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The EU ‘Fit for 55’ Package Explained, Along With Its Potential to Spur Litigation

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As we have been [regularly reporting](#), the European Union is pursuing major changes in its climate policy. The next significant development is a new legislative policy package, dubbed **“Fit for 55.”** The planned reforms would amend existing EU legislation such as the European Union Emissions Trading System and introduce new legislation regarding renewable energy, transport and land use, all in furtherance of the EU’s target of reducing net greenhouse gas emissions by at least 55% by 2030. Regardless of their final form, however, the “Fit for 55” reforms may lead to litigation, according to a recent report, [“Climate change law in Europe: What do new EU climate laws mean for the courts?”](#) by The Centre for Climate Change Economics and Policy (CCCEP), a joint effort by the University of Leeds and the London School of Economics and Political Science. The report suggests that litigation often has accompanied European climate efforts and that “Fit for 55”-linked litigation is likely to follow suit.

EU Climate Policy in Context

The European Commission presented the European Green Deal in December 2019 with the goal of transforming the economy to achieve climate neutrality in Europe. One notable aspect of the European Green Deal was the increased ambition of proposed emissions reduction, raising the bloc’s target from 40% to 55% by 2030 (relative to 1990 levels). The EU Climate Law followed in 2021, making the target of net zero greenhouse gas emissions by 2050 legally binding. Since then, EU legislators have worked to translate these obligations into tangible policies by developing a wide-ranging set of interconnected legislative reforms, the Fit for 55, which references the new 55% emissions reduction target.

Key Components of the Fit for 55 Proposals

Fit for 55's core proposals can be grouped broadly into the following related categories: direct decarbonization measures, facilitating measures and integrating measures. Direct decarbonization measures are, in many ways, the most straightforward, aiming for greenhouse gas emissions reductions. Facilitating measures harmonize requirements for EU member states to measure and plan for emission reductions. Integrating measures apply the EU's climate policies to particular sectors.

The proposed direct decarbonization measures in the Fit for 55 include notable updates to the centerpiece **EU Emissions Trading Directive (ETS)**, which governs the majority of energy-intensive sectors, covering emissions from electricity, heat generation and commercial aviation, among others. The proposed amendment to the ETS mandates emissions be reduced by 61% (relative to 2005 levels) by 2030, and extends ETS to maritime transport. This increase in decarbonization would be achieved largely by reducing the availability of emission allowances. Another major update to ETS would be the creation of a parallel emissions trading system, 'ETS-2,' governing emissions in building and road transport. Additionally, the Land Use, Land Use Change and Forestry Regulation (**LULUCF Regulation**) would be amended to provide more comprehensive rules to calculate greenhouse gas emissions in those sectors. Amendments were also proposed to the complementary **Effort Sharing Regulation (ESR)**, which covers sectors not addressed by the ETS or LULUCF Regulation (for example, agriculture and road transport). The ESR obligates EU member states to meet emissions reduction targets through targeted domestic action.

The Fit for 55 includes two new energy-related decarbonization directives: the **Recast Renewable Energy Directive (RED II)** and the **Energy Efficiency Directive (EED)**. The new provisions in RED II are particularly significant, focusing on biodiversity loss and the degradation of carbon sinks. Other new measures include the **Refuel EU Directive**, which aims to increase the share of sustainable aviation fuels, and the **Fuel EU Maritime Directive**, which represents an effort to reduce emissions associated with shipping. The **Vehicle Emission Performance Standards Regulation** also would be amended, effectively phasing out all new fossil fuel-based cars by 2035.

At present, the primary facilitating measure of current EU climate policy is Regulation (EU) 2019/199 on the Governance of the Energy Union and Climate Action (Governance Regulation), which requires that the EU's energy policies are implemented and coordinated coherently by imposing a set of more than 30 obligations related to planning, reporting and monitoring on EU member states. The Fit for 55 package proposes additional facilitating measures, including amendments to the **Market Stability Reserve**, which aims to correct imbalances between supply and demand in the emission allocations market among member states. The package also introduces two new measures. The first is the proposed establishment of a **Social Climate Fund** to address the disproportionate distributional impact on low-income groups of the anticipated increased price of fossil fuels. The second new measure, the **Carbon Border Adjustment Mechanism (CBAM)**, aims to equalize the carbon price between goods produced in the ETS-regulated EU and those produced elsewhere.

Integrating measures proposed in the Fit for 55 package include amendments to the **Energy Taxation Directive** to incorporate a graduated system of taxes for energy sources based on

environmental impact and to extend the directive to apply to maritime and shipping. An additional proposal would replace the existing [Alternative Fuels Infrastructure Regulation](#) with new targets for member states.

CCCEP Report

The CCCEP report predicts four areas in which the Fit for 55 could prompt litigation:

- The extension of the EU ETS – in keeping with historic trends, the expansion of coverage to new sectors is likely to prompt challenges seeking to prevent or delay the implementation of the new rules from the private sector, and possibly EU member states. The report also notes the possibility of the EC bringing infringement proceedings against member states as an enforcement strategy.
- Climate targets – cases against the EC or member states challenging the adequacy of member states implementation frameworks, alleging the failure of national governments to properly execute on their national plans, or possibly asserting the inadequacy of the EU framework overall, under a theory of failure to protect fundamental human rights under national or international law.
- “Just transition” – environmental justice cases focusing on the relative impacts of new climate policies across socio-economic strata, questioning whether components of the Fit for 55 are “regressive,” disproportionately falling on low-income households.
- The definition of “low-carbon” energy – which energy sources can be categorized as low carbon, and therefore prioritized in the programs and policies designed to accelerate energy transition continues to be contentious. For example, reforms targeting how existing business practices contribute to biodiversity loss, and on which we have [previously reported](#), would expedite the permitting process for renewable energy projects, and is likely to create controversy for multiple stakeholders.

Taking the Temperature: As the CCCEP report suggests, the ambitious and far-reaching policies encompassed by Fit for 55, regardless of their final form, appear likely to result in various types of litigation. This EU policy-related litigation would be in keeping with the [global trend](#), which we have reported on the increasing numbers and variety of climate-related litigation. We have reported on instances of what the report calls “strategic” litigation — typically cases where [NGOs or other claimants](#) bring suits in an effort to use both the judicial system and the “court of public opinion” to prompt systemic change. As the report observes, strategic climate litigation can take a number of forms, and can seek to advance either “pro-regulatory” (or “pro-climate”) agendas, as well as “anti-regulatory” (or “anti-climate”) agendas, some of which [we have seen recently](#) in the United States.

The report also asserts that, beyond the direct decarbonization elements of Fit for 55, the facilitating and integrating measures have as their aim to shape economic activity within the EU to align with climate goals, in particular in the areas of corporate governance and supply chain, sustainable finance and consumer information. These areas also could be ripe for litigation, as the private sector and regulators struggle with frameworks around issues of responsibility, liability and accountability, as well as disclosures and transparency in reporting, related to climate change, sustainability and

the transition to net zero. The report predicts—and we agree—that **green-washing suits** challenging corporate narratives around ESG initiatives as incomplete or inaccurate could also be on the rise.