The 'Fit for 55' Package: Towards a More Integrated Climate Framework in the EU

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Abstract: *The European Union (EU) is determined to become the world's first climate-neutral economy by 2050. The European Green Deal (EGD) is a comprehensive policy framework, intended to lead the EU towards this goal. The European Climate Law is the first legal initiative to implement the EGD. It makes climate neutrality a legally binding target, whilst also setting a mandatory goal of reducing emissions by 55% in 2030. To achieve the 2030 mitigation objective, the 'Fit for 55' legislative package includes proposals to revise the targets, scopes, and structures of all existing legal acts in the current 2030 climate and energy policy framework. It also contains proposals for new complementary legal instruments. This article provides an in-depth analysis of the evolving legal framework with the aim of assessing its potential to accelerate the green transition in the European Union and reinforce the EU's climate legal architecture.*

Keywords: *European Climate Law, climate neutrality, 2030 target, 55% emissions reduction, 'Fit for 55' legislative package.*

JEL classification: *Q54, Q58, R11.*

Introduction

The European Climate Law was adopted on 30 June 2021[2]. It constitutes a landmark in the EU's climate and energy policy, setting two major legally binding targets: a 55% reduction in greenhouse gas (GHG) emissions by 2030, as compared to 1990 levels, and climate neutrality – i.e., net-zero emissions – by 2050. As a legal instrument, the European Climate Law is one of the first outcomes of the European Green Deal (EGD), a comprehensive policy framework launched by the European Commission in December 2019, whose aim is to make the EU the first climate-neutral economy by 2050[3]. To achieve this ambition, the EGD aims to decouple economic growth from resource use and guarantee social justice by ensuring that 'no one is left behind'[4].

In line with the new targets set, on 14 July 2021, fifteen days before the European Climate Law came into force, the European Commission presented the 'Fit for 55'

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[2] Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations (EC) 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJEU L243/1 of 9 July 2021.

[3] European Commission, 'The European Green Deal,' COM (2019) 640 final.

[4] *Ibid.*, 4.

package[5]. This legislative package includes interconnected and complementary legal instruments whose main purpose is to implement the EGD in general and to achieve the 55% GHG reduction target established under the European Climate Law. With this aim, the 'Fit for 55' package contains a broad array of legislative and strategic proposals that amend and extend the current 2030 climate and energy policy framework, which would otherwise prevent achieving new targets.[6]

Moreover, the goal of climate neutrality constitutes EU's commitment under the Paris Agreement[7]. This multilateral instrument on climate change sets the target of limiting the increase in global temperature to well below 2°C, while pursuing efforts to keep it under 1.5°C, and of achieving net-zero emissions within the second half of this century (Art. 2.1a, Paris Agreement). In practice, climate neutrality means compensating for unavoidable GHG emissions by removing GHGs from the atmosphere. To develop the road towards this objective, the Paris Agreement requires the Parties to submit voluntary nationally determined contributions (NDCs) every five years and to develop long-term strategies by 2020 (Arts. 3 and 4, Paris Agreement). The first global stocktake of implementation of the agreement is scheduled for 2023 (Art. 14.2, Paris Agreement).

The EU, therefore, is committed to achieving the goal of the Paris Agreement. However, the EU currently faces an extraordinarily challenging set of circumstances. The COVID-19 pandemic and its negative impact on growth and employment have exacerbated existing social and regional inequalities across Europe[8]. At the same time, climate pressures and environmental degradation have continued to increase[9]. Russia's invasion of Ukraine poses yet another challenge to the EU's security and its prospects for recovery[10]. Yet, in this uncertain and challenging context, the EU seems determined to speed up the green transition and reinforce its energy independence.

Will the legal changes and policy options proposed within the 'Fit for 55' package be ambitious enough for the EU to achieve its climate and energy goals? To address this question, this research offers a comprehensive overview of the EU legal acts and policies that implement the EGD, with a special focus on the 'Fit for 55' package. At the same time, it assesses whether the new measures contribute to strengthening the EU's power in climate policy.

With this scope, this article draws on a combination of academic literature and EU institutional documents and legal instruments. The approach is mainly

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[5] European Commission, "Fit for 55': delivering the EU's 2030 climate target on the way to climate neutrality,' COM (2021) 550 final.

[6] The current legal framework would result in a 45% emission reduction by 2030. See European Commission, 'Preparing the ground for raising long-term ambition. EU Climate Action Progress Report,' COM (2019) 559 final: 3.

[7] As of 1 January 2021, the Paris Agreement replaced the Kyoto Protocol as the main multilateral legal instrument to address climate change. United Nations, 'Paris Agreement' (2015), https://unfccc.int/sites/default/files/english_paris_agreement.pdf (Accessed: 2 June 2022).

[8] Gregor Erbach, 'Impact of the coronavirus crisis on climate action and the European Green Deal,' EPRS Briefing, PE 649.370 (2020).

[9] European Environment Agency, 'Europe's changing climate hazards: an index-based interactive EEA report' (2021), https://www.eea.europa.eu/publications/europes-changing-climate-hazards-1/what-will-the-future-bring (Accessed: 2 June 2022).

[10] European Parliament Economic Governance Support Unit (EGOV), 'Economic repercussions of Russia's war on Ukraine – weekly digest,' *In-depth analysis*, EP 699 522 (2022): 9.

empirical, with the aim of highlighting the contribution of the new legal developments to the EU's climate and energy ambitions. There is abundant literature on EU climate policies implementing the EGD on the path to climate neutrality. Amongst several themes, scholars have analysed the new policy instruments, their implementation and effectiveness, the member states' compliance with the new climate and energy targets and the EU multi-level climate governance and its effects on policy outcomes[11]. Within this existing literature, some scholars and research institutions, many of which are mentioned in this article, have specifically focused on the 'Fit for 55' as a broad legislative package, while others have analysed specific measures of this package. While this article builds on the insights of related academic work, its contribution lies in providing a further assessment of how the new measures taken by the EU increase its regulatory power on climate and energy policy, an area of shared competencies between the EU and its member states.

This article is structured as follows. It begins by providing an overview of the European Climate Law as the first legal instrument to implement the EGD and set legally binding targets for 2030 and 2050. It then analyses the scope of the 'Fit for 55' package by reviewing the proposals that amend existing legal instruments and those that introduce new ones. As a general preliminary assessment, the article finds that the adoption and effective implementation of this ambitious and comprehensive decarbonisation package has the potential to accelerate the green transition in Europe and reinforce the EU's climate policy framework, with regulatory power increasingly shifting to EU level. However, the article concludes that the current energy and security crisis resulting from Russia's invasion of Ukraine will condition the success of this process. This challenging context will require the EU to take additional measures to speed up its green transition in the coming years.

The European Climate Law: on the road to net-zero emissions by 2050

The European Climate Law came into force on 29 July 2021. Since then, the target of climate neutrality has been legally binding for the EU and its member states, as has the target of a 55% GHG reduction by 2030. The new mitigation goals amend the current 2030 climate and energy framework, endorsed by the October 2014 European Council, which initially targeted a 40% reduction[12]. Thus, the European Climate Law not only updates the 2030 target, but also changes its nature, by making it legally binding.

Moreover, the European Climate Law is a regulation of the European Parliament and the Council. This is a significantly relevant legal instrument in environmental

[11] Among other authors, see Claire Dupont, Sebastian Oberthür and Ingmar von Homeyer, 'The COVID-19 crisis: a critical juncture for EU climate policy development,' *Journal of European Integration*, vol. 42, no. 8 (2020); Ludwig Krämer, 'Planning for climate and the environment: the EU Green Deal,' *Journal for European Environmental and Planning Law*, vol. 17, no. 3 (2020); Tanja A. Börzel and Aron Buzogány, 'Compliance with EU environmental law. The iceberg is melting,' *Environmental Politics*, vol. 28, no. 2 (2019); Georgios Maris and Floros Flouros, 'The Green Deal, National Energy and Climate Plans in Europe: member states' compliance and strategies,' *Administrative Science*, vol. 11, no. 3 (2021); Julia Kreienkamp, Tom Pegram and David Coen, 'Explaining transformative change in EU climate policy: multilevel problems, policies and politics,' *Journal of European Integration*, vol. 44, no. 5 (2022).

[12] European Council, 'Conclusions (24 October 2014)', EUCO 169/14. This 2030 climate and energy policy framework represented the EU's first Nationally Determined Contribution (NDC) under the Paris Agreement.

policy, an area of shared competence between the EU and its member states (Arts. 4.2e, 191-193 Treaty on the Functioning of the EU, TFEU). Unlike directives, the legal instrument commonly used in areas of shared competence, a regulation is entirely binding and directly applicable in all member states (Art. 288, TFEU), and therefore gives complete normative power to the European legislator.

The European Climate Law is explicitly linked to the Paris Agreement and the EU's commitment to achieve climate neutrality by 2050. Specifically, Article 1 paragraph 2 establishes that climate neutrality is a binding target to be achieved by the EU and its member states by 2050 'in pursuit of the long-term temperature goal set out in point a) of Article 2.1 of the Paris Agreement'. Article 1 paragraph 2 of the European Climate Law also introduces a binding 2030 reduction target, specified in Article 4.1 at 55%, compared to 1990 levels. This 2030 mitigation target corresponds to the increased reduction target agreed by the European Council on 11 December 2020[13] and submitted shortly thereafter by the EU as its updated NDC under the Paris Agreement[14]. However, the European Parliament had proposed a target of 65% – considered by the United Nations (UN) to be the rate of emissions reduction required globally to limit global temperature increase to 1.5°C.[15] In general, the second or updated NDCs notified by the Parties are considered insufficient to achieve the global temperature goal set by the Paris Agreement[16]. In the case of the EU in particular, some analyses of equitable mitigation efforts suggest that to be compatible with the long-term goal of the Paris Agreement, an 86% GHG reduction by 2030 would be required, with zero emissions by the period between 2036 and 2040[17].

Besides the new binding mitigation targets, one of the most relevant aspects of the European Climate Law is the normative power assigned to the European Commission for taking any necessary measures, including submitting proposals to amend the Law, to achieve the target of climate neutrality. This reinforced legislative capacity ascribed to the European executive is another indicator of the increasingly integrated character of the EU climate policy. Thus, Article 4.3 of the European Climate Law provides that the European Commission will make a legislative proposal setting 'a Union-wide climate target for 2040,' within six months of the first global stocktake under the Paris Agreement in 2023. Similarly, the Commission will continue to regularly evaluate the member states' National Energy and Climate Plans (NECPs) and make recommendations in case of insufficient progress towards net-zero emissions by 2050. To this end, the European Climate Law amends the Governance Regulation, introducing the climate neutrality objective into its text as a new additional basis for

[13] European Council, 'European Council meeting (10 and 11 December 2020) – Conclusions,' EUCO 22/20.

[14] 'Submission by Germany and the European Commission on behalf of the EU and its Member States,' 17 December 2020, https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/Spain%20First/EU_NDC_Submission_December%202020.pdf (Accessed: 2 June 2022).

[15] Florence Schulz, 'EU lawmakers debate 65% climate target proposal,' *Euractiv*, 29 May 2020, https://www.euractiv.com/section/energy-environment/news/eu-parliaments-climate-committee-divided-over-65-climate-target/ (Accessed: 2 June 2022).

[16] United Nations Environment Programme (UNEP), 'The heat is on. A world of climate promises not yet delivered. Emission Gap Report,' 2021, pp. 34-35, https://www.unep.org/es/resources/emissions-gap-report-2021 (Accessed: 2 June 2022).

[17] Niklas Höhne et al., 'A possible 2050 climate target for the EU,' *New Climate Institute Report* (2019): 6; Climate Action Tracker, 'Country Summary,' 2021, https://climateactiontracker.org/countries/eu/ (Accessed: 2 June 2022).

reporting and evaluation (Art. 13)[18].

In sum, the European Climate Law introduces greater certainty and predictability to the EU's mitigation efforts in the coming decades, whilst empowering the European Commission to promote legislation towards the goal of climate neutrality. Indeed, the European executive has continued to adopt many and diverse policies to address the EU's increased climate ambitions in an extremely challenging context.

The EU is currently seeking to align its efforts to recover from the economic crisis caused by the COVID-19 pandemic with its climate and environmental goals, designed to accelerate the green transition[19]. In general, the EU is considered to be in the right direction, with 30% of the combined €750 billion NextGenerationEU recovery instrument and the €1.1 trillion budget of the Multiannual Financial Framework (MFF) focusing on activities contributing to the 2030 emissions reduction target and 2050 climate neutrality objective. More significantly, the cornerstone of the NextGenerationEU mechanism is a €672 billion Recovery and Resilience Facility. Under the regulations of this facility, at least 37% of expenditure in national recovery plans must go to supporting the green transition[20]. The majority of national recovery plans have already been submitted and endorsed by the European Commission and some countries already submitted payment requests[21]. However, some expert analyses suggest that most final recovery plans will miss the 37% climate spending target[22]. Nevertheless, national recovery plans are currently being implemented, and it is too early to tell whether they will have a sufficiently significant climate impact. At this stage, the European Commission's monitoring role will be crucial in ensuring that funded projects and activities in all member states are in line with the 2030 and long-term climate targets. This monitoring process is particularly important in current circumstances, with the EU facing additional investment and spending needs, not only to accelerate the green transition and strengthen its energy security, but also to fund the assistance to address the defence, economic and security challenges posed by Russia's invasion of Ukraine[23]. The European and national financial resources must be therefore used in a targeted and effective manner to support real recovery and social cohesion in the transition towards a climate neutral region.

The EU's plans for post-pandemic recovery currently prioritise implementation of the EGD and climate targets. This determination is highlighted in the Commission's Communication 'Stepping up Europe's 2030 climate ambition. Investing in a climate-neutral future for the benefit of our people,' presented on 17 September 2020, along with the amended proposal for the European Climate Law, which raised the 2030 GHG

[18] Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action, OJEU L328/1 of 21 December 2018.

[19] Jon Birger Skjaerseth, 'Towards a European Green Deal: The evolution of EU climate and energy policy mixes,' *International Environment Agreements*, vol. 21, no. 1 (2021): 36-38.

[20] Nick Molho, 'Delivering a sustainable, durable, and inclusive recovery for Europe,' *Think2030 Policy Paper* (2021): 6, 10.

[21] European Commission, 'Recovery and resilience scoreboard,' https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html?lang=en (Accessed: 2 June 2022).

[22] Green Recovery Tracker, 'EU recovery: how green is recovery spending in different sectors' (2021):1, https://www.greenrecoverytracker.org/ (Accessed: 2 June 2022).

[23] EGOV, *op. cit.* (n. 10): 9.

reduction target to at least 55%[24]. The Communication, commonly known as the 2030 EU Climate Target Plan, lays the foundation for a wide range of actions within the EGD's principal objective and proposes an increased 2030 target of 55%. Drawing on an impact assessment and public consultations carried out in spring 2020, the 2030 Climate Target Plan concludes that the current 2030 climate and energy framework is insufficient to achieve climate neutrality in 2050, thus only resulting in a 60% reduction[25].

Therefore, to address the EU's new climate ambitions, the Climate Target Plan sets out reforms to many legal instruments of the current 2030 climate and energy framework, as well as introducing entirely new legal initiatives[26]. Most of the legislative proposals were later included in the European Commission's 2021 work programme, under the title of the 'Fit for 55 package'[27]. This legislative framework was subsequently presented by the European Commission in July 2021, following the adoption of the European Climate Law.

Delivering the EU's climate objective for 2030: the 'Fit for 55' legislative proposals

To achieve the 55% mitigation target by 2030 and prepare the road for the climate neutrality objective, the European Commission's 'Fit for 55' package includes proposals for revising the targets, scopes, and structures of all existing legal acts of the current 2030 climate and energy framework. Additionally, the package contains proposals for new complementary legal instruments to achieve the emissions reduction goal. In conjunction, the proposed instruments make 'Fit for 55' a comprehensive and robust package that revises the EU's entire climate and energy legal architecture.

Amendment of existing instruments: raising decarbonisation and energy ambitions

Among the legal acts related to emissions reductions, 'Fit for 55' includes reforms of the Emissions Trading System (ETS) Directive, the Effort Sharing Regulation (ESR) and the Regulation on the inclusion of greenhouse gas emissions and removals from land use, land-use change and forestry in the 2030 climate and energy framework (LULUCF Regulation)[28].

The ETS has been one of the key instruments of mitigation since 2005. As part of the 'Fit for 55' package, the aim of the proposal to amend the ETS Directive is to strengthen this carbon pricing mechanism by raising its overall reduction target

[24] COM (2020) 562 final.

[25] *Ibid.*, 2, 7-8.

[26] Liselotte Jensen, 'EU climate target plan. Raising the level of ambition for 2030,' *EPRS Briefing*, PE 659.370 (2020).

[27] European Commission, 'Commission work programme 2021. A union of vitality in a world of fragility,' COM (2020) 690, Annex I: New initiatives.

[28] For a detailed analysis of existing legal acts within the 2030 framework, see Kati Kulovesi and Sebastian Oberthür, 'Assessing the EU's 2030 climate and energy policy framework: incremental change toward radical transformation?,' *Review of European, Comparative and International Environmental Law (RECIEL)* vol. 29, no. 2 (2020): 151-166.

and extending its scope[29]. Thus, the GHG emission reduction objective is increased from the current 43% to 61% by 2030 (compared to 2005) in all sectors included in the trading system (fossil-fuel-consuming industrial areas, energy sectors and aviation). As a significant complementary aspect to GHG reduction performance, the proposed amendment also raises the annual linear reduction of allowances in circulation, from the current figure of 2.2% to 4.2%. This reduction will also apply to emissions from air transport, a sector where it has been proposed to reduce the current free allowances by 25% annually between 2024 and 2027, to which point all allowances will be auctioned.

The proposed amendment also extends the scope of the ETS to maritime transport. Specifically, all intra-EU maritime emissions and half of extra-EU maritime emissions will be progressively covered by allowance trading, starting in 2023 and reaching 100% in 2026. Another major addition to the current structure and scope of the ETS is a proposed second trading system for emissions from building and transport sectors, currently covered by the ESR. This second ETS will be a separate mechanism from the existing one, although the proposed amendment to the ETS Directive envisages that both systems could be merged by October 2031. For now, the proposed ETS for building and transport differs significantly in applying an upstream approach from the existing one, i.e., it applies to fuel suppliers rather than consumers[30]. This new ETS is proposed to be introduced in 2025, with an emissions cap and a linear reduction factor to reduce emissions by 43% by 2030[31].

Further supporting the increased mitigation aspirations of the revision to the ETS Directive, an amendment to the Market Stability Reserve (MSR) Decision is also proposed under the 'Fit for 55' package[32]. Since it first began operating in 2019, the role of the MSR has been to extract surplus allowances from the market. Its purpose is to prevent excessively low allowance prices by reducing the supply. The proposed amendment maintains the current minimum number in the MSR at 24% of the total number of allowances in circulation until the end of 2023. From that year onwards, any allowances placed in the MSR above the total number auctioned during the previous year will no longer be valid. In addition, a separate MSR is proposed for the second ETS[33].

ESR is the main legal instrument for reducing emissions in sectors not included in the ETS, such as agriculture, waste management, building and transport, which it

[29] European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending the Directive 2003/87/EC establishing a system for GHG emissions allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union GHG emissions trading system and Regulation (EU) 2015/757,' COM (2021) 551 final.

[30] Sabine Schlacke, Helen Wentzien, Eva-Maria Thierjung and Miriam Köster, 'Implementing the EU climate law via the 'Fit for 55',' *Oxford Open Energy*, no. 1 (2022): 4-5.

[31] Gregor Erbach and Nela Foukalova, 'Review of the EU ETS. "Fit for 55" package,' *EPRS Briefing*, PE 698.890 (2022): 7.

[32] European Commission, 'Proposal for a Decision of the European Parliament and of the Council amending Decision (EU) 2015/1814 as regards the number of allowances to be placed in the market stability reserve for the Union GHG emissions trading scheme until 2030,' COM (2021) 571 final.

[33] Maciej Pyrka et al., 'Reform of the market stability reserve (MSR) in the "Fit for 55" package,' *Centre for Climate and Energy Analyses* (2022): 18-40.

is also proposed to be amended as part of the 'Fit for 55' package[34]. The European Commission's proposal provides first for a greater reduction in GHGs in the EU, from a current figure of 30% to 40% by 2030, compared to 2005 levels. Secondly, it proposes to revise the individual targets for member states, which are set based on their Gross Domestic Product (GDP). Notably, the new amendment does not change the scope of the ESR, despite the proposal for a second ETS to cover emissions from the building and transport sectors. Consequently, these two sectors will be subject to a dual regulation, at least until the effects of the new second ETS will be assessed by the European Commission[35].

Another key piece of EU climate legislation is the LULUCF Regulation, to which substantial changes are proposed within the 'Fit for 55' framework[36]. The LULUCF Regulation provides nature-based solutions, known as removals, for reducing GHG in the atmosphere (e.g., absorption of emissions by plant growth and forest land). To ensure this legal instrument can achieve a reduction of at least 55% in GHG emissions by 2030, the proposed amendment introduces for the first time a quantified EU net removals target of 310 million tonnes of CO_2 by 2030, beginning with 2026. It is proposed to share this common target among the member states through binding national removals targets. In this respect, the proposal also amends the Governance Regulation, as it includes the rules for monitoring, reporting, and tracking member states' progress towards achieving the LULUCF Regulation targets[37]. In addition, from 2031 the scope of the Regulation will be extended to include certain GHG emissions from the agriculture sector, which will continue to be covered by the ESR until 2030. For this sector in particular, the European Commission seeks to achieve climate neutrality by 2035[38].

The review of the entire 2030 policy framework under the 'Fit for 55' package also includes the energy sector, in particular, the Renewable Energy Directive (RED II) and the Energy Efficiency Directive (EED). Both legal acts have cross-sectoral effects since they concern not only the energy sector, but also industry, transport, and buildings[39].

[34] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/842 on binding annual GHG emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement,' COM (2021) 555 final.
[35] Dessislava Yougova, 'Revising the Effort-Sharing Regulation for 2021-2030: "Fit for 55" package,' *EPRS Briefing*, PE 698.812 (2021).
[36] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of the Member States for 2030 and committing to the collective achievement of climate neutrality by 2035 in the land use, forestry and agriculture sector, and (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review,' COM (2021) 554 final.
[37] Vera Vikolainen, "Fit for 55' package: Revising the Regulation on land-use, land-use change and forestry (LULUCF),' *EPRS Briefing*, PE 699.483 (2022): 1-2.
[38] Liselotte Jensen, 'Revision of the LULUCF Regulation. Strengthening the role of the land use, land-use change and forestry sector in climate action,' *EPRS Briefing*, PE 698.843 (2021): 5-6; Sabine Schlacke et al., *op. cit.* (n. 30): 11.
[39] Sabine Schlacke et al., *op. cit.* (n. 30): 9.

The proposed amendment to the RED II extends both its targets and its scope[40]. The EU's overall binding target of achieving at least a 32% share of energy from renewable sources by 2030 is raised to 40%. It aims to complement this overarching target with additional EU and national sub-targets in certain sectors. Thus, a new indicative EU target of 49% renewable energy in the building sector by 2030 is introduced. Likewise, a binding (as opposed to an indicative) target of a 1.1% increase of renewable sources in the cooling and heating sector is proposed for all member states. In industry, two new targets are proposed. The first one entails a 1.1% annual average increase in the share of renewable energy sources used in industry, which is an indicative target. The second one brings a binding 2030 target of 50% of renewable fuels of non-biological origin to be used as feedstock or as an energy carrier in industry, for member states. In the transport sector, member states are required to reduce GHG emissions by 13% until 2030 through a gradual increase in the use of renewable fuels[41].

The proposed amendment to the EED also tightens the current targets and introduces new ones, making them mandatory[42]. The current EED sets an EU goal of a 32.5% improvement in energy efficiency by 2030. The revised EED would require member states to almost double their annual energy savings obligations. As a main provision, 'Energy Efficiency First' becomes a legal principle in the amended EED. Under this principle, member states are obliged to implement energy efficiency solutions in all sectors impacting energy demand, including social housing, and when granting subsidies and awarding contracts. The revised EED provides for a new binding EU energy efficiency target of at least 9% by 2030 compared to the 2020 baseline scenario. In practice, the change in the baseline year from 2007 at present to 2020 is more ambitious, since its application will mean a final energy saving for the EU equivalent to 36% of final energy consumption, as compared to 32.5% at present. To achieve this new target, member states are obliged to set new national energy efficiency objectives in their updated NECPs. Under the amended EED, EU countries are required to increase annual savings in final energy consumption to 1.5% from 2024 (the current target remaining at 0.8% until then). In addition, two legally binding targets are introduced for public bodies in all member states. Firstly, all public services and buildings must reduce the total final energy consumption by at least 1.7%. Secondly, 3% of all public buildings are required to achieve near-zero energy standards. Finally, the revised EED introduces a new obligation for member states to take measures to protect the citizens affected by energy poverty, vulnerable customers and people living in social housing[43].

As a complementary legal act, the 'Fit for 55' package also provides for

[40] European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652,' COM (2021) 557 final.

[41] Alex Wilson, 'Revision of the Renewable Energy Directive: Fit for 55 package,' *EPRS Briefing*, PE 698.781 (2021): 5-7; Andris Piebalgs and Christopher Jones, 'The Commission's proposal of a Fit for 55 legislative package - what impact could it have?,' Florence School of Regulation *Policy Brief*, no. 2021/56 (2021): 3.

[42] European Commission, 'Proposal for a Directive of the European Parliament and of the Council on energy efficiency (recast),' COM (2021) 558 final.

[43] Alex Wilson, 'Revising the Energy Efficiency Directive: Fit for 55 package,' *EPRS Briefing*, PE 698.045 (2021): 1-5; Andris Piebalgs and Christopher Jones, *op. cit.* (n. 41): 5.

an amendment to the Energy Tax Directive[44]. One of the main changes involves a broadening in its scope. Thus, the revised Directive ends the exemption from taxation for the kerosene used in aviation and the heavy oil used in the maritime sector for intra-EU travels. In addition, the reform proposes a change whereby taxes would be expressed in terms of energy (€/Gigajoule) as opposed to volume[45]. Another significant change in the recasting of this legal act is represented by the minimum taxation levels. The reformed Directive identifies six fuel ranks based on GHG savings. More specifically, the minimum tax rates seek to favour certain energy sources that are considered to be more beneficial for the green transition or for social objectives. Under this minimum taxation ranking, the highest tax would be levied on conventional fossil fuels, whilst electricity –whether renewable or not – would be subject to the lowest minimum taxation rate. Finally, it should be noted that the adoption of this amended Directive on energy taxation will need to be unanimously voted in the Council by means of a special legislative procedure (Art. 192.2 TFEU), whereas the rest of the legislative reform package can be passed by both the European Parliament and the Council through the ordinary legislative procedure[46].

As well as the major legal instruments of the 2030 climate and energy policy framework, the 'Fit for 55' package also includes reforms of certain specific legal acts in the transport sector. This is particularly the case of the Regulation setting CO2 emission standards for new cars and light commercial vehicles[47]. The proposed reform increases the CO_2 reduction target for 2030, while adding a new target for 2035. Specifically, for newly registered passenger cars, the reduction target is increased from the current 37.5% to 55%, while for light commercial vehicles the proposed reduction is increased from 31% to 50%, compared to 2021 figures. By 2035, manufacturers of both types of vehicles must achieve a 100% reduction in CO2 emissions as compared to 2021, in practice implementing a ban on internal combustion engines from that year onwards[48].

To achieve these significant changes in the automobile industry, the European Commission also argues for an amendment to the Directive on the deployment of alternative fuels infrastructure within the 'Fit for 55' package. One relevant change concerns the legal nature of the Directive, which is proposed to be converted into a Regulation[49]. In addition, the proposal introduces very specific binding requirements on member states to ensure a sufficient number of public charging and fuelling stations. Thus, for each new electric car registered in the European Union, 1 kW of new charging

[44] European Commission, 'Proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast),' COM (2021) 563 final.

[45] One gigajoule represents one billion joules. For natural gas, one gigajoule is equivalent to 25.5 cubic metres, 27 litres of fuel oil, 39 litres of propane, 26 litres of gasoline or 227 kilowatt hours of electricity. See Fortis BC. Energy at work, 'Gigajoules: how natural gas is measured,' https://www.fortisbc.com/about-us/facilities-operations-and-energy-information/how-gas-is-measured (Accessed: 2 June 2022).

[46] Andris Piebalgs and Christopher Jones, *op. cit.* (n. 41): 5-6.

[47] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2019/631 as regards strengthening the CO2 emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition,' COM (2021)556 final.

[48] Gregor Erbach, 'CO2 emission standards for new cars and vans: Fit for 55 package,' *EPRS Briefing*, PE 698.920 (2022); Sabine Schlacke et al., *op. cit.* (n. 30): 10.

[49] European Commission, 'Proposal for a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council,' COM (2021) 559 final.

capacity must be installed. Likewise, a pool of electric charging points should be made available (at least) every 60 kilometres on the EU’s major motorways and roads by 2030. One hydrogen filling station must be provided every 150 kilometres on major motorways and at every urban node by 2030. An appropriate number of liquified natural gas (LNG) refuelling points in maritime Trans-European Transport Network (TEN-T) ports must also be ensured[50].

Additional new mechanisms: strengthening the path to the 55% target

In addition to the proposed amendments on the transport sector, the ‘Fit for 55’ package includes two new Regulations concerning the fuel transition in the air transport (‘ReFuelEU Aviation’)[51] and maritime sectors (‘Fuel EU Maritime’)[52]. In the aviation sector, the proposal sets minimum targets for the provision and use of sustainable and synthetic fuels. It therefore affects both fuel suppliers and air companies. Specifically, the share of sustainable aviation fuels would rise from 2% in 2025 to 63% in 2050, while the use of synthetic aviation fuels would have to be progressively increased, starting in 2025, to 28% by 2050. In the maritime sector, the approach of the proposed Regulation is different, since it is based on the annual GHG intensity of the energy used by ships entering and leaving EU ports. The GHG reduction targets are set for periods of five years, starting with 2% in 2025 and reaching 75% in 2050[53].

Two other significant legal innovations are the Regulations for a carbon border adjustment mechanism (CBAM)[54] and a Social Climate Fund[55]. The CBAM is designed to become a powerful tool of EU climate diplomacy[56], while the Social Climate Fund strengthens the social dimension of the ‘Fit for 55’ package, which is fundamental for its successful implementation[57].

With regards to the CBAM, the proposal envisages replacing the EU’s current framework on carbon leakage. Carbon leakage occurs when high-emitting European industries relocate production abroad, thus lowering the cost for their emissions. The EU has been addressing carbon leakage through a range of measures, the most important one being the free allocation of allowances. However, this system has proved ineffective in encouraging beneficiary industries to accelerate their decarbonisation

[50] Andris Piebalgs and Christopher Jones, *op. cit.*, (n. 41): 7; Jaan Soone, ‘Deployment of alternative fuels infrastructure: Fit for 55 package,’ *EPRS Briefing*, PE 698.795 (2021): 1-5.
[51] European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport,’ COM (2021) 561 final.
[52] European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on the use of renewable and low-carbon fuels in maritime transport and amending Directive 2009/16/EC,’ COM (2021) 562 final.
[53] Stephanie Searle, ‘Alternative transport fuels elements of the European Union’s Fit for 55 package,’ ICCT *Policy Update* (2021):5-7; Andris Piebalgs and Christopher Jones, *op. cit.*, (n. 41): 7; Sabine Schlacke et al., *op. cit.* (n. 30): 11.
[54] European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism,’ COM (2021) 564 final.
[55] European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council establishing a Social Climate Fund,’ COM (2021) 568 final.
[56] Milan Elkerbout, Vasileios Rizos, Christian Egenhofer and Julie Bryhn, ‘European Green Deal. Towards a resilient and sustainable post-pandemic recovery,’ CEPS Task Force Working Group *Report* (2021): 7.
[57] Rebekka Popp and Namita Kambli, ‘Fit for Society. Benchmarks for a social Fit for 55 package,’ E3G *Briefing Paper*, (2021):1.

process and has even generated extraordinary profits for them[58]. As explained above, the reform of the ETS Directive will drastically reduce ETS allowances, which will result in an increase of the CO_2 price. In such a situation, the free allowances system will not be able to prevent carbon leakage.

Under the CBAM, a charge linked to the ETS price is levied on imported products at the border, exactly equivalent to the ETS allowances paid by EU producers. In this way, the new system ensures that the carbon adjustment price paid by importers strictly reflects the price paid under the ETS by European industries. The CBAM therefore represents a radical new approach as compared to the current system of free allocation[59]. It is proposed to fully implement the CBAM in 2026 following a three-year pilot period starting in 2023. It will initially be applied to five sectors – cement, iron and steel, aluminium, fertilisers, and electricity. Its gradual implementation will entail a progressive elimination of free allowances in these sectors, starting in 2025 and ending in 2035 with no free allocation. This ten-year phase-out period has been criticised by some experts and civil society groups who consider that the EU should fully implement the CBAM and completely eliminate free allocations by 2030[60].

What does appear certain is that the EU will become the first region to adjust carbon at its borders. The prospect has led some trade partners to consider similar mechanisms and sparked debate on its impact and compatibility with World Trade Organisation (WTO) rules. According to the European Commission's proposal, the design of the CBAM is compliant with WTO provisions. Application of the proposed system provides for no exception other than that granted to the non-EU countries that participate in the ETS (Iceland, Liechtenstein, and Norway), meaning that Least Developed Countries and the main trade partners are all included. Likewise, the new mechanism applies a reduction factor on CBAM certificates equivalent to the CO2 price paid in the country of origin, thus avoiding the risk of dual taxation, specifically for non-EU countries participating in the ETS. Finally, the proposal does not include the granting of export rebates, which would be incompatible with WTO law. Indeed, an export rebate can only be granted if it is intended to compensate for a domestic tax. However, the ETS on which the CBAM is based is not a tax[61].

Some essential aspects of the CBAM remain unresolved, such as the use of the funds raised through the mechanism. Overall, however, the CBAM as proposed has the potential not only to protect the European industry from carbon leakage, but to inspire other trade partners to introduce similar mechanisms and push foreign exporters to comply with EU's climate standards[62].

For its part, the proposed Regulation introducing a Social Climate Fund

[58] Additional profits accounted for €1.6 billion between 2008 and 2019. See Sander de Bruyn, Daan Juijn and Ellen Schep, 'Additional profits for sectors and firms from the EU ETS, 2008-2019,' CE Delft for Carbon Market Watch Report (2021).
[59] Milan Elkerbout, Vasileios Rizos, Christian Egenhofer and Julie Bryhn, 'European Green Deal. Towards a resilient and sustainable post-pandemic recovery,' CEPS Task Force Working Group Report (2021): 7.
[60] Pierre Leturcq, 'Climate ambition and justice: A compass for the CBAM design,' Institute for European Environmental Policy (IEEP) *Policy Paper* (2021): 3
[61] *Ibid.*: 7
[62] Lorenzo Faggiano, 'On the way to Fit-for -55: The Carbon Border Adjustment Mechanism,' International Development Research Network (IDRN) *Discussion Paper* (2021): 7.

is intended to help vulnerable households, transport users and micro-enterprises compensate for the additional cost arising from inclusion of buildings and road transport in the second ETS. It will operate from 2025 to 2032 with a financial volume of €72.2 billion, of which 23.7 billion will be funded by the current 2021-2027 MFF and 48.5 billion will be included within the next 2028-2032 MFF. According to the European Commission's forecast, this financial envelope corresponds to 25% of expected revenues from the second ETS[63].

The proposed Regulation on the Social Climate Fund will also bring amendments to the Governance Regulation. Specifically, member states will have to submit a Social Climate Plan by 30 June 2024 at the latest, as part of their scheduled updates of their NECPs. These plans must provide income support to vulnerable groups and measures to promote decarbonisation in building and road transport in accordance with the Social Climate Fund Regulation. The Social Climate Plans will be assessed by the European Commission, which will adopt and implement a decision if a positive evaluation will be made. A negative assessment will require the member state concerned to revise and resubmit its plan[64].

Finally, Annex I of the proposed Regulation contains the criteria for calculating the maximum financial allocation from the Social Climate Fund for each member state. These criteria consider, inter alia, total population, gross national income, population at risk of poverty in rural areas, and CO_2 emissions from fuel combustion by households. Based on these variables, the largest recipients are expected to be Poland, France, Italy, Spain, and Romania[65].

Conclusion

The 'Fit for 55' package is probably the most ambitious decarbonisation framework ever adopted by the EU. It aims to address the 55% GHG reduction target set by the European Climate Law, placing the EU and its member states on the road to climate neutrality. In this sense, the 'Fit for 55' package is an expression of the EU's ambition to lead the ecological transition and become the first climate-neutral region in the world by 2050.

As a legislative package, the 'Fit for 55' envisages amendments to all existing legal acts of the current 2030 climate and energy framework. In addition, it includes proposals for new legal instruments. Apart from the energy Directives, all the proposed acts are Regulations, a form of legal instruments that provide the European legislator with complete normative power. Most of the legal acts introduce stricter targets or new goals, broaden their scope, and set mandatory requirements that will entail even more ambitious actions by member states. Many proposals include amendments to the Governance Regulation, which provides the European Commission with the main mechanism for monitoring member states' climate and energy policies in the achievement of the sectoral targets. Along these lines, some of the proposed legal acts will require member states to include more actions in their NECPs, such as energy efficiency solutions in all sectors, including public services and Social Climate Plans.

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[63] Sabine Schlacke et al., *op. cit.* (n. 30): 6.

[64] *Ibid.*: 6.

[65] Alex Wilson, 'Social climate fund: Fit for 55 package,' *EPRS Briefing*, PE 698.777 (2021).

If adopted as proposed, the 'Fit for 55' legislative package therefore has the potential to accelerate the green transition in Europe and reinforce the EU's climate legal architecture significantly. Indeed, the use of Regulations as the main legal act, the more ambitious targets, the greater level of action required from member states and the European Commission's reinforced regulatory and monitoring power are clear indicators of the increasingly integrated nature of the EU climate policy.

The first legal acts derived from 'Fit for 55' are expected to be adopted by the end of 2022 and the first semester of 2023. However, the legislative process will be conditioned by the challenging and uncertain times that the EU is currently facing, chiefly due to the economic and social impacts caused by the COVID-19 pandemic, and the energy and security crisis resulting from Russia's invasion of Ukraine.

In this unprecedented situation, the EU's financial recovery instruments and consistent alignment of national recovery plans with the EU's 2030 climate target and its 2050 climate neutrality goal can provide the impetus to accelerate the energy transition and reinforce climate action as a driver of economic and social transformation.

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