

## **Feedback on the Commission proposal for a European Climate Law**

The European Roundtable on Climate Change and Sustainable Transition (ERCST) welcomes the opportunity to comment on the European Commission's **proposal for a regulation establishing the framework for achieving climate neutrality (The European Climate Law)**.

The proposed regulation lays out a (legal) framework for achieving climate neutrality by 2050, including through:

- Setting out a process to enhance and review the trajectory towards 2050;
- Enhancing adaptation efforts;
- Regularly assessing progress against the commitments;
- Assessing and reviewing existing policies in light of consistency with the objectives of the climate law

## **The need for predictability vs. flexibility**

The EU has been a leader in addressing climate change both domestically as well as in the international arena, in the UNFCCC as well as in other forums. The level of ambition that it has shown as well as the introduction of the EU ETS, putting a clear price on carbon, have been a clear indication of EU leadership. This was done in the absence of a climate law in the form of what is in the current proposal. In this way, this is a departure from the current climate change approach and not a minor one. The need needs to be clearly demonstrated, as well as any conditions attached to it.

ERCST understands the benefit that emerges from the predictability that comes with such a law – well defined governance and targets will provide industry and other economic sectors with the possibility to properly align their investment decisions. As a second rationale, this will show both domestically, as well as internationally, that the EU is serious about delivering upon its stated climate ambition. This is clearly presented in the proposal as an irreversible change.

However, a push towards predictability and an ethos of irreversibility will inherently bring with it some degree of inflexibility. As we live in a rapidly changing world, where the economic situation, scientific discovery and social norms seem to rapidly change (and the current economic crisis triggered by the government response to COVID-19 is a testament to this) maintaining a certain level of flexibility is necessary. Therefore, the climate law should be tempered with the necessary room for flexibility as well as sufficient checks and balances, as should any type of legislation.

## **The legal standing of the climate law**

The legal standing of the climate law, and whether a regulation is the proper legal tool to adopt such a law, has so far received little attention in the public debate.

However, it has to be noted that this proposal for a climate law will have fargoing implications for other pieces of legislation. Indeed, the requirement to ensure consistency of all existing policies and EU legislation with the climate neutrality goal, seems to indicate some form of primacy of the Climate Law over other EU legislation.

Moreover, the law's ethos of irreversibility and its long-term objective means that the climate law will be perceived as a 'new baseline' for much of EU policymaking for the next three decades.

As such, it should be debated whether the ordinary legislative procedure is the right procedure for such a historic piece of legislation, or whether it would be more appropriate to deal with this at a higher level, i.e. EU primary law.

## **Climate-neutrality objective**

The proposal defines the objective as achieving a balance between Union-wide emissions and removals of greenhouse gases regulated in Union law at the latest by 2050. This is ahead of the timetable of the Paris Agreement and should be applauded. Moreover, the explanatory memorandum stresses that this objective is to be achieved *domestically* within the Union.

The law should also integrate provisions to ensure that the process of reaching the union-wide objective of climate neutrality will be undertaken in an economically efficient and cost-effective manner.

Moreover, three issues should be highlighted with regards to the climate neutrality objective:

- Firstly, ERCST supports the reference to the role of removals, whose importance is further stressed in the explanatory memorandum. However, in order to 'get serious' about the role of carbon removal technologies and natural sinks, and to provide clarity on the extent of removals necessary, a separate target for sequestration is warranted. While this should not be included in the climate law itself, it should be part of the trajectory setting process.
- Secondly, the explanatory memorandum seems to a priori exclude the role of international cooperation, including through offsets, in achieving the 2050 ambition. This limits the flexibility that might be necessary in reaching climate neutrality, especially in an asymmetrical climate ambition scenario. It also limits the role the EU

can play as climate ‘leader’, by removing incentives for climate investments in, and low-carbon technology transfer to, other countries.

- Lastly, the climate objective is in a way incomplete as it concerns itself only with production emissions, while ignoring consumption emissions. The historical focus on production emissions has already led to an increase in the share of imported emission in the EU and has so far limited the uptake of low-carbon products. Including consumption emissions in the EUs climate ambition would be the environmentally best option, as well as help create a market for low-carbon products. This is not a “nice-to-have” but a “must-have”, if the EU is to show real international leadership, lead by example, and expect that others will follow.

## **Setting out the trajectory and inter-institutional arrangements**

In its proposal, the European Commission is granted a broad mandate to not only assess the progress made against the climate neutrality objective, but also to update the trajectory by setting intermediate targets, through adopting delegated acts.

This may lead to a politicization of the debate around the climate law proposal and shift the focus of the debate from the overall climate objective, and how to achieve it, to a fight over governance of the EU Treaty. Such as debate would not help the climate and may slow things down.

It is clear that climate action has broad public support and using normal governance would provide it with the necessary and visible political backing that it will need when things will get tough – and they will.

Regardless of the political process in setting the trajectory, any review of the trajectory should be rooted in a framework of regularly updated impact assessments, which are to be comprehensive, have a well-defined scope and be transparent.

The issues to be considered, as currently captured under Article 3(3), should be better defined and ‘fleshed out’. The impact analysis should also be sufficiently disaggregated, outlining both the expected contributions and potential impacts (positive as well as negative) at Member State and sectoral level.

Moreover, in examining this proposal, it is also important to remember that Europe climate change policy does not exist in a vacuum: the level of ambition and pace of action in other countries will have an impact on the EU’s economy and society.

As such, we should not be indifferent to what the rest of the world does, and the impact analysis should take this into account. At this time, following the UN Secretary General’s

Summit in September 2019 and COP 25 in Madrid, the asymmetry between EU ambition and that of other major trading partners is visible, even if we hope, temporary.

## **Assessment of progress and measures**

The proposal lays out a robust governance framework for assessing collective and individual progress against the overall ambition. The move towards aligning this process with the Paris Agreement ratcheting process can be welcomed, and the mainstreaming of climate change in other Union policies (*through assessing their impact on achieving the overall climate objective*) is a long overdue element in achieving effective climate policymaking in the EU.

Moreover, it is encouraging that the regular assessment of collective progress will be embedded in existing governance elements (such as the Governance regulation and the European Semester), limiting the risk of creating additional administrative ‘red tape’.

## **Enshrining the need for an enabling framework and flanking measures into law**

This proposal for the Climate Law only enshrines one side of the coin into law: the 2050 ambition, and the governance and legal process of ensuring achievement of that ambition. The other side of the coin, the presence, objectives and regular assessment of an overall enabling framework, including flanking measures which mitigate negative socio-economic impacts, and mitigating the risk of carbon leakage, should also be enshrined in law.

As an example, going back to existing EU legislation, the EU ETS has put in place the Market Stability Reserve whose impact will clearly be to raise prices (needed and welcomes), but only in conjunction with strong carbon leakage provisions for direct emissions, and a growing number of MS providing support for indirect costs.

Only if both sides are included, EU citizens will be able to have the confidence that the stated climate ambition will be reached in a responsible and efficient way and there will continue to be a strong industrial Europe, which decarbonizes through the production and consumption of low carbon products and not by importing emissions