



What the Environment Council need to do about the Effort Sharing Regulation (ESR)

September 2017

In July 2016, the European Commission published its legislative proposal for emission reductions in the sectors transport, agriculture, buildings, small industry and waste for 2021-2030, the so called Effort Sharing Regulation (ESR). These sectors represent 60% of the emissions in the EU. The proposal sets an EU wide target of reducing emissions in these sectors by 30% by 2030 (compared to 2005 emissions), but this is way too weak of a target. In addition, the Commission set a too high starting point for when to start counting emission reductions, and included loopholes which would allow countries to use accounting tricks to reach their targets on paper without taking real action.

The negotiations have entered a critical phase. Ministers have little time left to correct for the flaws of the Commission's proposal, and prove that they are serious about implementing the Paris Agreement. This briefing addresses the most critical issues that the Council need to agree on the 13 October. All details of what CAN Europe advocates for can be found in our [position paper](#).

The bigger picture

Claim: With ESR as proposed by the Commission the EU is on track to deliver the Paris Agreement.

This is not true. The overall target of -40% greenhouse gas emission reductions for 2030 and the targets set out in the various legislative proposals, including the -30% target for ESR were agreed before the Paris Agreement was struck. All signatories to the Paris Agreement recognized that the pledges put forward are not enough to reach its long term objectives. CAN Europe's position is that emission reductions of at least 47% would have to be achieved in the ESR sectors by 2030.

It also does not enable the EU to reach the potential for climate action that is available. The experiences from the climate policies currently in place clearly shows that the EU underestimates the climate action potential in the Member States, as the weak overall 2020 target of -20% has already been achieved four years early. Furthermore, there are three loopholes in the proposal which increase the carbon budget for the period 2021-2030 by almost a billion tonnes: the starting level in 2021, the use of offsets from the forestry sectors and the use of offsets from the ETS.

In addition, both the European Parliament and the Council has introduced a new loophole in the form of what they call an "early action reserve". Under this proposal, some countries can use 'hot air' to reach their 2030 target. To argue that the EU is on track to implement Paris is therefore inherently flawed. To be credible internationally and to its citizens, Environment Ministers need to recognize this, adopt a position which corrects for the flaws of the Commission's proposal and rejects new loopholes to be included.

On the starting point

1. What's wrong with the Commission's proposal?

The Commission proposes a starting point based on 1) average 2016-18 actual emissions of each Member State and 2) starting the linear pathway to the 2030 target of each Member State in 2020. Under these conditions, the emissions level the Commission has set for the starting point in 2021 is way higher than where emissions will actually be in almost all of the Member States. This both increases the total carbon budget available for each country, but also creates an artificial reservoir of

unused allowances, and hence weakens the real impact of the targets. To correct for this, two important changes need to be made to the Commission's proposal:

- for those countries for whom this trajectory would lead to an emissions level in 2020 which is above their 2020 target (hence for those countries that are to miss their 2020 target), the starting point in 2021 should be defined on the basis of a trajectory from their target in 2020
- base the starting point on a trajectory which starts in 2017 instead of 2020. This would bring the starting point closer to what actual emissions are projected to be by then. The total emissions budget thereby decreases and avoid a surplus of allowances being built up.

2. What is in the Council's draft position and what do Ministers have to do now?

The draft position of the Council, agreed on 27 September by COREPER¹ does not suggest any changes to the Commission's proposal on the starting point.

Germany has put forward a proposal which addresses the point of ensuring countries that will miss their 2020 target will begin the 2030 emission reduction trajectory from the level of their 2020 target.

- **While this did not remedy enough support so far in the negotiations, it is crucial that Ministers agree to support this measure, as it would remove almost 100 Mt CO₂ surplus allowances from the system. What is more important, it would send a necessary signal that member states will not be awarded for underachieving.**

The problem with this proposal is however that it was made before the inclusion of the new "safety reserve" loophole which would allow 100 Mt extra allowances into the system through carry over. With this now included, Germany's starting point proposal would not strengthen the overall system at all - it would simply bring us back to square one. Countries who actually want to strengthen the proposal seemingly have to come up with something more ambitious.

- **To have any real impact, the starting point needs to be strengthened further, with a change of the year from when to start the trajectory, from 2020 to 2017 or maximum 2018. The European Parliament broadly endorsed this approach when it voted for the trajectory to start in 2018 with 79% in favour during the plenary vote in June this year. A trajectory which starts in 2018 results in around 370 Mt CO₂e additional emission cuts compared to the Commission proposal and to start it in 2017 would result in 512 Mt CO₂e additional emission cuts compared to the Commission proposal².**

On the other loopholes

1. Why not allow countries to use LULUCF permits?

The EU's LULUCF sector, short for Land Use, Land Use Change and Forestry, is a net sink, removing about 350 Mt of CO₂ every year. However, this sink is projected to decrease. The ESR proposal allows Member States to use offsetting from the aforementioned land use sectors to reach their ESR targets. It implies that Member States can increase their GHG emissions in the ESR sectors by 280 million tonnes in total, as was proposed by the Commission. It is suggested that all countries can use this loophole but to a different degree, depending on how high a country's agricultural emissions are. The Commission's Impact Assessment of the ESR was made without taking into account the

¹ http://g8fip1kplyr33r3krz5b97d1.wpengine.netdna-cdn.com/wp-content/uploads/2017/09/DRAFT_EFFORT.pdf

² <http://www.caneurope.org/publications/presentations/1420-infographic-no-cheating-from-the-start>

possibility of using LULUCF credits in the ESR – meaning if we include LULUCF credits now, we risk undermining overall reductions in other ESR sectors.

- **Ministers must eliminate or limit the use of LULUCF credits to the greatest extent possible**

2. Why not allow countries to use ETS surplus allowances?

The Commission proposes that nine countries should be able to use part of their surplus ETS pollution permits to meet their ESR targets. But because of the weak 2020 target in the ETS, a huge surplus of about 3-4 billion ETS pollution permits will have accumulated by the end of 2020. These can be fully carried over to the next trading period. Therefore, if ETS allowances are used, it will mean fewer reductions are made in the ESR sectors without achieving any additional reductions in the ETS.

- **Ministers must eliminate or limit the use of ETS surplus to the greatest extent possible**

3. The so called safety reserve

Under this proposal, some countries can use 'hot air' to reach their 2030 target, meaning they can carryover surplus allowances from this commitment period - when many countries are still allowed to increase their emissions - to the period 2021-2030. The carryover of hot air goes against the principles of the Paris Agreement, which allows for no back-sliding. It also goes against commitments the EU made already back in 2012, when it was agreed that carryover would no longer be allowed³.

- **Ministers should reject the inclusion of a new loophole altogether**

On the European Parliament's adopted position

The European Parliament's position represents a strengthening of the Commission's proposal. It is however not enough to make the ESR fit for purpose or align it with the Paris Agreement, especially since the European Parliament included a so called "early action reserve" of 90 Mt CO₂e. Therefore, it is ever more important that the Parliament agreed to changing the **starting point** from beginning the trajectory to beginning it in 2018 and by requiring that Member States that will not meet their 2020 targets will have to start from their target for 2020.

- **Ministers must look to the European Parliament when agreeing on its position on the starting point**

Further positive elements in the Parliament's position include that a full compliance check should be carried out every two years, rather than every five years as suggested by the Commission, and that a limitation to how many allowances Member States can bank from one year to the next (10% of allowances may be banked in the years 2021-2025 and 5% in the years 2026-2029) was agreed upon. Such a limitation will help limit surplus build-up and better ensure Member States will actually meet the end target. The Parliament also strengthened the review clause, but not enough to ensure ambition will actually be ramped up. Other loopholes were not decreased nor increased.

- **Ministers should look to the European Parliament when agreeing on its position on banking and compliance checks. Ministers should further strengthen the review clause so that it ensures ambition will not only be reviewed but ramped up in line with the Paris Agreement review cycle.**

³ <http://unfccc.int/resource/docs/2012/cmp8/eng/13a01.pdf>