EUROPEAN COMMISSION

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C(2022) 377 final

Dear Presidents,

The Commission would like to thank the Houses of the Oireachtas for their reasoned Opinion, adopted on 5 October 2021, on the following legislative proposals of the 'Fit for 55' package:

- *Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757 {COM(2021) 551 final},*
- *Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2018/841 as regards the scope, simplifying the compliance rules, setting out the targets of the Member States for 2030 and committing to the collective achievement of climate neutrality by 2035 in the land use, forestry and agriculture sector, and (EU) 2018/1999 as regards improvement in monitoring, reporting, tracking of progress and review {COM(2021) 554 final},*
- *Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/842 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 {COM(2021) 555 final},*
- *Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 of the European Parliament and of the Council, Regulation (EU) 2018/1999 of the European Parliament and of the Council and Directive 98/70/EC of the European Parliament and of the Council*

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as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652 {COM(2021) 557 final},

- *Proposal for a Directive of the European Parliament and of the Council on energy efficiency (recast) {COM(2021) 558 final} and*
- *Proposal for a Regulation of the European Parliament and of the Council establishing a Social Climate Fund {COM(2021) 568 final}.*

These proposals form part of a broader package of ambitious measures designed to reduce net greenhouse gas emissions by at least 55% by 2030 across Member States. They will also pave the way to achieving climate neutrality by 2050, in line with the binding objectives set out in the European Climate Law[1]. Setting ambitious, yet achievable targets will give a boost to meeting the EU's commitment.

The Commission has carefully analysed the issues raised by the Houses of the Oireachtas in their reasoned Opinion and takes them seriously. Their main concern is that the 'necessity' and 'greater benefits' of these proposals in contrast to measures taken at Member State level have not have been adequately established and that the proposals are therefore neither proportionate nor compliant with the principle of subsidiarity.

In response to the issues raised, the Commission would like to provide the following clarifications – grouped by topic – as regards the necessity and greater benefits of these proposals.

All these proposals are based on the Commission's 2030 Climate Target Plan[2] of 17 September 2020. The Communication was accompanied an extensive impact assessment underpinning a comprehensive plan to responsibly increase the EU's binding target for 2030 to at least 55% net emissions reduction. Each of the proposals under the 'Fit for 55' package mentioned in the reasoned Opinion is supported by a specific impact assessment.

The Commission also endeavoured to combine the different policy proposals in a Member State scenario assessment that attempts to capture their combined impact as much as possible (the so-called MIX scenario). The Commission has presented the scenario results for this policy scenario at Member State level, along with the EU reference scenario. The EU reference scenario captures the implementation of current policies, notably your existing national energy and climate plans. All this information is transparently available on the Directorate-General for Energy's[3] modelling webpage.

More concretely, the Effort Sharing Regulation proposal[4] and the Land Use, Land Use Change and Forestry Regulation proposal[5] set out the action required by Member States

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1 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') – OJ L 243, 9.7.2021, p. 1-17.

2 Communication from the Commission to the Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Stepping up Europe's 2030 climate ambition – Investing in a climate-neutral future for the benefit of our people – COM(2020) 562 final.

3 https://ec.europa.eu/energy/data-analysis/energy-modelling_en

4 COM(2021) 555 final.

in the corresponding sectors to achieve the agreed climate law targets to reduce at least 55% net greenhouse gas emissions by 2030 and EU climate neutrality by 2050.

Renewable Energy Directive[6]:

The Renewable Energy Directive proposal aims to increase the use of renewable energy by 2030, to improve energy system integration and to contribute to climate and environmental objectives, including the protection of biodiversity. Therefore, the proposal aims to address the intergenerational concerns associated with global warming and biodiversity loss. It also increases the current EU target of at least 32% of renewable energy sources in the overall energy mix to at least 40% by 2030. This approach should provide the right incentives to Member States with different levels of ambition to accelerate, in a coordinated way, the energy transition. A comprehensive framework to deploy renewables across all sectors of the economy, in line with the Commission's vision for an integrated energy system of the future is also envisaged. It focuses therefore on sectors in which progress in integrating renewables has so far been slow, such as transport, buildings and industry.

Some of the measures take the form of additional targets. Others are aimed more at simplifying administrative procedures and smoothing out bottlenecks under the current rules, for example by accelerating the permitting process. The Renewable Energy Directive proposal seeks to enable EU energy systems to become more flexible, making it easier to integrate renewables into the grid as efficiently as possible. This should enable district heating, heat pumps, home batteries and electric vehicles to better fulfil their potential. It also supports the uptake of renewable hydrogen where electrification is more difficult.

New rules are also proposed to strengthen the sustainability criteria for forest biomass. The aim is to ensure that products such as biomass can continue to make an important contribution in a way that is consistent with the EU's biodiversity objectives.

Strengthening the EU Emissions Trading System and a new emissions trading system for fuels used in road transport and buildings[7]:

As far as the issue of strengthening the EU Emissions Trading System (ETS) and a new emissions trading system for fuel used in road transport and buildings[8] is concerned, the Commission would like to highlight the following:

Climate change is a cross-border issue and EU action can effectively complement and strengthen global, regional, national and local action. Increasing the 2030 target for EU greenhouse gas emission reductions will affect all sectors across the EU economy and coordinated action at EU level is therefore required. EU action has a much better chance of leading to the changes that are needed, acting as a strong driver for cost-efficient

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[5] COM(2021) 554 final.
[6] COM(2021) 557 final.
[7] COM(2021) 551 final.
[8] COM(2021) 551 final.

change and upward convergence. Furthermore, many of the elements of this proposal have a major single market dimension, including the options linked to carbon leakage protection and low-carbon funding mechanisms.

As a cap-and-trade instrument, the EU ETS incentivises cost-effective emission reductions across the activities it covers, achieving greater efficiency. Implementing similar measures nationally would significantly reduce the potential for cost-effective abatement. It would also result in smaller, fragmented carbon markets, risking distortions of competition.

Moreover, the EU ETS operates since 2005 based on rules that have been largely harmonised at EU level through a reform of the corresponding Directive[9] *in 2009. In line with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union, the objectives of the proposal to amend the EU ETS Directive can only be achieved through a legislative instrument at EU level.*

Similarly, Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC[10] *is an existing EU measure. Amending it, as this proposal does, cannot be achieved at national or local level, but requires action at the EU level.*

For the buildings and road transport sectors combined, we have observed increasing emissions at EU level between 2014 and 2019 of 5%, whereas an appropriate contribution to an at least 55% greenhouse gas emission reduction target set in the European Climate Law would require a reduction of 43% by 2030 compared to 2005.

Although these sectors are subject to regulatory measures, they are generally not subject to a carbon price. Therefore, there may not have been sufficient incentives to reduce emissions. From an EU perspective, the 2021 Irish Climate bill, which sets a steady carbon price increase for these sectors, is an exception. There is therefore an urgent need to enact more robust policies for these sectors, both at EU and national level, where none have been taken. Carbon pricing is only one of the policies that will be needed to achieve the level of emission reductions required.

The existing carbon price signal from the EU ETS has proved to be effective for the sectors governed by it. The Commission proposes to introduce a new emissions trading system for sectors that currently are not meeting their emission reductions targets. The new system will build on the lessons-learned from the EU ETS. Foregoing the possibility of reducing EU-wide emissions through inter alia the application of a carbon price signal would result in higher overall costs of the climate transition.

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[9] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, OJ L 275, 25.10.2003, p. 32-46.

[10] OJ L 264, 9.10.2015, p. 1-5.

As already mentioned, there are also single market aspects. Currently, there is no level playing field in terms of carbon pricing between domestic fossil-fuelled heating systems, and district heating and electric heating (including heat pumps), which are covered by the EU ETS. The latter amount to around 30% of EU direct and indirect heating emissions, with significantly higher shares in a number of Member States. Here again, Ireland is an exception. Covering road transport emissions in the new emissions trading system would also correct the lack of a level playing field between fossil-fuelled road transport, and electric vehicles and electrified rail, which are already covered by the EU ETS as it covers electricity production. With a rise in the uptake of electric vehicles, this will become of increasing importance.

However, action at national level remains important in the buildings and road transport sectors. In fact, this point is recognised in the scope of the Effort Sharing Regulation proposal. The new EU level emissions trading system is proposed as an additional economic incentive to achieve cost-effective emission reductions. The new emissions trading system will complement national targets in areas of national competence (e.g. urban planning) or address Member State specific non-price barriers, as its EU-wide emission cap is set at the level of the cost-efficient overall reduction contribution of the covered sectors of 43% emission reductions by 2030 compared to 2005. Emissions trading and the resulting carbon price would provide a cost-effective instrument to achieve the remaining EU-wide reductions required taking into account national policies and further relevant EU policies. The new emissions trading system would also not prevent Member States from implementing more ambitious national carbon pricing policies by means of taxation if they wish so. For example, if the resulting EU-wide carbon price 2026 to 2030 would be lower than planned in national legislation.

Social Climate Fund[11]:

As far as the issue of the Social Climate Fund is concerned, the Commission would like to highlight the following points:

The Fund is set up to contribute to the transition towards climate neutrality by addressing the social impacts of the inclusion of greenhouse gas emissions from buildings and road transport into the scope of the EU ETS Directive. The application of a uniform price for greenhouse gas emissions from buildings and road transport will have an uneven impact in different Member States and regions.

The Fund should provide support to Member States, so that they can finance a coherent set of measures, including the possibility to finance temporary direct income support, and investments considered necessary to meet the EU's climate targets. In particular, it should ensure affordable and sustainable heating, cooling and mobility for the most vulnerable in society. The support should reflect the diverse situation of Member States and their regions, taking into account regional energy poverty maps and maps of poorly connected by road or rail, remote and rural areas. Measures and investments should

[11] COM(2021) 568 final.

benefit households, micro-enterprises and transport users, who are vulnerable and particularly affected by the carbon price being passed on the costs to the final consumer. Member States may also provide temporary direct income support to vulnerable households and transport users, decreasing over time and limited to the direct impact of the new emissions trading system.

Funding from the EU budget concentrates on activities whose objectives cannot be sufficiently achieved by all the Member States alone ('necessity test'), and where EU intervention can bring additional value compared to Member States acting alone. In this case, the specific needs of the different Member States are reflected in the allocation methodology. The operation of the fund also ensures that all Member States can take measures to complement climate action at EU level. The Member States will be those who will design and select the measures and investments, because they are best placed to design such measures that reflect the national particularities.

Member States should put forward a comprehensive set of measures and investments to be financed by the fund through their social climate plans. These social climate plans should be submitted together with the update of their national energy and climate plans in line with the Governance Regulation[12]. Action at EU level is necessary to achieve a fast and robust green transition where no one is left behind and is therefore needed to coordinate an appropriate response to the social challenges from emissions trading for the buildings and road transport sectors ('effectiveness test'). This goal cannot be sufficiently achieved by Member States acting alone, while the EU's intervention can bring additional value by establishing an instrument targeted at supporting Member States financially in the design and implementation of much needed measures and investments.

Recast of the Energy Efficiency Directive[13]:

Regarding the proposal for a recast of the Energy Efficiency Directive, the Commission would like to highlight the following points:

Energy efficiency is a precondition of any successful decarbonisation policy and as such needs to be prioritised. Its essential contribution towards achieving the EU target to reduce net greenhouse gas emissions by at least 55% by 2030 is quantified in the impact assessment accompanying the 2030 Climate Target Plan. Given the increased climate target, a more ambitious EU energy efficiency target is required for 2030.

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12 Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (Text with EEA relevance) – OJ L 328, 21.12.2018, p. 1-77.

13 COM(2021) 558 final.

Energy efficiency policies are assessed in a specific impact assessment as being crucial to reducing greenhouse gas emissions in a cost-effective way and contribute to environmental, climate, economic and social benefits, including job creation, economic growth, alleviation of energy poverty, better living conditions and air quality, reduced energy bills and better health. The barriers to an optimal level of energy savings and reduced level of energy consumption, which comply with EU-wide and international commitments, are the same across the EU, are present everywhere and differ only in sectors.

Whereas specific actions to reduce energy consumption need to be taken at Member States' level, an effective legal framework, a coordinated and harmonised approach at EU level is needed to reach the headline EU energy efficiency target. This ensures that energy efficiency objectives are achieved collectively and at the lowest possible cost. Member States will retain the flexibility in terms of selecting their policy mix, sectors and the approach to achieve the required energy savings, by taking into account the national context and specificities.

Regarding the external costs of energy consumption (e.g. greenhouse gas emissions, air pollutant emissions, energy security), actions to increase energy efficiency and reduce energy use are likely to lead to benefits beyond national borders. For cross-border issues, Member State alone action is unlikely to lead to optimal outcomes.

A common approach at EU level will enable and enhance Member States' actions, and ensure the four freedoms of the single market. It will help, for example, to create larger markets for European suppliers, workers and goods, and ensure that the same obligations and rules apply. This will protect and boost competition. While leaving flexibility to Member States on the choice of specific implementation measures, reliable EU and national targets will lead to investor certainty, encouraging investment in and development of more energy efficient products and technologies.

By acting at the EU level, several barriers to public and private investments will also be tackled, addressing the lack of coordination between various authorising bodies at national level and stimulating the administrative capacity to implement cross-border projects and support schemes. An obligation to achieve an annual reduction of the energy consumption in the public sector will ensure that the public sector fulfils its exemplary role, whereas Member States retain full flexibility regarding the choice of energy efficiency improvement measures.

The proposal for a recast of the Energy Efficiency Directive also aims to further empower and protect vulnerable customers and final users and those affected by energy poverty. Whereas the Energy Efficiency Directive will require the implementation of certain basic contractual rights of customers across the EU, national competences would not be restricted.

The experience from the current Energy Efficiency Directive has shown that the Directive effectively complements and catalyses other national and EU measures.

The points made above are based on the initial proposals presented by the Commission, which are currently in the legislative process involving both the European Parliament and the Council.

The Commission hopes that these comments address the issues raised by the Houses of the Oireachtas and looks forward to continuing the political dialogue in the future.

Yours faithfully,

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For the Secretary-General

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