

An improved framework for non-ETS emissions in the 2030 framework

Q and A's

1 Why do we need both Energy Savings Targets and a reformed Effort Sharing Decision in the 2030 framework?

Reason #1: energy savings are crucial but do little to impact non-CO2 gases, or CO2 from certain sources.

CO2 is the largest contributor to manmade climate change. However, it is only one of 6 GHG gases regulated by the Kyoto Protocol and included in the EU's greenhouse reduction targets for 2020 and the agreed goals for 2050. These other gases include methane (CH4), derived from agricultural processes, gas leakage, waste and fossil fuel combustion, nitrous oxide (N2O) from agricultural processes and some industrial processes, fluorinated gases (HFCs and PFCs) from refrigeration and air conditioning systems, and sulphur hexafluoride (SF6) from electrical transmission equipment. According to the IPCC 4th Assessment Report, globally, CO2 represents 77% of global emissions out of the 6 regulated by the Kyoto Protocol. Methane is the second largest contributor.¹

Unlike the ETS, which primarily regulates CO2 alone (with a few exceptions for certain industrial installations) the EU Effort Sharing Decision covers all 6 GHGs.

In the EU, the proportion of CO2 is slightly higher, representing 82% of the Kyoto 6 GHG emissions in 2011.² However, with the 'dash for gas' the EU is experiencing, particularly with the possible uptake of shale gas, we can expect the proportion of fugitive methane emissions to increase. Even on the current split, with CO2 representing 82% of EU GHG emissions regulated by the Kyoto Protocol, it is useful to note that even if the entirety of the EU's CO2 emissions

¹ IPCC, 4th Assessment Report Synthesis – Summary for Policy Makers (2007). Graphs available at http://www.ipcc.ch/publications_and_data/ar4/syr/en/figure-spm-3.html

² EEA, GHG trends and projections report 2012, main report, graphs page 90, available at <http://www.eea.europa.eu/publications/ghg-trends-and-projections-2012>

were stopped in the EU by 2050, this would still not be enough to achieve the upper end of the 80-95% reductions required. It is therefore essential that the emissions of other Kyoto gases are reduced substantially.

Energy savings targets are a crucial pillar for the post 2020 climate framework, and can deliver a an important share of the reductions required for a science backed GHG target for 2030. However, energy efficiency measures reduce almost exclusively CO₂ emissions and do not address other GHGs. For example, energy efficiency policies are unlikely to drive changes in fertilizer use or chemical processes in industry to reduce N₂O emissions (representing 8% of global GHG emissions.) They are unlikely to reduce methane from waste or agricultural processes or encourage MSs to be more ambitious in phasing out HFCs from refrigeration systems. These and other measures not driven by energy savings will have to be stepped up well before 2050.

In addition, out of the 77% of global Kyoto emissions that are CO₂, 17% of these come from deforestation and land use sources³ (LULUCF) which may soon be included in the EU Effort Sharing Decision. These emissions are not really impacted by energy savings or energy efficiency measures.

Therefore, to effectively reduce emissions from all greenhouse gases, the EU will need both ambitious Energy Savings Targets and an instrument like the ESD to provide a governance framework for the economy wide GHG target, in order to be on track for a nearly fully decarbonised economy by 2050.

Reason # 2: Any agreed EU energy savings targets are likely to fall short of full potential for CO₂ reductions from energy savings – therefore an additional driver is needed

In the 2020 package, the energy efficiency target is the only non-binding target and the only one at risk of not being met. Despite the fact that Energy Efficiency Directive⁴ that has been adopted for 2020 is considerably weaker than what the European Commission had originally proposed, a preliminary analysis of the national energy efficiency targets reported by Member States estimates that a gap towards the 2020 target of 62 Mt Co₂e will remain. Clearly a binding target is needed for energy savings.

Yet binding energy efficiency targets without binding ESD targets would not be able to capture the full mitigation potential of energy savings. The Energy Efficiency Directive does not put enough emphasis on demand response or sufficiency measures such as changes in behaviors to reduce energy use. This category of measures appears only once in the broad language in article 15 of the Energy Efficiency Directive. Such measures are essential if the EU is to reach a 2030 mitigation target in line with science. The ESD can complement the EED by creating additional incentives to reduce emissions through changes in behavior and consumer patterns, such as car sharing or smart metering.

³ Ibid.

⁴ DIRECTIVE 2012/27/EU (Energy Efficiency Directive), article 15 reads “8. Member States shall ensure that national energy regulatory authorities encourage demand side resources, such as demand response, to participate alongside supply in wholesale and retail markets.”

It is unclear what form the Energy Savings targets will take for the 2030 Framework. The targets could be expressed as absolute reductions of energy, an energy intensity target or a efficiency target. Unfortunately, given the current political climate, it is likely that any agreed energy savings targets would fall short of the full range of energy savings.

The ESD can help drive higher ambition for a broader set of energy savings measures by translating the EU economy wide GHG target into binding obligations for each MS.

Reason # 3: The Effort Sharing Decision is the ‘chapeau,’ and will not replace the need for EU sectoral measures such as binding domestic energy savings targets

The ESD is the structural instrument or ‘chapeau’ translating the economy wide GHG target into national binding targets. It offers flexibility to MSs in their choice of policy mix to achieve GHG reductions.

Energy savings targets are nevertheless necessary because effort sharing targets are economy wide, and not broken down per sector. In other words, the ESD does not guarantee the implementation of sufficient energy savings measures in all important sectors. MSs could for example meet their Effort Sharing targets by focusing on only a few sectors (e.g. transportation) and doing less to improve energy efficiency. In addition, the ESD allows for multiple flexibilities, such as using international offsets or buying ESD allowances from other EU member states with the aim to reduce compliance cost. National energy saving targets are needed to ensure that all MSs make adequate progress within their own borders. All Member States must take action domestically to avoid risk of lock-in to inefficient buildings and infrastructure – these investments have long economic lifetimes and could therefore threaten the achievement of decarbonisation pathways further down the track.

The ESD could however, be a helpful landing point to secure commitment to future EU sectoral legislation. There is already some precedent for this in the existing Effort Sharing Decision, which enshrined the legislative review that gave rise to the Energy Efficiency Directive – needed to help meet Effort Sharing targets.

To sum up, the ESD is not a substitute for binding Energy Savings targets, but it can be an additional driver for their delivery. It can also provide a useful political ‘fall back’ if the new energy savings targets end up being too weak or non binding. On the other hand, the ESD alone will not be sufficient to drive domestic energy saving action in a broad range of sectors. Only in combination can the two policy measures deliver the needed GHG reductions.

2 Do we really need a framework for non-ETS emissions in the 2030 package – or is it enough to rely on EU sectoral measures?

Answer # 1 Without the Effort Sharing Decision, there is no legally binding economy wide GHG reduction target for the EU.

It is essential to note that the binding EU GHG reduction target for 2020 does not exist anywhere in law apart from in the Effort Sharing Decision and the ETS Directive. References exist in the recitals of other Directives but recitals are not legally binding under EU law.

If all we had was the ETS plus a handful of EU sectoral policies (Energy Efficiency Directive, Renewable Energy Directive, Landfill Directive) there would be no legally binding economy wide target for the EU. This is because targets are only legally binding if they act on Member States, and because existing EU sectoral measures leave many gaps.

Loosing the economy wide or legally binding aspect of the EU GHG reduction target for 2030 would severely compromise the prospects of achieving the EU's long term GHG reduction target. Achieving 80 to 95% GHG emissions reduction simply cannot be done without addressing all sectors and gases, including consumer behavior change. We cannot ignore the need for an economy wide framework, and the Effort Sharing Decision is the single instrument that completes this picture.

Answer #2 There are currently significant gaps in EU sectoral regulation for climate change. An EU framework for economy wide targets is needed to drive new and tougher EU measures.

Significant gaps exist in the EU regulation of key sectors, such as agriculture, mining, transport, lighter industry and consumers. Furthermore, gaps also exist for particular GHG gases. A case in point is methane. Despite being the second most important GHG after CO₂, there are few EU sectoral drivers of methane reductions apart from the Landfill Directive.

In addition to driving national policies, an improved ESD can drive, or expressly commit to, new EU measures to help Member States to achieve economy wide targets. In fact, there is some precedent for this, with the existing Effort Sharing Decision containing a provision committing to the legislative review that gave rise to the new Energy Efficiency Directive.

Answer #3 There are political and legal limitations to what can be regulated at EU level thus binding. economy wide targets are needed to drive national measures.

Despite several pieces of EU legislation to ensure action on climate mitigation, a number of sectors remain difficult to regulate effectively at an EU level. For example, the Treaty of the Functioning of the European Union provides that taxation measures (and measures of a primarily fiscal nature more broadly⁵) can only be adopted at EU level through special legislative procedure with unanimity in the Council. This makes the achievement of measures such as

⁵ Treaty of the Functioning of the European Union, art 192(2)

effective fuel taxation on an EU level almost impossible. However, an ambitious Effort Sharing Decision, can nevertheless operate to drive such measures at national level.

In addition to specific gaps in the EU's competence to act, core constitutional principles enshrined in the Treaty give rise to additional limitations on what can be regulated at EU level. Although the environment (including climate change) is a shared competence between the EU and Member States, the subsidiarity principle⁶ means that an EU measure should only be adopted where the same measure cannot be effectively adopted at national level. In practical terms, this can act as a barrier to the adoption of EU measures in sectors like agriculture, where Member States use the reality of their very different soil profiles and farm profiles as grounds to oppose EU harmonization and thus undermine political support for specific EU level regulation of agricultural emissions. However, once again, a well designed and ambitious Effort Sharing Decision can operate to incentivize Member States to take national action to reduce emissions from their respective agricultural industries.

Finally, the compromises involved in adopting EU measures, even when negotiated through legislative procedures requiring majority voting often result in a 'lowest common denominator' outcome. The Environment Chapter of the Treaty recognizes this, by affirming that Member States generally retain the legal right to adopt more stringent protective measures – and thus to go beyond the minimum established by EU laws. Meeting the EU's climate objectives for 2050 will critically depend on ensuring the existence of strong incentives for Member States to go beyond what is adopted within the context of EU sectoral legislation. This is another compelling reason why we need an ambitious Effort Sharing Decision to ensure that Member States are appropriately incentivised to go beyond the minimum requirements of EU environmental law.

David Holyoake

Law and Policy Advisor
Climate and energy programme

t +32 2 808 3470

e dholyoake@clientearth.org

www.clientearth.org

⁶ Treaty on European Union, article 5(3)