

European Resolution of the Senate No 88 (2019-2020) setting out the reasoned opinion on compliance with the principle of subsidiarity of the Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM (2020) 80 final

The Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM(2020) 80 final, presented by the Commission on 4 March 2020, is an integral part of the "European Green Deal". It sets out in concrete terms how the European Union is to achieve carbon neutrality by 2050.

On the basis of Articles 191 and 192 of the Treaty on the Functioning of the European Union, the Commission is proposing in particular:

1. to enshrine the Union's climate neutrality objective for 2050 in European law, with the objective being assessed for the Union as a whole;

2. to set out the trajectory necessary to achieve it, tasking the Commission in particular with reviewing existing policies and Union legislation in order to reinforce consistency with regard to the climate neutrality objective and the trajectory set out;

3. to distinguish two separate periods within this framework:

- a first period lasting until 2030: by September 2020, the Commission will re-examine, and if it deems it necessary, make proposals for increasing the Union's specific greenhouse gas emission reduction target for 2030, with a view to raising it from 40% to 50% and possibly even 55% compared with 1990 levels. It could put forward amendments to European legislation along these lines by 30 June 2021 at the latest;

- a second period, from 2030 to 2050, during which the Commission would be empowered to adopt delegated acts to set out the trajectory necessary to achieve climate neutrality by 2050. The starting point for the trajectory over this period would be the

Union's specific target set for 2030. The trajectory would be reviewed every 5 years.

The text takes up the principles set out in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. It thus provides that the power to adopt delegated acts would be conferred on the Commission for an indefinite period, but could be revoked at any time by the European Parliament or the Council, which would receive a notification of each delegated act adopted by the Commission and could express objections within a period of two months (which may be extended by a further two months). The experts designated by the Member States would be consulted before the adoption of any delegated act;

4. to enhance by constant progress the capacity to adapt, strengthen resilience and reduce vulnerability to climate change, a task that falls within the purview of both the competent institutions of the Union and the Member States, pursuant to Article 7 of the Paris Climate Agreement;

5. to specify the methods of assessing the measures taken by the European Union and the Member States.

Having regard to Article 88-6 of the Constitution,

Considering the terms of the letter sent to the Speaker of the Senate on 8 April 2020 by the Vice-President of the European Commission, according to which, as the eight-week period laid down in Protocol no. 2 annexed to the treaties for the assessment by national parliaments of the compliance of the draft legislative acts transmitted by the Commission with the principles of subsidiarity and proportionality cannot be extended, the Commission undertakes to take account as far as possible of the resolutions of the national parliaments expressing concerns about such compliance and to respond to them publicly, even if these resolutions were to reach it after the expiry of the eight-week period because of the COVID-19 crisis, even though such belated opinions could not legally be taken into account in reaching the thresholds for triggering the yellow-card or orange-card procedure,

The Senate makes the following observations:

Concerning the general procedure relating to the monitoring of subsidiarity by national parliaments, in the special context of the COVID-19 crisis:

- the Senate, as indicated by the Foreign Affairs Committee in its report which formed the Senate's contribution to the European Commission's Subsidiarity and Proportionality Task Force,¹ considers that the monitoring of subsidiarity by national parliaments leads to an assessment on the texts with regard to the principle of subsidiarity, but also to the principle of proportionality of the measures envisaged, since these two principles are closely connected to each other;

- delegated acts and implementing acts are currently not transmitted to the national parliaments for the purpose of monitoring compliance with the principle of subsidiarity, whereas they constitute complements to legislative acts, which are subject to such monitoring, rendering the monitoring of subsidiarity performed by the national parliaments only partial;

- given the lockdown imposed by the COVID-19 crisis and its impacts on the conduct of parliamentary business by the national parliaments, the period of eight weeks to adopt a reasoned opinion laid down by Protocol no. 2 on the application of the principles of subsidiarity and proportionality, has proved to be particularly inadequate to exercise any in-depth monitoring of subsidiarity. The Senate reiterates its wish, expressed in the aforementioned report by its European Affairs Committee, to see this period increased from eight weeks to at least ten weeks and to give the Commission a period of twelve weeks to respond to a reasoned opinion. A suspension of these deadlines could also be provided for in exceptional circumstances;

¹ Senate information report no. 456 (2017-2018) constituting the Senate's contribution to the European Commission's Subsidiarity and Proportionality Task Force, drawn up on behalf of the European Affairs Committee by Mr Jean BIZET, Mr Philippe BONNECARRÈRE and Mr Simon SUTOUR, 20 April 2018.

Concerning the added value of the European Union setting a climate neutrality objective for 2050:

- pursuant to Article 4 of the Treaty on the Functioning of the European Union, environmental policy, including combating climate change, and energy policy are areas of shared competence between the European Union and the Member States, in the manner outlined in Articles 191 to 194 in particular;

- the European Union has already set itself objectives for reducing greenhouse gases in the past and the setting of a climate neutrality objective for 2050 for the Union as a whole represents European added value;

- the fact that the objective is set for the Union as a whole implies solidarity between Member States; the distribution of efforts between Member States with a view to achieving this objective has not been assessed at this stage;

- in principle, the setting of this climate neutrality objective for the Union for 2050, which marks a high ambition in the fight against climate change, accompanied by European action in favour of climate change adaptation, both of which are consistent with the objectives of the Paris Climate Agreement, appears justified with regard to the principle of subsidiarity;

Concerning the possible revision of the specific greenhouse gas emissions reduction target for 2030:

- the proposal for a Regulation includes the perspective of an upward revision of the greenhouse gas emissions reduction target for 2030, endorsed by the European Council in 2014 and adapted in 2018 by the Effort Sharing Regulation;²

- this perspective of an increase in the Union's ambitions for 2030 may appear consistent with the high target that the proposal for a Regulation sets for 2050;

- the final level of this upward revision remains to be finally specified. Given its implications in terms of economic and social

² Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 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 and amending Regulation (EU) No 525/2013.

budgets, the Senate regrets that the impact study concerning reduction targets envisaged by 2030 was not presented at the same time as the proposal for a Regulation;

- whereas the European Environment Agency stresses the importance of the efforts required to meet the target for the reduction of greenhouse gas emissions that is today set for this deadline,³ in fact it seems impossible to appreciate at this stage the proportionality of this potential new ambition of the Union with a deadline set in the near future in terms of the investment cycle and which is dependent on the outcome of the negotiations on the next multiannual financial framework;

- the current target for the reduction of greenhouse gas emissions by 2030 was unanimously approved by the European Council before being integrated into the ordinary legislative procedure. Based on the congruence principle, the decision to increase the level of the ambition for 2030 should be approved by the European Council before being endorsed as part of this proposal for a Regulation at the end of the ordinary legislative procedure;

Concerning the procedure for assessing the measures taken by the European Union and the Member States:

- Articles 5 and 6 of the proposal for a Regulation set out, respectively, the procedure for the assessment of Union progress and measures, as well as the procedure for the assessment of national measures, concerning the achievement of the climate neutrality objective and the progress made on climate change adaptation;

- the principle of assessment is necessary to ensure effective monitoring of a binding objective. It is also justified from the point of view of the investments required to achieve this objective and the funding that will be granted for this purpose by the European Union;

- there is a clear correlation between the provisions of Article 6 of this proposal and those of Articles 13 and 34 of Regulation (UE) 2018/1999 of the European Parliament and of the Council of

³ European Environment Agency, The European environment - state and outlook 2020 - Knowledge for transition to a sustainable Europe, 4 December 2019.

11 December 2018 on the Governance of the Energy Union and Climate Action;

- Article 6 refers to the trajectory that the Commission wishes to set out, by means of delegated acts from 2030 onwards, with a view to achieving climate neutrality by 2050. Now, the items taken into account in setting out this trajectory, listed in Article 3 of the proposal for a Regulation, appear very broad, which suggests that caution is needed;

- this procedure for assessing the national measures should be clarified, in particular with regard to the stipulations of Article 194 (2) of the Treaty on the Functioning of the European Union, so that the Commission, whilst ensuring compliance with ambitious objectives, does not unduly interfere with the powers of the Member States through its recommendations;

Concerning the conferring on the Commission of the power to use delegated acts to set out the trajectory for reducing greenhouse gas emissions with a view to achieving carbon neutrality between 2030 and 2050:

- from 2030 onwards, the Commission proposes that it be empowered, in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, to adopt delegated acts to set out the trajectory to be followed at Union level to achieve climate neutrality by 2050. It considers that "the establishment of a robust governance of the EU 2050 climate-neutrality objective will help to ensure that the EU remains on track to achieve the objective";

- whereas the European Union has until now set itself greenhouse gas emissions reduction targets at ten-year intervals (2020, 2030), the text proposed by the Commission does not include any mention of a specific target for 2040;

- Article 290 of the Treaty on the Functioning of the European Union stipulates that "a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act. (...) The essential elements of an area shall be reserved for the legislative act and accordingly shall not be the subject of a delegation of power".

- the setting out of the trajectory for the reduction of greenhouse gas emissions is not a technical or mechanical issue. Given the need to give economic operators and investors predictability over the complete duration of an investment cycle, but also the importance of the issues at stake in such a decision in economic and social, technological and industrial terms, as well as in terms of regional development in each of the Member States, the setting out of the trajectory to achieve climate neutrality by 2050 takes on an eminently political nature and must be fully accepted by the Member States if it is to be successfully implemented. The Senate thus considers that the setting out of this trajectory constitutes an essential element in this proposal for a Regulation, which prohibits the intended use of delegated acts;

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For these reasons, and even though the principle of setting a climate neutrality objective for the Union as a whole by 2050 seems to it to be justified with regard to the division of powers between the Member States and the Union, the Senate considers that the proposal for a Regulation COM(2020) 80 final does not comply with the principle of subsidiarity. The Proposal for a Regulation of the European Parliament and of the Council establishing the framework for achieving climate neutrality and amending Regulation (EU) 2018/1999 (European Climate Law), COM(2020) 80 final, presented by the Commission on 4 March 2020, is an integral part of the "European Green Deal". It sets out in concrete terms how the European Union is to achieve carbon neutrality by 2050.

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- delegated acts and implementing acts are currently not transmitted to the national parliaments for the purpose of monitoring compliance with the principle of subsidiarity, whereas they constitute complements to legislative acts, which are subject to such monitoring, rendering the monitoring of subsidiarity performed by the national parliaments only partial;

- given the lockdown imposed by the COVID-19 crisis and its impacts on the conduct of parliamentary business by the national parliaments, the period of eight weeks to adopt a reasoned opinion laid down by Protocol no. 2 on the application of the principles of subsidiarity and proportionality, has proved to be particularly inadequate to exercise any in-depth monitoring of subsidiarity. The Senate reiterates its wish, expressed in the aforementioned report

⁴ *Senate information report no. 456 (2017-2018) constituting the Senate's contribution to the European Commission's Subsidiarity and Proportionality Task Force, drawn up on behalf of the European Affairs Committee by Mr Jean BIZET, Mr Philippe BONNECARRÈRE and Mr Simon SUTOUR, 20 April 2018.*

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- whereas the European Environment Agency stresses the importance of the efforts required to meet the target for the reduction of greenhouse gas emissions that is today set for this deadline,⁶ in fact it seems impossible to appreciate at this stage the proportionality of this potential new ambition of the Union with a deadline set in the near future in terms of the investment cycle and which is dependent on the outcome of the negotiations on the next multiannual financial framework;

- the current target for the reduction of greenhouse gas emissions by 2030 was unanimously approved by the European Council before being integrated into the ordinary legislative procedure. Based on the congruence principle, the decision to increase the level of the ambition for 2030 should be approved by the European Council before being endorsed as part of this proposal for a Regulation at the end of the ordinary legislative procedure;

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contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013.

⁶ European Environment Agency, The European environment - state and outlook 2020 - Knowledge for transition to a sustainable Europe, 4 December 2019.

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