

Fit for 2050

Improving the Commission's proposal to reform the Climate Action Regulation for Europe (CARE) – Amendments

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Purpose of this note

On 14 July 2021, the Commission proposed amendments to the Regulation 2018/842 – currently called by many the ‘Effort Sharing Regulation’.

This note presents amendments to the Commission’s proposal. The note does not invent new provisions but rather takes a conservative approach and builds on existing EU rules. Addressing the shortcomings of the Commission’s proposals, these amendments are intended to:

- ▶ help ensure that all EU climate policy instruments support achieving the EU’s 2050 climate neutrality target and net negative emissions afterwards,
- ▶ ensure high levels of transparency through adopting clear emission budgets for the EU and Member States,
- ▶ enhance the robustness of the Regulation through strengthening compliance rules, streamlining flexibilities and improving public access to justice so that it can be consistently enforced at national level,
- ▶ help frame the EU’s climate policy debates better.

How to read this note:

The Commission’s proposed amendments to Regulation 2018/842 are marked **bold**.

Amendments to the Regulation and to the Commission’s proposals suggested in this note are in **bold**, *italics*, and underlined. Deletions are crossed out.

The title

Amendment 1: Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 **and beyond** contributing to climate action to meet commitments under the Paris Agreement **and Regulation 2021/1119 (EU Climate Law)** and amending Regulation (EU) No 525/2013.

Amendment 2: Add this official abbreviation **(Climate Action Regulation for Europe, CARE)**

Rationale:

- ▶ Very often the Regulation is referred to as the ‘Effort Sharing Regulation’ due to its predecessor’s title: the Effort Sharing Decision (Decision No 406/2009/EC). This terminology is factually wrong – the Regulation does not use the term ‘effort sharing’ even once.
- ▶ ‘Effort sharing’ is not only factually wrong it also chooses a politically harmful framing. Sharing the ‘effort’ towards the Union’s climate goals frames climate action as a burden, rather than an essential response to an urgent and existential threat. It ignores the many positive developments that climate policies will have in terms of economic modernisation, enhanced competitiveness, intact nature, human health and wellbeing.
- ▶ The title given to legislation matters because it communicates either a positive or negative message. The title should make the purpose of the legislation clear to the general public, not only to a few experts.

- ▶ The title should also clearly communicate that this Regulation does not only cover the time until 2030 but goes beyond.
- ▶ The title should clarify that the Regulation does not only serve to support meeting the commitments under the Paris Agreement but also those under Regulation (EU) No 1119/2021, the EU Climate Law.
- ▶ For these reasons, amendments should help end the misleading and wrong use of the term 'effort sharing' by introducing an official abbreviated title – the Climate Action Regulation for Europe (CARE). This abbreviation is not only factually correct but also conveys a positive approach to climate action. The remainder of this paper refers to the Regulation as the CARE.

Article 1

Subject matter

Amendment 3: To contribute to achieving the objectives of the Paris Agreement, to support achieving the Union's climate neutrality target, and to aim to achieve negative emissions as set out in 2.1. Article of Regulation 2021/1119 (EU Climate Law), this Regulation lays down obligations on Member States with respect to their minimum contributions for the period from 2021 to 2030 to fulfilling the Union's target of reducing its greenhouse gas emissions by **Amendment 4 40 % plus x %** below 2005 levels in 2030 in the sectors covered by Article 2 of this Regulation. ~~and contributes to achieving the objectives of the Paris Agreement.~~

Amendment 5: This Regulation also lays down rules on determining **reduction commitments on Member States from 2031 onwards and** annual emission allocations and for the evaluation of Member States' progress towards meeting their minimum contributions.

Rationale:

- ▶ Europe's commitment to the Paris Agreement and its own climate targets do not end in 2030. Nor do those of the EU's Member States. The revised CARE must therefore ensure that EU rules fully honour the EU's long-term obligations.
- ▶ The revised CARE should unequivocally state that it also serves to help achieving the targets under the EU Climate Law, which are legally binding and more concrete than the obligations under the Paris Agreement.
- ▶ Member States will continue to be the single most important player in EU climate policies and must remain accountable for required emission reductions in a politically meaningful way. Legally binding reduction targets are an established and proven way to ensure Member State accountability and must continue after 2030. Many Member States recognise this principle, enshrined in their long term targets in national legislation.
- ▶ The European Climate Law sets a legally binding 2030 target for the EU of net reductions of 55 % compared to 1990. This Regulation entered into force only a few months ago – after intensive negotiations. However – in light of rapidly shrinking emission budgets and the pivotal importance of this decade for achieving long-term climate targets enshrined in EU law and the Paris Agreement, this target and –

hence – the corresponding commitments under this Regulation need to be strengthened.¹ The exact increase of targets should be subject of the upcoming negotiations.

Article 2

Scope

1. **‘This Regulation applies to the greenhouse gas emissions from IPCC source categories of energy, industrial processes and product use, agriculture and waste as determined pursuant to Regulation (EU) 2018/1999 of the European Parliament and the Council*, excluding greenhouse gas emissions from the activities listed in Annex I to Directive 2003/87/EC, other than the activity “maritime transport”.**

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

2. Without prejudice to Article 7 and Article 9(2) of this Regulation, this Regulation does not apply to greenhouse gas emissions and removals covered by Regulation (EU) 2018/841.
3. For the purposes of this Regulation, CO₂ emissions from IPCC source category ‘1.A.3.A civil aviation’ shall be treated as zero.

Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘Greenhouse gas emissions’ means emissions in terms of tonnes of CO₂ equivalent of carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), nitrogen trifluoride (NF₃) and sulphur hexafluoride (SF₆) determined pursuant to Regulation (EU) No 525/2013 and falling within the scope of this Regulation;
- (2) ‘Annual emission allocations’ means the maximum allowed greenhouse gas emissions for each year between 2021 and 2030 determined pursuant to Article 4(3) and Article 10;

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- (3) 'EU ETS allowance' means an 'allowance' as defined in point (a) of Article 3 of Directive 2003/87/EC.

Article 4

Annual emission levels for the period from 2021 to 2030

1. 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.

2. **Subject to the flexibilities provided for in Articles 5, 6 and 7 of this Regulation and the adjustment pursuant to its Article 10 (2) and taking into account any deduction resulting from the application of Article 7 of Decision No 406/2009/EC, each Member State shall ensure that its greenhouse gas emissions:**

Amendments 6:

(a) do not exceed, in the years 2021 and 2022, the limit defined by a linear trajectory, starting on the average of its greenhouse gas emissions during 2016, 2017 and 2018 2018, 2019 and 2020, as set out pursuant to paragraph 3 of this Article, and ending in 2030 at the limit set for that Member State in column 1 of Annex I to this Regulation. ~~The linear trajectory of a Member State shall start either at five-twelfths of the distance from 2019 to 2020 or in 2020, whichever results in a lower allocation for that Member State;~~

(b) ~~do not exceed, in the years 2023, 2024 and 2025, the limit defined by a linear trajectory starting in 2022 at the annual emission allocation for that Member State, as set out pursuant to paragraph 3 of this Article for that year, and ending in 2030 at the limit set for that Member State in column 2 of Annex I to this Regulation;~~

(c) ~~do not exceed, in the years 2026 to 2030, the limit defined by a linear trajectory starting in 2024, at the average of its greenhouse gas emissions during the years 2021, 2022 and 2023, as submitted by the Member State pursuant to Article 26 of Regulation (EU) 2018/1999, and ending in 2030 at the limit set for that Member State in column 2 of Annex I to this Regulation.~~

3. The Commission shall adopt implementing acts setting out the annual emission allocations for each Member State for the years from 2021 to 2030 in tonnes of CO₂ equivalent in accordance with the linear trajectories set out in paragraph 2.

~~For the years 2021 and 2022, it shall determine the annual emission allocations based on a comprehensive review of the most recent national inventory data for the years 2005 and 2016 to 2018 submitted by the Member States pursuant to Article 7 of Regulation~~

~~(EU) No 525/2013 and indicate the value for the 2005 greenhouse gas emissions of each Member State used to determine those annual emission allocations.~~

~~For the years 2023, 2024 and 2025, it shall determine the annual emission allocations based on the value for the 2005 greenhouse gas emissions of each Member State indicated pursuant to the second subparagraph and the reviewed values of the national inventory data for the years 2016, 2017 and 2018 referred to in the second subparagraph.~~

~~For the years 2026 to 2030, it shall determine the annual emission allocations based on the value for the 2005 greenhouse gas emissions of each Member State indicated pursuant to the second subparagraph and on a comprehensive review of the most recent national inventory data for the years 2021, 2022 and 2023 submitted by the Member States pursuant to Article 26 of Regulation (EU) 2018/1999.~~

Rationale

- ▶ Rather than three different trajectories, the revised CARE should feature only one trajectory for reasons of clarity and certainty.
- ▶ Because of rapidly shrinking emission budgets and the pivotal importance of this decade for climate action, the total emission volumes permissible under this Regulation should be as low as possible in the given framework of the CARE. For this reason, the reduction trajectory should start at the low emission levels of the years 2018, 2019 and – in particular – 2020. The Regulation should help avoid or compensate for emission increases that might occur after the COVID-19 pandemic.
- ▶ The EEA's 2021 trends and projections will contain robust emission data for the years 2018, 2019 and 2020.
- ▶ Negotiations of the CARE will end after 2021, and the CARE will enter into force well after 2021. This is a challenge because Member States will have to adhere to a new trajectory while the negotiations are ongoing, and while the CARE has not entered into force yet. However, given the timeframe of the negotiations, this problem is inevitable. Any revision of the trajectory, including the proposal from the Commission, faces this challenge.

Amendment 7: 3a. By the end of 2021, the Commission shall adopt an implementing act / report quantifying the total amount of emissions covered by this Regulation for the period 2021 to 2030 in tonnes of CO₂ equivalent (emission budget). This emission budget shall equal the amount of emissions permissible according to paragraphs 1 and 2. When determining the annual emission allocations pursuant to paragraph 3, the Commission shall also indicate the total amount of emissions for the respective Member State and respective period.

Amendment 8: Article 4.4. to be repealed 4. ————— Those implementing acts shall also specify, based on the percentages notified by Member States under Article 6(3), the total quantities that may be taken into account for a Member State's compliance under Article 9 between 2021 and 2030. If the sum of all Member States' total quantities were to exceed the collective total

of 100 million, the total quantities for each Member State shall be reduced on a pro-rata basis so that the collective total is not exceeded.

5. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 14.

Rationale:

- ▶ To ensure high levels of transparency and predictability for Member States and societies, the new CARE should explicitly quantify the overall amount of EU emissions for the period 2021-2030 (emission budget). To this end, the Commission shall adopt an implementing act or report quantifying the overall amount of the emissions covered by the Regulation. The Commission shall adopt this decision by the end of 2021 when it allocates AEAs according to the revised Regulation for the first time. The emission budget equals the amounts of emissions permissible according to paragraphs 1 and 2, serving primarily as a tool to increase transparency and accountability.
- ▶ In addition, the Commission shall also quantify the overall amount of emissions for each Member State. For this purpose, every Commission's decision allocating AEAs to Member States shall also explicitly quantify the total amount of emissions for the respective period.
- ▶ There is already a similar provision in the Commission's proposals to amend the ETS Directive. According to Article 30c (1), by 1 January 2024, the Commission shall publish the EU-wide quantity of allowances for the year 2026.
- ▶ Because Article 6 is to be repealed (see below), Article 4.4 becomes obsolete and also needs to be repealed.

New Article 4a: Member State Commitments for 2040, 2050 and onward

Amendment 9:

Alternative 1, building partly on Article 4 (4) of the LULUCF proposal

In view of the Union's climate neutrality target set out in Article 2 (1) of Regulation 2021/1119 and in view of the Union's intention to adopt a 2040 climate target pursuant to Article 4 (3)-(5) of Regulation 2021/1119, the Commission shall propose, as appropriate, by the end of 2025, individual Member State targets and EU-wide measures for the period of 2031 - 2040. These individual targets for the Member States shall be the subject to an impact assessment and a new legislative proposal.

In order to contribute to the achievement of the neutrality target set out in Article 2 (1) of Regulation 2021/1119 and view of the Union's commitments under the Paris Agreement, Member States shall balance their greenhouse gas emissions regulated by this Regulation and removals at the latest by 2050, thus reducing emissions to net zero by that date. From 2051 onward, Member States shall aim to achieve net negative emissions ensuring that removals exceed the amount of emissions covered by this regulation.

Alternative 2, building on Article 4 European Climate Law

With a view to achieving the climate-neutrality objective set out in Article 2 (1) of Regulation 2021/1119 (Climate Law), and in view of the a Union-wide climate target for 2040 pursuant to Article 4 (3) – (5) of Regulation 2021/1119, the Commission shall make a legislative proposal, as appropriate, based on a detailed impact assessment, to amend this Regulation to distribute the Union’s 2040 climate target among Member States. This proposal shall be published no later than 3 / 4 / 6 months after the adoption of the Union’s new climate target for 2040.

In order to contribute to the achievement of the neutrality target set out in Article 2 (1) of Regulation 2021/1119 and view of the Union’s commitments under the Paris Agreement, Member States shall balance their greenhouse gas emissions regulated by this Regulation and removals at the latest by 2050, thus reducing emissions to net zero by that date. From 2051 onward, Member States shall aim to achieve net negative emissions ensuring that removals exceed the amount of emissions covered by this regulation.

Rationale:

- ▶ Climate protection does not end in 2030; it must take account of the entire century and beyond, as required by Article 2.1 of Regulation 2021/1119. Member States will continue to be the single most important player in EU climate policies and must remain accountable in a politically meaningful and transparent way.
- ▶ For these reasons, the CARE should include a clear and predicable process to set national reduction targets for the time 2031 to 2050 and the interim milestone of 2040. Having clarity about the continuation of Member States’ individual long-term climate targets now would strengthen national commitment to and capacity for more accurate climate policy backcasting.
- ▶ To contribute to the implementation of the obligations under Article 2.1 of the Regulation 2021/1119, the CARE should oblige Member States to balance the emissions regulated by this Regulation and removals by 2050, and to achieve net negative emissions thereafter.

Article 5

Flexibilities by means of borrowing, banking and transfer

1. In respect of the years 2021 to 2025, a Member State may borrow a quantity of up to 10 % from its annual emission allocation for the following year.

2. In respect of the years 2026 to 2029, a Member State may borrow a quantity of up to 5 % from its annual emission allocation for the following year.

3. A Member State whose greenhouse gas emissions for a given year are below its annual emission allocation for that year, taking into account the use of flexibilities pursuant to this Article and Article 6, may:

Amendment 10:

- (a) ~~in respect of the year 2021, bank that excess part of its annual emission allocation to subsequent years until 2030; and~~
- (b) ~~in respect of the years 2022 to 2029, bank the excess part of its annual emission allocation up to a level of 30 % of its annual emission allocations up to that year to subsequent years until 2030.~~

4. A Member State may transfer up to 5 % of its annual emission allocation for a given year to other Member States in respect of the years 2021 to 2025, and up to 10 % in respect of the years 2026 to 2030. The receiving Member State may use that quantity for compliance under Article 9 for the given year or for subsequent years until 2030.

5. A Member State whose reviewed greenhouse gas emissions for a given year are below its annual emission allocation for that year, taking into account the use of flexibilities pursuant to paragraphs 1 to 4 of this Article and Article 6, may transfer that excess part of its annual emission allocation to other Member States. The receiving Member State may use that quantity for compliance under Article 9 for that year or for subsequent years until 2030.

6. Member States may use revenues generated by transfers of annual emission allocations pursuant to paragraphs 4 and 5 to tackle climate change in the Union or in third countries. Member States shall inform the Commission of any actions taken pursuant to this paragraph.

7. Any transfer of annual emission allocations pursuant to paragraphs 4 and 5 may be the result of a greenhouse gas mitigation project or programme carried out in the selling Member State and remunerated by the receiving Member State, provided that double counting is avoided and traceability is ensured.

8. Member States may use credits from projects issued pursuant to Article 24a(1) of Directive 2003/87/EC for compliance under Article 9 of this Regulation without any quantitative limit, provided that double counting is avoided.

Rationale:

To ensure compliance with commitments under this Regulation and in light of low emissions levels in the year 2020 caused by the pandemic, borrowing should be limited throughout the commitment period.

Article 6

Amendment 11: Article 6 to be repealed –Flexibility for certain Member States following reduction of EU ETS allowances

1. The Member States listed in Annex II to this Regulation may have a limited cancellation of up to a maximum of 100 million EU ETS allowances collectively taken into account for their compliance under this Regulation. Such cancellation shall be made from the auctioning volumes of the Member State concerned pursuant to Article 10 of Directive 2003/87/EC.
2. The EU ETS allowances taken into account under paragraph 1 of this Article shall be considered as EU ETS allowances in circulation for the purposes of Article 1(4) of Decision (EU) 2015/1814.

In its first review pursuant to Article 3 of that Decision, the Commission shall consider whether to maintain the accounting set out in the first subparagraph of this paragraph.

3. The Member States listed in Annex II shall notify the Commission by 31 December 2019 of any intention to make use of the limited cancellation of EU ETS allowances referred to in paragraph 1 of this Article, up to the percentage listed in Annex II for each year of the period from 2021 to 2030 for each Member State concerned, for its compliance under Article 9.

The Member States listed in Annex II may decide to revise the notified percentage downwards once in 2024 and once in 2027. In such case, the Member State concerned shall notify the Commission thereof by 31 December 2024 or by 31 December 2027, respectively.

‘3a. Malta shall notify the Commission by 31 December 2023 if it intends to make use of the limited cancellation of EU ETS allowances referred to in paragraph 1, up to the percentage listed in Annex II for each of the years 2025 to 2030 for its compliance under Article 9’.

4. At a Member State’s request, the Central Administrator designated pursuant to Article 20(1) of Directive 2003/87/EC (‘the Central Administrator’) shall take into account an amount up to the total quantity determined pursuant to Article 4(4) of this Regulation for that Member States’ compliance under Article 9 of this Regulation. One-tenth of the total quantity of EU ETS allowances determined pursuant to Article 4(4) of this Regulation shall be cancelled pursuant to Article 12(4) of Directive 2003/87/EC for each year from 2021 to 2030 for that Member State.

5. Where a Member State, in accordance with paragraph 3 of this Article, has notified the Commission of its decision to revise the previously notified percentage downwards, a correspondingly lower quantity of EU ETS allowances shall be cancelled for that Member State in respect of each year from 2026 to 2030 or from 2028 to 2030, respectively.

Rationale – Delete Article 6:

- ▶ Article 6 allows the inflow of credits that were generated in the traded sectors into the non-traded sector. This makes a complex system even more complicated.
- ▶ Corresponding to the volume of eligible ETS allowances, this flexibility weakens incentives for emission reductions in the non-ETS sectors.

Article 7

Amendment 12: Article 7 to be repealed – Additional use of net removals from LULUCF

1. **To the extent that a Member State’s greenhouse gas emissions exceed its annual emission allocations for a given year, including any annual emission allocations banked pursuant to Article 5(3) of this Regulation, a quantity up to the sum of total net removals and total net emissions from the combined land accounting categories included in the scope of Regulation (EU) 2018/841, may be taken into account for its compliance under Article 9 of this Regulation for that year, provided that:**

‘(a) the cumulative quantity taken into account for that Member State for the years 2021 to 2025 does not exceed half of the maximum amount of total net removals set out in Annex III to this Regulation for that Member State;

‘(aa) the cumulative quantity taken into account for that Member State for the years 2026 to 2030 does not exceed half of the maximum amount of total net removals set out in Annex III to this Regulation for that Member State;’.

- 1 ~~such quantity is in excess of that Member State’s requirements under Article 4 of Regulation (EU) 2018/841;~~
- (a) the Member State has not acquired more net removals under Regulation (EU) 2018/841 from other Member States than it has transferred;
 - (b) the Member State has complied with Regulation (EU) 2018/841; and
 - (c) the Member State has submitted a description of the intended use of the flexibility available under this paragraph pursuant to the second subparagraph of Article 7(1) of Regulation (EU) No 525/2013.

Rationale – Delete Article 7:

- ▶ Net removals in the land use sector are not only hard to measure, they are also inherently unstable and reversible. Therefore they cannot be considered directly equivalent, tonne-for-tonne, to emission reductions in other sectors. The new EU Climate Law recognises this reality, by limiting the amount of net removals eligible for the achievement of the 2030 target to 225 Mt CO_{2eq} and by prioritising “swift and predictable emission reductions” (Article 2.1).

Article 8

Corrective action

1. If the Commission finds, in its annual assessment under Article 21 of Regulation (EU) No 525/2013 and taking into account the intended use of the flexibilities referred to in Articles 5, 6 and 7 of this Regulation, that a Member State is not making sufficient progress towards meeting its obligations under Article 4 of this Regulation, that Member State shall, within three months, submit to the Commission a corrective action plan that includes:
 - (a) additional actions that the Member State shall implement in order to meet its specific obligations under Article 4 of this Regulation, through domestic policies and measures and the implementation of Union action;
 - (b) a strict timetable for implementing such actions, which enables the assessment of annual progress in implementation.
2. In accordance with its annual work programme, the European Environment Agency shall assist the Commission in its work to assess any such corrective action plans.

Amendment 13: The Commission ***shall*** issue a ***public*** opinion regarding the robustness of the corrective action plans submitted in accordance with paragraph 1 and shall in that case do so within four months of receipt of those plans. The Member State concerned shall take utmost account of the Commission's opinion and may revise its corrective action plan accordingly. ***If the Member State concerned does not address a recommendation or a substantial part thereof, that Member State shall provide and make public its reasons.***

Rationale:

These amendments enhance transparency and accountability. Article 9.3 of the Governance Regulation contains an identical provision.

Article 9

Compliance check

1. In 2027 and 2032, if the reviewed greenhouse gas emissions of a Member State exceed its annual emission allocation for any specific year of the period, taking into account paragraph 2 of this Article and the flexibilities used pursuant to Articles 5, ~~6 and 7~~, the following measures shall apply:

- a) an addition to the Member State's greenhouse gas emission figure of the following year equal to the amount in tonnes of CO₂ equivalent of the excess greenhouse gas emissions, multiplied by a factor of 1,08, in accordance with the measures adopted pursuant to Article 12; and
- b) the Member State shall be temporarily prohibited from **Amendment 14: using the flexibilities referred to in Article 5 of this Regulation** transferring any part of its annual emission allocation to another Member State until it is in compliance with Article 4.

The Central Administrator shall implement the prohibition referred to in point (b) of the first subparagraph in the Union Registry.

~~2 If the greenhouse gas emissions of a Member State in the period from 2021 to 2025 referred to in Article 4 of Regulation (EU) 2018/841 exceeded its removals, as determined in accordance with Article 12 of that Regulation, the Central Administrator shall deduct from that Member State's annual emission allocations an amount equal to those excess greenhouse gas emissions in tonnes of CO₂ equivalent for the relevant years.~~

Amendment 15:

If a Member State exceeds its annual emissions allowance in two or more consecutive years it shall undertake a review of its National Energy and Climate Plan and national Long-Term Strategy. This review shall be completed within 6 months /1 year. The Commission may issue Recommendations identifying how the NECP and/or LTS should be revised. Member States shall notify the revised plans to the Commission together with a statement setting out how the proposed revisions will remedy non-compliance with the national AEAs and how they have responded to the Commission's recommendations where relevant. If the NECP or LTS remains substantially unaltered, the Member State shall publish an explanation setting out its reasoning.

Rationale:

To strengthen compliance in light of more stringent reduction requirements, the CARE's compliance mechanisms should be strengthened through:

- ▶ temporarily prohibiting the use of all flexibilities,
- ▶ requiring Member States to adjust their NECPs and LTSs.

Article 9a

Access to justice

Amendment 16: building on Article 25 of the Industrial Emissions Directive (IED)

1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge a violation of the obligations pursuant Article 4 of this Regulation when one of the following conditions is met:

- (a) they have a sufficient interest;**
- (b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.**

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by Member States, consistently with the objective of giving the public concerned wide access to justice and in conformity with the Aarhus Convention.

To this end, the interest of any non-governmental organisation promoting environmental protection shall be deemed sufficient for the purpose of paragraph 1(a).

Such organisations shall also be deemed to have rights capable of being impaired for the purpose of paragraph 1(b).

4. Paragraphs 1, 2 and 3 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. Member States shall ensure that practical information is made easily available to the public on access to administrative and judicial review procedures.

Rationale:

- ▶ In 2019, the Environmental Implementation Review identified systemic shortcomings concerning access to justice in environmental matters in national legal systems.² The review highlighted problems faced by NGOs in obtaining legal standing to bring legal challenges on EU-related environmental issues and procedural hurdles.
- ▶ In its Communication on improving access to justice in environmental matters at EU and national levels³, the Commission recognised that compliance with the Aarhus Convention standards was inconsistent across the EU and called on co-legislators

² Environmental Implementation Review 2019: A Europe that protects its citizens and enhances their quality of life – COM(2019) 149.

³ Communication on Improving access to justice in environmental matters in the EU and its Member States, 14.10.2020, COM(2020) 643 final

to include proposals for rights of access to national courts when developing or revising EU legislation.

- ▶ Courts play a central and growing role in ensuring national compliance with reduction commitments.
- ▶ For these reasons, the revised CARE should help grant access to national courts so that the interested public can seek judicial review of national compliance.
- ▶ In line with the CJEU case law⁴, proposed amendments recognise that judicial and administrative procedures concerning access to justice in environmental law fall ‘primarily’ within the scope of Member State law.

Article 10

Adjustments

1. The Commission shall adjust the annual emission allocations for each Member State under Article 4 of this Regulation in order to reflect:
 - (a) adjustments to the number of EU ETS allowances issued pursuant to Article 11 of Directive 2003/87/EC that resulted from a change in the coverage of sources under that Directive, in accordance with the Commission Decisions adopted pursuant to that Directive on the final approval of the national allocation plans for the period from 2008 to 2012;
 - (b) adjustments to the number of EU ETS allowances or credits, respectively, issued pursuant to Articles 24 and 24a of Directive 2003/87/EC in respect of greenhouse gas emission reductions in a Member State; and
 - (c) adjustments to the number of EU ETS allowances pertaining to greenhouse gas emissions from installations excluded from the EU ETS in accordance with Article 27 of Directive 2003/87/EC, for the time that they are excluded.
2. The amount contained in Annex IV shall be added to the annual emission allocation for the year 2021 for each Member State referred to in that Annex.
3. The Commission shall publish the figures resulting from such adjustments.

Amendment 17: Article 11 to be repealed

Article 11

Safety reserve

1. A safety reserve corresponding to a quantity of up to 105 million tonnes of CO₂ equivalent shall be established in the Union Registry, subject to the fulfilment of the Union

⁴ Joined Cases C-401/12 P to C-403/12 P, Council and Commission v Vereniging Milieudefensie a.o.s, EU:C:2015:4, paragraph 60; Joined Cases C-404/12 P and C-405/12 P, Council and Commission v Stichting Natuur en Milieu a.o.s, EU:C:2015:5, paragraph 52.

target referred to in Article 1. The safety reserve shall be available in addition to the flexibilities provided for in Articles 5, 6 and 7.

2. A Member State may benefit from the safety reserve provided that all of the following conditions are fulfilled:
 - (a) its GDP per capita at market prices in 2013, as published by Eurostat in April 2016, was below the Union average;
 - (b) its cumulative greenhouse gas emissions for the years from 2013 to 2020 in the sectors covered by this Regulation are below its cumulative annual emission allocations for the years from 2013 to 2020; and
 - (c) its greenhouse gas emissions exceed its annual emission allocations in the period from 2026 to 2030, although it has:
 - (i) exhausted the flexibilities pursuant to Article 5(2) and (3);
 - (ii) made the maximum possible use of net removals according to Article 7, even if that quantity does not reach the level set in Annex III; and
 - (iii) made no net transfers to other Member States under Article 5.
3. A Member State, which meets the conditions set out in paragraph 2 of this Article, shall receive an additional quantity from the safety reserve up to its shortfall to be used for compliance under Article 9. That quantity shall not exceed 20 % of its overall overachievement in the period from 2013 to 2020.

If the resulting collective quantity to be received by all of the Member States which fulfil the conditions set out in paragraph 2 of this Article exceeds the limit referred to in paragraph 1 of this Article, the quantity to be received by each of those Member States shall be reduced on a pro rata basis.
4. Any amount remaining in the safety reserve after the distribution in accordance with the first subparagraph of paragraph 3 shall be distributed among the Member States referred to in that subparagraph proportionally to their remaining shortfall, but not exceeding it. For each of those Member States, that quantity may be additional to the percentage referred to in that subparagraph.
5. After the completion of the review referred to in Article 19 of Regulation (EU) No 525/2013 for the year 2020, the Commission shall, for each Member State that fulfils the conditions in points (a) and (b) of paragraph 2 of this Article, publish the amounts corresponding to 20 % of the overall overachievement in the period from 2013 to 2020 as referred to in the first subparagraph of paragraph 3 of this Article.

Rationale:

Delete the so-called safety reserve. To achieve required emission reductions and to stay within rapidly shrinking emission budgets, the EU cannot afford loopholes like the so-called safety reserve enshrined in Article 11 of the CARE. The formula for distributing national targets already takes account of different circumstances in Member States, making such loopholes obsolete.

Amendment 18: Article 11a to be repealed

‘Article 11a

Additional reserve

1. If, by 2030, the Union has reduced net greenhouse gas emissions by at least 55% compared to 1990 levels in compliance with Article 3 of Regulation (EU) 2021/1119 of the European Parliament and of the Council**, and taking into account the maximum limit of the contribution of net removals, an additional reserve shall be established in the Union Registry.
2. Member States which decide to neither contribute nor benefit from the additional reserve shall notify their decision to the Commission no later than six months after the entry into force of this Regulation.
3. The additional reserve shall consist of the net removals that participating Member States have generated in the period 2026 to 2030 in excess of their respective targets pursuant to Regulation (EU) 2018/841, after deduction of both of the following:
 - (a) any flexibilities used under Articles 11 to 13b of Regulation (EU) 2018/841;
 - (b) the quantities taken into account for compliance pursuant to Article 7 of this Regulation.
4. If an additional reserve is set up pursuant to paragraph 1, a participating Member State may benefit from it if the following conditions are fulfilled:
 - (a) the greenhouse gas emissions of the Member State exceed its annual emission allocations in the period from 2026 to 2030;
 - (b) the Member State has exhausted the flexibilities pursuant to Article 5(2) and (3);
 - (c) the Member State has made the maximum use possible of net removals in accordance with Article 7, even if that quantity does not reach the level set in Annex III; and
 - (d) the Member State has made no net transfers to other Member States under Article 5.
5. If a Member States fulfils the conditions set out in paragraph 4, it shall receive an additional quantity from the additional reserve up to its shortfall to be used for compliance under Article 9.

If the resulting collective quantity to be received by all of the Member States which fulfil the conditions set out in paragraph 4 of this Article exceeds the quantity allocated to the additional reserve under paragraph 3 of this Article, the quantity to be received by each of those Member States shall be reduced on a pro rata basis.’

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

Delete for the reasons why Article 7 should be deleted.

Article 12

Registry

1. The Commission shall adopt delegated acts in accordance with Article 13 to supplement this Regulation in order to ensure the accurate accounting under this Regulation through the Union Registry in respect of:
 - (a) annual emission allocations;
 - (b) flexibilities exercised under Articles 5, ~~6 and 7~~;
 - (c) compliance checks under Article 9;
 - (d) adjustments under Article 10; and
 - (e) the safety reserve under Article 11.
2. The Central Administrator shall conduct an automated check on each transaction in the Union Registry that results from this Regulation and shall, where necessary, block transactions to ensure that there are no irregularities.
3. The information referred to in points (a) to (e) of paragraph 1 and in paragraph 2 shall be accessible to the public.

Article 13

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 7(2) and 12(1) shall be conferred on the Commission for a period of five years from 9 July 2018. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of powers referred to in Articles 7(2) and 12(1) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or

at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Articles 7(2) and 12(1) shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 14

Committee procedure

1. The Commission shall be assisted by the Climate Change Committee established by Regulation (EU) No 525/2013. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 15

Review

1. This Regulation shall be kept under review taking into account, inter alia, evolving national circumstances, the manner in which all sectors of the economy contribute to the reduction of greenhouse gas emissions, international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement **and the Union's climate objectives pursuant Articles 2 (1) and 4 (3) of Regulation 2021/1119 (Amendment 19)**.
2. The Commission shall submit a report to the European Parliament and to the Council, within six months of each global stocktake agreed under Article 14 of the Paris Agreement, on the operation of this Regulation, including the balance between supply and

demand for annual emission allocations, as well as on the contribution of this Regulation to the Union's overall 2030 greenhouse gas emission reduction target, **the Union's climate objectives pursuant Articles 2 (1) and 4 (3) of Regulation 2021/1119 (Amendment 20)** and its contribution to the goals of the Paris Agreement, in particular with regard to the need for additional Union policies and measures in view of the necessary greenhouse gas emission reductions by the Union and its Member States, including a post-2030 framework, and may make proposals if appropriate.

Those reports shall take into account the strategies prepared pursuant to Article 4 of Regulation (EU) No 525/2013 with a view to contributing to the formulation of a long-term Union strategy.

Rationale:

The review of the CARE should also assess progress towards the EU's long-term targets under the ECL, which are legally binding and more concrete than the commitments under the Paris Agreement.

Article 16

Amendments to Regulation (EU) No 525/2013

Regulation (EU) No 525/2013 is amended as follows:

- (1) in Article 7, paragraph 1 is amended as follows:
 - (a) the following point is inserted:

‘(aa) as of 2023, their anthropogenic emissions of greenhouse gases referred to in Article 2 of Regulation (EU) 2018/842 of the European Parliament and of the Council (*) for the year X-2, in accordance with UNFCCC reporting requirements;

(*) 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 (OJ L 156, 19.6.2018, p. 26).’;

- (b) the second subparagraph is replaced by the following:

‘In their reports, Member States shall annually inform the Commission of any intention to use the flexibilities set out in Article 5(4) and (5) and Article 7 of Regulation (EU) 2018/842, as well as of the use of revenues in accordance with Article 5(6) of that Regulation. Within three months of receiving such information from Member States, the Commission shall make the information available to the committee referred to in Article 26 of this Regulation.’;

(2) in point (c) of Article 13(1), the following point is added:

‘(ix) as of 2023, information on national policies and measures implemented towards meeting their obligations under Regulation (EU) 2018/842 and information on planned additional national policies and measures envisaged with a view to limiting greenhouse gas emissions beyond their commitments under that Regulation;’;

(3) in Article 14(1), the following point is added:

‘(f) as of 2023, total greenhouse gas projections and separate estimates for the projected greenhouse gas emissions for the emission sources covered by Regulation (EU) 2018/842 and by Directive 2003/87/EC.’;

(4) in Article 21(1), the following point is added:

‘(c) obligations under Article 4 of Regulation (EU) 2018/842. The evaluation shall take into account progress in Union policies and measures and information from Member States. Every two years, the evaluation shall also include the projected progress of the Union towards implementing its Nationally Determined Contribution to the Paris Agreement containing the Union’s commitment to economy-wide greenhouse gas emission reductions and the projected progress of Member States towards fulfilling their obligations under that Regulation.’.

Amendment 21:

Article 17

Guidelines for the creation of National climate advisory bodies

To assist Member States in taking up the invitation extended under Article 2b(4) of Regulation 2021/1119, the Commission shall publish EU Guidelines setting out best practice in the design and mandating of national climate advisory bodies.

Article 18

Entry into force

This Regulation shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at ...

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