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Summary of stakeholder feedback to the Effort Sharing Regulation proposal

On 20 July 2016 the Commission adopted a proposal for binding annual greenhouse gas emissions targets for Member States from 2021-2030 ("Effort Sharing Regulation")[1]. It covers mainly the transport, buildings, agriculture and waste sectors and continues many elements of the current Effort Sharing Decision[2]. In the context of the Better Regulation Package of May 2015[3], stakeholders have the possibility to provide feedback on legislative proposals within 8 weeks after their adoption by the Commission. This document presents a summary of the feedback received from 20/07/2016 to 27/09/2016. Since feedback is meant to feed into the legislative debate, this summary was sent by the Commission to the European Parliament and the Council.

In the following the suggested changes to the Effort Sharing Regulation proposal of the responding stakeholders are summarised:

- Carbon Market Watch (CMW),
- Client Earth,
- Climate Action Network (CAN) Europe,
- Danish Agriculture and Food Council (DAFC),
- Die Linke German regional faction in the Saxonian Parliament,
- Environmental Defense Fund (EDF),
- Sandbag,
- Stichting Birdlife Europe (BLE),
- Transport & Environment (T&E),
- Verband der Chemischen Industrie (VCI),
- Zero Waste Europe (ZWE).

With respect to the **annual emission levels for the period 2021 to 2030** (Art. 4 and annex I), several NGOs (CAN, CMW, ZWE) and Die Linke criticise the EU-wide 30% emission reduction target for the 2030 Effort Sharing Regulation sectors as too low. CAN Europe calls for increasing the non-ETS target from 30% to at least 47% reductions in order to achieve overall GHG reductions of -55% compared to 1990, CMW for at least -45% and ZME for a more modest increase in line with an overall GHG target of -45% instead of -40%. In addition, CAN Europe proposes to adapt the 2030 targets of the nine Member States whose 2014 emission levels are below their 2030 target so that no

[1] 2016/0231 (COD), COM (2016) 482 final; http://eur-lex.europa.eu/legal-content/EN/TXT/DOC/?uri=CELEX:52016PC0482&from=EN

[2] Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020

[3] COM(2015) 215 final, see also COM(2016) 615 final

emission increases after 2020 are allowed, while Sandbag considers that no country should be in a position of reaching their 2030 target on the basis of existing policy measures alone.

Several NGOs agree with setting the 2021 starting point on the basis of average 2016-18 emissions (CAN Europe, EDF). However, CAN Europe calls for defining the 2021 starting point based on a linear trajectory between 2017 and 2030 (instead of 2020 as proposed by the Commission). For those countries for which this trajectory would lead to an allowed emission level in 2020 above their 2020 effort sharing target, the trajectory should start from their 2020 target. CMW calls for setting the starting point on the basis of actual 2020 emissions or 2020 targets, whichever the lower. Also Sandbag and ZWE prefer a later emission year than 2016-18 for defining the starting point.

With respect to the continuation of the EU internal **flexibility instruments already existing** under the current Effort Sharing Decision (Art. 5), CAN Europe calls for reducing the borrowing limit from 5% to 2% of 2005 emissions and for limiting banking to 5% of a Member State's annual emission allocation. Also T&E calls for limiting banking. CAN Europe calls for mandatory auctioning of annual emission allocations with a reserve price of €40, and an earmarking of revenues for climate measures. CAN Europe welcomes that international credits cannot be used any longer. Some NGOs argue for strengthening project-based mechanisms (which are already currently possible but left to Member States' discretion) based on a set of principles (CAN Europe, Sandbag), and separated from any projects under Art 24a of the ETS Directive.

Several stakeholders call for deleting the proposed new limited **one-off flexibility with the EU Emissions Trading System** (Art. 6 and annex II) for nine Member States with a maximum size of 100 million ETS allowances. They argue that it would allow effort sharing sectors to limit their decrease by this amount (CAN Europe, CMW, Sandbag, T&E, ZWE and Die Linke), or that it would increase the ambition level of the ETS and reduce regulatory certainty for market participants (VCI). Other stakeholders see the one-off more positively, welcoming it as step towards a least cost decarbonisation (EDF), while Sandbag would consider such a link only for post 2030 for environmental integrity reasons. DAFC calls for increasing the volume of this flexibility so that all eligible MS can have access to an amount of 4% of their 2005 emissions, but suggests to make the use of new flexibilities conditional on the implementation of transport specific mitigation measures. DAFC proposes an additional flexibility with the EU ETS for certified "climate efficient" agricultural production, to avoid the risk of production decreases in Member States with efficient agriculture.

Many of the participating stakeholders call for the deletion of the proposed new limited **flexibility with the LULUCF sector** (Art. 7 and annex III) to use up to 280 million net removals from deforested and afforested land, managed cropland and managed grassland. They criticise that it would allow effort sharing sectors to limit their decrease by this amount (CAN Europe, CMW, Sandbag and Die Linke). BLE calls for a downsizing of the flexibility, arguing that the contribution of agriculture required in the EUCO27 and EUCO30 policy scenarios used in the Commission's impact assessment is lower. T&E calls for ensuring that LULUCF can only offset agricultural emissions. However, DAFC and EDF welcome the LULUCF flexibility as a promising first step to recognise the mitigation potential of these sectors and T&E welcome the exclusion of managed forest land. DAFC calls for establishing guidelines for transparency. Several NGOs criticise the eligibility of removals from net afforestation because of the non-permanence of the sequestered CO_2 (CAN Europe, CMW) and its potential negative impacts on biodiversity (BLE). BLE instead calls for including managed wetlands into the flexibility.

Detailed feedback on the foreseen **corrective action and compliance check** (Art. 8 and 9) is provided by Client Earth. It welcomes the continuing role of the European Environment Agency but calls for more transparency of the monitoring processes. It calls for strengthening the Commission's role by allowing it to issue directly binding legal decisions as follow up on Member States' action plans. It criticises the split between (punitive) compliance check and (impunitive) corrective action as potentially misleading and calls for amended language to avoid confusion. It also questions if the follow up on insufficient progress should be covered by the sector specific regulation as proposed or rather by the Monitoring Mechanism Regulation. CAN Europe, CMW, Sandbag and ZWE call for an annual compliance check, arguing that the administrative cost savings of checks every fifth year amount to less than 0.001% of the EU's yearly budget.

Some NGOs call for deleting the proposed **adjustment of 2021 allocations** (Art 10(2) and annex IV) for Member States with increasing annual emission allocations under the current Effort Sharing Decision (CMW, Sandbag, T&E). CAN Europe sees a more limited adjustment justified if their proposal how to set the 2021 starting point (see above) would be considered.

The foreseen **review** in 2024 and every five years after (Art. 14) is commented upon as too lenient or relatively ineffective by several NGOs (CAN, CMW, ClientEarth, T&E) and Die Linke. Die Linke calls for a biennial review starting in 2023. ClientEarth welcomes the proposed links to the Paris Agreement, but calls for strengthening them with a requirement for the Commission to make proposals. CAN Europe and CMW call for including an automatic adaptation of all Member State targets based on current distribution rules to any changes of the EU's Nationally Determined Contribution und the UNFCCC. Also ZWE and T&E call for stronger provisions for ratcheting up the EU wide target. DAFC calls for revising the access limits to new flexibilities and to explore possibilities for international offsets in the case of a step up.

With respect to the foreseen governance related **amendments to the Monitoring Mechanism Regulation** No. 525/2013/EU (Art. 15), CAN Europe welcomes the continued annual reporting on emissions and calls for annual instead of biennial reporting on GHG projections and policies and measures.

On **other issues**, DAFC would like to have examined an additional flexibility for Member States which contribute above average per capita to EU climate finance for developing countries, without specifying how this flexibility should be generated. CAN Europe and T&E welcome that the Commission does not foresee a carry-over of surplus allowances 2013-20, while DAFC calls for transferring all unused 2013-20 allowances into the period 2021-30.

Finally, some stakeholders miss **provisions on specific sectoral policies**. Die Linke would like to see the national targets split up into binding sectoral targets, and it also would like to include non-ETS domestic aviation emissions, into the Effort Sharing Regulation scope (the proposed Art 2(3) excludes them to avoid unnecessary administrative burden). Sandbag calls for setting minimum EU-wide sectoral thresholds to ensure that all sectors contribute appropriately. Zero Waste Europe highlights the additional mitigation potentials in the waste sector which it would like to see explicitly reflected in the ESR and the need for coherence of the effort sharing targets with the targets set in the proposed Circular Economy Package. BLE calls for ensuring policy coherence with the EU's biodiversity goals, notably by taking into account adverse impacts on biodiversity of emission reduction related pressures to intensify and industrialise agricultural production, as well as of afforestation monocultures on biodiversity rich marginal agricultural (grass)land.