

EURACOAL Position Paper

on the European Climate Law and 2030-2050 targets as well as the “Fit for 55” package

Summary

Members of EURACOAL make a real contribution to climate protection and believe in an integrated, just and economically efficient transformation of the energy sector in the European Union which takes into account the entrepreneurial interests of EURACOAL members and the interests of the coal and lignite regions, as well as protects the value chain. EURACOAL and the EU coal and lignite industry stand to achieve the climate goals set out in the UNFCCC Paris Agreement, as ratified by all EU Member States. In this respect, a European Climate Law and a strengthening of the EU climate target for 2030 above 40% can be contemplated, subject to certain conditions that should be addressed at the EU level by Member States and the European Commission:

- 1. Guarantee security of energy supply in the EU, ensure renewable energy can be stored in sufficient quantities, support carbon capture, use and storage (CCUS), and recognise the role of nuclear power in certain Member States.*
- 2. See coal as an enabler of security of supply and of competitiveness in a number of Member States – its use decreasing, but still vital and valuable. Recognise the emission reductions coal has already delivered since 1990.*
- 3. Promote a united global climate response, especially among the G20 countries, with a level playing field for EU industry.*
- 4. The trajectory to meet 2030 and 2050 climate targets is of fundamental importance to the economies of EU Member States and should not be subject to change by delegated act.*
- 5. For sectors currently covered by the EU ETS, let the system do its job of cost-effectively reducing CO₂ emissions below politically agreed targets in an economically efficient manner. For the near term, other sectors will need a separate CO₂ pricing or trading system with differentiated price signals.*
- 6. Determine the potential economic and social impacts of the EU 2030 climate target at the Member State level.*
- 7. Carry out comprehensive, impact assessments at Member State level to determine how energy security, economic competitiveness and social cohesion can be assured during the mammoth task of transforming every aspect of life in the EU to achieve the 2050 climate-neutrality target.*
- 8. Targets in the European Climate Law must not be legally enforceable as such, because no sovereign legislature shall bind future legislatures.*
- 9. Increase the size of JTF/JTM resources, extend their availability period, allow support for large companies and fossil gas projects, and avoid any conditionality based on a Member State’s commitment to climate neutrality by 2050.*

Preamble

As a core part of the European Green Deal, the European Commission proposed in March 2020 a European Climate Law, a regulation to achieve climate neutrality by 2050. An important aim of the new EU strategy is to decouple economic growth from resource use and thus **transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy**. The Commission subsequently amended its proposal in September 2020.

The proposed law includes measures to keep track of progress against National Energy and Climate Plans and respond accordingly, based on European Environment Agency reporting and the latest scientific evidence. Progress will be reviewed every five years, in line with the global stocktake exercise under the UNFCCC Paris Agreement.

Climate change is, by its very nature, a transboundary challenge that cannot be solved by national or local action alone. Co-ordination of climate action is necessary at the European level and, where possible, at the global level. EU climate action is justified by the European Commission on subsidiarity grounds and aims to provide cost-effective delivery of long-term greenhouse gas (GHG) emission reduction targets, while ensuring fairness and environmental integrity (Ares(2020)119545).

The draft regulation will amend an extant regulation (EU) 2018/1999. Unlike directives, its provisions will apply directly on Member States which will thus not be required to transpose the regulation into national law, but must comply immediately. As proposed, the European Climate Law will cover all greenhouse gases.

Summary of the proposed European Climate Law regulation

The aim of the proposed European Climate Law is to ensure that the transition to climate neutrality by 2050 is **irreversible**, with a **defined pathway** that provides predictability for investors and businesses:

- In September 2020, the European Commission published an EU-wide impact assessment and explored options for a new GHG emission reduction target for 2030 of 50% to 58%. Based on this assessment, it proposed a new target of 55% in an amendment to the European Climate Law.
- By June 2021, the European Commission will review, and where necessary propose to revise, all relevant policy instruments to achieve the additional emission reductions for 2030.
- The European Commission proposes to establish an EU-wide trajectory for GHG emission reductions from 2030 to 2050.
- By September 2023 and every five years thereafter, the European Commission will assess EU and national measures against the 2030-2050 trajectory. The European Environment Agency will assist with GHG emission data collection and Member State GHG emissions will be further monitored using the Copernicus satellite system.
- The European Commission wishes to be empowered, by means of delegated act, to review the 2030-2050 trajectory and Union-wide measures, and to take the necessary further measures in accordance with the Treaties to ensure progress. The European Commission will issue recommendations to Member States which fall behind, based on the best available science and EU legislation.
- Member States will be required to develop and implement climate adaptation strategies.

To implement these points, the European Commission proposes amendments to the Energy Union governance regulation (EU) 2018/1999 that came into force on 24 December 2018.

EURACOAL Position I: General statement

We respect the UNFCCC Paris Agreement and EU efforts to comply with that agreement ...

EURACOAL members acknowledge the long-term goals of the UNFCCC Paris Agreement on climate change to limit global warming to below 2°C compared with pre-industrial levels and to pursue efforts to limit the rise to 1.5°C. Also, we respect the European Council conclusions of December 2019 and December 2020 which offer our industry a new direction with ambitious net GHG reduction targets for 2030 across the EU as a whole, and a transition to climate neutrality by 2050. Hence, we support the efforts of the European Union to contribute to achieving the global climate objectives as part of an overall EU policy to create a “a fair and prosperous society, with a modern, resource-efficient and competitive economy”.¹

Polls show 93% of EU citizens see climate change as a serious problem and many want to see increased climate action.² However, such social research should also explore the potential impacts of regulatory action. Without sufficient knowledge of the impacts on future energy prices, regional development and employment, citizens are unaware of the many trade-offs. For the coal sector, this means meeting EU environmental objectives while supplying reliable, secure and competitive energy and electricity, and, at the same time, diversifying its activities in support of regional economies.

... and will continue to reduce emissions from coal- and lignite-fired power generation in the EU.

Those EU Member States who depend heavily on coal, such as Bulgaria, Czechia, Germany, Greece, Poland, Romania and Slovenia, have all submitted to the European Commission their draft national energy and climate plans, including assumptions on their future energy mixes. Following the cessation of subsidised hard coal mining in Germany and Spain at the end of 2018, as required under EU law (2010/787/EU), many countries are now expected to largely exit from coal and lignite use for electricity generation: France in 2022, Italy in 2025, Greece in 2028, Hungary in 2030 and Germany in 2038. Other countries are likewise considering how and when to exit, but this will take time, two decades or more in some cases. Any tightening of climate policy would greatly impact EU industry and energy suppliers who must bear the high costs of transition. This applies particularly to the coal-using Member States which is why it is so important to ensure a *just transition* at the right pace.

Replacing coal with renewable energy sources or nuclear power, and deploying CCUS, will all take time, but progress is being made. Replacing the advantages of coal – its abundance, its affordability and its availability – also presents a challenge, but one that can be met with enormous investment in renewable energy sources and large-scale energy storage technologies. The EU coal sector has already contributed massively to GHG emission reductions in the EU – a reduction in CO₂ emissions alone of more than 60% since 1990. With the now reformed EU ETS, this reduction trend will continue in the future, as shown in Figure 1, helping the EU to meet the objectives agreed in Paris at the UNFCCC COP 21 climate conference held in December 2015.

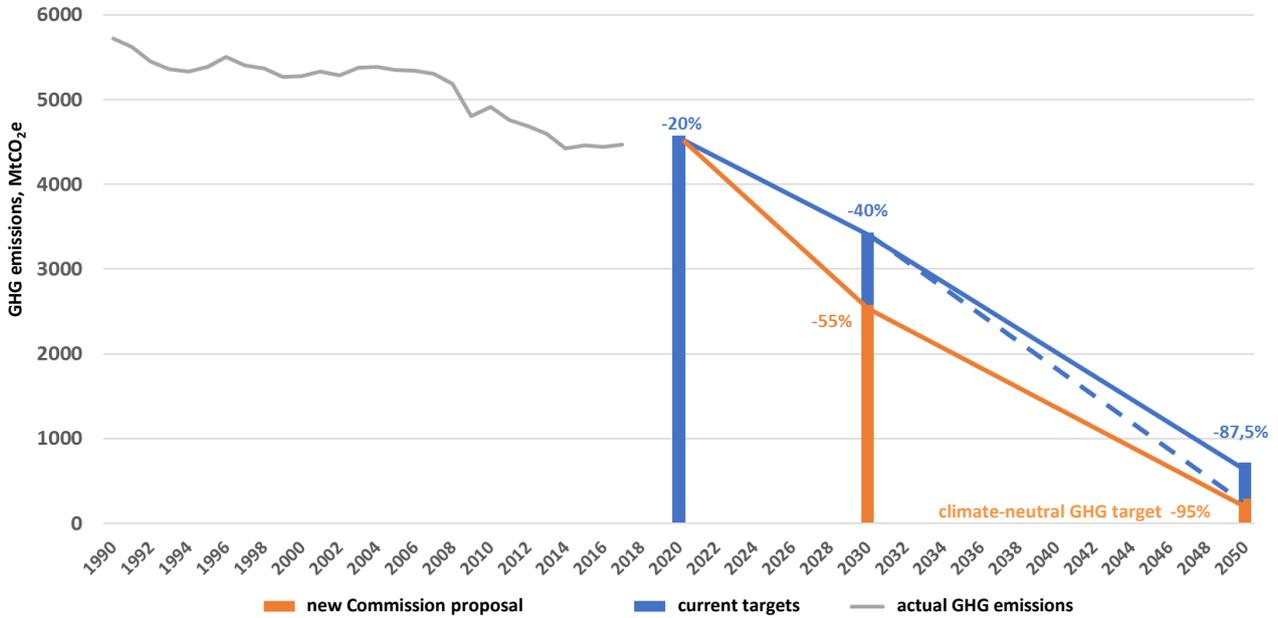
The energy transition should not compromise energy security or industrial competitiveness. Reaching the EU climate targets means a more rapid deployment of renewable energy sources. At the same time, companies and regions that are dependent on coal need support in the transition towards climate

¹ European Green Deal, COM(2019) 640

² Special Eurobarometer 490, “Climate Change” Report, a survey conducted by Kantar on behalf of Kantar Belgium at the request of the European Commission, Directorate-General for Climate Action (DG CLIMA), Wave EB91.3, April 2019.

neutrality. Mechanisms should be designed to reduce the (unknown) socio-economic consequence that might lead to an irreversible economic downturn. Studies and impact assessments at the Member State level are needed to assure citizens, along with credible regional development programmes.

Figure 1 – Greenhouse gas emissions and future targets for the EU-28, 1990-2050



EURACOAL Position II: Specific points

- 1. Guarantee security of energy supply in the EU, ensure renewable energy can be stored in sufficient quantities, support carbon capture, use and storage (CCUS), and recognise the role of nuclear power in certain Member States.**

Energy supply security, including the security of electricity supply, has been assured in the EU over many years through a diversity of energy sources and suppliers. In this respect, nuclear power offers a high degree of electricity supply security, and some Member States wish to continue using or begin using this reliable source of power, even as others phase out of nuclear. Looking to the future, when renewable energy sources are expected to account for a large share of total primary energy supply in the EU, it will be important to guarantee energy supply security with enough energy storage to cover diurnal, intertemporal and seasonal periods when renewable sources are unable to deliver sufficient energy. This might entail small- and large-scale energy storage projects of sufficient capacity, in combination with demand-side management measures, to assure supply at all times. Finally, wherever fossil fuels continue to be used for heat and power, options for carbon capture, use and storage (CCUS) must be available if climate neutrality is to be achieved everywhere. CCUS is likely to be important in the EU, but it will certainly be important in the rest of the world. The International Energy Agency forecasts that by 2050 – when annual CO₂ emissions from global energy use are expected to have fallen to 10 GtCO₂ – CCUS projects should be capturing around 5 GtCO₂ each year from power plants located mainly in China and the US, as well as from steel and cement production.³

³ IEA (2020), *World Energy Outlook 2020*, OECD International Energy Agency, Paris, October 2020. p.122

2. See coal as an enabler of security of supply and of competitiveness in a number of Member States – its use decreasing, but still vital and valuable. Recognise the emission reductions coal has already delivered since 1990.

Carbon dioxide **emissions from coal use in the EU have fallen already by over 60%** since 1990 – no other sector has made such a significant contribution to reaching the EU’s ambitious climate targets. At the same time, coal still provides a reliable and competitive source of electricity in many Member States, and coal-fired power plants have become important for backup – both spinning reserve and security standby – as intermittent renewables have grown. As a cost-effective bridge to a clean energy system, existing coal plants can be relied on over the coming years.

3. Promote a united global climate response, especially among the G20 countries, with a level playing field for EU industry.

The European Commission’s highest priority should be a diplomatic effort to engage with the world’s top carbon emitters – say the G20 countries – to agree a united, international response to the climate challenge. We note that this is the intent of Article 6 of the UNFCCC Paris Agreement on a global carbon trading mechanism which came into effect at the beginning of 2020 and **which EURACOAL supports**. In this way, the long-term temperature rise limits, set out in Article 2 of the Agreement, can be achieved; noting, however, that the Agreement does not specify any absolute GHG emission levels, target dates or conditions on climate neutrality.

So long as climate efforts elsewhere lag behind the EU’s, and without fair competition on a level playing field, carbon-leakage protection will be necessary to avoid the loss of EU industry as a result of unilateral climate action. And yet, it is not clear how the proposed carbon border adjustment (CBA) mechanism can be designed in such a way that it is WTO compliant. Moreover, if the EU introduces a CBA mechanism, then it risks a trade war which could damage the export-oriented economies of the EU. Furthermore, it hinders international co-operation to tackle climate change. Without substantive action on carbon-leakage protection, the proposed European Climate Law would be a leap of faith that non-EU regions and countries profit from at our expense.

4. The trajectory to meet 2030 and 2050 climate targets is of fundamental importance to the economies of EU Member States and should not be subject to change by delegated act.

Any proposed revision of climate targets raises concerns about the fundamental right, under the Treaty on the Functioning of the European Union, for Member States to determine their own energy mixes (TFEU Article 194). The scope of the delegated powers proposed by the Commission in the European Climate Law – namely to set and revise the 2030-2050 trajectory for GHG reductions – raises deep concerns about their compatibility with the Treaty, in particular with Article 290(1): *“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.”*

However, according to Articles 3 and 9 of the draft European Climate Law, the European Commission wishes to be granted delegated powers whereby it *can* adapt, every five years, the trajectory to meet the EU climate targets for 2030 and 2050 on the basis of the criteria set out in Article 3(3), including *“the best available and most recent scientific evidence, including the latest reports of the IPCC.”*

If this draft regulation is adopted at EU level, then Member States will no longer have due influence on the setting of revised, interim targets and thus on a central plank of the EU policy that determines national prosperity. The European Parliament and the Council of the European Union would have only limited powers to object within a short period of time, respectively by simple majority or by qualified majority. In view of the scope of the proposed delegated act, this would be a massive and

unwelcome shift of competences in an area that demands more democratic oversight. **It is not compatible with the subsidiarity principle.**

5. For sectors currently covered by the EU ETS, let the system do its job of cost-effectively reducing CO₂ emissions below politically agreed targets in an economically efficient manner. For the near term, other sectors will need a separate CO₂ pricing or trading system with differentiated price signals.

To meet EU climate targets in the sectors it covers – including power generation – the EU emissions trading system (ETS Directive 2003/87/EC) is a cost-effective and targeted mechanism. The sectors falling under the EU ETS have a clear pathway ahead that leads towards zero emissions around 2058. An accelerated decline, with a steeper linear reduction factor, can be envisaged over the two decades from 2030 to 2050. EU climate policy must guarantee that utilities can deliver electricity securely, stably and competitively during the decades to come. The ETS sectors should not therefore be the target of any disproportionate measures in the next decade, given that substantial reductions have already been and will continue to be delivered by the sectors covered, while non-ETS sectors have delivered much less.

All sectors – ETS and non-ETS – must reduce their emissions, so effort-sharing legislation must be adapted to ensure all sectors of the EU economy carry the GHG emission reduction burden equally. Where emissions trading or carbon levies are contemplated for non-ETS sectors, care should be taken to ensure that price signals are broadly differentiated by sector, because the relative carbon-price impact on emissions varies considerably from sector to sector.

The EU ETS should remain the main instrument used to drive down CO₂ emissions from the energy sector: it must deliver on the politically agreed climate targets and should only be updated if Member States agree to revised targets. Changes to the market stability reserve (MSR) rules or design features, a one-off reduction of the cap or a CO₂ floor price are unnecessary and, in our view, inappropriate. Such politically motivated interventions damage what should be a market-based system. A more worldly approach would be to look again at allowing international credits and thus promote international carbon markets – this being an objective of the Paris Agreement. Furthermore, to promote new technologies, emission credits should be available for negative emission technologies (NETs), carbon capture, use and storage (CCUS), low-carbon synthetic fuels and carbon removals through land use, land-use change, and forestry (LULUCF).

6. Determine the potential economic and social impacts of the EU 2030 climate target at the Member State level.

Under the European Green Deal and its latest proposals, the European Commission proposes a tightening of the GHG emission reduction target for 2030 from 40% to a very ambitious 55%, compared with 1990. This is necessary, “*to have a more balanced reduction pathway from 2020 to 2050*”. To implement a revised target, the Commission will propose, by June 2021, amendments to extend the Emissions Trading System Directive and its carbon-leakage measures, recast effort-sharing legislation, amendments to the Land Use, Land Use Change and Forestry Regulation, and reviews of the CO₂ emission performance standards for cars and vans, the Energy Efficiency Directive, the Renewable Energy Directive, and the Energy Taxation Directive, as well as other policy measures related to the European Green Deal.

It is precisely because such a tightening of the 2030 target is intrinsically linked to the proposed European Climate Law that an *a priori*, transparent and comprehensive impact assessment was essential. EURACOAL welcomes the European Commission’s EU-wide impact assessment of a revised 2030 target (SWD(2020) 176), published alongside the proposed 2030 Climate Target Plan

(COM(2020) 562). However, energy affordability, sustainability and security, as well as social aspects, must also be considered at the Member State level. This level of detail is promised by the Commission in country-level assessments by June 2021. These should also consider equity issues, such as how revenues from carbon pricing are distributed between Member States and EU own-resources. Such assessments must ensure the socio-economic viability and security of EU energy supplies and determine the negative impacts on regional development, including in the mining regions, as well as elaborate real projects and concrete initiatives **to create new jobs of equivalent standing in those regions.**

The 55% climate target proposed for 2030 by the European Commission would require an additional emission reduction of 35 percentage points compared with 1990 in just ten years. In the twenty-eight years from 1990 to 2018, and excluding the UK, the reduction was just 21 percentage points (Ares(2020)1631599 p.1). Hence, the target envisaged by the Commission would require a **five-fold increase in the rate of emission reductions to date** – without any repeat of the large emission reductions that came from the economic collapse of the former Eastern Bloc in the 1990s.

In its published impact assessment, the Commission shows that the impact on the coal industry of the 55% target is disproportionately harsh when compared with either the existing 40% target or even a 50% target, as summarised in the table below. A 55% target requires coal use in 2030 to be 21% lower than baseline, compared with 5% lower for a 50% target.

Impact on coal demand of different GHG reduction targets for 2030 in the EU⁴

	GHG reduction in 2030 (c.f. 1990)	EU coal demand in 2030 (c.f. 2015)
baseline – current 2030 target	40%	-62%
Commission’s proposal	55%	-70%
alternative MIX-50 scenario	50%	-64%
most aggressive ALLBNK scenario	58%	-81%

The Member State impact assessments should assess how a new 2030 target would affect the price of EU ETS allowances and the consequent increase in the cost of transition for those Member States that rely on more carbon-intensive power generation and industries where coal cannot be easily phased out. Moreover, to ensure a just transition points to the need for an impact assessment that addresses the costs of transition for each Member State and identifies the sources of funds to cover the huge investments envisaged in new, post-mining economic activities.

7. Carry out comprehensive, impact assessments at Member State level to determine how energy security, economic competitiveness and social cohesion can be assured during the mammoth task of transforming every aspect of life in the EU to achieve the 2050 climate-neutrality target.

EU climate and energy policy, especially when expressed as *targets*, such as climate neutrality by 2050, has a fundamental impact on energy affordability, sustainability and security, as well as on social conditions. Energy system costs, infrastructure needs and the role of an effective and efficient internal energy market should all be considered alongside climate targets as part of comprehensive

⁴ Impact Assessment accompanying the Commission Communication on “Stepping up Europe’s 2030 climate ambition – Investing in a climate-neutral future for the benefit of our people”, Commission Staff Working Document SWD(2020) 176, 17 September 2020

impact assessments at the Member State level that provide more detail than the staff working document published in September 2020. These impact assessments should use open-source models with code and data publicly available so that the Commission’s assumptions and assessments can be fully replicated and independently scrutinised. Given the scope of the proposed European Climate Law, which aims to map out the next thirty years, these impact assessments must be economy-wide and cover all parts of society.

Ambitious climate protection policies are necessary. However, strict, long-term climate targets, introduced unilaterally by the EU, can significantly impair the EU’s international competitiveness and could lead to the de-industrialisation of Europe, simply displacing emissions elsewhere.

8. Targets in the European Climate Law must not be legally enforceable as such, because no sovereign legislature shall bind future legislatures.

Climate targets must be formulated in such a way that they do not directly limit the rights of legal persons (citizens, corporations or interest groups) nor give them the opportunity to derive any enforceable rights. A specific risk here is the refusal to grant or the withdrawal of permits for installations that would be otherwise permissible under current EU environmental law.

Legal actions against individual projects on the grounds of a claimed incompatibility with the proposed European Climate Law would further impede and even prevent long-term investments in the energy sector. The only requirement should be that installations comply with the secondary legislation adopted on the basis of the proposed law (e.g. the EU emissions trading system).

Only with politically agreed targets, that are politically binding but not legally enforceable, can policymakers be sure that they retain all options and powers to shape future climate policy. If this fundamental point is not respected, then EU sovereign law could slip out of the hands of elected politicians and into the hands of unelected policymakers.

9. Increase the size of JTF/JTM resources, extend their availability period, allow support for large companies and fossil gas projects, and avoid any conditionality based on a Member State’s commitment to climate neutrality by 2050.

The Just Transition Fund (JTF) is a necessary support measure for a journey which is going to be both costly and difficult in the time available. It should provide support to those EU regions facing serious socio-economic challenges during the transition to an EU-wide climate-neutral economy by 2050. The support must be sufficient, flexible, timely and effective. Any conditions that compromise these objectives should be rejected.

JTF resources should be significantly increased as the challenges of the transition from a largely fossil-fuel-based economy to a low-carbon economy will cost many hundreds of billions of euros in Member States. The €40 billion JTF proposed by the President of the European Commission, Ursula von der Leyen, in her Recovery Plan Communication, “*Europe’s moment: Repair and Prepare for the Next Generation*” on 27 May 2020, was a commendable starting point. The necessary new investments will require a high support intensity for the most promising projects which might not otherwise proceed.

The JTF resources should be made available over the 2021-2027 budget period, because transition is a long-term process. A longer support period would benefit the large and complex investments that will be needed in Member States.

The successful transformation of the energy industry, including district heating, and all industrial sectors, including iron and steel making, means allowing support for alternative energy sources during

a transitional period. For example, wealthier Member States have reduced their GHG emissions by switching towards a combination of fossil gas and renewable energy sources. Elsewhere, existing coal plants can be the bridge to a clean energy system. An alternative might be to invest in new gas-fired power plants that would, by necessity, have only short operating lives on the road to carbon neutrality. In some Member States, this might be an attractive way to re-use existing infrastructure after the closure of coal-fired power plants, while preserving jobs and electricity supply security. However, such investment decisions are best left to Member States who should also be free to retain their coal assets. In any event, the continued operation of existing coal power plants or commissioning of new gas plants are only transitional solutions as new, cleaner energy sources are developed and deployed, including green hydrogen.

The JTF should help prevent the loss of a significant number of jobs by creating new ones, but JTF support should not be conditional on the elimination of any “old” jobs or companies, for example in the coal sector. The Green Deal will be much more welcomed by workers if their employer survives and transitions as a whole company rather than being forced into mass lay-offs and subsequent unemployment. In this respect, it will be important to allow support for large companies, even including coal companies, who seek to diversify or make incremental process improvements to reduce emissions, including in the processing of critical raw materials. It is these companies that can and do have the biggest impact on a successful transition in the regions, especially where they are the largest employers. In general, the Fund should support investments and projects regardless of the size of the applicant so that “no one is left behind”. Here, it is wrong to demand exhaustive lists of transition projects in Territorial Just Transition Plans as these plans need to be flexible and adaptable to the future availability of commercial energy technologies. At the same time, we warn against any further widening of the originally intended scope of the JTF with activities that are not directly linked to or that do not directly contribute to the energy transition. For example, we do not agree with the inclusion of a wide range of public projects as these can be and already are supported by the European Regional Development Fund and other EU sources.

The withholding of JTF support from individual Member States who are unable to commit to achieving climate neutrality by 2050 is unfair. **Such conditionality is unjust for those Member States which, for historic reasons, are heavily dependent on coal.** The European Commission’s proposal for a European “Climate Law” calls for a *Union-wide* climate neutrality target. It would thus be inconsistent to demand Member States agree national climate-neutrality targets for 2050 in order to gain access to much needed transition funds. For coal-dependent Member States, incentives are needed, not punishments.

Conclusion

EURACOAL members, and the many professionals and workers in the coal regions who we represent, look forward to a future of good co-operation to ensure that the coal industry’s extensive value chains form the basis of new economic growth and prosperity, leaving nobody behind.

14 January 2021