

Nils Meyer-Ohlendorf & Lisa Fee Meinecke

A CLIMATE LAW FOR EUROPE

MAKING THE PARIS AGREEMENT REAL



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Foreword

EFFECTIVE CLIMATE ACTION must be enshrined in law. Binding all stakeholders, laws demonstrate the unequivocal commitment of a country. A climate law has the benefit of establishing long-term rules for investments. With a climate law in place there will be no doubt for the private sector on where we are heading. Effective climate laws include rules to drive the deployment of renewable energy and enhance energy efficiency. A climate law plays a special role in enabling the scale and speed of transformation required to achieve the mid-century deep decarbonisation required by the Paris Agreement and build the foundation where money is spent in line with our ambitions.

One of the Green party's main political goals for this five year term in the European parliament has been to launch the work for an EU climate law. The need for a European climate law is obvious since the EU legislation of today consists of a patchwork of legal acts regulating energy and climate. Although we all agreed to fulfil the obligations from the Paris agreement, several of the laws approved post Paris actually do not meet the ambition of the agreement. If the EU should stay true to its vision of being number one in renewables and overcome climate change a climate law is a missing piece.

The picture of the Swedish minister of climate, Isabella Lövin, signing a national climate law went viral all over the world (It has some similarities to the infamous photo where Trump signs the global gag rule). The Swedish photo was a successful act of political communication and it raised awareness of both female and climate leadership. On 1 January 2018, the Swedish climate law entered into force. We must now take further action to make the law itself as viral and powerful as the picture of Isabella Lövin at the signing of the bill.

The ambitions and targets for reducing our carbon footprint are in place, but still the EU lack political accountability when translating the ambitions into law. The climate targets need a stronger status and it is obvious that we need better tools to make sure that both existing and future legislation are in line with the Paris agreement. We took a major step to bridge this legislative gap and better translate targets into law when passing the Governance Regulation of the Energy Union and Climate Action. We now have a foundation for a climate law for Europe.

Jakop Dalunde,
Member of European Parliament

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1 | SUMMARY

A growing number of countries, regions and cities are adopting climate laws. These laws share a number of features, for example: legally binding reduction targets, emission budgets, review systems and independent institutions to support decision making. These features are essential to make climate laws effective. They are also crucial for the implementation of the Paris Agreement (PA).

The EU's current rules on climate action are comprehensive and detailed but lack many of these features. In this sense, the existing EU acquis falls short of what countries and regions have adopted. It also falls short of what the full implementation of the PA implies.

The Regulation on Governance of the Energy Union and Climate Action (GR) addresses a number of current shortcomings and includes several features of effective climate legislation. It is therefore a strong foundation for a Climate Law for Europe - even though it is considerably weaker than what the European Parliament had proposed in February 2018.¹

The GR introduces for instance a requirement for the Commission to analyze scenarios and their implications for the EU's carbon budget, but does not set a quantified budget for a specific period. It also requires the Commission to adopt long-term strategies as a contribution to greenhouse gas emission reductions.

The European Parliament had proposed an unequivocal commitment to reaching net zero emissions by 2050 and negative emissions thereafter. It had stipulated a requirement of the Commission to analyse the EU's fair share in the remaining global carbon budget, with which the long-term strategies should be consistent.

¹ Cf. the first version of this paper published in March 2018, available at https://www.ecologic.eu/sites/files/publication/2018/3527-climate_law_report_for_web.pdf.

Common elements of climate laws implied by the Paris Agreement

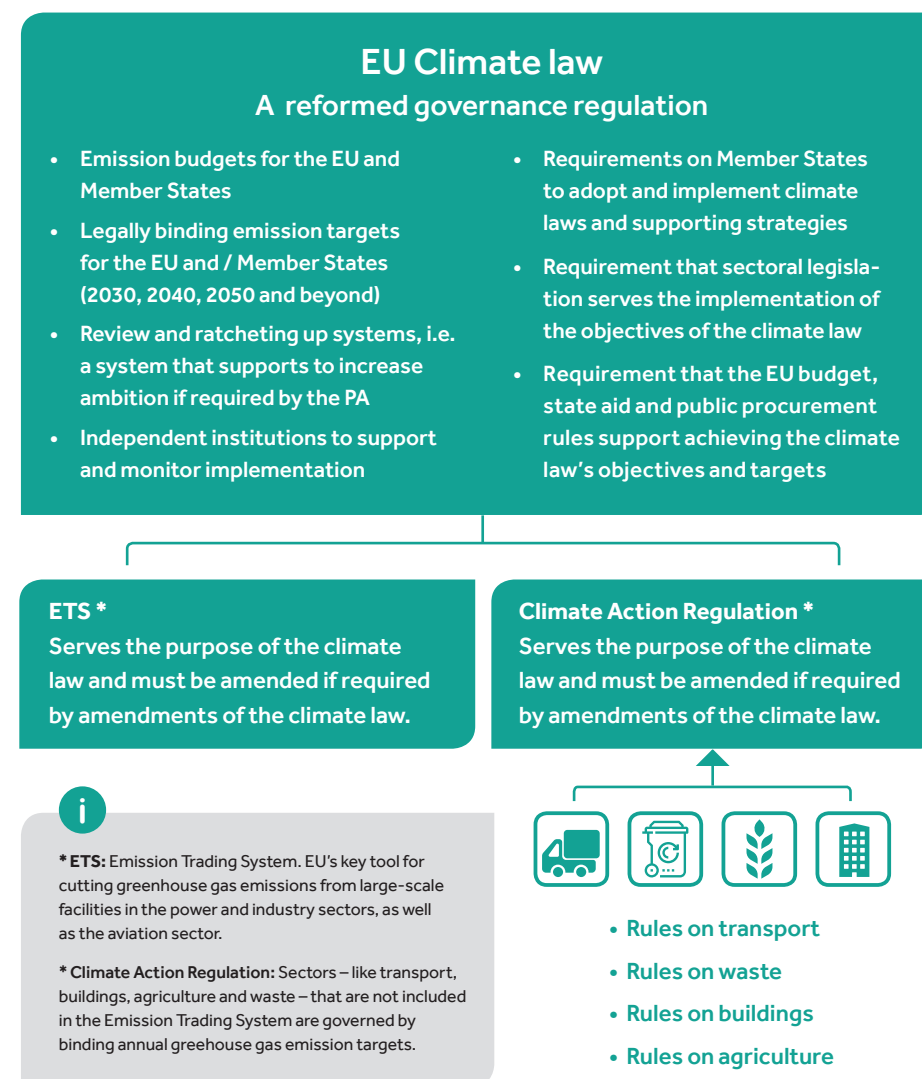
Common elements of climate laws	EU rules apart from GR	Governance Regulation (GR)
Overarching EU Emission budget		
Long term EU targets in law (2040, 2050 and beyond)		
Near term EU target in law (2030)		
Low carbon strategies		
Review		
Ratcheting up mechanism		
Enhancing natural sinks		
Independent advisory bodies and other institutions		
Governance for financial flows to mitigation and adaptation		
Citizen participation		

Even with the GR in force, there will be gaps that make existing EU climate policies remain incremental, short term and inadequate for decarbonising Europe's economies within the time frame set by the PA.

A comprehensive "Climate Law for Europe" is a particularly promising option to fill these gaps. Adopted as a regulation or directive, such a law should be inspired by best practices of Member States, regions or other countries.

A Climate Law for Europe would not replace sectoral EU legislation, but would build on it. The graphic adjacent illustrates the structure of such a law under the GR's 'roof' and what its elements could look like after a reform.

The structure of EU climate action under the GR's 'roof' and the GR's main elements.





2 | PARIS AGREEMENT OPENS A NEW ERA OF WHAT IS REQUIRED FOR EFFECTIVE CLIMATE GOVERNANCE

The **Paris Agreement (PA)** commits parties to hold the increase of global average temperature well below 2°C and to pursue efforts to limit the temperature increase to 1.5°C. To achieve these objectives, the PA requires its parties to aim at peaking of global greenhouse gas emissions as soon as possible and net zero emissions in the second half of this century (Article 4.1). To this end, the PA requires immediate and drastic emission cuts. Achieving these reductions will require deep change across the entire economy of all countries. To make this change happen, ambitious and robust laws and policies at all levels are essential.

Although the PA does not prescribe in detail the specific sectoral policies that each individual party should implement, it implies a **global consensus** about the fundamental elements of the governance framework needed to enable rapid and radical decarbonisation. In light of the PA, these elements can be said to form essential features of effective climate governance.

• Long-term targets:

The PA includes a long-term target for the second half of the century. According to Article 4.1, one of the PA's fundamental rules, Parties aim to achieve net zero emissions after 2050. Supplementing this long-term target, the PA determines that developed country Parties should “undertake” economy-wide absolute emission reduction targets (Article 4.4). Developing countries are encouraged to “move overtime towards economy-wide emission reduction or limitation targets”. Despite these important differences between developed and developing countries, **the PA expresses a clear preference for the adoption of national reduction targets in all countries.**

• Emission budgets:

Science helps translate the temperature goals of the PA into specific greenhouse gas concentrations. To stay below these concentrations, cumulative emissions over time may not exceed specific amounts. These amounts effectively set emission budgets.

• Long-term strategies:

The PA stipulates that all Parties should “strive to formulate and communicate” long-term low greenhouse gas emission development strategies (Article 4.19). Strategies should be “mindful” of the Agreement’s objectives taking into ac-

count country's capabilities and national circumstances (Article 4.19). Since the accompanying Paris Decision invites parties to communicate such strategies by 2020 (paragraph 35), **the PA makes a strong case that all parties should adopt long-term climate strategies.**

- **Consistency between long term objectives and short term action:**

Because greenhouse gas emissions accumulate in the atmosphere, the long term targets of the PA can only be achieved if drastic emission reductions occur now. Delayed emission reductions lead to higher greenhouse gas concentrations in the atmosphere that – in turn – require more drastic and ultimately unrealistic reductions at a later stage. Delayed action could lock in carbon intensive investments, leading to stranded assets. **This means that short term action must be consistent with long term goals.**²

- **Parties must implement national mitigation policies (preferably through laws):**

The PA requires all Parties to put forward their best efforts through so-called “nationally determined contributions” (NDCs). It requires that the NDCs content must be ambitious and be guided

by its overall objectives (Article 3), although it does not specify the individual level of ambition. According to Article 4.2, parties must ‘maintain’ their NDCs and pursue domestic mitigation measures to achieve the objectives of their NDCs. **In light of these provisions and given the magnitude of the challenge of climate change, there is a strong argument that national policies should be rooted in law.**

- **Review and ratcheting up of ambition:**

The pledge and review system of the PA requires parties to individually as well as collectively review progress and to scale up their commitments every five years (Articles 4.3 and 3 in conjunction with Article 14).

Partly in an effort to implement the PA, a growing number of countries, regions and cities have adopted overarching climate laws that enshrine many of these elements.

Against this backdrop, **this paper discusses** (1) essential elements of effective climate laws, (2) to what extent the EU already has a climate law, (3) the added value of a climate law and (4) interaction with other EU laws.

²It is noteworthy that this principle is fundamental to effective climate action and essential for the implementation the PA, but the PA does not specify it for individual Parties.

3 | CLIMATE LAWS AROUND THE WORLD: WHAT ARE THE ESSENTIAL FEATURES?

A growing number of countries around the world are adopting climate laws or have done so in the past. Early movers such as the UK and Mexico have had climate laws for a number of years. They have been followed by several others, most recently by Ireland, France, Sweden, Kenya, New Zealand and Norway. Other countries are in the process of adopting or discussing climate laws, including the Netherlands, Spain and South Africa. Many cities or regions have also adopted climate laws or strategies, notably California, Scotland, Berlin and other German Bundesländer.

These laws differ in content, level of detail, and institutional set-up – and not all are even formally described as ‘climate laws’. But despite the differences, these legal frameworks share a number of **common elements** – all of which are strongly resonant of the ‘overarching’

fundamentals of climate governance enshrined in the Paris Agreement. **These shared elements are essential parts of effective climate laws.**³ The table on page 16 outlines these elements and relevant requirements of the Paris Agreement.



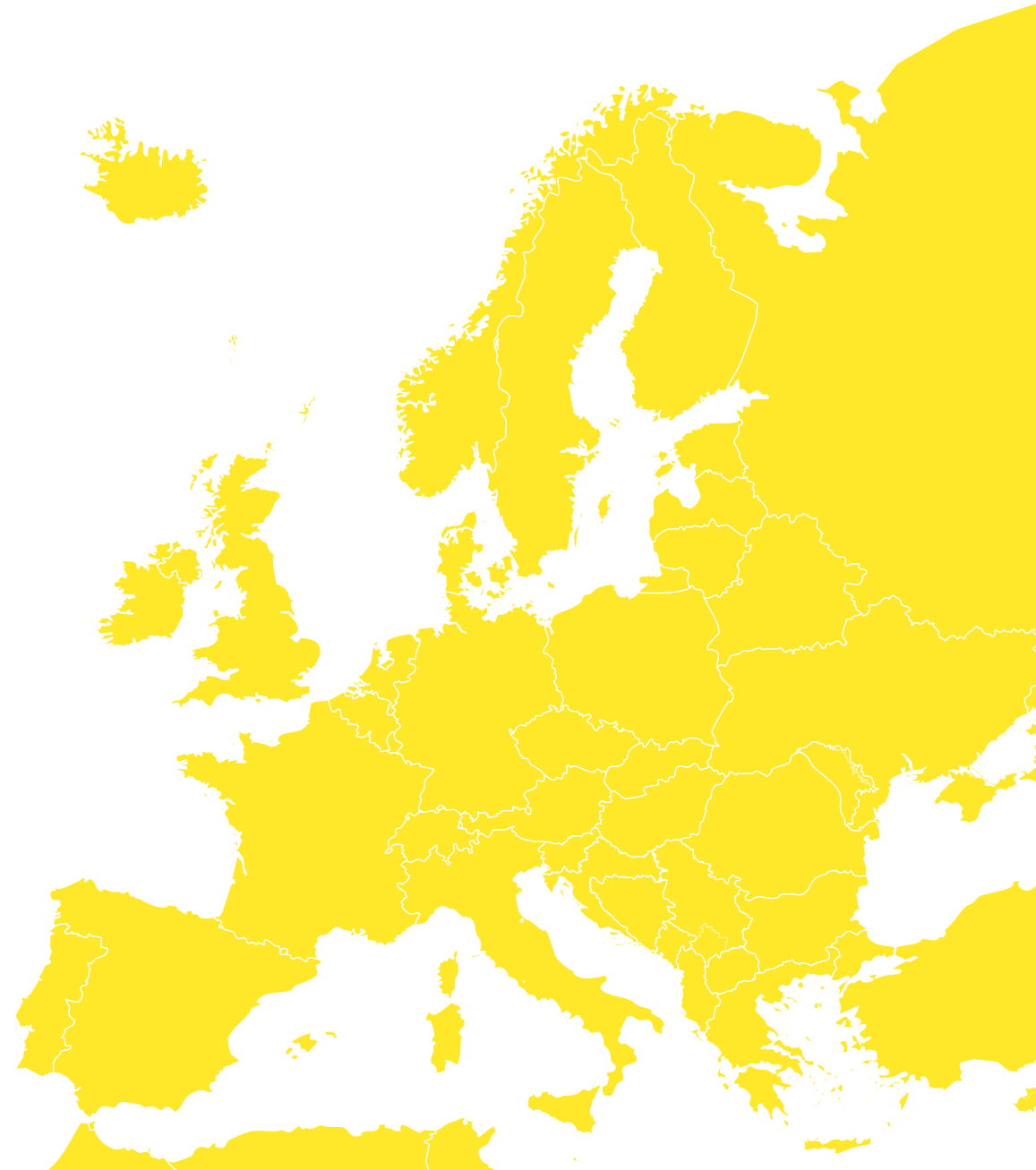
³For a recent mapping of some of the key examples of national and sub-national climate laws, see: Matthias Duwe et al.: “Paris compatible” governance: long-term policy frameworks to drive transformational change (2017), https://www.ecologic.eu/sites/files/publication/2017/governance-to-fight-climate-change_0.pdf.

Table 1

Essential elements of effective climate laws as implied by the PA and present in existing climate laws

Paris Agreement	Country examples
Emission budget <ul style="list-style-type: none"> No explicit emission budgets, but explicit science-informed temperature objectives and net zero emissions in the second half of the century imply emission budget for the world. Only weak criteria for distributing overall emission budgets among individual parties or groups, but clear that developed countries should take the lead, reflecting an emphasis on equity in implementation of PA (Articles 2 and 3). 	<ul style="list-style-type: none"> Climate laws in the UK, France and Scotland make provisions for emission budgets (with important differences in detail).
Targets in law <ul style="list-style-type: none"> Net zero emissions in the second half of this century (Article 4.1). Developed countries undertake economy-wide absolute emission reduction targets. (Article 4.4). Developing countries [...] are encouraged to move towards economy-wide emission reduction or limitation targets (Article 4.4). Highest possible ambition (Article 4.3). Each NDC has to be "maintained" (Article 4.2). 	<ul style="list-style-type: none"> The UK, Norway, Finland, Mexico, Scotland and France have targets in law (with important differences in design and legal weight). Sweden's climate law requires Parliament to adopt targets and the government to achieve them.
Low carbon strategies consistent with net zero objective <ul style="list-style-type: none"> All parties should strive to formulate and communicate long-term low greenhouse gas emission development strategies mindful of the Agreement's objectives (Article 4.19), and are invited to do so by 2020 (Paragraph 35 of the Paris Decision). 	<ul style="list-style-type: none"> Climate laws of the UK, Sweden, Ireland, France and Mexico require the adoption of low carbon strategies and plans (with different levels of detail, scope and time spans).

Paris Agreement	Country examples
Review and ambition progression <ul style="list-style-type: none"> Global stocktake (Article 14). Ambition increases over time: Each successive NDC represents a progression beyond the Party's previous NDC (Article 4.3). 	<ul style="list-style-type: none"> Climate laws generally contain review clauses to monitor progress. Some of the laws also require the definition of new measures and/or targets if the review suggests that targets will be missed. The Mexican climate law, for example, allows only setting more ambitious targets.
Institutions <ul style="list-style-type: none"> Conference of the parties, several subsidiary bodies and a financial mechanism; link to IPCC for scientific advice but no requirement on parties to establish institutions specifically mandated to support the implementation of the PA. 	<ul style="list-style-type: none"> Climate laws in the UK, Sweden, Mexico, Ireland, France, California, and Scotland establish institutions tasked to support implementation (with important differences in mandate and composition).
Participation platform <ul style="list-style-type: none"> Enhance public and private sector participation in the implementation of nationally determined contributions (Article 8). 	<ul style="list-style-type: none"> Climate laws generally provide for public consultation in review processes and plan making. Ireland (Citizens' Assembly) and Germany are examples of countries with innovative, dedicated direct citizen consultation mechanisms.
Financial flows <ul style="list-style-type: none"> Explicit purpose of the PA is to redirect finance flows towards low greenhouse gas emissions and climate resilient development (Article 2.1 c). Developed country parties shall provide financial resources to assist developing country parties (Article 9). 	<ul style="list-style-type: none"> The Swedish climate law stipulates that "climate policy and national budgetary policy objectives (...) cooperate with each other". The French law provides for carbon tax with distinct values for 2020 and 2030. The Mexican law refers to market-based mechanisms to achieve its targets.



4 | DOESN'T THE EU ALREADY HAVE A 'CLIMATE LAW'?

A number of EU rules already contain the main elements of effective climate laws. The Climate Action Regulation (CAR, the successor of the Effort Sharing Decision (ESR)), entered into force on 9 July 2018, contains specific reduction targets for the EU and Member States for 2030, a linear reduction trajectory, a review mechanism, compliance rules and so-called flexibilities. Indirectly, through targets and the trajectory, it sets an emission budget for the EU and Member States until 2030.⁴ The revised EU Emission Trading Scheme sets – also indirectly – reduction targets and an emission budget (through the linear reduction factor). It contains rules on review, compliance and enforcement. The GR includes rules on an EU emission budget, rules on national planning for 2030 and beyond as well as rules on long-term strategies. It also contains rules on review, reporting, and compliance.

Although these elements of climate laws are already included in EU legislation, numerous elements of effective climate laws are still absent from the EU acquis. It falls short of what a growing number of countries and regions have adopted. The table on the next page provides an overview of missing elements.

⁴ Due to numerous flexibilities and loopholes, the exact calculation of the emission budget for the next decade is complex.

Table 2
Elements of a climate law missing or under-developed in EU legislation

Elements of climate law	Gaps
Quantified EU carbon budget	<p>No quantified emission budget for the EU or Member States</p> <ul style="list-style-type: none"> • No clearly quantified EU emission budget until 2030: In combination, ETS and CAR indirectly set a carbon budget for the EU as a whole until 2030 but the calculation of this budget is complex, non-transparent and easily contested because of many flexibilities and loopholes. • No emission budget beyond 2030: Only ETS sets EU carbon budget beyond 2030, CAR sets budget only until 2030. In consequence, the EU has no emission budget beyond 2030 in law. • GR sets requirement for Commission to report on implications for EU carbon budget: The Commission shall analyze various scenarios for the EU's contribution towards the long-term objectives and the implications of these scenarios on the remaining global and Union carbon budget. This provision enshrines the idea of an EU carbon budget in law, but does not set a quantified budget for a specific period of time. • GR requires long-term climate and energy strategies to help stay within the emission budget: Long-term climate and energy strategies shall contribute to achieving greenhouse gas emission reductions in order to meet the temperature objectives of the PA. This provision does not quantify an EU carbon budget but determines that the long term climate and energy strategies help ensure that the EU meets its commitments under the PA.

Elements of climate law	Gaps
Long-term EU targets in law (2040, 2050 and beyond)	<ul style="list-style-type: none"> • No explicit reduction target beyond 2030 in law. • GR requires long-term climate and energy strategies to contribute to greenhouse gas emission reductions: Long-term climate and energy strategies shall contribute to reducing greenhouse gas emissions and enhancing removals by sinks so as to achieve a balance between anthropogenic emissions and removals of greenhouse gases within the Union as early as possible and, as appropriate, go into negative emissions thereafter.
Mid-term EU target in law (2030)	<ul style="list-style-type: none"> • No overall EU 2030 target in law, but for the sectors covered by the CAR. • 2030 target is disaggregated between ETS and CAR, and subject to a number of flexibilities and loop-holes.
Low-carbon strategies	<ul style="list-style-type: none"> • GR and the Greenhouse Gas Monitoring Mechanism Regulation (MMR) require low carbon strategies: Member States are required to adopt National Energy and Climate Plans according to a binding template. Additionally, Member States as well as the EU are required to adopt long-term strategies. They should be drafted according to a non-binding template. The Commission is empowered to amend both templates by delegated acts.
Review	<ul style="list-style-type: none"> • Overall review clause in GR. • Significantly strengthened review clauses in CAR.
Ratcheting up ambition over time	<ul style="list-style-type: none"> • CAR will require the Commission to review the need for additional Union measures in "view of necessary greenhouse gas reductions by the Union and its Member States, including a post-2030 framework". The Commission may make proposals if appropriate. • The GR will require the Commission to review the GR's contribution to the long-term goals of the PA. The Commission may make proposals if appropriate.

Elements of climate law Gaps

Enhance natural sinks

- **LULUCF Regulation:** No targets on removing carbon through enhancing natural sinks but only no debit rule. According to the no debit rule, sinks may not emit more CO₂ than they store.
- **GR requires long-term climate and energy strategies to include removals by sinks:** Long-term climate and energy strategies shall cover enhancements of removals by sinks

Institutions and advisory councils

- **No obligation** on the EU to create institutions to give independent political advice – beyond the European Environment Agency's limited scientific role.

Governance for financial flows

- **No obligation** to ensure that the EU budget, state aid guidelines, EU public procurement rules, and development aid are aligned with the objectives of the PA.

Obligation on Member States to have a climate law

- **No obligation** on Member States to have a climate law that includes all or some of the elements above.

5 | WHAT'S THE ADDED VALUE OF AN EU CLIMATE LAW?

First and foremost, a comprehensive Climate Law for Europe could close the various gaps in EU's climate governance – that still exists after the entry into force of the GR, as outlined above. In addition, such a Climate Law could have the following benefits – if designed well and ambitious in content:⁵

- **Clear message of commitment and strong framing for more ambitious climate policies**

A Climate Law for Europe would send a very visible and powerful signal that the EU is fully committed to implement the PA. A Climate Law for Europe would help frame political discussion towards a positive narrative of climate change as a fundamental opportunity and challenge that requires coherent efforts over very long periods of time – as partly demonstrated during the adoption of national climate laws in the UK, Ireland and in other countries.

- **Enhance transparency and coherence**

A Climate Law for Europe – as one overarching piece of legislation – could en-

hance transparency, policy coherence and thereby accountability for achieving the required outcomes.

- **Clarify the direction of travel and turn sectoral legislation into true tools of implementation**

A Climate Law for Europe would focus EU climate action towards meeting its objective and would determine that the EU legislation primarily serves the purpose of meeting the EU's overall climate objectives. In consequence, it would help make the ETS 'accountable' to an overarching EU 2050 target for the whole economy. This is currently not the case. Weaknesses in the EU ETS, for example, have also undermined the effect of more ambitious national climate laws.

- **Improving policy certainty**

Climate laws not only demonstrate ambition but are also a mechanism for protecting that ambition from political shifts.

- **Enhancing the rule of law through courts**

Depending on its design, a Climate Law for Europe might allow eligible stakeholders to use the national and European courts to ensure implementation and enforcement. Courts can play an essential role in supporting climate action through upholding and clarifying the scope of climate action obligations.

⁵ Matthias Duwe et al.: "Paris Compatible" Governance: long-term policy frameworks to drive transformational change (2017), https://www.ecologic.eu/sites/files/publication/2017/governance-to-fight-climate-change_0.pdf.

- **Higher ambition in Member States**

A Climate Law for Europe – particularly one requiring Member States to adopt a national equivalent – could unlock not only higher performance from countries with ambitious national climate laws but also incentivise more action in slow moving countries.

- **Protect the EU from high carbon lock-in**

By ensuring that the near-term climate policies and measures are designed in light of the longer term objective, a Climate Law for Europe can help achieve a

least cost transition and protect Member States and their citizens from the disruptive shocks of stranded infrastructure and financial assets.

- **Drive public and private finance towards decarbonising economies**

A Climate Law for Europe could require the EU and Member States to align public budgets with climate action. It would send the most powerful signal possible to private investors concerning the EU's seriousness to decarbonise its economies.



6 | HOW WOULD AN EU CLIMATE LAW INTERACT WITH OTHER EU LAWS?

It is clear that a comprehensive 'Climate Law for Europe' would be adopted in the form of an EU regulation or directive. It could contain all or some of the elements outlined in the table above. As such it would be legally binding and a 'climate law' all but in name. It is also clear that a Climate Law for Europe would build on the existing EU acquis, but would not replace it. It is only a theoretical option that the climate law would merge the entire EU acquis relevant for implementing the PA into one piece of legislation.

In consequence, the climate law's **main elements could be embedded in the ETS, CAR or GR in the course of further reforms.** However, there is a compelling argument for concentrating the essential elements of an EU climate law in the GR and possibly re-naming the GR to signal its enhanced purpose as an instrument committing the EU to building a carbon-neutral economy:



- **Consistency and transparency**

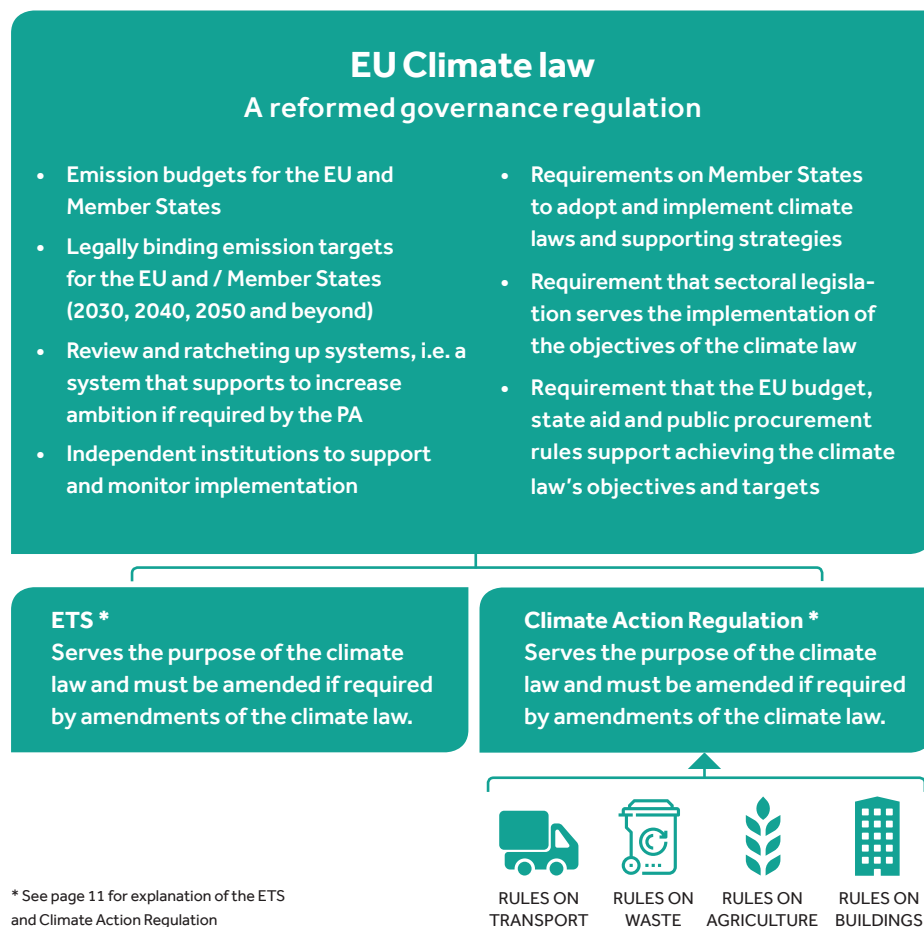
The GR covers the entire emissions within the EU. In contrast, the ETS, the CAR or the LULUCF Regulation cover only parts of the EU's emissions.

- **Symbolic weight**

Amendments to the ETS, CAR or LULUCF Regulation are less likely to receive the same amount of public attention and gain similar political weight.

If the GR was enhanced in a further reform process, it should require sectoral EU legislation to serve the fundamental objectives of the GR – in particular the decarbonisation of the EU economies by 2050 at the latest. For consistency, amendments to sectoral legislation should stipulate that sectoral

rules must serve the purposes of the GR and that they must be amended if the GR requires such amendments. The graphic below illustrates this structure of EU climate action under the roof of the GR and what its elements could look like in an ambitious reform.



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The Greens | European Free Alliance is a political group in the European Parliament made up of Green parties across EU. **Jakop Dalunde** is a member of the Swedish Green party and Member of the European Parliament since 2016. Jakop is member of the ITRE committee and group coordinator in the TRAN committee. Jakop has sponsored this study.