisions on access to climate justice. But there are other important gaps that should be filled. These include, amongst other things:

- Provisions on **carbon dioxide removal**. The proposal highlights the need for a significant increase in the EU's 2030 emissions reduction target, but a rapid increase in carbon dioxide removal by sinks over the same period is also vital. The climate law should set out how this will be achieved – for example through legally binding targets for restoration of forests and other ecosystems – and make clear that increases in natural sinks are separate from and additional to reductions in emissions, not a means of achieving the EU's 2030 emissions reduction target (for example by being used to off-set emissions in other sectors).
- A requirement for the Commission to publish (and update every five years) an **EU long term climate strategy** consistent with the revised 2030 target, against which policies can be tested for consistency. The 'clean planet for all' communication published by the Commission in 2018 does not constitute such a strategy because it considered a range of different scenarios of which only two were consistent with reaching climate neutrality and all of which were based on the existing 40% emissions reduction target for 2030. This requirement might best be incorporated in legislation through changes to Article 15 of the Governance Regulation, a Regulation that the proposed climate law already to a limited extent amends.

**Why we are here**

To stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature.

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