The Forgotten Sector: Establishing the Need for Stronger Regulation of Livestock Emissions in the European Union – An Emergency Law Perspective

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ABSTRACT

The current EU emission mitigation framework advances the narrative that CO_2 emissions are the predominant source of anthropogenic climate change. However, this approach fails to acknowledge the intense impact of non-CO_2 greenhouse gas emissions, primarily from animal agriculture, on global warming. This paper establishes the near exemption that livestock emissions are given within EU climate change policies, leading to inherently inadequate mitigation efforts. Although climate emergency declarations are continuously cited as efficient normative tools to overcome governmental complacency regarding climate policy, an investigation of the European Parliament's Climate Emergency Declaration suggests that the EU failed to exploit the potential of its climate emergency declaration as it retains a free pass for livestock emission within its current emissions mitigation framework. This paper proposes sectoral emergency intervention as an alternative to the current climate emergency declaration to stimulate necessary climate action in the livestock sector.

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INTRODUCTION

Anthropogenic climate change, the concept that humans are causing the current shifts in atmospheric conditions by releasing large amounts of greenhouse gases (GHG),[1] is receiving growing attention as the earth's ecosystem approaches an irreversible tipping point. Many countries, organisations, and municipalities have declared climate emergencies in order to exploit the normative potential of emergency frameworks. The European Parliament declared a climate emergency in 2019, calling on 'the Commission, the Member States, and all global actors' to 'urgently take the concrete action needed to fight and contain this threat before it is too late'.[2]

Carbon dioxide (CO_2), methane (CH_4), and nitrous oxide (N_2O) are the three largest pollutants contributing to global warming, and reduction efforts are necessary to combat the climate emergency.[3] Most non-CO_2 emissions (CH_4 and N_2O) stem from agricultural practices, specifically from livestock.[4] A recent report from the environmental think-tank 'Worldwatch Institute' states that livestock emissions account for 51% of greenhouse gases. It found that a prior estimate from the Food and Agriculture Organization (FAO), which indicated that livestock accounted for 18% of GHG, overlooked some direct and indirect livestock emissions (including CO_2 emissions from livestock respiration, methane emissions, and emissions from clearing land to graze livestock and

[1] Stefan Rahmstorf, 'Anthropogenic Climate Change: Revisiting the Facts' in Ernesto Zedillo (eds), *Global Warming: Looking Beyond Kyoto* (Brookings Institution Press 2008) 35.
[2] Resolution on the Climate and Environment Emergency 2019/2930(RSP) <https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2019/2930(RSP)> accessed 21 February 2022.
[3] Gunnar Myhre and others, 'Anthropogenic and Natural Radiative Forcing' in T. F. Stocker and others (eds), *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2013) 659-740.
[4] Hongmin Dong and others, 'Chapter-10: Emissions from Livestock and Manure Management' in Simon Eggelston and others (eds), *2006 IPCC Guidelines for National Greenhouse Gas Inventories, Volume 4 - Agriculture, Forestry and Other Land Use* (Institute for Global Environmental Strategies 2006) 10.68.

grow feed).[5] Despite this, the livestock sector has been subject to less stringent climate change mitigation policies, with carbon emissions from fossil fuel extraction receiving far more attention.[6] Although climate emergency declarations support an 'all-hands-on-deck' approach to combating climate change, even where such declarations are made, there continues to be a narrow focus on fossil fuel emissions. This paper argues for a sectoral emergency declaration in the livestock sector to end its unregulated position within emission mitigation schemes. The failure of the current EU climate emergency declaration to end livestock emissions' free pass makes this approach a necessity.

This paper is divided into four parts. Section I seeks to conceptualise the European Climate Emergency Declaration by situating it in a broader emergency law framework. Section II establishes the exceptional position of animal agriculture with regard to its regulation within the EU's emission mitigation framework as opposed to carbon emissions from other sectors. Section III explores general and institutional explanations for the failure of the European Parliament's Emergency Declaration to encourage appropriate action. Finally, Section IV makes a case for a sectoral emergency declaration. It sets out three justifications for sectoral emergency intervention to end the failure to address livestock emissions, and highlights the potential of such an emergency declaration to reduce them.

SECTION I: EMERGENCY LAW CONCEPTUALISATIONS - THE EUROPEAN UNION'S CLIMATE EMERGENCY DECLARATION

The concept of 'emergency' and its operation invite different understandings of emergency regimes. This section clarifies key definitions and concepts as a basis for subsequent sections.

[5] World Watch, 'Livestock and Climate change' (*World Watch,* 2019) <https://awellfedworld.org/wp-content/uploads/Livestock-Climate-Change-Anhang-Goodland.pdf> accessed 17 February 2023.

[6] Bojana Bajželj and others, 'Importance of Food-Demand Management for Climate Mitigation' (2014) 4 Nature Climate Change 928.

1.1 Climate Change as an Emergency

Classifying phenomena as emergencies entails both a factual and value-based analysis, including both significant scientific evidence as well as proof of public crisis perceptions.

Compared with rapidly-forming emergencies such as the COVID-19 pandemic, climate change is best described as a 'catastrophe in slow motion'.[7] Nonetheless, its ramifications will be disastrous, threatening national and international security, as evidenced by the 2022 International Panel on Climate Change (IPCC) report. The report states that 'beyond 2040 … climate change will lead to numerous risks to natural and human systems' including significant increases in 'ill health and premature deaths' and heightened risk of 'displacement in all regions'. This leads to fragile states and regions where increased resource conflicts allow malign actors to thrive.[8] For example, Drury and Olson have developed a model that statistically identifies a positive linkage between disaster severity and levels of political unrest.[9] Nel and Righarts have identified that climate-related disasters increase the risk of conflict onset in the same year and the following year.[10] Climate change in this sense is defined as a threat multiplier as the resulting resource scarcity multiplies inequalities, rebellion opportunities and incentives.

Although there is scientific evidence that if global warming increases by 1.5°C, there will be unavoidable increases in multiple climate hazards.[11] To stress the immense likelihood of irreversible future damage due to climate

[7] Bruno Latour, 'The Other State of Emergency' (2016) 22 (3) Social Identities 228; Raymond T. Pierrehumbert, 'Climate Change: A Catastrophe in Slow Motion' (2006) 6 Chicago Journal of International Law 573.

[8] Hans Pörtner and others, 'Summary for Policymakers IPCC Sixth Assessment Report' (*IPCC*, 2022) <https://report.ipcc.ch/ar6wg2/pdf/IPCC_AR6_WGII_SummaryForPolicymakers.pdf > accessed 22 March 2022.

[9] Cooper A. Drury and Richard Stuart Olson, 'Disasters and Political Unrest: An Empirical Investigation' (1998) 6 (3) Disasters and Political Unrest 153.

[10] Philip Nel and Marjolein Righarts, 'Natural Disasters and the Risk of Violent Civil Conflict' (2008) 52 (1) International Studies Quarterly 159.

[11] H. O. Pörtner and others (eds), 'Summary for Policymakers' in H. O. Pörtner and others (eds), *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022).

change,[12] this paper accepts the precautionary principle as the central principle for framing climate change as an emergency. The precautionary principle is an integral part of international environmental law to close existing gaps and has been adopted by many domestic jurisdictions as well. It is set out in the Rio Declaration that 'where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation'.[13] This is crucial for an issue such as climate change where it is impossible to identify all its potential consequences and how they will affect humanity. In light of the principle, 'anticipation and/or prevention of harm notwithstanding an absence, deficit or ambivalence of knowledge suffices to find that an action is an emergency'.[14] Thus, reference to precaution motivates action where repercussions are not yet visible or still unfolding, as it produces a causal connection between today's science and tomorrow's consequences. This is especially important due to the imminent danger and unforeseeable nature of the extreme threats that climate change might produce. Further, the 2021 UNDP Climate Vote Survey, including over half of the world population, found that 64% of voters believe climate change is a global emergency,[15] proving that climate change is also a public crisis.

Thus, climate change possesses the constitutive features of an emergency,[16] warranting the formulation of climate emergency declarations, which are contingent on the existence of a recognised state of emergency.[17]

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[12] Susan Solomon and others, 'Irreversible Climate Change due to Carbon Dioxide Emissions' (2009) 106 Proceedings of the National Academy of Sciences 1704.
[13] UN General Assembly, Rio Declaration on Environment and Development (*United Nations*, 1992) <https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf> accessed 17 February 2023.
[14] Bruce Lindsay, 'Climate of Exception: What might a Climate Emergency mean in Law?' (2010) 38 (2) Federal Law Review 255, 271-273.
[15] UNDP, 'World's largest survey of public opinion on climate change: a majority of people call for wide-ranging action' (*United Nations Development Programme*, 2021) <https://www.undp.org/press-releases/worlds-largest-survey-public-opinion-climate-change-majority-people-call-wide> accessed 1 January 2022.
[16] Jocelyn Stacey, 'The Environmental Emergency and the Legality of Discretion in Environmental Law' (2016) 52 Osgoode Hall LJ 985, 1027.
[17] John Ferejohn and Pasquale Pasquino, 'The Law of the Exception: A Typology of Emergency Powers' (2004) 2 (2) International Journal of Constitutional Law 210.

1.2 Conceptualising Emergency Powers

Notions of emergency powers can be distinguished in their approach to the rule of law. Historically, under the neo-Roman model, emergencies have been linked to suspension of law.[18] Introducing a dialogue between law and politics, Schmitt defines emergencies as states of exception where a sovereign power has absolute capacity to transcend the rule of law in the name of the public good.[19] Agamben's concept of *exception-as-the-rule* goes even further,[20] indicating that emergencies induce the collapse of the defining relations between law and exception, suggesting that the exception autonomously defines the political.[21] However, the suspension of the rule of law, even if only to a limited extent, permits abuse as actions remain unreviewable, potentially creating a super-constitutional emergency government (i.e., a governing body that exceeds the powers given to the executive under the constitution).[22]

The EU Climate Emergency Declaration specifically states that 'no emergency should ever be used to erode democratic institutions or undermine fundamental rights … and all measures will always be adopted through a democratic process'.[23] This indicates that the Declaration envisions an emergency regime that operates within the ordinary democratic process as opposed to being subject to extraordinary powers of the executive. Thus, when referring to emergency powers, this paper endorses a collaborative emergency regime co-produced by many,[24] defending the extension of the rule of law during emergencies,[25] and reinforcing the democratic legitimacy of emergency measures. This legislative approach to emergency law-making – conceptualising

[18] David Dyzenhaus, 'Now the Machine Runs Itself: Carl Schmitt on Hobbes and Kelsen' (1994) 16 Cardozo Law Review 10.
[19] Naomi Lazar, 'Must Exceptionalism Prove the Rule? An Angle on Emergency Government in the History of Political Thought' (2006) 34 (2) Politics & Society 245, 247.
[20] Giorgio Agamben, *State of Exception* (University of Chicago Press 2005) 9.
[21] Jef Huysmans, 'The Jargon of Exception—On Schmitt, Agamben and the Absence of Political Society' (2008) 2 International Political Sociology 166, 172-176.
[22] Sascha Müller, 'Turning Emergency Powers Inside Out: Are Extraordinary Powers Creeping into Ordinary Legislation' (2016) 18 Flinders LJ 295, 301.
[23] Resolution on the Climate and Environment Emergency (n 2).
[24] Roxanne Doty, 'States of Exception on the Mexico–US Border: Security' (2007) 1 (2) International Political Sociology 116.
[25] William Scheuerman, 'Rethinking Crisis Government' (2002) 9 Constellations 492; Lazar (n 19) 266.

emergency responses as acts of the legislature working within its normal competence – is imperative as it supports the EU political framework, which states that 'the notion of emergency powers is not enshrined as a regulative ideal to cope with crises'.[26] Emergency legislation may delegate a great deal of special and temporary powers to the executive, but this is continuously monitored by the legislature[27] and subject to independent control mechanisms.[28] This allows for the establishment of a separate emergency legal system with rules, rights, and procedures, rather than making exceptions to the law. The model enacts new laws in an exceptional way through emergency discourse by incentivising the legislature to act promptly and forcefully.[29]

However, the model bears the risk that by embedding extraordinary powers in ordinary legislation, they potentially become normalised. This may, for one, lead to common rule of law concerns as the emergency framework operates with reference to 'exceptionalism' and 'urgency', which may risk the equality of all citizens before the law or the prevention of arbitrary use of power. Further, normalisation may provoke a reduction of the normative force inherent in an emergency declaration.[30] This threat is especially dominant within a climate crisis that demands continuous, prolonged efforts, which cannot be managed by temporary emergency governance.[31] This indicates that the conservative nature from which the model derives its legitimacy is lost. Further, legislatures are large and slow and may be unable or unwilling to quickly respond to crises.[32]

1.3 The Normative Potential of Emergency Declarations

Climate Emergency Declarations are symbolic measures without legal force. However, by instituting emergency discourse, they mobilise social and economic resources and set a new status quo, indicating its normative potential to activate emergency powers.

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[26] Christian Kreuder-Sonnen, 'Does Europe Need an Emergency Constitution' (2021) 71 (1) Political Studies 125.
[27] Ferejohn and Pasquino (n 17) 215.
[28] Müller (n 22) 303.
[29] Andrew Neal, 'Normalization and Legislative Exceptionalism: Counterterrorist Lawmaking and Changing Times of Security Emergencies' (2012) 6 International Political Sociology 273.
[30] Müller (n 22).
[31] Ferejohn and Pasquino (n 17) 228.
[32] ibid 219.

Declaring a climate emergency signals both high risk and high urgency,[33] conveying the need for exceptionally quick action outside the prevailing economic and socio-ecological norms.[34] The EU's Emergency Declaration adopted this narrative, highlighting 'immediate and ambitious action … crucial to limiting global warming to 1.5°C,' involving 'citizens and all sectors of society and the economy'.[35] Thus, climate emergency declarations can contribute to significant shifts in public perceptions of climate change from a 'future risk' to a 'current crisis'.[36] Emergency framing may serve as a tool for rapid social mobilisation,[37] encouraging bespoke and innovative policymaking and overcoming government complacency.[38] There are estimates that by 2050, the result of these declarations, and consequential response plans, in the UK alone will reduce CO_2 emissions by approximately 2.5 billion tonnes of CO_2 equivalents.[39] Thus, emergency declarations are an important persuasive tool, directly influencing governance processes by demanding a radical, urgent mobilisation of economic and social resources at an intense level.[40]

Further, climate emergency declarations entrench political positioning of climate action intentions.[41] This may establish a new status quo, setting a 'psychologically powerful baseline against which future policy failures can be measured'.[42] The support of influential authorities prompts people to

[33] Lindsay (n 14) 259.
[34] ibid 262; Patrick Hodder and Brian Martini, 'Climate Crisis? The Politics of Emergency Framing' (2009) 44 (36) Economic and Political Weekly 54.
[35] Resolution on the Climate and Environment Emergency (n 2).
[36] Lucy McHugh and others, 'Risk? Crisis? Emergency? Implications of the New Climate Emergency framing for Governance and Policy' (2021) 12 (6) WIREs Climate Change 3.
[37] Ben Anderson, 'Emergency Futures: Exception, Urgency, Interval, Hope' (2017) 65 (3) The Sociological Review 463.
[38] Arjen Boin and others, *The Politics of Crisis Management:Public Leadership under Pressure* (2nd edn, Cambridge University Press 2016) 65.
[39] Climate Emergency Declaration, 'Climate emergency declarations in 2,318 jurisdictions and local governments cover 1 billion citizens' (*Climate Emergency Declaration*, 2023) <https://climateemergencydeclaration.org/climate-emergency-declarations-cover-15-million-citizens/> accessed 21 February 2023.
[40] McHugh (n 36) 2.
[41] Xira Ruiz-Campillo and others, 'Motivations and intended outcomes in local governments' declarations of climate emergency' (2021) 9(2) Politics and Governance 17, 22.
[42] Arden Rowell and Josephine van Zeben, 'The New Status Quo of the Paris Agreement: The Psychological Impact of the 2-Degrees Aspiration' (2016) European Journal of Risk Regulation 49, 49.

consciously and subconsciously justify the new state of affairs.[43] Thus, emergency declarations may produce moral obligations to avoid generating additional harm in a situation deemed to require immediate mitigation, thereby inciting a material response to the emergency.[44]

Despite this normative potential, it must be recalled that emergency declarations are not legally enforceable. As a result, the generated normative obligations must be translated into enforceable measures to take effective climate action.[45] By instigating emergency discourse, declarations may justify enacting new laws in an exceptional way to address the climate crisis. However, this depends on whether the generated normative force is powerful enough to overcome government complacency. Unfortunately, policymakers often react by formulating 'placebo policies',[46] instead of enacting essential 'treatment policies,' to address the root of the issue. This curtails the practical benefits of emergency declarations. 'Placebo policies' refer to any sort of action which has the sole aim of demonstrating that something is being done about the problem, even where the solution has no link to the actual problems at hand. An example of this is Australia's 'Future Fuels and Vehicles Strategy' which addresses skyrocketing emissions in the transport sector with a technology-led approach, instead of committing to robust mitigation targets.[47] However, as a whole, these drawbacks can be addressed in a separate manner and do not deter from the normative power of emergency declarations in mobilising social and economic resources and setting a new status quo.

SECTION II: LIVESTOCK EMISSIONS' EXCEPTIONAL STATUS - ANALYSING EU MITIGATION POLICIES

Livestock emissions are frequently overlooked in emission mitigation policies. Even the most celebrated international climate treaties, such as the

[43] ibid.
[44] ibid 51.
[45] Ruiz-Campillo (n 41) 20.
[46] Allen McConnell, 'The use of placebo policies to escape from policy traps' (2019) 27(7) Journal of European Public Policy 957, 958.
[47] Department of Industry, Science and Resources, 'Future Fuels and Vehicles Strategy' (*Department of Industry, Science and Resources*, 2022) <https://www.industry.gov.au/news/machinery-government-mog-changes-our-department-1-july-2022> accessed 17 February 2023.

Paris Agreement, have adopted a singular approach to industrial emissions.[48] This section will reveal similar patterns within the EU emission mitigation policy. The EU made commitments to reduce agricultural emissions, proposing focused climate change instruments on agricultural activities, and to include agriculture within its Nationally Determined Contribution (NDC). However, the main instruments regulating agricultural activity, the Common Agricultural Policy (CAP) and the Effort Sharing Regulation (ESR), fail to address livestock emissions and are fundamentally unbalanced, prioritising productivity and farm revenue over environmental concerns.[49] It is acknowledged that there may be inherent obstacles to the regulation of livestock emissions such as their nature, which are from non-point sources and thus difficult to identify. Further, several European countries have large farming lobbies which have great influence over policymaking as they are important economic actors. Most importantly, there is a connection between the regulation of livestock emissions and food security concerns, as regulating agricultural practices may decrease production and thus limit the availability of food. However, as is argued in Section IV, this essay finds the current regulatory framework insufficient in spite of these concerns.

2.1 Common Agricultural Policy (CAP) — Failing to Incentivise Reduction

The CAP is the EU's main agricultural and farming subsidies programme. While it strives for 'sustainable management of natural resources and climate action'[50] its financing structure is a major obstacle to meeting necessary climate objectives as it supports a highly industrialised, intensive, and livestock-focused agricultural model. This sustainable management would be necessary to comply with the Treaty of the Functioning of the European Union (TFEU), which requires environmental protection measures in all EU policies.[51]

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[48] Jonathan Verschuuren, 'Climate change and agriculture under the UNFCCC and related documents' in Mary Jane Angelo and Anél du Plessis (eds), *Research Handbook on Climate Change and Agricultural Law* (Edward Elgar Publishing 2017), 44-45.

[49] Guy Pe'er and others, 'A greener path for the EU Common Agricultural Policy' (2019) 365 (6452) Science 449, 450.

[50] European Commission, 'The CAP and Climate Change' (*European Commission*, 2019) <https://ec.europa.eu/info/food-farming-fisheries/sustainability/environmental-sustainability/climate-change_en> accessed 15 March 2022.

[51] Case C-428/07 *Horvath* [2009] ECR I-06355 [29].

Agricultural sustainability is intended through cross-compliance mechanisms, green direct payment ('greening') schemes, and rural development policies (RDPs).[52] These have been widely ineffective, however,[53] failing to include reduction targets in subsidy distribution and to limit livestock numbers or provide incentives to reduce them.[54] The cross-compliance scheme makes financial support conditional on maintaining certain environmental standards,[55] but makes no reference to livestock within these codes of conduct.[56] The greening scheme, which rewards farmers for preserving natural resources fails to acknowledge the potential role of livestock in carbon sequestration.[57] Moreover, the flexibility of the scheme induces Member States to implement greening schemes to minimise burdens and protect farmers.[58] This is an obstacle to meeting necessary climate objectives as, instead of preserving the status quo, farmers must step up their climate protection measures. Lastly, although specifically supporting the shift towards a low carbon and climate-resilient economy in agriculture, merely 2% of RDPs between 2014–2020 focused on innovative livestock management to reduce GHG.[59] These failures to recognise the harm of livestock emissions and incentivise their reduction indicate their exceptional position in EU emission mitigation policies.

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[52] European Commission, 'EU agriculture policy and climate change' (*European Commission*, 2020) <https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/651922/EPRS_BRI(2020)651922_EN.pdf> accessed 22 December 2021.

[53] Aris Konstantinidis, 'European Court of Auditors Special Report-Greening: a more complex income support scheme, not yet environmentally effective' (2017) <https://www.eca.europa.eu/Lists/ECADocuments/SR17_21/SR_GREENING_EN.pdf> 9 September 2021.

[54] ibid 12.

[55] Council Regulation (EC) 73/2009 establishing common rules for direct support schemes for farmers under the CAP [2009] OJ L30/16, Art 4.

[56] Regulation (EU) 1306/2013 Rules on cross-compliance pursuant to Article 93 [2013] OJ L347/549; Guy Pe'er and others, 'Is the CAP fit for purpose? An evidence-based fitness check assessment' (2017) German Centre for Integrative Biodiversity Research 4.

[57] Alliance Environment and Thünen Institute, 'Evaluation study of the payment for agricultural practices beneficial for the climate and the environment' (2017) <https://op.europa.eu/en/publication-detail/-/publication/598b81ff-dfbc-11e7-9749-01aa75ed71a1> accessed 6 October 2021.

[58] Konstantinidis (n 53) 36.

[59] European Commission, Overview of the 118 RDPs 2014-2020 (2018) <https://ec.europa.eu/agriculture/sites/agriculture/files/rural-development-2014-2020/country-files/common/rdplist_en.pdf> accessed 6 October 2021.

The inconsistencies of this legislative framework become clear when compared to emission policies concerning other sectors, such as energy. Although these policies require improvement as subsidies for fossil fuel-powered energy remain prevalent,[60] Member States have acknowledged the harmfulness of these energy sources; agreed to phase out environmentally harmful subsidies'[61] and recognised that European Investment Bank (EIB) investments must 'no longer support or de-risk unsustainable investments such as fossil fuels'.[62] No such commitments have been made regarding livestock emission reductions. The comprehensive 10-year *Farm to Fork Strategy*, despite recognising the unsustainability of current livestock production and consumption, lacks commitment to livestock emissions.[63] The lack of commitment is illustrated by unambitious targets and loopholes which are exploited by self-interested states to protect the status quo for farmers rather than advancing climate change objectives. Ultimately, the EU adopts a singular focus on incentivising the reduction of emissions from other sectors, granting immunity to livestock emissions.

[60] Julian Nowag and others, 'Phasing out fossil fuel subsidies in the EU? Exploring the role of state aid rules' (2021) 21(8) Climate Policy 1037.

[61] European Commission, 'Second Report on the State of the Energy Union' (*European Commission*, 2017) <https://ec.europa.eu/commission/sites/beta-political/files/2nd-report-state-energy-union_en.pdf> accessed 7 October 2021; Council Decision 2010/787/EU on State aid to facilitate the closure of uncompetitive coal mines [2010] OJ L336; European Commission, 'A roadmap for moving to a competitive low carbon economy in 2050', 10 (*European Commission*, 2011) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0571&from=EN> accessed 16 October 2021.

[62] European Commission, 'Financing a Sustainable European Economy' (*European Commission*, 2017) <https://c.europa.eu/info/sites/info/files/170713-sustainable-finance-report_en.pdf> accessed 8 October 2021.

[63]European Commission, Farm to Fork Strategy (*European Commission*, 2020), 7-8 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0381> accessed 8 October 2021.

2.2 Effort Sharing Regulation (ESR) – Failing to Regulate Appropriate Reduction

The ESR is a governance tool, providing an overarching reduction target for the EU and assigning individual Member State targets.[64] The Regulation replaces the Effort Sharing Decision (ESD),[65] which regulated but did not limit agricultural emissions.[66] It supplements the Land Use and Forestry Regulation (LULUCF) which sets 'no-debit' targets for net emissions/removals from agricultural land use.[67] The ESR implements binding, enforceable reduction targets for non-CO_2 emissions, implemented through national law, which allows for some flexibility.[68] Addressing emissions from sources not covered by the EU emissions trading system (ETS), the ESR aims to reduce emissions by 40% by 2030 from 1990 levels.

Although the ESR advances mitigation efforts in the agricultural sector, reluctance to target some emissions is noticeable. As reduction targets are aggregated to cover all non-ETS sectors, Member States can focus on reducing emissions in some sectors while avoiding others. Further, the Regulation includes two flexibility mechanisms to relieve the 'pressure to reduce agricultural emissions'.[69] The LULUCF flexibility allows Member States to use LULUCF credits to offset emissions in the ESR sector, and the ETS flexibility entitles Member States to use ETS allowances up to the equivalent of 2% or 4%

[64] 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 [2018] OJ L156.
[65] Decision (EU) No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 [2009] OJ L140.
[66] ibid.
[67] Regulation (EU) 2018/841 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework [2018] OJ L156.
[68] Marjan Peeters, 'The continued effort sharing approach in EU climate law: Binding targets, challenging enforcement?' (2020) 29(2) Review of European, Comparative & International Environmental Law 201, 201.
[69] Regulation (EU) 2018/842 (n 64).

of their 2005 non-ETS emissions.[70] This practically leads to the agricultural sector merely having to reduce emissions by 6% if the flexibility is fully exercised. Thus, excessive flexibility disincentivises mitigation action in the agricultural sector,[71] prompting agriculture to only contribute 1% of the 11% ETS reduction effort between 2005-2018.[72] The Regulation also fails to reference livestock emissions specifically, despite them being the main share of agricultural emissions.[73] Ultimately, the Regulation's indifferent approach towards regulating livestock emission reduction further indicates their free pass within EU emission mitigation frameworks.

Further, the ESR is an arguably weaker instrument than the market-based ETS, addressing emissions from other sectors. The ETS sets a determinative price on carbon, delivering a predictable reduction pathway through its declining cap, sending long-term signals for businesses and investments. Contrarily, the ESR faces issues in targeting specific emissions and enforcing such targets. Thus, the inability of the ESR to mandate emission reduction as effectively as the ETS further confirms the focus of emission mitigation policies on mandating emission reduction from other sectors.

Ultimately, the scale of GHG reductions required to combat the climate emergency exempts no sector,[74] as 'full mitigation potential … will only be realised if agricultural emissions are included in mainstream climate policy'.[75] In July 2021, the European Commission published its environmental package 'Fit for 55,' which presented a suitable opportunity to end livestock's free pass

[70] IFOAM Organic Europe, 'IFOAM EU position on the Effort Sharing Regulation and Land Use, Land Use Change and Forestry' (2017) 2 <https://www.organicseurope.bio/content/uploads/2020/06/ifoameu_policy_euclimateenergy2030_positionpaper_201702.pdf?dd> accessed 4 March 2022.
[71] ibid 5.
[72] European Environment Agency, 'National action across all sectors needed to reach greenhouse gas Effort Sharing targets' (*EEA*, 2020) <https://www.eea.europa.eu/themes/climate/trends-and-projections-in-europe/national-action-across-all-sectors> accessed 4 March 2022.
[73] IFOAM (n 70) 7.
[74] Meryl Richards and others, 'National contributions to climate change mitigation from agriculture: Allocating a global target' (2018) 18(10) Climate Policy 1283.
[75] Margot Hurlbert and others, 'Chapter-7: Risk management and decision making in relation to sustainable development' (2019) 676 <https://www.ipcc.ch/site/assets/uploads/sites/4/2019/11/10_Chapter-7.pdf> accessed 4 March 2022.

and exploit the force of the Parliament's Declaration. However, the package does not entail the needed reforms. The CAP continues a business-as-usual approach to farming, merely providing for more flexibility through national CAP strategic plans and slightly more ambitious targets and funding to the existing CAP mechanisms.[76] Regarding the ESR, neither the loopholes concerning the flexibilities, nor the aggregated emission target approach, have been revised.[77] Overall, agricultural emissions have barely declined since 2005.[78] Future predictions taking into account implemented policies also show that no reduction is expected. Thus, as mitigation of CO_2 emissions from other industries is intensifying, this consistent level of agricultural emissions indicates the continuing privilege afforded to livestock emissions, despite their enormous climate impact. Any ambitious mitigation policy to fight climate change must make it a priority to change this. Importantly, this paper does not suggest that livestock emissions should be regulated instead of emissions from industry, but advances the argument that the current climate emergency requires an 'all-hands-on-deck' approach which must include livestock emission reductions.

SECTION III: THE FAILURE OF THE EUROPEAN PARLIAMENT'S CLIMATE EMERGENCY DECLARATION - POTENTIAL EXPLANATIONS

Only 11% of climate emergency declarations materialise into institutional change, and the European Parliament's Climate Emergency Declaration is unlikely to change this bleak statistic.[79] This section explores the EU institutional structure and general emergency framing issues as possible explanations for the failure to exploit the value of the European Parliament's Declaration to alter the exceptional position of livestock within its emissions mitigation policy.

[76] Margarethe Scheffler and Kirsten Wiegmann, 'Improving the contribution of the Common Agricultural Policy to climate change mitigation' (2021) German Watch.
[77] European Commission Proposal for a Regulation of the European Parliament and 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 [2018] COM/2021/555.
[78] EEA (n 72).
[79] Ruiz-Campillo (n 41) 25.

3.1 The EU Institutional Structure as an Explanation for the Declaration's Lack of Success

i. *Fragmented Legislative Power*

A prominent feature of the legislative emergency model is that the legislature plays a fundamental role both in recognising an emergency and creating powers to deal with it.[80] In the EU institutional framework, legislative power is shared between the Parliament, the Council, and the Commission. While the right to legislative initiative lies with the Commission, the Council and the Parliament reject or amend Commission proposals under the ordinary legislative procedure, which has applied to environmental policymaking since the Amsterdam Treaty,[81] and the CAP since the Lisbon Treaty.[82] Given that the EU legislative process is more diffused than in national systems, it is difficult to formulate policy as urgently and forcefully as required for emergency intervention.[83] Thus, the EU institutional framework is ill-suited to employ the legislative emergency model as its disconnected legislative structure makes it almost impossible to reach a compromise on creating the powers necessary to deal with an emergency. Such powers mostly include the ability to produce emergency legislation.

This is also seen in the EU's approach of dealing with the financial crisis. As the EU had no adequate institutional mechanisms in place to deal with the situation, its response took the form of emergency politics characteristic of polities beyond the nation-state, resulting in an unregulated framework which exceeded the democratic political order (exemplified by expanding European Central Bank (ECB) competencies outside the treaties).[84] There was a need for fiscal integration to support the common currency but implementation pathways were blocked by 'the constraining dissensus among European publics',[85] creating several functional gaps in the EU authority structure. To fill

[80] Ferejohn (n 17) 217.
[81] Paul Craig and Gráinne de Búrca, *EU Law: Text, Cases, and Materials* (7th edn, Oxford University Press 2020) 113-17.
[82] Francisco Torres, 'How efficient is joint decision-making in the EU? Environmental policies and the co-decision procedure' (2003) 38(6) Intereconomics 312, 321.
[83] ibid 319.
[84] Kreuder-Sonne (n 26) 128-129.
[85] ibid 126.

these gaps and circumvent public dissent, decision-makers resorted to emergency measures outside the EU legal framework. They entrusted political interventions to the politically-independent and democratically-unchecked ECB.[86] Thus, during the financial crisis, the EU did not opt for a legislative emergency framework, as is suggested in this paper, but rather for democratically illegitimate and unregulated emergency powers by the ECB. With regard to climate action in the livestock sector, the lack of institutional mechanisms has so far led to legislative inaction, as the diffused system requires the political agreement of a variety of actors.

ii. Conflicting Interest of Legislative Organs

The condition for a functioning legislative emergency model is that the legislature must be willing to enact statutes conceding new, temporary powers to the executive: 'The normal circumstances of jealousy or rivalry between governmental departments (must) be overridden during emergencies'.[87] However, as the composition and function of different EU organs can often lead to clashes in interest there is a strong rivalry between them. While there are instances where EU-wide interests will cohere with individual Member State interests, requisite majorities may be difficult to generate on topics such as livestock, which affect some states such as Spain and Italy more than others. Thus, in general, the *supranational*[88] Commission and the European Parliament (EP), in which representatives act in the interests of the Union, prefer furthering EU interests, whereas in the *intergovernmental*[89] Council, Member States' national interests dominate as decisions are made by the relevant ministers in their capacity as state representatives.[90]

Intergovernmental and supranational interests clash not only in legislative-executive power distribution but also during the ordinary legislative procedure, which is problematic as the procedure does not 'create truly co-equal

[86] ibid.
[87] Ferejohn (n 17) 218.
[88] EU policy outcomes are results of bargaining by institutions which are not merely agents for national governments.
[89] EU policy outcomes are results of interstate bargaining among states pursuing their own national interests.
[90] Raj Chari and Sylvia Kritzinger, *Understanding EU policy making* (Pluto 2006) 80.

branches in terms of relative policy influence'.[91] The co-decision procedure has had positive impacts on reaching a compromise in favour of the EP within the specific context of environmental policy-making, and the EP has been increasingly able to shift policy outcomes since the introduction of the procedure towards its preferences. However, it still cannot reliably ensure outcomes that are closer to its own preferences than those of the Council, remaining heavily contingent on preference congruence. This establishes the Council as the dominant EU policy actor.[92] Thus, intergovernmental interests persist in environmental policymaking, hindering ambitious climate and agricultural policies. However, a caveat must be introduced. Although the EP has been credited as a climate champion, mostly due to its influential and forward-looking environmental committee and its institutional location in the legislative process, its activism is highly dependent on its composition. The EP will be more inclined to pursue a progressive climate agenda if the majority of seats are occupied by parties that support active climate action.[93] While an empirical study has found that the EP's amendments regarding environmental protection are often unambitious and that it may have lost its teeth in environmental championing, the EP still seeks to advance the environmental agenda more than other EU organs.[94] The supranational Parliament, which is more inclined to adopt stronger climate policies regardless of differentiated national resistances, is stifled by the Council protecting national interests.[95] Thus, the lack of will to reduce emissions in the livestock sector may have arisen due to an impasse within the EU institutional structure.

The rejection of industry-related policies in order to protect national interests is exemplified in negotiations on the most recent CAP reform. The Policy ultimately adopted a voluntary approach to capping payments above €100,000/year, as preferred by the Council, although the Parliament was

[91] Craig and de Búrca (n 81) 113-17.
[92] Amie Kreppel, 'Bicameralism and the balance of power in EU legislative politics' (2018) 24(1) The Journal of Legislative Studies 11, 28.
[93] Charlotte Burns and Neil Carter, 'Is Co-decision Good for the Environment? An Analysis of the European Parliament's Green Credentials' (2010) 58 Political Studies 123, 137.
[94] Kreuder-Sonne (n 26) 142.
[95] Uwe Puetter, 'Europe's deliberative intergovernmentalism: the role of the Council and European Council in EU economic governance' (2012) 19(2) Journal of European Public Policy 161, Torres (n 82) 320.

defending mandatory application.[96] The dilution of crop rotation policies, by considering crop diversification as an equivalent in line with Council's policy preferences, is another example. Opposed to this, the Parliament pushed for additional safeguards prohibiting monocultures.[97] Crop diversification is important as it provides for more secure, stable wildlife habitats and increased resilience to climate change. Replacing crop rotation policies with crop diversification as an equivalent is detrimental as crop diversification cannot provide the same benefits as crop rotation. This highlights how the Parliament's ambitious climate policies are regularly undermined within the EU legislative process to protect Member States' interests. The trend is further apparent in other industries, exemplified by the Council continuously blocking a Commission proposal adopted by the Parliament to achieve climate neutrality by 2050 due to concerns that this would hurt nuclear and coal-dependent economies.[98]

The dominance of Member State interests in EU policymaking explains why the EP's Declaration has not yet incited appropriate action regarding livestock emission mitigation. Considering the tension between intergovernmental and supranational organs of the EU, it is unlikely that the legislative emergency model's condition of non-rivalry between legislative and executive organs is currently satisfied within the EU. The fact remains that 'the EU is still far from resembling the hierarchically integrated state structures where constitutional provisions to accommodate emergency powers are commonplace'.[99]

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[96] Matteo Metta and Oliver Moore, 'Last Week of CAP Negotiations: What's the Deal?' (*Heinrich-Böll-Stiftung*, 2021) <https://eu.boell.org/en/2021/05/25/last-week-cap-negotiations-whats-deal> accessed 3 March 2022.

[97] ibid.

[98] European Council, 'European climate law: Council and Parliament reach provisional agreement' (*European Council*, 2021) <https://www.consilium.europa.eu/en/press/press-releases/2021/05/05/european-climate-law-council-and-parliament-reach-provisional-agreement/> accessed 18 February 2022.

[99] Kreuder-Sonne (n 26) 128.

3.2 Emergency Framing Issues as an Explanation for the Declaration's Lack of Success

Aside from the EU's institutional structure, emergency framing itself might explain why the Parliament's Declaration has not incited adequate climate action in the livestock sector. This is due to several reasons:

(i) The narrative of 'catastrophe' communicating worry and fear, as well as implying a deadline in relation to a closing window,[100] might generate polarised actions because of expressed hopelessness,[101] or even discourage efforts.

(ii) The climate crisis is a complex collective action problem, requiring coordinated widespread systemic change across an intergenerational timespan. Thus, it does not fit the fundamentally 'conservative' nature of emergency frameworks. Emergency powers are inherently conservative as they are temporary measures aimed at the restoration of previous conditions. However, it is difficult to conceptualise the point at which the climate is restored to its 'original' position, hindering the application of emergency frameworks generally.[102]

(iii) The meanings of 'climate emergency declarations' are ambivalent, and they are described as an 'empty signifier' in that the multiple meanings ascribed to them reinforce different ideological projects.[103] The generated normative force may be inadequate to overcome the issues of the crisis, but rather lead to previously discussed placebo policies, such as progressive mitigation targets without implementation mechanisms and a general gap between declaration and implementation.

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[100] Shinichiro Asayama and others, 'Why setting a climate deadline is dangerous' (2019) 9 Nature Climate Change 570, 571.

[101] Andrew Wilson and Ben Orlove 'What do we mean when we say climate change is urgent?' (2019) Colombia Academic Commons <https://academiccommons.columbia.edu/doi/10.7916/d8-b7cd-4136> accessed 24 March 2022.

[102] Ferejohn and Pasquino (n 17) 219.

[103] Chris Methmann, 'Climate protection' as empty signifier: A discourse theoretical perspective on climate mainstreaming in world politics' (2010) 39(2) Journal of International Studies 345, 348-9.

Ultimately, as it is proposed that ending livestock emissions' free pass must be prioritised in an appropriate mitigation policy, retaining the special position of these emissions in the EU indicates the failure of the EU Climate Emergency Declaration to incite action.[104] Emergency declarations are merely the first of several steps to initiate climate emergency mobilisation. However, the EU Declaration has been unable to break government complacency due to EU-specific institutional issues and more conceptual problems regarding emergency declarations.

SECTION IV: THE WAYS FORWARD - THE CASE FOR A SECTORAL EMERGENCY DECLARATION

Having established that the current framework regarding livestock emissions is inadequate despite the Parliament's Climate Emergency Declaration, this section proposes the declaration of sectoral emergency in the livestock sector as an alternative.

4.1 Justifying a Sectoral Emergency Law Response to Fight Livestock Emissions' Exceptional Status

Before dealing with the potential of a sectoral EU emergency declaration for the livestock industry, such a targeted intervention must be justified. It is argued that livestock emissions' significant reduction potential, associated food security concerns, and the principle of equal treatment should trigger the intervention of emergency law within the livestock industry.

[104] Mark Chou, 'Australian local governments and climate emergency declarations: Reviewing local government practice' (2020) Australian Journal of Public Administration 607, 618; Ruiz-Campillo (n 41) 17.

i. Reduction Efficiency

Many EU instruments aim to cut emissions where it is cheapest and most practicable,[105] advancing an efficiency narrative for reduction. The objective of this efficiency analysis in law is the value-maximisation of normative resources, requiring mitigation policies that maximise reduction capability.[106] GHG from livestock have considerable mitigation potential, both because it is currently not being actively reduced, and because of the nature of these emissions. Their inclusion would arguably reflect a more *efficient* reduction policy.

First, the impact of livestock emissions is currently not accounted for, thus suggesting capacity for massive reductions. Agriculture is a significant contributor to global warming, generating around half of all anthropogenic CH_4 emissions and around three-quarters of N_2O,[107] but has so far been disregarded in mitigation schemes. Livestock is the leading source of non-CO_2 GHGs,[108] indicating that animal agriculture's temperature impact accounts for at least 23%, without including emissions related to feed production, land-use change, fertiliser use, energy, and transport.[109] Although non-CO_2 GHG emissions from agriculture have declined by 24% between 1990 and 2012, this relative change is

[105] Examples include the ETS and emissions caps dependent on member states. This is also the rationale behind the European Emission trading scheme. See: European Commission, 'Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union' (*European Commission*, 2003) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32003L0087> accessed 18 February 2023; European Council and Parliament 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. For example, Article 4 provides that 'Each Member State shall, in 2030, limit its greenhouse gas emissions at least by the percentage set for that Member State in Annex I in relation to its greenhouse gas emissions in 2005, determined pursuant to paragraph 3 of this Article.'

[106] Robert Cooter, 'Liberty, Efficiency, and Law' (1987) 50(4) Law and Contemporary Problems 141, 142.

[107] Cheikh Mbow and others, 'Chapter-5: Food security' (*IPCC*, 2019) <https://www.ipcc.ch/site/assets/uploads/sites/4/2020/02/IPCCJ7230-Land_SM5_200226.pdf> accessed 4 March 2022.

[108] Helen Harwatt, 'Including animal to plant protein shifts in climate change mitigation policy: a proposed three-step strategy' (2018) 19(5) Climate Policy 533, 535.

[109] Andy Reisinger and Harry Clark, 'How much do direct livestock emissions actually contribute to global warming?' (2017) 24 Global Change Biology 1749, 1750-51.

lower than in sectors such as waste and industrial processes,[110] suggesting a possibility for further reduction.

Second, the distinct nature of non-CO_2 GHG demonstrates reduction potential. CH_4 has a short atmospheric lifetime but potent warming impact as opposed to CO_2 which slowly warms the planet over time. Thus, reductions may be achieved more rapidly, and effects will be observed more quickly compared to CO_2.[111] A large share of non-CO_2 mitigation can be realised at relatively low costs through land-use change, land management, and livestock management.[112] These steps are essential to meet higher emission targets and current net-zero targets.[113] Thus, livestock emissions' inclusion in mitigation schemes allows for efficient reduction, complementing current CO_2 mitigation.

Ultimately, the capacity and nature of non-CO_2 GHG indicate that policies targeting non-CO_2 emission from livestock optimise value-maximisation of resources. Thus, cost-efficiency analysis provides a justification for targeted intervention of emergency law within the livestock sector to mitigate emission levels.

ii. Food Security Concerns

The right to food is a protected human right under Article 11(1) of the International Covenant of Economic, Social and Cultural Rights (ICESCR). However, climate change has slowed agricultural productivity over the past 50 years.[114] The 2022 IPCC report clarifies that climate change will increase the

[110] Ignacio Domínguez and Thomas Fellmann, 'The Need for Comprehensive Climate Change Mitigation Policies in European Agriculture' (2015) 14(1) EuroChoices 11, 11; Scheffler and Wiegmann (n 76) 2.
[111] Harwatt (n 108) 3; John Lynch and others, 'Agriculture's Contribution to Climate Change and Role in Mitigation Is Distinct From Predominantly Fossil CO_2-Emitting Sectors' (2021) Frontiers in Sustainable Food Systems 2; Peter Smith and others, 'Chapter-11: Agriculture, Forestry and Other Land Use (AFOLU)' in Peter Smith and others, (eds), *Working Group III contribution to the IPCC 5th Assessment Report "Climate Change 2014: Mitigation of Climate Change*(*IPCC* 2014).
[112] ibid.
[113] Mathijs Harmsen and others, 'Non-CO_2 greenhouse gases: the underrepresented, complex side of the climate challenge' (2020) 17(3) Journal of Integrative Environmental Sciences 3.
[114] Pörtner (n 8) 10.

number of floods, droughts and heatwaves, putting pressure on our food systems and undermining food security.[115] Food security concerns are further aggravated by population growth and changing preferences towards more emission-heavy diets, which worsen climate change. Currently, global meat, egg, and milk production are responsible for nearly one-fifth of human-induced GHG, and trends indicate that the livestock sector might contribute up to 70% of the GHG emission limit in 2050.[116] Thus, the human right to food security is increasingly endangered by not only climate change itself but unsustainable agricultural practices and emission-heavy diets.

Food insecurity provides greater support for intervention in the livestock sector to address the issue.[117] Apart from employing more sustainable agricultural techniques, incentivising shifts from animal to plant-sourced protein is effective in addressing both climate and food security concerns. Plant-based diets require fewer natural resources including land, nitrogen, phosphorus, water, and energy, resulting in lower GHG emissions and more space for carbon sinks and greater food availability.[118] Thus, the growing concern surrounding the human right to food justifies the pointed emergency intervention in the livestock sector, as structural changes in the sector may not only decrease the food systems' climate impacts, but also alleviate fears of food insecurity.

iii. Equal Treatment

Under EU law, the general principle of equal treatment requires that comparable situations are not treated differently unless differentiation is objectively justified,[119] adopting the Aristotelian approach that those in similar situations should be treated alike.[120] As non-CO_2 GHG from livestock have the

[115] ibid 14-15.
[116] Pierre Gerber and others, 'Tackling climate change through livestock–A global assessment of emissions and mitigation opportunities' (2013) UNFAO <http://www.fao.org/3/8d293990-ea82-5cc7-83c6-8c6f461627de/i3437e.pdf> accessed 7 February 2022.
[117] Pörtner (n 8) 24.
[118] Harwatt (n 108) 6.
[119] T-704/14 *Marine Harvest ASA v European Commission* [2017] ECLI:EU:T:2017:753 [207].
[120] Dagmar Schiek, 'Torn between Arithmetic and Substantive Equality? Perspectives on Equality in German Labour Law' (2002) 18 International Journal of Comparative Labour Law and Industrial Relations 149, 150; T-10/93 *A v Commission* [1994] ECR II-179 [42].

same destructive effects on the climate system as CO_2, equal treatment requires their effective inclusion in mitigation schemes.

The *Arcelor* case exemplifies the application of this principle to a specific sector and its analysis can be applied to the livestock sector.[121] The case concerned an action brought by Arcelor, a steel producer, challenging the validity of the Emissions Trading Directive. Arcelor claimed that certain articles of the Directive violate the principle of equal treatment. The company pointed out that the ETS includes the steel sector but not competing industries, including non-ferrous metal and chemical product sectors, despite their responsibility for comparable CO_2 emissions.[122] The General Court explained that all GHG emissions contribute to climate change, and thus all sectors of the economy which emit them are comparable. The quantity of CO_2 emitted by each sector is immaterial for assessing comparability, indicating that the steel, chemical and non-ferrous metal sectors are in a comparable position.[123] However, the Court dismissed the equal treatment claim, holding that disparate treatment could be justified as the inclusion of non-ferrous metal and chemical product sectors would increase administrative burdens and disrupt ETS functioning.[124]

Applying these principles to the livestock sector indicates that the sector's current free pass might breach equal treatment. *Arcelor* clarified that all emissions of greenhouse gases are liable to contribute to dangerous interference with the climate system and are thus comparable. Furthermore, the quantity of GHG emitted by a sector is not essential for assessing comparability, indicating that livestock emissions should not be distinguished from emissions from other sectors unless there are objective justifications. The *Arcelor* administrative burden justification has already been rebutted in the previous section, as there is value maximisation is allocating more administrative resources towards reducing emissions in the livestock sector. Food security concerns are also dismissed as a justification, and it is submitted that there are no further justifications for

[121] C-127/*07 Société Arcelor Atlantique et Lorraine v Premier ministre* [2008] ECR I-09895.
[122] ibid [162].
[123] ibid [34]-[38]
[124] ibid [59]-[65] cases concerning agriculture: C-96/03 and C-97/03 *Tempelman and van Schaijk* [2005] ECR I-1895 [48] and C-504/04 *Agrarproduktion Staebelow* [2006] ECR I-679 [37].

disparate treatment.[125] Thus, the intervention of emergency measures in this sector is justified to rectify the current situation, which illegally differentiates emissions reductions efforts between sectors, against EU law.[126]

4.2 The Potential of a Sectoral Emergency Declaration to end Livestock Emissions' Free Pass

The potential of a sectoral emergency declaration to end the free pass of livestock emissions is derived from increased normative force and attribution of responsibility. A sectoral declaration limits the reach of the necessary 'restoration', thereby making an emergency framework more feasible. However, it must be submitted that the constraints posed by the EU institutional framework will continue to inhibit appropriate livestock emissions mitigation.

i. Increasing Normative Force

A sectoral emergency declaration will generate greater normative force to trigger emergency powers, incentivising climate action.[127] Pointed intervention shifts attention to livestock emissions, indicating that a sectoral declaration is not an 'empty signifier'. Its specific focus on the livestock sector communicates a communal ideological project, instigating a normative force for climate action potentially strong enough to overcome government complacency. This force is further strengthened by minimising the narrative of 'catastrophe', addressing a single sector as opposed to creating panic within the whole economy. Through this, such a declaration makes a *clearer* statement through the 'expressive function of the law'.[128] As Sunstein argues, such an expressive function means that an appropriately-framed law influences and pushes social norms to reconstruct existing norms and change the social meaning of action

[125] cf C-352/98 *Bergaderm and Goupil v Commission* [2000] ECR I-5291 [39] and C-198/03 *Commission v CEVA and Pfizer* [2005] ECR I-6357 [61].
[126] cf C-17/61 and C-20/61 *Klöckner-Werke and Hoesch v High Authority* [1962] ECR 325 and C-250/83 *Finsider v Commission* [1985] ECR 131 [8]; C-462/99 *Connect Austria* [2003] ECR I-5197 [115].
[127] Daniel Bodansky, 'International Sectoral Agreements in a Post-2012 Climate Framework' (2007) Pew Center on Global Climate Change Working Paper <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1028187> accessed 4 February 2022.
[128] Cass Sunstein, 'On the expressive function of the law' (1999) 144 University of Pennsylvania Law Review 2021, 2024.

through a legal statement about appropriate behaviour.[129] As a sectoral declaration increases normative force, it arguably becomes *more* appropriate, and will thus have a greater effect on existing norms regarding livestock emission reduction and change the social meaning of livestock pollution more drastically.[130] For example, the entirely normative framework of the Paris agreement, including the 2°C temperature goal, the time target of peaking emissions in the latter half of the century, and the imposition of mitigation obligations on every state, has led to enforceable domestic laws adopting these norms.[131]

By making livestock pollution socially undesirable, such a declaration assists in bypassing EU institutional constraints. It generates a norm to which the society is committed and by which it should be legally bound,[132] inducing the construction of more appropriate emission reduction policies in the livestock sector. Setting a uniform baseline by reference to such norms improves cooperation between institutional actors, holding them to the same normative standard and thus allowing the creation of emergency legislation through the ordinary legislative process. Overall, 'transnational politics of emergency' would not be 'largely unregulated' but rooted in social norms created by the declaration,[133] illustrating that it might be a viable alternative to activate emergency powers to deal with emission reduction. Importantly, this paper does not argue that emission reduction should be restricted to the livestock sector, but that the sector in particular would benefit from a sector-specific emergency declaration.

ii. *Attributing Responsibility*

Rather than a general emergency declaration involving 'all sectors of society and the economy',[134] a sectoral emergency declaration more expressly identifies responsible actors. While recognising individuals and EU decision-makers as part of the problem, it specifically shifts attention to those facilitating livestock emissions. Thus, such a declaration addresses the central

[129] ibid 2031.
[130] ibid 2032.
[131] Examples include the German and Dutch Climate Change Act.
[132] Sunstein (n 128) 2027.
[133] Kreuder-Sonne (n 26) 126.
[134] Resolution on the climate emergency (n 2).

question of responsibility, asking 'who ought to pay?'.[135] While decision-makers have the funds, livestock operators are the producers of these emissions with the ability to reduce them. This redistribution of responsibility is legally justified by reference to the Polluter Pays Principle (PPP), a key principle underlying the EU's environmental policy,[136] which mandates that polluters (livestock producers in this case) must bear the costs of preventing, controlling and remedying their pollution. However, responsibility must be distinguished from blameworthiness,[137] demonstrated by Young's model of social connection. The model reveals that the concept's central aim is to change the structural processes that created a situation, by holding accountable 'all agents who contribute by their actions to the structural processes that produce injustice' rather than attributing guilt.[138] As responsibility arises from mere participation in the diverse institutional processes producing the climate emergency, and not through blame, farmers should receive funds to deal with the issue. For this purpose, it does not matter whether the 'farmers' are individuals or big corporations as in the current analysis both are blameless and deserve compensation for restructuring their activities. Overall, a sectoral declaration assists in identifying producers as participants in institutional livestock processes leading to the climate emergency, thus making them responsible for tackling it.

As the Commission is obligated to draft proposals based on the PPP, this responsibility justifies emergency laws, detailing the stakeholders who must address the climate emergency. It thus assists in determining the contents of emergency laws. By recognising livestock operators as responsible actors, emergency legislation can justifiably redirect funds and other resources to the livestock industry to assist and compel livestock farmers to shift towards more environmentally-friendly methods. Thus, a sectoral climate emergency declaration might not only create greater normative force to overcome government complacency but may further be a tool to justify the contents of emergency laws, sustaining funding and resource allocation by specifically attributing responsibility to catalysts in the sector. Farmers will arguably be convinced to change practices as increased funding combined with normative

[135] Joel Feinberg, 'Problematic responsibility in law and morals' (1962) 71(3) Philosophical Review 340, 342.
[136] Art.191(2) TFEU.
[137] Iris Young, *Justice and the Politics of Difference*(Princeton University Press 1990) 151.
[138] Iris Young, 'Responsibility and global justice: A social connection model' (2006) 23(1) Social Philosophy and Policy 102, 102-103.

force will make it apparent that adaptation is the only way forward in the current climate emergency.

4.3 A Framework to Restructure the EU Livestock Sector

To conclude, this paper recommends an improved framework for regulating livestock emissions. Exploiting the value of a sectoral declaration, it is proposed that such a framework must be facilitated under emergency legislation, allowing the Commission greater discretion over the EU budget and mitigation policy in this area. It would thus address the institutional balance of power issue previously identified by primarily awarding decision-making powers to supranational actors such as the Commission. To recognise the temporality of emergency law, such an emergency delegation would be limited in terms of time. The framework is reliant on an economic incentives/market-based approach implemented through existing mechanisms, the CAP and ETS, as opposed to a regulatory approach.[139] Such an approach introduces flexibility and focuses on result-based reduction and reducing monitoring costs, which are crucial for the livestock sector. Competing concerns of food security and cultural identity need to be balanced against climate effects, and further, the monitoring of livestock emissions from non-point sources is difficult.[140] Since these instruments also include a revenue-raising component, those most affected by livestock emission policies should be compensated.[141]

i. *PILLAR 1: Rewarding Climate-Friendly Practices*

Subsidies: Climate subsidies are a form of financial government support for rewarding climate-friendly activities.[142] In a revised framework for livestock emission regulation, abatement subsidies where farmers receive a

[139] Godefroy Grosjean and others, 'Options to overcome the barriers to pricing European agricultural emissions' (2016) 18(2) Climate Policy 151, 155.
[140] 'Economic Incentives' (*EPA*, 2022) <https://www.epa.gov/environmental-economics/economic-incentives#:~:text=Subsidies%20are%20forms%20of%20financial,tax%20treatment%2C%20and%20procurement%20mandates> accessed 24 March 2022; James Breen, 'Reducing Greenhouse Gas Emissions from Irish Agriculture: A market-based approach' (2012) Research in Agriculture and Applied Economics 28.
[141] EPA (n 140).
[142] ibid.

subsidy for reducing emissions below a predetermined cap,[143] should be introduced under the CAP cross-compliance mechanism. These would be funded by the EU and its financial institutions. This would incentivise agricultural efficiency gains, realised through improved and innovative techniques in production methods, including capturing methane from manure and improving degraded pasture and lifetime animal productivity.[144] A new framework must strengthen the CAP's greening mechanisms and enforce incentives to improve grazing land management in order to preserve and create carbon sinks,[145] enabling carbon sequestration. Ultimately, such a framework must abolish harmful subsidies, such as coupled direct payments for high-emitting outputs, to reduce livestock emissions. Although economic subsidies do not always incite the intended effects, it is argued that in combination with the emergency narrative, which pushes the idea that change is needed not only for human survival, but financial sustainability, these incentives are provided for.

ii. PILLAR 2: Punishing Environmentally Harmful Practices

Taxation: An improved framework must impose deterrent taxation mechanisms, including, for example, a Livestock Tax: a regionally homogenous tax for livestock based on their emission potential[146] or unit taxes based on actual measured emissions.[147] Taxation must also be employed to shift consumer behaviour towards climate-friendly diets directly by taxing livestock products (for example, by increasing VAT on meat and dairy products) or indirectly by shifting livestock producers' behaviour.[148] It is submitted that the adoption of

[143] Pierre Gerber and others, 'Policy options in addressing livestock's contribution to climate change' (2010) 4(3) Animal 393, 397.
[144] Joseph Poore, 'Reducing food's environmental impacts through producers and consumers' (2019) 360 Science 987, 989-990.
[145] David Blandford and Katharine Hassapoyannes, "The role of agriculture in global GHG mitigation" (2018) OECD Food, Agriculture and Fisheries Papers, No.112 8/7; Jessica Bellarby, 'Livestock greenhouse gas emissions and mitigation potential in Europe' (2013) 19 Global Change Biology 3, 12.
[146] Tara Garnett, 'Climate change and agriculture: Can market governance mechanisms reduce emissions from the food system fairly and effectively?' (2012) International Institute for Environment and Development 42.
[147] Gerber (n 143) 396.
[148] Hannah Ritchie and others, 'The impact of global dietary guidelines on climate change' (2018) 49 Global Environmental Change 46, 53; Damian Carrington, 'EU urged to adopt meat tax to tackle climate emergency' (*The Guardian*, 2020)

such tax laws is unlikely even if a sectoral emergency declaration was imposed. Tax law is subject to a margin of appreciation and is mostly for the individual member states to implement. For example, Germany and France have immense farming lobbies which hold great power and are likely to prevent the imposition of additional taxes on meat and dairy products. However, the viability of these measures must be considered in the emergency context, which arguably imposes a threat to business-as-usual measures and may convince EU members to impose such taxes if they are convinced that this is the only way to continue production.

iii. PILLAR 3: Combined Punishing and Rewarding

ETS Inclusion: Livestock emissions must be included in the ETS as the scheme's market-based approach leads to more efficient emission reductions at a lower cost.[149] Farmers may harvest private net gains from participating,[150] thus offsetting negative effects on their income in other areas of mitigation efforts. Frameworks such as New Zealand's emissions trading scheme, which proposes the inclusion of agricultural emissions, illustrate that the inclusion of such emission sources is possible despite them comprising mostly non-CO_2 GHGs deriving from non-point sources.[151]

Ultimately, pointed emergency intervention in the livestock sector is justified. It increases emergency declarations' normative potential and overcomes EU institutional constraints which consequently allows the use of legislative emergency powers to enforce restructuring through the proposed framework. Further, it attributes responsibility, justifying the allocation of funding and resources in such a framework by recognising efforts that can structurally transform the sector.

<https://www.theguardian.com/environment/2020/feb/04/eu-meat-tax-climate-emergency> accessed 24 March 2022; proposed in Farm to Fork Strategy (n 63).

[149] Garnett (n 146) 36.

[150] Ignacio Dominguez and others, 'Trading schemes for greenhouse gas emissions from European agriculture: A comparative analysis based on different implementation options' (2009) 90(3) Review of Agricultural and Environmental Studies 287, 304-305.

[151] Gerber (n 143) 400; NZ Emissions Trading Scheme (2013) <https://icapcarbonaction.com/en/?option=com_etsmap&task=export&format=pdf&layout=list&systems%5B%5D=48> accessed 15 December 2021. This partial mechanism is not yet enforced.

CONCLUSION

Achieving the central aims of the Paris Agreement will become increasingly difficult if non-CO_2 GHG emissions are not addressed strongly and rapidly. Climate emergency declarations are generally considered useful tools in shifting public perception from 'future risk' to 'current crises', incentivising political action from business-as-usual approaches and establishing a new status quo.

However, an investigation of the CAP and the ESR indicates that the European Parliament's Climate Emergency Declaration fails to incite appropriate action regarding the reduction of livestock emissions. This failure might be explained by the inability of the EU institutional framework to enact appropriate emergency powers. In response, this paper proposes an emergency declaration in the livestock sector to redirect social norms toward the imposition of an improved framework for agriculture, incentivises transition to a design that stimulates climate-friendly practices and outputs, and attributes responsibility to the right parties. Such a pointed intervention is more efficient, compatible with the general EU law principle of equal treatment, and tackles issues regarding food security. Overall, a sectoral emergency declaration is an effective instrument in ending livestock emissions' exceptional status in EU mitigation efforts and is thus crucial in the fight against climate change.

However, within the context of wider threats to the EU, it seems unlikely that such a regime will be adopted in the near future. The Union is still recovering from criticism regarding its inability to act in crisis situations, such as the COVID-19 pandemic.[152] Further, the EU is increasingly polarised amid the rule of law crisis.[153] As such, it seems unlikely that the proposed framework or a similar system will be adopted anytime soon, despite the looming threat of climate change.

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[152] See, for example: Stefan Lehne, 'Why Can't Europe Cope with the Coronavirus?' (*Carnegie Europe*, 2021) <https://carnegieeurope.eu/strategiceurope/84286> accessed 11 March 2023.

[153] See, for example: Laurent Pech, 'The Rule of Law as a Well-Established and Well-Defined Principle of EU Law' (2022) 14, 107–138 <https://link.springer.com/article/10.1007/s40803-022-00176-8> accessed 11 March 2023.

Viability aside, further research must address mechanisms outside the emergency law perspectives to establish whether other tools are more appropriate to stimulate action in an area as complex as animal agriculture. Ultimately, livestock emissions' intense impact on global warming indicates that it should no longer be given a free pass in climate change efforts — it should instead be subject to targeted intervention.