

'Fit for 55' package: Revision of the Effort-Sharing Regulation

Impact assessment (SWD(2021) 611 final, SWD(2021) 612 final (summary)) accompanying a Commission Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement (COM(2021) 555 final)

This briefing provides an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying the above-mentioned [proposal](#), submitted on 14 July 2021 and referred to the European Parliament's Committee on the Environment, Public Health and Food Safety (ENVI). The proposal is part of the 'fit for 55' legislative package submitted by the Commission in the context of the [European Green Deal](#), which reaffirms the long-term objective of a climate-neutral European Union by 2050, set in November 2018 by the Commission [communication](#): A Clean Planet for All. The achievement of this objective requires, based on [state-of-the-art scientific warning](#) on climate change trends, [increasing](#) the cuts in the EU greenhouse gas (GHG) emissions by 2030 as compared to what is currently envisaged by the EU legislation. In particular, the [European Climate Law](#), which made 'climate neutrality by 2050' a legally binding objective for the EU Member States, requires that by 2030 the EU achieve a net reduction of 55 % of its GHG emissions (compared to 1990 levels). However, the current set of EU climate mitigation policies, agreed by the EU co-legislators in what was at the time a less ambitious climate mitigation context, are fit to achieve a GHG reduction target of no more than 40 % (compared to 1990 levels). The current EU climate mitigation policies must therefore be revised to be 'fit' for achieving the new '55 % by 2030' net reduction target.

The [Effort-sharing Regulation](#)¹ (ESR) is an essential part of the EU climate mitigation policy. It governs the reduction of GHG emissions that are not covered by the existing EU emissions trading system (EU ETS). These are GHG emissions that are i) sourced from **sectors** such as buildings, transport (except aviation and non-domestic shipping), agriculture, waste, industrial installations and gases (not covered by the EU ETS); or are ii) non-combustion-related emissions from energy and product use. The ESR thus covers around 60 % of the total EU GHG emissions. For the years between 2021 and 2030, it sets a collective EU GHG reduction target. It furthermore sets GHG reduction targets for each EU Member State to achieve by 2030, as well as binding annual reduction targets distributed among the EU Member States based on fairness and cost-efficiency.² Member States thus 'share the effort' of reducing direct GHG emissions. The Commission proposal for a revision of the ESR, whose IA is discussed in this briefing, aims to upgrade the relevant reduction targets in a way that would allow the ESR to contribute sufficiently to the '55 % by 2030' net reduction EU target, while at the same time remaining faithful to its own scope.

Problem definition

The ESR currently in force requires the 27 EU Member States to collectively reduce, by 2030, their GHG emissions from the ESR sectors by 29 % (compared to 2005). According to the Commission's IA, the proposed revision of the ESR addresses the following 'general' problem, whose nature and scale are defined in a clear and straightforward way: '... with current national targets agreed for 2030

(a EU-27 reduction of 29 %³ compared to 2005) and existing and planned policies, **GHG emissions in ESR sectors** are **not** expected to **sufficiently decrease** by 2030 to achieve the contribution of these sectors to the new overall EU target of at least 55 %' (p. 14, IA). Furthermore, the problem definition is supported with a projection – the so-called [EU Reference Scenario 2020](#)⁴ – which convincingly shows that even if the current ESR (and related policies) are to be fully implemented by all Member States and the 29 % reduction target is to be achieved (or even over-achieved) by 2030, this result would not be enough to satisfy the need for a 39-40 % reduction in the ESR sectors by 2030 as estimated by the EU [climate target plan](#) (CTP).⁵ The CTP assessed that the overall reduction in the ESR sectors would need to increase by some 10 percentage points.

When formulating the problem definition, the IA also takes specific account of the need to revise the ESR so as to adapt it to the EU climate mitigation policies' alignment with the raised ambition for emissions cuts by 2030. In particular, the IA reasonably assesses that, if not addressed by policy action, the problem would evolve under the baseline scenario as follows: without a change in both its scope and ambition, the current ESR would place the entire additional burden of stepping up decarbonisation on the sectors covered by the EU ETS and the Land Use, Land-use Change and Forestry (LULUCF) Regulation, and on the other instruments relevant to these sectors, in particular the Energy Efficiency Directive, the Renewable Energy Directive and the Energy Performance of Buildings Directive

The stakeholders that would be mostly affected by the initiative are not explicitly defined in the problem definition. Nevertheless, in its Annex 10.3, the IA does mention the Member States' administrations and the various economic sectors covered by the ESR. Furthermore, the open public consultation carried out with the aim of collecting evidence for the IA suggests that affected stakeholders include: 'public authorities, business associations, companies, trade unions, environmental organisations, individuals, academic institutions, etc.)'.

Given that the implementation of the ESR only started at the beginning of 2021, there is not a critical volume of data to enable its ex post evaluation, the findings of which the IA would have otherwise incorporated. This does not affect the validity of the IA analysis in any way.

Subsidiarity / proportionality

The IA stresses the **subsidiarity** aspects of the proposal. In particular, it claims that the EU is the appropriate level at which the policy intervention should take place as compared to what could be effectively achieved at national, regional and/or local level. The IA puts forward the following plausible arguments: 'Climate change is a trans-boundary problem where coordinated EU action can supplement and reinforce national and local action effectively. Thus, individual action is unlikely to lead to optimal outcomes and action at EU level is therefore indispensable' (p. 19, IA). Another reasonable argument is that 'coordination at the European level enhances climate action and EU action is thus justified on grounds of subsidiarity in line with Article 191 of the Treaty on the Functioning of the European Union' (p. 20, IA). At the same time, the IA rightly warns that Member States have a crucial role to play in the achievement of the increased climate ambition, in particular in areas where subsidiarity has delegated the competence for specific policies and measures to the national level, which is indeed the case of the ESR.

According to the IA, the added value of the EU-level intervention in the increased chances for achieving a true transformation of the EU into a climate-neutral economy by 2050, while at the same time avoiding the fragmentation of its internal market.

As for the principle of **proportionality**, it has not been explicitly addressed by the dedicated section of the IA,⁶ nor have the identified policy options been analysed for their correspondence with it.⁷ Instead, proportionality is succinctly claimed to have been guaranteed; these claims are made by the [executive summary of the IA](#), the [explanatory memorandum of the proposal](#) and the [subsidiarity grid accompanying the proposal](#), which appears to be (more of) a 'ticking the box' exercise rather than a proper justification of this specific EU policy-making aspect, which it does deserve.

Within the deadline of 8 November 2021, a reasoned opinion was [submitted](#) by the Irish parliament.

Objectives of the initiative

The IA sets one general and three specific objectives. Contrary to the requirements of the applicable [Better Regulation Guidelines](#), it does not identify any operational objectives.

According to the IA, the **general objective** of the revision is 'to strengthen the ESR in a coherent manner with a view to achieving the new 2030 net GHG emission reduction target of 55 % (compared to 1990), in line with the 2030 CTP, which is a step in achieving climate neutrality – net zero GHG emissions – by 2050 in a gradual and balanced way' (p. 21, IA).

Against this backdrop, the IA identifies the following three **specific objectives**, aimed at supporting the achievement of the general objective:

- to define the scope of the regulation so that it remains coherent with other related proposals included in the 'fit for 55' package, as well as with the overall architecture, motivating a cost-efficient contribution by all sectors to meeting the overall objective;
- to ensure that any additional efforts are shared in a consistent, fair and equitable manner between the Member States;
- to promote cost-efficient solutions that would make it possible to further reduce emissions in the ESR sectors using target reductions and flexibilities.

The general and specific objectives are clearly defined. Furthermore, they derive from the particular problem that the legislative initiative aims to solve. The general objective involves net reductions of GHG emissions with specific targets and a deadline for their achievement. The general objective is thus measurable and time-bound, so it is already quite specific, rather than Treaty-based, as required by the applicable [Better Regulation toolbox](#).⁸ The objectives thus seem to be realistic. It is also worth noting that the IA takes account of the need (defined as specific objective 'two') to ensure that Member States' efforts are indeed shared based on a set of clearly defined principles (i.e. fairness and cost-efficiency), which would help them to collectively achieve the general objective.

Range of options considered

The IA clearly describes the baseline scenario, which is common to several IAs accompanying the proposals under the 'fit for 55' package. It builds on the EU Reference Scenario 2020 (discussed above in the context of the problem definition), which suggests that, should the climate-related regulatory framework remain unchanged, even if it is fully implemented, it would not achieve the higher reduction ambition of the general objective. The IA therefore concludes that the baseline is not a relevant policy option for solving the problem.

Three policy options are discarded at an early stage: i) setting ESR ambition levels that go beyond cost-efficient projected contributions; ii) reducing the ESR scope to cover only non-CO₂ emissions other than those sourced from agriculture; and iii) removing domestic navigation emissions from the ESR scope. Discarding these options appears to be justified. Three options (and relevant sub-options) are defined and considered in detail by the IA (pp. 24-26, the preferred option of the IA is in grey):

Option 1: Extending emissions trading to some of the sectors currently covered by the ESR (parallel coverage ESR/emissions trading for transport and buildings), while keeping these sectors in the scope of the ESR

Sub-option 1.1: Parallel coverage ESR/new emissions trading for transport and buildings, strong increase in ESR ambition (40 % reduction compared to 2005 levels). Sub-option 1.1. has two target options:

Target option 1.1.1 Baseline, where the distribution of targets is based on a pure update of the GDP/capita data methodology used under fairness target-setting;

Target option 1.1.2 Based on the same GDP/capita data methodology but with additional adjustments to **reflect cost-efficiency** concerns

Sub-option 1.2: Parallel coverage ESR/new emissions trading for transport and buildings, limited increase in ESR ambition (35 % reduction compared to 2005 levels) and in flexibilities related to EU ETS and LULUCF

Option 2: Maintaining in the ESR only the sectors not covered by emissions trading

Sub-option 2.1: Taking out buildings and road transport from the scope of the ESR, targets increased to a cost-efficient ESR ambition level (i.e. 35 % reduction compared to 2005 levels)

Sub-option 2.2: Taking out buildings and road transport from the scope of the ESR, current ESR targets maintained (which in practice would mean 27 % reduction compared to 2005 levels as applied to the reduced scope)

Option 3: Phasing out the ESR and replacing it by other policy instruments

Under this option, the ESR will no longer exist. Instead, an extended emissions trading will cover all fossil fuel combustion emissions and a single climate policy instrument will cover agriculture and LULUCF. Additional sectorial regulation will cover the remaining emissions from current ESR sectors, namely, emissions from waste-water treatment installations and methane emissions from fossil fuel-based energy installations.

Alternatives are considered within both options 1 and 2, through sub-options that offer realistic courses of action. However, when defined, none of the three options was explicitly analysed either for its subsidiarity or its proportionality. Nevertheless, subsidiarity-related aspects of the options have been taken into account throughout the subsequent analysis of impacts and comparison of the options.

The above three options appear to be presented in a clear yet not always balanced way. This lack of consistency in terms of balance is exemplified in Section 5 of the IA, which identifies the options. There, sub-option 1.1. is explained in more detail than options 2 and 3, and than sub-option 1.2.; this approach somewhat downgrades options 1.2., 2 and 3. In particular, the emissions reduction capacities of the relevant (sub-)options, and in particular the reduction capacity of sub-option 1.1. (which implies a reduction of emissions in the ESR sectors by 39-40 % compared to 2005), creates the impression that the IA has a preferred sub-option from the outset, being the only one in line with the reduction envisaged by the CTP. Nevertheless, as explained further down, the IA identifies and analyses (in Sections 6 and 7) the impacts of the three options and justifies (in Section 8) the choice of a preferred option. In particular, the preference is for sub-option 1.1. as combined with target sub-option 1.1.2, i.e. parallel coverage ESR/new emissions trading for transport and buildings, strong increase in ESR ambition (39-40 % reduction compared to 2005 levels) based on the same GDP/capita data methodology but with additional adjustments to reflect cost-efficiency concerns.

Assessment of impacts

The IA presents the impacts of the three options selected for further analysis in detail; this presentation combines quantitative and qualitative methods. The analysis identifies and quantifies relevant costs and benefits, which are instrumental for the identification of the impacts of the policy options.

For **options 1 and 2** (and their relevant sub-options), the analysis applies (nearly) the same set of criteria and thus gives equal weight to each of the two options, namely: efficiency and environmental impacts of the 2030 targets in the ESR sectors; national targets and distributional

impacts in the ESR sectors; starting point and trajectory in the ESR and environmental integrity; assessing the impact of the existing flexibilities built into the EU ETS and the LULUCF Regulation over the 2021-2030 period; (for option 1 only) the role of the other flexibilities in the ESR (transfers, banking, borrowing); and administrative impacts of the current compliance rules.

The consideration of the above criteria ensures that relevant **economic, environmental administrative and social impacts** are identified and assessed with a focus on the first three impacts.⁹ The above analytical structure also made it possible to identify and assess the relevant positive and negative, direct and indirect impacts of options 1 and 2 (and their sub-options). A strength of the IA is that it analyses the impacts from the standpoint of those affected by the initiative (the ESR sectors and Member States' administrations). The IA is sufficiently specific about the efforts the affected sectors need to make to ensure compliance. The IA also refers to the results of the stakeholder consultations carried out with the aim of collecting data in support of its analysis.

Because of the nature of **option 3** – phasing out the ESR and replacing it by other instruments – the majority of the criteria applied to options 1 and 2 are inapplicable to this option. It is, therefore, assessed by the IA only for its environmental and cost-efficiency impacts, and for its administrative impacts on the current compliance rules. The IA notes that the impacts of this particular option are primarily analysed by the IAs accompanying the proposals for revision of the [EU ETS Directive](#) and the [LULUCF Regulation](#), especially as regards economic and distributional impacts.

The IA compares the options (and their sub-options) in terms of their potential to achieve the specific objectives, in particular, regarding their scope, environmental integrity, distribution of efforts (fairness and cost-efficiency) and flexibility offered.

The choice of option 1.1.2. as the preferred one appears to be justified based on the analysis of the impacts and the comparative assessment of the options. In particular, the methodology used for the calculation of targets, based on the principles of fairness, cost-efficiency and environmental integrity, is well illustrated in Table 5 of the IA (pp. 40-41, IA).

In terms of **environmental impacts**, the preferred option ensures the ESR's share in achieving the EU's common climate objectives. **Economic** impacts involve, among others, increased energy system costs (by 0.3 % to 0.6 % of GDP) in the next decade, as compared to the EU reference scenario. **Social** impacts include distribution of the reduction efforts based on fairness and solidarity among Member States; the IA however does not provide further substantiation.

Simplification and other regulatory implications

The revision of the ESR is not a REFIT initiative; therefore, simplification and administrative burden reduction is not an explicit priority of the IA. Moreover, the IA explicitly considers that Member States' reporting obligations under the ESR 'would follow the same well established rules and procedures as in the current commitment period 2021-2030 [...], which implies that the associated administrative burden and costs for monitoring compliance are already reduced both for Member States and the European Commission and fit for purpose'. (IA, p. 107).

The IA takes account of the fact that a large number of EU policy initiatives and legislative acts – all relevant to the three policy options, since they form part of the European Green Deal and related EU policies (e.g. the common agricultural policy) – are related to the proposed revision of the ESR. However, instead of analysing the links between the revision of the ESR and each of the initiatives/legislative acts for coherence, in most cases the IA only lists the main objectives of the identified initiatives/pieces of legislation. This approach creates the impression that there are a lot of definite synergies as regards climate mitigation, but this also leaves any potential incoherence unidentified.

Monitoring and evaluation

The IA justifies in detail why the system of monitoring, reporting and evaluation established by the ESR currently in force (and the related [Regulation](#) on the governance of the energy union and

climate action¹⁰) should be 'largely' kept, provided the ESR would be indeed revised in accordance with the Commission's preferred option. The ESR is already strictly based on a system of quantified targets, which could indeed serve as a sufficient reference point for its monitoring, reporting and evaluation.

Stakeholder consultation

As mentioned, the IA contains a dedicated annex (Annex 10.3), which, among others, identifies the main affected stakeholders – both directly (primarily Member States' administrations as regards reporting under the ESR) and indirectly (the sectors responsible for effectively achieving the ESR targets as a result of the implementation of measures taken at EU and national level). Stakeholders were given the opportunity to share views within the frame of a [feedback exercise](#) collecting their views on the Inception Impact Assessment (IIA) of the initiative (dated 29 October 2020), which was carried out between 29 October and 20 November 2020. In line with the Better Regulation guidelines, an [open public consultation](#) (OPC) was held from 13 November 2020 to 5 February 2021. It appears from the IA (namely, the summaries of stakeholder feedback included in Annex 10.2) and from the [summary report of the OPC](#), that both consultations allowed the respondents to comment on the problems provoking the policy initiative and the various options for tackling it.¹¹ Stakeholder views are extensively used across the whole IA, including on the definition of options and the assessment of their impacts. No option(s) enjoying broad stakeholder support was/were ruled out by the IA. The IA's Annex 10.2 and the OPC summary report transparently present the expressed opinions by attributing them to the relevant respondent category (e.g. public authorities, business associations, companies, trade unions, environmental organisations, individuals, and academic institutions).

Supporting data and analytical methods used

The IAs accompanying several of the legislative proposals included in the 'fit for 55' package,¹² including the IA analysed here, rely on a common analytical framework, aimed at 'ensuring consistency of the analysis across all initiatives' (p. 120, IA). This framework is embedded in several modelling tools with a proven track record in supporting EU policy-making. These modelling tools are used for producing a common baseline (the [EU Reference Scenario 2020](#)) and a set of core scenarios (REG, MIX, and MIX-CP – all of which are set to achieve the 55 % net GHG reduction EU target by 2030), complemented by specific variants developed for the individual 'fit for 55' initiatives. The modelling tools, including those used for the preparation of the present IA – PRIMES, PRIMES-TREMOVE, PRIMES-maritime, GLOBIOM-G4M, GAINS, and CAPRI – are publicly available in the Modelling Inventory and Knowledge Management System ([MIDAS](#)) of the European Commission. The modelling work is based on socio-economic and technology assumptions regarding the evolution of the European population, GDP growth, international energy prices, and the development of technologies, in terms of performance and costs.¹³ The modelling tools are fuelled with recent data whose sources are referenced. The uncertainties of the analysis are duly recognised. Work done by external contractors is publicly available, and so are the technology assumptions supporting the IA analysis.¹⁴

The IA uses the MIX scenario and the variant 'MIX-NECP-plus' as its 'central' scenario. MIX assumes an extended ETS in buildings and road transport, combined with additional, medium to high ambition, energy efficiency and renewable energy policies. In this scenario, the ETS for new sectors is assumed as separate from the existing EU ETS, but its parameters are supposed to be set at a level of ambition that would lead to carbon prices similar to those projected for the existing EU ETS.

Follow-up to the opinion of the Commission Regulatory Scrutiny Board

The RSB issued an [opinion](#) on 19 April 2021, noting significant shortcomings of the draft IA. The RSB thus gave a 'positive opinion with reservations', which means the relevant Commission services could only proceed further with the initiative, provided they first bring the recommended improvements to the IA.

The RSB pointed out three elements of particular concern that needed improving. The first was the definition of the problem, namely, the IA did not sufficiently identify the shortcomings of the current ESR. Coherence with other linked initiatives (including with the EU ETS and the LULUCF Regulation) is the second point of concern, which, according to the RSB, was not convincingly addressed by the draft IA; in particular, it 'does not sufficiently demonstrate that it is proportionate to keep the ESR for sectors that will be covered by the revised ETS' (RSB opinion, p. 2). Thirdly, the draft IA did not identify who will be affected and how and did not present the main costs and benefits of the preferred options; the RSB noted further that the draft IA did not include the views of the relevant stakeholders. Additional recommendations have also been addressed by the RSB.

Annex 10.1.3. to the IA explains which RSB comments were addressed and how. It appears that the Commission services mainly addressed the above three points of particular concern for the RSB.

Coherence between the Commission's legislative proposal and IA

The proposal for revision of the ESR follows the preferred option of the IA. As already highlighted, the proposal deals with the proportionality aspects of the initiative by claiming that proportionality is ensured, while the IA should have analysed (and substantiated) this in more depth.

The IA analyses the nature and scale of the problem that has triggered the revision of the Effort-sharing Regulation. While the IA addresses the subsidiarity aspects of the revision sufficiently, it does not address those related to proportionality. The IA sets one general and three specific objectives, clearly deriving from the problem. It identifies and analyses three policy options in detail. It compares the options (and their sub-options) in terms of their potential to achieve the specific objectives, in particular, regarding their scope, environmental integrity, distribution of efforts (in terms of fairness and cost-efficiency) and flexibility offered. The options are analysed mostly for their environmental, economic and administrative impacts. Stakeholder views are abundantly used and transparently referenced throughout the analysis of impacts. The IA rests on a solid knowledge base combining the use of qualitative and quantitative methods.

ENDNOTES

- ¹ [Regulation \(EU\) 2018/842](#) of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emissions reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement.
- ² According to the IA, the application of the principles of fairness and cost-efficiency in the distribution of targets implies 'a target setting approach that takes into account differences in capacity to act, while considering adjustments to take into account specific national circumstances' (IA, p. 16).
- ³ The ESR EU target with the United Kingdom (i.e. EU-28) was set at 30 %. Without the UK in the EU (i.e. EU-27), this target is equivalent to 29 % of GHG reductions below 2005 levels.
- ⁴ The 'EU reference scenario 2020' is one of the scenarios used by the IA next to the MIX, MIX CP, and REG scenarios. According to the Commission definition, the 'EU Reference scenario 2020' assumes the full implementation of existing climate, energy, transport and energy policies and is based on the National Energy and Climate Plans prepared by Member States under Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action, prioritising the achievement of the energy efficiency and renewable energy targets as included in these plans and the legislative framework as it currently exists for 2030 (achieving at least -40 % GHG emissions reductions compared to 2005).
- ⁵ The Commission document, which, based on an [impact assessment](#), proposed in September 2020 the increase of the 2030 target from a 40 % emissions reduction to a 55 % net emissions reduction (compared with 1990 levels).
- ⁶ Section 3, 'Why should the EU act' of the IA, pp. 19-20.
- ⁷ Section 7, 'How do the options compare?' of the IA, pp. 82-91.
- ⁸ [Tool #16](#) 'How to set objectives' defines the general objectives as 'the Treaty-based goals, which the policy aims to contribute to'.
- ⁹ Social impacts (e.g. on employment) are mostly considered in the Section 'Other impacts', which refers to [the IA supporting the CTP](#) as a source, and are hence considered mostly in the larger context of climate and energy policies and the transition, which their reform seeks.
- ¹⁰ [Regulation \(EU\) 2018/1999](#) of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action (the Governance Regulation).
- ¹¹ It is of note that the consultation activities on the Inception IA and the OPC checked the same main options that are also assessed by the IA.
- ¹² The proposals for revision concern the following areas: EU ETS, ESR, LULUCF Regulation, CO₂ emission standards for cars and vans, energy efficiency and renewable energy.
- ¹³ The assumptions are provided in Annex 10.4.3, pp. 131-134 of the IA.
- ¹⁴ The 'EU Reference Scenario 2020' report and the technology assumptions are available on the [Commission website](#).

This briefing, prepared for the ENVI committee, analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal.

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