Evaluation of the European Commission's Effort Sharing Regulation proposal

Brussels, 4.9. 2016

Summary

The European Council agreed in 2014 to reduce the EU's greenhouse gas emissions by **at least 40%** by 2030, as compared to its emissions in 1990. In order to achieve this, the Council also agreed that emissions under the Emissions Trading Scheme (ETS) would be reduced by 43% by 2030, and emissions in the non-ETS sectors by 30% by 2030, as compared to emissions in 2005. In July 2016, the European Commission released its proposal on how EU Member States should contribute to the 30% target for the non-ETS sectors.

This target and the proposed Regulation for the non-ETS sectors, called the Effort Sharing Regulation (ESR) will not do enough to protect the climate. The proposed Regulation is not the most ambitious interpretation of the Council's at least 40% 2030 reduction target, which in itself is too weak to be in line with the objectives of the Paris Agreement to keep temperature rise well below 2°C and pursue efforts to limit it to 1.5°C. The proposal is weak because:

- The overall target is too weak. It neither matches what is needed to achieve the objectives of the Paris Agreement, nor enables to reach the mitigation potential that is available.
- The emissions level set for the starting point in 2021 is too high.
- Three loopholes further water down the targets by 421 million tonnes.

Nine countries could increase their emissions from current levels. On the whole, the EU is expected to overshoot its 30% non-ETS target if it simply meets its (weak) targets for energy efficiency and renewable energy. To make the ESR effective, the following changes need to be introduced:

- **A higher 2030 target**: it should be raised from -30% to at least -45% for the non-ETS sectors and **a ratchet-up mechanism** to increase targets every five years, starting from 2018 should be created.
- **A lower 2021 starting point**: Member States should each have a starting point that is most stringent given their projected emissions and their 2020 target.
- **Loopholes should to be eliminated**.

Introduction

The European Commission's proposal on reducing greenhouse gas emissions in the non-ETS sectors from 2021 to 2030 (now called the Effort Sharing Regulation, ESR) was released on 20 July 2016. All documents related to the proposal can be found here. The ESR proposal was released as part of the Commission's Energy Union summer package, which also included a proposal for a decision to address greenhouse gas emissions from the land use, land use change, and forestry (LULUCF) sector and a communication on the decarbonisation of transport.

The ESR sets binding annual greenhouse gas emission reduction targets for Member States for the period 2021–2030 for the sectors of the economy not regulated under the EU Emissions Trading System (ETS). These so called non-ETS sectors include buildings, agriculture, waste management, and road transport, and account for almost 60% of total EU emissions in 2014.

In October 2014, EU Heads of State and Government set a binding economy-wide domestic emission reduction target of at least 40% by 2030, compared to 1990. This target is to be achieved by reductions in the ETS by 43% and in the non-ETS sectors by 30% by 2030 compared to 2005 emissions. These targets were defined more than a year before the Paris Summit, and there is a clear need to align them with the objectives of the Paris Agreement. In order for the EU to make its fair contribution to achieving the objectives of keeping temperature rise well below 2°C, and pursuing efforts to limit it to 1.5°C, it will need to substantially increase its 2030 targets. The non-ETS 2030 target would therefore need to be raised from 30% to at least 45%.

The Member State targets

The European Commission needed to set a target for each Member State. Together these targets need to add up to the EU-wide -30% non-ETS target. Based on the Council Conclusions from October 2014, countries with GDP per capita below the EU average received a target exclusively based on their GDP. The 11 richer countries received a target that also took into account their mitigation potential. In the Commission's proposal this lowered targets for some countries quite considerably: e.g. if purely based on GDP per capita, Ireland would have had a target of -38%, but the Commission proposed a target of -30%.[1] Furthermore, due to loopholes (see below), Ireland's proposed target is a mere -20.4%.

How weak the minus 30% 2030 target for the non-ETS sectors really is becomes obvious when comparing it to current (2014) emissions: the target and loopholes lead to a reduction in the non-ETS sectors of only 16.3% in 2030. **This means the EU aims to reduce its emissions by merely 1% per year in the next 16 years, while in the last five years an annual reduction of almost 2% was achieved.** Moreover, under the Commission's proposal nine countries would be able to increase their emissions from current (2014) levels (see table in the conclusion section).

Loophole 1: offsetting from land-use sector

Article 7 of the ESR proposal spells out the rules for using offsetting from the land use sector (LULUC)**. In total this loophole would allow EU countries to increase greenhouse gas emissions in the non-ETS sectors by 280 million tonnes**. The Commission proposes that this loophole can be used by all countries but to a different degree. The higher a country's agricultural emissions

[1] Please note that in this case, Ireland (one of the 16 richer EU countries) has a lower target than Italy, even while Italy is amongst the 11 poorest countries which in principle are to all have lower targets than the 16 richest countries.

are (in % of their total emissions), the more LULUC offsetting they can use. Luxembourg can only use the equivalent of 0.2% of its 2005 emissions whereas Ireland can use 5.6%, see table below.

The Commission proposes to limit the type of land-use activities that can be used for offsetting: existing forests (forest management, the 'F' in LULUCF) cannot be used for offsetting under the ESR. But the proposal specifies that this exclusion is subject to review; depending on the development of new accounting rules, this could change at a later date.

A separate proposal for a LULUCF sector regulation

The Commission also published a regulation proposal for the LULUCF sector (see all documents here).This proposal, if adopted, would weaken the EU's overall 40% target by more than 1%. This is because there is full flexibility within the LULUCF sector, i.e. a country with deforestation emissions can offset these with forest plantations. But countries should protect their existing forests and not be rewarded for replacing them with forest plantations. Moreover, the Commission suggests that a country can trade excess LULUC credits (not from forest management) it does not need - in essence, setting up a market for LULUC credits.

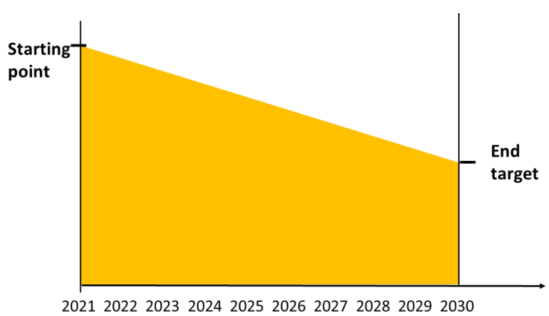
On the positive side, the LULUCF sector is not allowed to have net emissions: if it does, then a country needs to balance them with increased emission reductions in the Effort Sharing Regulation sectors.

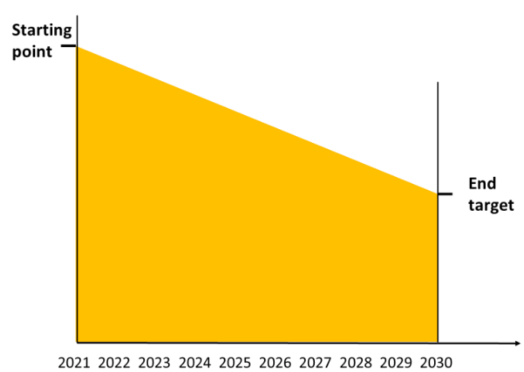
Loophole 2: ETS pollution permits under the ESR

The Commission suggests that nine countries should be able to use part of their surplus ETS pollution permits to meet their ESR targets. Luxembourg and Ireland would be allowed to use the equivalent of 4% of their 2005 emissions, whereas Austria, Belgium, Denmark, Finland, Malta, the Netherlands and Sweden would be allowed to use 2%. **In total this loophole would allow EU countries to increase their non-ETS greenhouse gas emissions by 100 million tonnes.** Eligible Member States would have to notify the Commission before 2020 of the extent to which they intend to use this flexibility.

Starting Point

The emissions budget for 2021-2030 is determined by both the end target and the starting point (see graphs).





The Commission proposes a starting point based on 2016-18 actual emissions. This value would then be used in 2020 to draw a linear pathway to the 2030 target of each Member State. The 2021 starting point would then be based on that trajectory. The fact that the Commission starts their trajectory already in 2020 instead of 2021 is positive because it lowers the starting point.

However, starting the trajectory in 2017 would be even better, as it would further lower the starting point.

The most concerning part of the Commission's starting point proposal is the fact that it would reward countries that are projected to miss or are slow in making progress towards their 2020 target. This is because for these countries[2] the proposed starting point would be higher than their 2020 target. A solution that ensures the laggards are not rewarded would entail:

- **For the majority of Member States, setting the starting point for 2021 on the basis of a trajectory starting in 2017 from actual 2016-2018 emissions;**
- **For those countries for which this trajectory would have an emissions level in 2020 that is higher than their 2020 target, setting the starting point on the basis of a trajectory from their 2020 target.** (for details see our briefing paper here.)

Loophole 3: 2021 Bonus for lower-income Member States

An even weaker solution to the starting level would have been to set the starting point at the 2020 target (which most countries will overshoot)[3]. Thankfully, the Commission refrained from doing so. However the Commission has introduced another loophole in Article 10 (2) which would allow some countries to have a larger emission budget for the year 2021. This loophole would benefit Bulgaria, the Czech Republic, Croatia, Estonia, Latvia, Lithuania, Hungary, Poland, Portugal, Romania, Slovenia and Slovakia.

Even though the text is not clear in this regard, according to information from the Commission this loophole would only increase their 2021 target as a one-off addition and would not affect their trajectory up to 2030. Under these conditions, **this loophole would allow these countries to increase greenhouse gas emissions by a total of 39 million tonnes.**

Missing a ratchet up mechanism

Article 14 includes an insufficient review clause: *The Commission shall report to the European Parliament and to the Council by 28 February 2024 and every five years thereafter on the operation of this Regulation, its contribution to the EU's overall 2030 greenhouse gas emission reduction target and its contribution to the goals of the Paris Agreement, and may make proposals if appropriate.*

The UNFCCC reviews of collective efforts to tackle climate change under the Paris Agreements will take place in 2018, 2023 and every five years thereafter. Having a report in 2024 would be six years after the 2018 stock-take, and do nothing to ensure the EU has a ratchet-up mechanism in place that would require it to raise its targets to be in line with the Paris Agreement goals. Moreover, the proposed text does not add anything, as the Commission always has the right to make legislative proposals.

[2] Belgium, Luxembourg, Ireland, Denmark, the Netherlands

[3] The EU is expected to overachieve its -10% target in the non-ETS sectors as set out in the current Effort Sharing Decision. The latest emissions data for 2014 indicates that emissions went down by 13% in these sectors compared to 2005. According to EU projections, in 2020, emissions are expected to be reduced by 16% in these sectors compared to 2005. Under the 2016 reference scenario, five richer Member States (Belgium, Denmark, Ireland, Luxembourg, and the Netherlands) are projected to miss their national 2020 targets.

Rules on flexibility

Article 5 sets out the flexibility available to Member States to achieve their annual limits. The Commission left existing rules in place for trading, banking and borrowing within the period.

Flexibility instruments should under no circumstance lead to a reduction of the overall ambition level for the non-ETS sectors or to an increased risk of non-compliance. CAN Europe would like to see the borrowing rules to be changed from 5% to 2% of 2005 emissions levels to limit borrowing to approximately one year's worth of reduction efforts. Borrowing capabilities beyond 2% would enable countries to delay mitigation and increase the risk of compliance problems at the end of the ESD period. Borrowing should not enable countries to postpone significant mitigation action to later years. The earlier emission cuts are implemented the better.

Rules for reporting and following up progress

The proposal maintains annual reporting and compliance obligations for the period 2021-2030. However, a comprehensive review of Member States' GHG emissions reports and the more formal compliance check would only be carried out every five years, rather than annually. The first such review would take place in 2027 for the years 2021-2025, followed in 2032 for the years 2026-2030. The Commission claims that this has to do with LULUCF reporting (which is difficult to do annually because of large fluctuations) and with aligning reporting with the Paris Agreement, but these arguments do not bear scrutiny. If the first formal compliance check happened only in 2027 it would give countries no time to implement additional policies if they are not on track to meet their targets.

Conclusions: the Commission's ESR proposal would do little to nothing to protect the climate

The most important question is how effectively the new ESR would protect the climate. The answer unfortunately is: very poorly. This is because the -30% target is too weak and because the loopholes and the weak starting point would further weaken that target. The table below compares the proposed 2030 targets (including the loopholes) to actual 2014 emissions. It shows that in the EU as a whole the current targets and loopholes would lead to a reduction of only 16.3% in the non-ETS sectors compared to 2014 emissions. It also shows that nine countries (in orange) would be able to increase their emissions from current levels (see last column).

Table: Proposed country targets with and without loopholes compared to 2014 actual emissions

Country	Proposed 2030 target below 2005 emissions	ETS loophole	LULUCF loophole	2030 target with loopholes	2030 loopholes target vs 2014 emission
Austria AT	-36%	2.0%	0.4%	-33.6%	-20.0%
Belgium BE	-35%	2.0%	0.5%	-32.5%	-23.2%
Bulgaria BG	0%		1.5%	1.5%	6.6%
Croatia HR	-7%		0.5%	-6.5%	10.4%
Cyprus CY	-24%		1.3%	-22.7%	22.5%
Czech Republic CZ	-14%		0.4%	-13.6%	-9.4%
Denmark DK	-39%	2.0%	4.0%	-33.0%	-21.7%
Estonia EE	-13%		1.7%	-11.3%	-15.0%
Finland FI	-39%	2.0%	1.3%	-35.7%	-28.0%
France FR	-37%		1.5%	-35.5%	-23.9%
Germany DE	-38%		0.5%	-37.5%	-29.2%
Greece EL	-16%		1.1%	-14.9%	19.4%
Hungary HU	-7%		0.5%	-6.5%	28.9%
Ireland IE	-30%	4.0%	5.6%	-20.4%	-8.3%
Italy IT	-33%		0.3%	-32.7%	-13.8%
Latvia LV	-6%		3.8%	-2.2%	-7.4%
Lithuania LT	-9%		5.0%	-4.0%	6.4%
Luxembourg LU	-40%	4.0%	0.2%	-35.8%	-26.2%
Malta MT	-19%	2.0%	0.3%	-16.7%	-30.5%
Netherlands NL	-36%	2.0%	1.1%	-32.9%	-12.8%
Poland PL	-7%		1.2%	-5.8%	-8.6%
Portugal PT	-17%		1.0%	-16.0%	6.2%
Romania RO	-2%		1.7%	-0.3%	10.3%
Slovakia SK	-12%		0.5%	-11.5%	5.4%
Slovenia SI	-15%		1.1%	-13.9%	-0.9%
Spain ES	-26%		1.3%	-24.7%	-11.0%
Sweden SE	-40%	2.0%	1.1%	-36.9%	-18.0%
United Kingdom UK	-37%		0.4%	-36.9%	-24.2%
EU Total	**-30%**			**-28.7%**	**-16.3%**

The Commission's Impact Assessment on the ESR calculates that the ESR will reduce emissions from 2021-2030 by about 491 million tonnes compared to a scenario that takes into account already adopted policies but no new policies, see below table 5 from the Commission's Impact Assessment.[4] To put this in perspective: this is a little more than the EU's emissions from agriculture in 2014 (425 million tonnes).

[4] The EU Reference scenario 2016 projects EU and Member States energy, transport and GHG emission-related developments up to 2050, given current global and EU market trends and adopted EU and Member States' energy, transport, climate and related relevant policies.

If the already agreed 2030 targets for energy efficiency and renewable energy are taken into account (each currently at 27% by 2030)[5], by 2030, a pollution permit surplus of 512 million will build up under the ESR. **In other words, the EU is expected to overshoot its 30% target if it simply implements the (weak) targets it set for energy efficiency and renewable energy.**

Table 5: Impact on the build-up of a surplus or deficit in sectors covered by the current ESD over the period 2021-2030 of different starting points for target trajectory

Option	Sensitivity S2	S1	Sensitivity S3
Starting point	2020 emissions	2016-2018 emissions	2020 targets
	EU Mt surplus (+) or deficit (-) over the period 2021-2030		
MS WEM	-1918	-1739	-1326
2013 Reference	-1500	-1090	-758
2016 Reference	-972	-491	-74
EUCO27	31	512	928
EUCO30	26	511	929

Source: Commission calculations based on EEA, PRIMES and GAINS

The **loopholes which add up to 419 million tonnes (**LULUC loophole: 280 Mt CO_2, ETS loophole: 100 Mt CO_2, 2021 bonus for lower-income Member States: 39 Mt CO_2) will further weaken the target. The Commission itself warns of the dangers of such a weak ESR (p.52 of the Impact Assessment):

> *Of course in scenarios EUCO27 and EUCO30 it is assumed actions are taken to effectively achieve the -30% target in 2030. But notably the build-up of large surpluses early on can increase the risk that this is not the case, and that there are not enough reductions later in the period. Emissions might actually increase above target, with surpluses from early in the period being used for compliance later in the period.* ***This would mean that the 2030 target of -30% would be missed and of course this risk is larger with a large build up early on in the period of large surpluses.***

This is why CAN Europe has been calling for the -30% target to be raised to at least - 45%. Even with a minus 30% target, it is possible to avoid this large build up of surplus by choosing a more ambitious starting point. Even though the Commission chose to go for a weak compromise on the starting point, they acknowledge in their Impact Assessment (p.54) that a more ambitious starting point would eliminate the projected surplus.

To make the ESR effective, the following changes need to be introduced:

- **A higher 2030 target: it should be raised from -30% to at least -45% for the non-ETS sectors and a ratchet up mechanism to increase targets regularly, starting by 2018 should be created.**
- **A lower 2021 starting point:** Member States should each have a starting point that is most stringent given their projected emissions and their 2020 target.
- **Loopholes should to be eliminated.**

[5] EUCO27: A scenario that achieves the at least -40% GHG reduction target (with the split ETS/non-ETS reducing by -43%/-30% in 2030 compared to 2005), a 27% share of renewables and 27% energy efficiency improvements.

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Climate Action Network (CAN) Europe is Europe's largest coalition working on climate and energy issues. With over 130 member organisations in more than 30 European countries - representing over 44 million citizens - CAN Europe works to prevent dangerous climate change and promote sustainable climate and energy policy in Europe.