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Subject:	Preparation for the Council meeting (Environment) on 13 October 2017 Proposal for a Regulation of the European Parliament and of the Council on binding annual greenhouse gas emissions reductions by Member States from 2021 to 2030 for a resilient Energy Union and to meet commitments under the Paris Agreement and amending Regulation No 525/2013 of the European Parliament and of the Council on a mechanism for monitoring and reporting - General Approach

I. INTRODUCTION

1. At its meeting on 23-24 October 2014, the European Council agreed on the 2030 climate and energy policy framework for the European Union and endorsed a binding EU target of an at least 40% domestic reduction in greenhouse gas emissions by 2030 compared to 1990¹. This target also represents the Intended Nationally Determined Contribution (INDC) of the EU and its Member States, which was submitted to the UNFCCC on 6 March 2015.

¹ Doc. EUCO 169/14

2. On 20 July 2016, the Commission adopted two legislative proposals on the contribution of the non-ETS sectors towards the overall effort: on binding annual greenhouse gas emissions reductions by Member States from 2021 to 2030 ("Effort Sharing Regulation")² and on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework ("LULUCF Regulation")³.
3. The proposal for an Effort Sharing Regulation (ESR) sets the national reduction targets based on relative GDP per capita, with the targets for Member States with a GDP per capita above the EU average adjusted to reflect cost-effectiveness within that group. The proposal maintains existing flexibilities (banking and borrowing, transfers between Member States), and proposes two new flexibilities: a limited use of net removals from certain LULUCF accounting categories towards the targets in the effort-sharing sectors; and the possibility for certain Member States to use a limited number of ETS allowances (in total 100 million) to offset emissions in the effort sharing sectors.
4. On 14 June 2017, the European Parliament voted 48 amendments to the Commission proposal.
5. The Economic and Social Committee and the Committee of the Regions delivered their opinions on 14 December 2016 and 22-23 March 2017, respectively.
6. At Council (Environment) level, the proposal was last discussed on 19 June 2017, together with the proposal on the LULUCF Regulation, on the basis of a progress report⁴.

² Doc. 11483/16 + ADD 1 + ADD 2 + ADD 3.

³ Doc. 11494/16 + ADD 1 + ADD 2 + ADD 3.

⁴ Doc. 9861/17

7. The proposal has been discussed at a number of meetings of the Environment Working Party, most recently on 11 July 2017 on the basis of a Presidency compromise text ⁵. Based on that discussion and a number of informal contacts, the Presidency suggests a small number of additional compromise proposals, which are set out in the new compromise text contained in the Annex to this note. The changes compared to the previous text are marked as **bold and underlined**. Deletions are indicated by [...]. Previous changes to the initial Commission proposal are marked as underlined.

II. STATE OF PLAY

The national greenhouse gas emissions reduction targets for 2030, which are expressed as percentages in Annex I of the Commission proposal, have not generally been called into question during the discussions within the Council. Instead, in order to ensure the overall balance of the proposal, discussions focused from the start on its other key elements: the starting point for the linear reduction trajectory (Article 4), the LULUCF flexibility (Article 7 and Annex III), the one-off flexibility (Article 6 and Annex II), and the adjustment to the allocation for certain Member States (Article 10(2) and Annex IV). Several alternatives to the Commission's approach on those issues have been suggested but none of them gained significant support so far.

To break the deadlock, the Maltese Presidency introduced a new element into the discussions in the form of an additional safety reserve (new Article 10a), which aimed to address the concerns of a number of Member States without changing the existing central elements of the Commission proposal. At the meeting of the Council in June 2017, delegations welcomed the Presidency's efforts and many of them recognised the proposed approach as a way forward.

During the Estonian Presidency, work has therefore focused on clarifying the provisions on the functioning of the safety reserve, including its size and conditions for access. The proposed safety reserve will be available in 2032 to less wealthy Member States which overachieve their 2013-2020 targets and have problems in achieving their 2030 emission target even after the use of other flexibilities. The safety reserve is based on the principle that it must not undermine the achievement of the greenhouse gas emission reduction target of the Union of 30% for the year 2030 in the sectors covered by this Regulation.

⁵ Doc. 10969/17.

The Presidency believes that the safety reserve, as currently proposed, addresses the concerns of a certain number of Member States in a fair and balanced manner without undermining the environmental integrity of the Commission proposal.

Most delegations are in principle positive towards the safety reserve. Several of them have indicated, however, that their support is conditional on the other central elements of the Commission proposal remaining unchanged. The maximum size of the reserve remains the main open issue; this is why the figure suggested by the Presidency remains in square brackets. Some delegations suggest that the figure should be higher while others are opposed to any increase or support a lower figure. A few of the delegations which do not agree with the starting point for the trajectory proposed by the Commission remain of the view that the safety reserve does not solve their difficulties.

As mentioned above, the current Presidency text does not change the basic architecture and approach of the Commission proposal when it comes to its main elements. Concerning the LULUCF flexibility, the latest Presidency text strengthens, however, the wording in paragraph 2 of the Article regarding the contribution from the category managed forest land, as proposed during the Working Party discussions. On the one-off ETS flexibility, the Presidency compromise text maintains the earlier changes made to the Commission proposal, which provide more flexibility for the eligible Member States by allowing them to revise downwards their initial decision from 2019 on their intended use of the flexibility, on two occasions later in the period.

At the last Working Party meeting, one delegation presented a new proposal to enable a redistribution of the LULUCF flexibility to some Member States if less than the total amount of 280 million net removals is used for compliance under the ESR over the period 2021-2030. Several delegations indicated openness to discuss the proposal further.

Another delegation has recently proposed to introduce an additional adjustment to the one provided under Article 10(2) for Member States with a GDP per capita below the Union average in 2013.

III. OTHER ISSUES

The current Presidency text maintains the earlier changes made to the Commission proposal concerning the existing flexibilities available to Member States to achieve their annual limits, i.e. banking, borrowing and transfers of annual emission allocations (Article 5). Thus, the limit for borrowing is raised from 5% to 10% during the first 5-year allocation period, and the text includes a new reference to the possibility of project-based transfers between Member States.

Following the latest Working Party discussion, the Presidency has clarified the reference to the Paris Agreement in Article 15(4), and included in recital 20 a request to the Commission to assess the outcome of the 2018 Facilitative Dialogue in the context of regular reporting on the Union's progress towards international commitments, as required under the Monitoring Mechanism Regulation.

IV. CONCLUSION

The Permanent Representatives Committee is invited to:

- examine the compromise text in the Annex and resolve any outstanding issues including in particular the size of the safety reserve; and
- forward it to the Council (Environment) for discussion at its meeting on 13 October 2017, with a view to reaching a general approach.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030
for a resilient Energy Union and to meet commitments under the Paris Agreement and
amending Regulation (EU) No 525/2013 [...]**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission⁶,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁷,

Having regard to the opinion of the Committee of the Regions⁸,

Acting in accordance with the ordinary legislative procedure,

- (1) A binding target of at least a 40% domestic reduction in economy-wide greenhouse gas emissions by 2030 compared to 1990 was endorsed in the [...] European Council conclusions of 23-24 October 2014 on the 2030 climate and energy policy framework and this was reconfirmed in its conclusions of 17-18 March 2016. [...]

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ C , , p. .

- (2) The European Council conclusions of 23-24 October 2014 stated that the target should be delivered collectively by the Union in the most cost-effective manner possible, with the reductions in the Union emissions trading system ("EU ETS") laid down in Directive 2003/87/EC of the European Parliament and of the Council ⁹ and non-ETS sectors amounting to 43% and 30% by 2030 compared to 2005 respectively [...]. All sectors of the economy should contribute to achieving these emission reductions, and all Member States should participate in this effort, balancing considerations of fairness and solidarity. The methodology to set the national reduction targets for the non-ETS sectors, with all the elements applied in Decision No 406/2009/EC of the European Parliament and of the Council ¹⁰, should be continued until 2030 with efforts distributed on the basis of relative Gross Domestic Product (GDP) per capita. National targets within the group of Member States with a GDP per capita above the Union average should be relatively adjusted to reflect cost-effectiveness in a fair and balanced manner. Achieving these greenhouse gas emission reductions should boost efficiency and innovation in the European economy and in particular should promote improvements, notably in buildings, agriculture, waste management and transport, in so far as they fall under the scope of this Regulation.
- (3) This Regulation also implements contributions of the Union under the Paris Agreement ¹¹ adopted under the United Nations Framework Convention on Climate Change ("UNFCCC") which was ratified on behalf of the Union on 5 October 2016 in accordance with Council Decision (EU) 2016/1841 ¹². The [...] commitment of the Union to economy-wide emission reductions is contained in the intended nationally determined contribution [...] submitted in view of the Paris Agreement by the Union and its Member States to the Secretariat of the UNFCCC on 6 March 2015. The Paris Agreement entered into force on 4 November 2016 and replaces the approach taken under the 1997 Kyoto Protocol which will not be continued beyond 2020.

⁹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275 25.10.2003, p. 32).

¹⁰ Decision 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 (OJ L 140, 5.6.2009, p. 136).

¹¹ OJ L 282, 19.10.2016, p. 4.

¹² Council Decision (EU) 2016/1841 of 5 October 2016 on the conclusion, on behalf of the European Union, of the Paris Agreement adopted under the United Nations Framework Convention on Climate Change (OJ L 282, 19.10.2016, p. 1).

- (4) [integrated into recital 3]
- (5) The transition to clean energy requires changes in investment behaviour and incentives across the entire policy spectrum. It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens. Achieving this requires continuation of ambitious climate action with this Regulation and progress on the other aspects of Energy Union as set out in the Communication from the Commission entitled "A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy"¹³.
- (6) This Regulation should cover emissions from the Intergovernmental Panel on Climate Change (IPCC) categories energy, industrial processes and product use, agriculture and waste as determined pursuant to Regulation (EU) No 525/2013 of the European Parliament and of the Council¹⁴ excluding emissions from the activities listed in Annex I to Directive 2003/87/EC. Without prejudice to Articles 7 and 9(2) of this Regulation, activities covered by Regulation (EU) .../... of the European Parliament and of the Council [LULUCF]^{15*} should not be covered by this Regulation.

¹³ 6594/15 - COM(2015)80 Final

¹⁴ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

¹⁵ Regulation .../... of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework and amending Regulation (EU) No 525/2013 (OJ ...).

* See doc. 11494/2016 [LULUCF].

- (7) Data currently reported in the national greenhouse gas inventories and the national and Union registries are not sufficient to determine, at Member State level, the CO₂ civil aviation emissions at national level that are not covered by Directive 2003/87/EC. In adopting reporting obligations, the Union should not impose upon Member States and small and medium-sized enterprises (SMEs) burdens that are disproportionate to the objectives pursued. CO₂ emissions from flights not covered by Directive 2003/87/EC represent only a very minor part of the total greenhouse gas emissions, and establishing a reporting system for these emissions would be unduly burdensome in the light of existing requirements for the wider sector pursuant to Directive 2003/87/EC. Therefore, CO₂ emissions from IPCC source category ‘1.A.3.A civil aviation’ should be treated as being equal to zero for the purposes of this Regulation.
- (8) The reduction of the greenhouse gas emissions of each Member State for 2030 should be determined in relation to the level of its 2005 reviewed greenhouse gas emissions covered by this Regulation, excluding verified emissions from installations that operated in 2005 and which were only included in the EU ETS after 2005. Annual emissions allocations for 2021 to 2030 should be determined on the basis of data submitted by the Member States and reviewed by the Commission.
- (9) The approach of annually binding national limits taken in Decision No 406/2009/EC [...] should be continued from 2021 to 2030, with the start of the trajectory calculation in 2020 on the average of the greenhouse gas emissions during 2016 to 2018 and the end of the trajectory being the 2030 limit for each Member State. An adjustment to the allocation in 2021 is provided for Member States with both a positive limit under Decision 406/2009/EC and increasing annual emission allocations between 2017 and 2020 determined pursuant to Commission Decision 2013/162/EU¹⁶ and Commission Implementing Decision 2013/634/EU¹⁷, to reflect the capacity for increased emissions in those years. [...].

¹⁶ Commission Decision 2013/162/EU of 26 March 2013 on determining Member States’ annual emission allocations for the period from 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council (OJ L 90, 28.3.2013, p. 106).

¹⁷ Commission Implementing Decision 2013/634/EU of 31 October 2013 on the adjustments to Member States’ annual emission allocations for the period from 2013 to 2020 pursuant to Decision No 406/2009/EC of the European Parliament and of the Council (OJ L 292, 1.11.2013, p. 19).

- (10) A new one-off flexibility is created in order to facilitate the achievement of targets for Member States with national reduction targets significantly above both the Union average and their cost effective reduction potential as well as for Member States that did not allocate any allowances for free to industrial installations in 2013 [...].
- (10a) A starting point based on average 2016 to 2018 greenhouse gas emissions does not sufficiently recognise previous efforts made since 2013 of those Member States which had a GDP per capita below the Union average in 2013. It is therefore appropriate to establish a limited special purpose safety reserve corresponding to up to [100] million tonnes CO₂ equivalent, while maintaining the environmental integrity of this Regulation as well as incentives for Member States' actions beyond the minimum contributions under this Regulation [...]. The reserve should benefit Member States whose GDP per capita were below Union average in 2013 and whose emissions remain below their annual emission allocations from 2013 to 2020 and which have problems to achieve their 2030 emission target despite using other flexibilities provided for in this Regulation. [...] A reserve of this size would cover a significant part of the projected collective deficit of eligible Member States in the period 2021 to 2030, without additional policies, while maintaining incentives for additional action. The reserve should be available to those Member States in 2032 [...], provided that its use does not undermine the achievement of the greenhouse gas emission reduction target of the Union of 30% for the year 2030 in the sectors covered by this Regulation.
- (11) A range of Union measures enhance Member States' ability to meet their climate commitments and are crucial to achieving necessary emission reductions in the sectors covered by this Regulation. These include legislation on fluorinated greenhouse gases, CO₂-reductions from road vehicles, energy performance of building, renewables, energy efficiency and the Circular Economy, as well as Union funding instruments for climate-related investments.

(12) Regulation [LULUCF] lays down accounting rules on greenhouse gas emissions and removals relating to land use, land-use change and forestry (LULUCF). While the environmental outcome under this Regulation in terms of the levels of greenhouse gas emission reductions that are made is affected by taking into account a quantity up to the sum of total net removals and total net emissions from deforested land, afforested land, managed cropland and managed grassland as defined in Regulation [LULUCF], flexibility for a maximum quantity of 280 million tonnes of CO₂ equivalent of these removals divided among Member States according to the figures in Annex III should be included as an additional possibility for Member States to meet their commitments when needed. The total amount and the division among Member States acknowledge the lower mitigation potential of agriculture and land use sector and an appropriate contribution of the sector to GHG mitigation and sequestration. Where the implementing acts to update the forest reference levels based on the national forestry accounting plans pursuant to Article 8(6) of Regulation [LULUCF] are adopted, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission [...] to reflect a contribution of the accounting category managed forest land in the flexibility provided by this Regulation. Before adopting such a delegated act, the Commission should evaluate the robustness of accounting for managed forest land based on available data, and in particular the consistency of projected and actual harvesting rates. In addition, the possibility to voluntarily delete annual emission allocations should be allowed under [...] Regulation [LULUCF] in order to allow for such amounts to be taken into account when assessing Member States' compliance with requirements under that Regulation [...].

- (13) In order to ensure efficient, transparent and cost-effective reporting and verification of greenhouse gas emissions and of other information necessary to assess progress with Member State's annual emissions allocations, the requirements for annual reporting and evaluation under this Regulation should be integrated with the relevant Articles under Regulation (EU) No 525/2013. That Regulation should also ensure that the progress of Member States in reducing emissions continues to be evaluated annually, taking into account progress in Union policies and measures and information from Member States. Every two years, the evaluation should include the projected progress of the Union towards meeting its reduction targets and of Member States towards fulfilling their obligations. However, the application of deductions should only be considered at five-year intervals, so that the potential contribution from deforested land, afforested land, managed cropland and managed grassland taking place pursuant to Regulation [LULUCF] can be considered. This is without prejudice to the duty of the Commission to ensure compliance with the obligations of Member States resulting from this Regulation or to the power of the Commission to initiate infringement proceedings for this purpose.
- (13a) Regulation (EU) No 525/2013 should be amended accordingly.
- (14) In its conclusions of 23-24 October 2014, the European Council stated that the availability and use of existing flexibility instruments within the non-ETS sectors should be significantly enhanced in order to ensure cost-effectiveness of the collective Union effort and convergence of emissions per capita by 2030. As a means to enhance the overall cost-effectiveness of total reductions, Member States should be able to transfer part of their annual emission allocation to other Member States. The transparency of such transfers should be ensured and carried out in a manner that is mutually convenient, including by means of auctioning, the use of market intermediaries acting on an agency basis, or by way of bilateral arrangements. Any such transfer may be the result of a greenhouse gas mitigation project or programme carried out in the selling Member State and financed by the receiving Member State.

- (15) The European Environment Agency aims to support sustainable development and to help achieve significant and measurable improvement in the environment by providing timely, targeted, relevant and reliable information to policy-makers, public institutions and the public. The European Environment Agency should assist the Commission, as appropriate in accordance with its annual work programme.
- (16) In order to provide for the appropriate accounting of transactions under this Regulation, including the use of flexibilities and the application of compliance checks, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of ensuring the accurate accounting under this Regulation through the Union Registry. The necessary provisions should be contained in a single instrument combining the accounting provisions pursuant to Directive 2003/87/EC, Regulation (EU) No 525/2013, Regulation [LULUCF] and this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (17) In order to ensure uniform conditions for the implementation of Article 4 according to which annual emission limits for Member States will be established, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹⁸.
- (18) This Regulation is without prejudice to more stringent national objectives.

¹⁸ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (19) Any adjustments in the coverage as set out in Articles 11, 24, 24a and 27 of Directive 2003/87/EC [...] should be matched by a corresponding adjustment in the maximum quantity of greenhouse gas emissions covered by this Regulation. Consequently, where Member States include additional emissions into their commitments under this Regulation from installations that were previously covered by Directive 2003/87/EC, those Member States should implement additional policies and measures in the sectors covered by this Regulation in order to reduce those emissions.
- (20) This Regulation should be reviewed as of 2024 and every 5 years thereafter in order to assess its overall functioning. The review should take into account, inter alia, evolving national circumstances and be informed by the results of the 2018 Facilitative Dialogue and the Global Stocktake under the Paris Agreement. **In addition, as part of its regular reporting under Regulation (EU) No 525/2013, the Commission should also assess the outcome of the 2018 Facilitative Dialogue.**
- (21) Since the objectives of this Regulation, in particular to lay down obligations on the Member States with respect to their minimum contributions to the Union's greenhouse gas emission reduction target for the period from 2021 to 2030, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation lays down obligations on the 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 30% below 2005 levels in 2030 in the sectors covered by Article 2, as well as rules on determining annual emission allocations and for the evaluation of Member States' progress towards meeting their minimum contributions.

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) No 525/2013, excluding emissions from the activities listed in Annex I to Directive 2003/87/EC.
2. Without prejudice to Articles 7 and 9(2) of this Regulation, this Regulation does not apply to greenhouse gas emissions and removals covered by Regulation [LULUCF].
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:

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

Article 4

Annual emission limits 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 to this Regulation in relation to its emissions in 2005 determined pursuant to paragraph 3.
2. Subject to the flexibilities provided for in Articles 5, 6 and 7 of this Regulation, to the adjustment pursuant to Article 10(2) of this Regulation 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 in each year between 2021 and 2029 do not exceed the limit defined by a linear trajectory, starting in 2020 on the average of its greenhouse gas emissions during 2016, 2017 and 2018 determined pursuant to paragraph 3 of this Article and ending in 2030 on the limit set for that Member State in Annex I to this Regulation.
3. The Commission shall adopt [...] implementing acts setting out the annual emission allocations for the years from 2021 to 2030 in terms of tonnes of CO₂ equivalent as specified in paragraphs 1 and 2. For the purposes of those implementing acts, the Commission shall carry out a comprehensive review of the most recent national inventory data for the years 2005 and 2016 to 2018 submitted by Member States pursuant to Article 7 of Regulation (EU) No 525/2013. Those acts shall also indicate the value for the 2005 emissions of each Member State as used to determine the annual emissions allocations specified in paragraphs 1 and 2 of this Article.

4. Those implementing acts shall also specify, based on the percentages notified by Member States under Article 6(2), 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 13.

Article 5

Flexibility instruments to achieve annual emission limits

- 1.¹⁹ 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 bank that excess part of its annual emission allocation 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. The receiving Member State may use this quantity for compliance under Article 9 for the given year or for subsequent years until 2030.

¹⁹ Previously paragraph 2. The text of the previous paragraph 1 is deleted (redundant).

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. A receiving Member State may use this quantity for compliance under Article 9 for that year or for subsequent years until 2030.
- 5a. Member States may use revenues generated by transfers of 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.
- 5b. Any transfer pursuant to paragraphs 4 and 5 of this Article 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, while avoiding double counting and ensuring traceability.
6. 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 and while avoiding double-counting.

Article 6

Flexibility for certain Member States following reduction of EU ETS allowances

1. The Member States listed in Annex II 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. That cancellation shall be made from the auctioning volumes of the Member State concerned pursuant to Article 10 of Directive 2003/87/EC.

2. 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. Member States listed in Annex II may decide to revise the previously notified percentage downwards twice during the period, i.e. in 2024 and 2027. In such case, they shall notify the Commission of that decision by 31 December 2024 and, if necessary, by 31 December 2027.
3. At a Member State's request, the Central Administrator designated under Article 20 of Directive 2003/87/EC ([...] "the Central Administrator") shall take into account an amount up to the total quantity referred to in Article 4(4) of this Regulation for that Member States' compliance under Article 9 of this Regulation. One-tenth of the 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.
4. Where a Member State, in accordance with paragraph 2 of this Article, has notified the Commission of its decision to revise the previously notified percentage, a correspondingly lower quantity of allowances shall be cancelled for that Member State in respect of each of the years 2026 to 2030 and 2028 to 2030, respectively.

Article 7

Additional use of up to 280 million net removals from deforested land, afforested land, managed cropland and managed grassland

1. To the extent that a Member State's emissions exceed its annual emission allocations for a given year, a quantity up to the sum of total net removals and total net emissions from the combined accounting categories of deforested land, afforested land, managed cropland and managed grassland referred to in Article 2 of Regulation [LULUCF] 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 all years of the period from 2021 to 2030 does not exceed the maximum amount set in Annex III for that Member State;

- (b) such quantity is in excess of that Member State's requirements under Article 4 of Regulation [LULUCF];
- (c) the Member State has not acquired more net removals under Regulation [LULUCF] from other Member States than it has transferred; and
- (d) the Member State has complied with the requirements of Regulation [LULUCF].

2. The Commission **shall** adopt delegated acts in accordance with Article 12 of this Regulation to amend paragraph 1 of this Article in order to reflect **the** contribution of the accounting category managed forest land, where the implementing acts to update the forest reference levels based on the national forestry accounting plans pursuant to Article 8 (6) of Regulation [LULUCF] are adopted [...].

Article 8

Corrective action

1. If the Commission finds, after an assessment under Article 21 of Regulation (EU) No 525/2013 and taking into account the intended use of flexibilities referred to in Articles 5 to 7 of this Regulation that a Member State is not making sufficient progress, that Member State shall, within three months, submit to the Commission a corrective action plan that includes:
 - (a) 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 timetable for implementing such actions, which enables the assessment of annual progress in implementation.
2. The European Environment Agency shall assist the Commission in its work to assess any such plans in accordance with its annual work programme.
3. The Commission may issue an opinion on the plans submitted in accordance with paragraph 1 and shall in that case do so within four months of receipt of those plans.

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, pursuant to paragraph 2 of this Article and the flexibilities used pursuant to Articles 5 to 7, the following measures shall apply:
 - (a) an addition to the Member State's 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 11; and
 - (b) the Member State shall be temporarily prohibited from transferring any part of its annual emission allocation to another Member State until it is in compliance with Article 4 of this Regulation. The Central Administrator shall implement this prohibition in the registry referred in Article 11.
2. If the greenhouse gas emissions of a Member State in either the period from 2021 to 2025 or the period from 2026 to 2030 under Regulation [LULUCF] exceeded its greenhouse gas removals, as determined in accordance with Article 12 of that Regulation, there shall be a deduction from that Member State's annual emission allocations equal to the amount in tonnes of CO₂ equivalent of those excess greenhouse gas emissions for the relevant years.

Article 10

Adjustments

1. The annual allocations for each Member State under Article 4 of this Regulation shall be adjusted, so as 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 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 to this Regulation shall be added to the 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.

Article 10a

Additional safety reserve for Member States in exceptional circumstances

- 1. A safety reserve corresponding to a quantity of up to [100] million tonnes CO₂ equivalent shall be established **in the Union Registry** subject to the fulfilment of the Union target referred to in Article 1. It shall be available in addition to the flexibilities provided for in Articles 5, 6 and 7 [...].
- 2. A Member State may benefit from the reserve referred to in paragraph 1 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 emissions for the years 2013 to 2020 in the sectors covered by this Regulation are below its cumulative annual emission allocations for the years 2013 to 2020; and

(c) it has exhausted the flexibilities pursuant to Article 5(2) and 5(3), it has 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, it has made no net transfers to other Member States under Article 5, and its emissions nevertheless exceed its annual emission allocations in the period from 2026 to 2030.

3. A Member State, which meets the conditions set out in paragraph 2, shall receive an additional quantity from the 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 of all the Member States which fulfil the conditions set out in paragraph 2 exceeds the limit referred to in paragraph 1, the quantity for each of those Member States shall be reduced on a pro rata basis.

Any amount remaining in the reserve after the distribution set out in the first subparagraph shall be distributed among the Member States referred to in that subparagraph proportionally to their remaining shortfall **but not exceeding it**. Such quantity may for each of those Member States be in addition to the percentage referred to in the first subparagraph.

4. After the completion of the review referred to in Article 19 of Regulation (EU) No 525/2013 for the year 2020, the Commission shall publish the maximum amounts **referred to in the second sentence of the first subparagraph of paragraph 3 of this Article** for each Member State referred to in **points (a) and (b) of paragraph 2**.

Article 11

Registry

1. The Commission shall adopt delegated acts in accordance with Article 12 to supplement this Regulation in order to ensure the accurate accounting under this Regulation through the Union Registry established pursuant to Article 10 of Regulation (EU) No 525/2013 in respect of:

- (a) annual emission allocations;
- (b) flexibilities exercised under Articles 5 to 7 of this Regulation;

- (c) compliance check under Article 9 of this Regulation; and
- (d) adjustments under Article 10 of this Regulation;
- (e) the safety reserve under Article 10a of this Regulation.

- 1a. The Central Administrator shall conduct an automated check on each transaction under this Regulation and, where necessary, block transactions to ensure there are no irregularities.
- 2. The information referred to in points (a)-(e) of paragraph 1 and in paragraph 1a shall be accessible to the public.

Article 12

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 Article 7(2) and 11 [...] shall be conferred on the Commission for a period of five years from ... [date of entry into force of this Regulation]. 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 Article 7(2) and 11 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 Article 7(2) and 11 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 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 13

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 14

Review

1. The provisions of this Regulation shall be kept under review taking into account inter alia evolving national circumstances, international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement.

2. The Commission shall report to the European Parliament and to the Council within six months following each global stocktake agreed under Article 14 of the Paris Agreement on the operation of this Regulation, its contribution to the Union's overall 2030 greenhouse gas emission reduction target 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 necessary greenhouse gas reductions by the Union and its Member States, and may make proposals if appropriate.

Article 15

Amendments to Regulation (EU) No 525/2013

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

- (1) Article 7(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 .../... of the European Parliament and of the Council [ESR] [...] for the year X-2, in accordance with UNFCCC reporting requirements;"

- (b) the second sub-paragraph is replaced by the following:

"Member States shall annually inform the Commission in their reports of their intentions to make use of the flexibilities in Article 5(4) and (5) of Regulation [ESR]. Within three months of receiving that information from Member States, the Commission shall make the information available to the Committee referred to in Article 26".

(2) In Article 13(1)(c), the following point [...] is added:

"(viii) as from 2023, information on national policies and measures implemented towards meeting their obligations under Regulation [ESR] [...] and information on planned additional national policies and measures envisaged with a view to limiting greenhouse gas emissions beyond their commitments under that Regulation [...] (*moved to paragraph 1(b) above*)."

(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 Directive 2003/87/EC and by Regulation [ESR] [...].

(4) In Article 21(1)[...], the following point is inserted:

"(c) obligations under Article 4 of Regulation [ESR] [...] 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 emission reductions** and of the projected progress of Member States towards fulfilling their obligations under that Regulation.".

Article 16

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 Brussels,

For the European Parliament
The President

For the Council
The President

*ANNEX I***MEMBER STATE GREENHOUSE GAS EMISSION REDUCTIONS UNDER ARTICLE 4**

	Member State greenhouse gas emission reductions in 2030 below their 2005 levels determined in accordance with Article 4(3)
Belgium	-35%
Bulgaria	-0%
Czech Republic	-14%
Denmark	-39%
Germany	-38%
Estonia	-13%
Ireland	-30%
Greece	-16%
Spain	-26%
France	-37%
Croatia	-7%
Italy	-33%
Cyprus	-24%
Latvia	-6%
Lithuania	-9%
Luxembourg	-40%
Hungary	-7%
Malta	-19%
Netherlands	-36%
Austria	-36%
Poland	-7%
Portugal	-17%
Romania	-2%
Slovenia	-15%
Slovakia	-12%
Finland	-39%
Sweden	-40%
United Kingdom	-37%

ANNEX II

**MEMBER STATES THAT MAY HAVE A LIMITED CANCELLATION OF ETS
ALLOWANCES TAKEN INTO ACCOUNT FOR COMPLIANCE PURSUANT TO
ARTICLE 6**

	Maximum percentage of 2005 emissions determined in accordance with Article 4(3) of this Regulation
Belgium	2%
Denmark	2%
Ireland	4%
Luxembourg	4%
Malta	2%
Netherlands	2%
Austria	2%
Finland	2%
Sweden	2%

ANNEX III

TOTAL NET REMOVALS FROM DEFORESTED LAND, AFFORESTED LAND, MANAGED CROPLAND AND MANAGED GRASSLAND THAT MEMBER STATES MAY TAKE INTO ACCOUNT FOR COMPLIANCE FOR THE PERIOD 2021 TO 2030 PURSUANT TO ARTICLE 7

	Maximum amount expressed in million tonnes of CO ₂ equivalent
Belgium	3,8
Bulgaria	4,1
Czech Republic	2,6
Denmark	14,6
Germany	22,3
Estonia	0,9
Ireland	26,8
Greece	6,7
Spain	29,1
France	58,2
Croatia	0,9
Italy	11,5
Cyprus	0,6
Latvia	3,1
Lithuania	6,5
Luxembourg	0,25
Hungary	2,1
Malta	0,03
Netherlands	13,4
Austria	2,5
Poland	21,7
Portugal	5,2
Romania	13,2
Slovenia	1,3
Slovakia	1,2
Finland	4,5
Sweden	4,9
United Kingdom	17,8
Maximum total:	280

ANNEX IV

TOTAL ADJUSTMENT PURSUANT TO ARTICLE 10 PARAGRAPH 2

	Total adjustment pursuant to Article 10(2) expressed in tonnes of CO2 equivalent
Bulgaria	1602912
Czech Republic	4440079
Estonia	145944
Croatia	1148708
Latvia	547061
Lithuania	2165895
Hungary	6705956
Poland	7456340
Portugal	1655253
Romania	10932743
Slovenia	178809
Slovakia	2160210
