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Minister Darragh O'Brien

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(Please note that this letter will only be sent electronically)

2 March 2026

Dear Minister O'Brien,

The Council would like to thank Minister O'Brien for his letter of February 26th, inviting its views on a number of vitally important issues. At this critical juncture for climate policy, where the 1.5°C objective of the Paris Agreement is at considerable risk, it is critical that the underpinning legal basis for action in Ireland is clear, that Ireland's high level of climate ambition is maintained, and that planning, reporting and monitoring functions are efficient. It is crucial that Government is focussing its efforts on implementation.

In response to your questions the Council would make the following observations:

- ***Does the State's current statutory obligation to prepare an annual Climate Action Plan support an implementation focus? Does the national approach align optimally with the EU requirement for longer term plans? In this regard, I have received significant feedback from stakeholders that the current national approach is too focussed on the annual forward planning process at the expense of an increased implementation focus. Furthermore, I understand that Ireland is an outlier internationally in having this annual statutory obligation.***

The EU Governance Regulation sets out a cascading set of strategic plans including a rolling long-term strategy covering a period of 30 years, to be updated every 10 years. The long-term strategy informs a National Energy and Climate Plan (NECP)[1] which covers a 10 year period (aligned to the EU target timelines) and which is updated every 5 years (and subject to overarching assessment and review every 2 years). Other Member States have aligned their planning and reporting timelines to the EU Governance Regulation For example, the Dutch Climate Law sets the overall targets, and requires the government to draw up a 10-year climate plan every 5 years. The plan

[1] Ireland - Final updated NECP 2021-2030 (submitted in 2024) - European Commission

sets out policies and measures. The schedule for the preparation of the climate plans is aligned with the NECPs required under the EU's Governance Regulation[2]. Equally Member States such as Denmark take a similar approach.

In the Act planning and reporting timelines are not aligned with these EU requirements resulting in a situation where there is a dual system leading to delays in the finalisation of key documentation as Departments strive to ensure the greatest possible consistency of messaging between the two tracks whilst at the same time incorporating new and additional policy, data and scientific understanding emerging from a wide range of different sources. One such issue is that the EU Governance Regulation foresees Long Term Strategies to be completed on a 10 year cycle whereas the Act foresees a 5 year cycle. Each new wave of long-term plans introduces a wave of knock on interdependencies into other areas such as planning. Whilst this is well meaning this level of complexity appears to be slowing down rather than speeding up implementation of actions which are becoming ever more urgent.

Equally the Act requires the Minister prepare an annual **update** to the Climate Action Plan (CAP). Given that the overarching approach is set out in the long-term strategy, and the National Energy and Climate Plan (NECP) sets out policies, the annual CAP should be limited to setting out the key achievements to be delivered in the annual cycle, in order to achieve the ambition set out in the legislation. A shorter, action focussed CAP should reaffirm the sectoral ceilings and support the achievement of those. Of course, innovation, technological developments or other significant aspects could be included, as appropriate, in the annual CAP. A useful addition to a shortened CAP would be the provision of a response to the recommendations of the Council. This has been evident in parts in recent plans but should be comprehensive across all elements of the Annual Review of the year in question.

As the EU Governance Regulation is due to be reviewed in 2027, the conclusion of that process would present the best opportunity to formally streamline the process of planning, review and monitoring into a single system without the myriad of dependencies in the current set-up.

- ***Are the provisions of the Climate and Low Carbon Development Act, 2015 (as amended) optimally aligned with the EU framework including the ETS, ETS II, ESR, LULUCF, Renewable Energy Directive (RED) and Energy Efficiency Directive (EED) targets and provisions? In this regard, feedback received has pointed to potential confusion with two parallel frameworks where the national regime was put in place before the, wider, binding EU regime, with its different reference periods and targets. Furthermore, questions arise as to the most appropriate balance between the requirements of the various legal instruments at EU level.***

The EU climate and energy policy framework is aimed at reducing greenhouse gas emissions and promoting energy efficiency and renewable energy. The EU architecture of EU ETS, ETS II, ESR, LULUCF, by necessity, splits the various sectors into separate legislative instruments, reflecting issues such as the characteristics of

[2] https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/767176/EPRS_BRI(2024)767176_EN.pdf

the main emitters in these sectors, economic efficiency and the level of certainty that can be associated with their emissions. The obligations arising from the RED and the EED are supportive of the emissions targets but are not expressed in terms of greenhouse gases. The entire framework combines to set emissions limits, encourage energy efficiency and renewables, and support the transition to a low-carbon economy, ensuring that efforts in one area complement and reinforce the others.

The entire EU legislative framework applies in Ireland. Ireland contributes to the European objectives through the achievement of the derived member state targets for emission reduction whose targets are set out as follows:

- EU ETS which applies at EU level and whose objective is a 62% reduction relative to 2005,
- A national target of a 42% reduction of greenhouse gas emissions relative to 2005 levels as proscribed in the Effort Sharing Regulation,
- National targets for the Land Use, Land Use Change and Forestry Regulation which are subject to different accounting rules for each of the periods 2021-2025 and 2026-2030,
- A renewable energy target of 43% share of renewable energy in total consumption in 2030 and,
- National targets for 2030 under the Recast Energy Efficiency Directive of 10.451 Mtoe in Final Energy Consumption and 11.294 Mtoe in Primary Energy Consumption.

Delivery of the European obligations are supported by the Act which, inter alia, provides for the approval of plans by the Government in relation to climate change including establishing carbon budgets and a sectoral emissions ceiling to apply to different sectors of the economy.

Whilst all the elements of the EU Framework are supportive of carbon budgets they are not all denominated in the same units, and the EU ETS has a different geographical scope. Therefore, whilst we can and should aim to improve the alignment between these two frameworks, we cannot directly translate EU targets into national targets as currently expressed.

- ***Are the Irish and EU systems working optimally together given the accountability regime at national and EU level, the availability and role of flexibilities at EU level (ETS, ESR and LULUCF) and the implementation and accountability regime in place at national level? In this respect, the Councils views on international best practice would be welcomed. Based on independent analysis, simplification and clear accountability with strong implementation focus and funding appear to be at the fore in the best performing international comparators.***

Where inconsistencies between the Act and its secondary legislation/Regulation and the EU legislative approach are most evident are in respect to the three flexibilities which are allowed under the ESR which are in place to assist Member States meet their overall objectives in the most economically efficient manner possible.

1) In the case of the ETS flexibility, some member states including Ireland are allowed to take a smaller share of ETS Auction Revenues than they would, otherwise, normally be entitled to, thus reducing the number of ETS allowances that come into circulation. In Ireland's case, this amounts to just under 2 Mt CO_2 eq. per annum, or just under 20 Mt CO_2 eq. over the entire period 2021-2030. This is a significant amount which is not currently reflected in the Act. In the period from 2021 to 2025 trading revenues foregone exceeded €100m per annum[3], with a similar level of annual revenues to be foregone between now and 2030.
2) In addition, Member States are entitled to trade their own allocations with each other at prices to be agreed between the buying and selling parties. Ireland has used this flexibility to demonstrate compliance in the 2013-2020 period but has not used this flexibility yet during this commitment period. It is likely to have to do so at some stage in order to demonstrate compliance.
3) The LULUCF Regulation is complex and operates quite differently between the first two carbon budget periods, 2021-2025 and 2026-2030. In respect of the first period the accounting approach is similar to that of the Kyoto Protocol, whereby emissions are measured relative to a baseline. If the eventual emissions relative to that baseline are lower, and subject to a number of other conditions, then that over-achievement is allowed to be counted as a removal and aids with cross-compliance with the ESR. The converse also applies, where over-compliance in the ESR can be used to compensate for under-compliance under the LULUCF Regulation. This well-established accounting convention could be set to apply in the context of carbon budgets, but only if the LULUCF sector as a whole was excluded from the carbon budgets from a volumetric perspective. From 2026 onwards the accounting becomes more straight forward and operates in a similar manner to sectoral emissions ceilings (SECs) as foreseen in the Act i.e., as a simple gross total emissions over the period. A target and a trajectory to that target have been agreed and this can then be expressed in the same way as an SEC for that period. According to the EPA Projections, it is highly likely that Ireland will be able to use this flexibility in the 2021-2025 period, but it is not projected that Ireland will be able to use the flexibility thereafter.

As there is a consistency of accounting approach and in order to bring the national and EU systems into greater alignment, the Minister may wish to examine how the first two of these flexibilities can be taken into account for the purposes of concluding an evaluation of the extent to which Ireland has complied with its Carbon Budgets[4][5] without in any way moderating the headline ambition of the Act.

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[3] See Table 18 of Ireland's climate action and the potential costs of missing targets FINAL.pdf

[4] This would be consistent with the UK Climate Act which envisages similar such powers for their Secretary of State Climate Change Act 2008

[5] Such provisions were also envisaged in Section 6A.5(A) of the Act but there has been no use case of this provision thus far.

- ***Does the current approach to carrying forward carbon budget exceedance / surplus support or hinder the multi-annual delivery of high impact measures and take account of the EU flexibilities and implementation mechanisms referred to above?***

Final inventories for the full period 2021-2025 will not be available until April 2027 and it would make more sense to make changes at that point which are both retrospective and forwards looking but with the clear objective of putting carbon budgets on a firmer footing going forwards. If the Minister were to include the flexibilities in the accounting of the national effort (or make any other changes to the approach) then it would be important that clarity be given in respect of the application of such provisions in advance of the finalisation of inventories in April of 2027. Similarly, the Minister should also set out how any exceedances that might arise would be dealt with collectively and at a sectoral level in order to achieve the national level of ambition and to avoid further delays to action after the final calculations are concluded.

- ***Is the current national treatment of LULUCF optimal taking account of EU requirements and given the uncertainty and volatility in the accounting for the LULUCF sector GHGs?***

An important feature of the LULUCF and Agriculture sectors which sets them apart from the other sectors is that the understanding of the scientific inventories in this area is still developing. Since the delivery by the Council of its first carbon budget proposal, there have been a number of welcome improvements to the inventories in these two sectors developed by the EPA. In Northern Ireland, all carbon budgets are expressed in percentage rather than in absolute terms[6]. This means that movements in baseline emissions do not undermine carbon budgets expressed as absolute values. A similar approach is also taken in the context of setting targets under the National Emissions Reductions Commitments Directive which governs levels of air pollutants, where there is the potential for similar inventory changes. Whilst maintaining ambition, expressing carbon budgets collectively as a percentage reduction consistent with the pathways underpinning the original calculations would remove a further area of complexity that can undermine our collective understanding of progress.

- ***What is the optimal alignment of national and EU climate action regimes in light of the forthcoming development of the EU 2040 implementation framework and Irelands input into same.***

The detail of the EU 2040 package remains to be fully agreed but it is likely that the current mix of legislative instruments will be continued and indeed potentially further developed. For example, the European Commission has long signalled its intention to

[6] By way of an example the carbon budgets for Northern Ireland were expressed as a 33% reduction for the period 2023-2027 relative to the baseline. The baseline in the UK is similar to that used for the purposes of the Kyoto Protocol. [The Climate Change (Carbon Budgets 2023-2037) Regulations (Northern Ireland) 2024]

combine Agriculture and LULUCF under a single legislative instrument and there have already been significant moves to consolidate other parts of the ESR under what is now known as ETS II. An additional feature that has been agreed in principal but not in detail is the use of international credits for demonstrating compliance with national targets. Any actions taken to introduce the use of EU Flexibilities into accounting for carbon budgets should be flexible enough to include the use of these flexibilities should they be consistent with the overall carbon budgeting approach.

In summary the complexities arising from managing a dual system for governance and compliance are acting an additional barrier to what is now needed, which is a laser like focus on the implementation of meaningful domestic actions. In addition, there are a range of means by which the Government can demonstrate compliance with its current and future EU obligations that are not mentioned in the current domestic legislation.

In conclusion the Council recommends:

- In the short term, the annual CAP (a short document) should be limited to setting out the key achievements to be delivered in the annual cycle, reflecting on new innovations and the Council's Annual Review recommendations.
- Expressing national ambition in aggregate and covering all sectors as a percentage reduction rather than an absolute amount, whilst maintaining the levels of ambition in the original carbon budgets and the accountability of the sectoral emissions ceilings.
- In line with EU and international approaches, existing flexibilities, such as the "ETS flexibility" should be included and a provision set out for any future flexibility such as the use of international credits for demonstrating compliance with national targets.
- Ireland holds the EU Presidency in the second half of 2026 during which time many of the details of the 2040 package will be considered, along with the revision to the Governance Regulation. As part of these considerations, Ireland should consider how the planning, reporting and calculations of the Act and the revised Regulation could be aligned in order to streamline efforts.
- Once the 2040 package becomes clearer, the contribution of each Member State will become clear. Ambitions and targets post 2030 to 2035, 2040 and beyond will need to be set out clearly in the Act along with implications for sectoral ceilings.

The Act has established a clear and concrete programme of steps to guide Ireland on the path to emissions reduction. Carbon budgets for the periods 2021–2025 and 2026–2030 have been adopted by the Oireachtas, and the policies and actions required to deliver these — including sectoral ceilings — are clearly defined. Ambitions, targets, and carbon budgets for the period after 2030, including 2031–2035, 2040, and beyond, will need to be clearly set out in the Act, taking into account scientific developments, evolving EU policy, and the report of the Joint Oireachtas Committee. My successor will engage further with the Council on these matters in due course.

As my term as Chair comes to a close, I would like to extend my sincere thanks to you and the entire Department for your open and interactive collaboration with the Council.

The constructive dialogue, willingness to engage thoughtfully, and shared commitment to progress have made our work both productive and genuinely rewarding.

From a personal standpoint, it has been a true honour to serve in this role. I am proud of what we have achieved collectively and grateful for the professionalism, insight, and dedication you, the Department and the Secretariat of the Council, have consistently brought to the table. I look forward with great optimism to seeing the rapid implementation of the many policies and actions developed over the last five years, and to witnessing their positive impact.

Thank you again for your collaboration, support, and commitment.

Regards

Marie C. Donnelly
Chairperson
Climate Change Advisory Council