Revising the Effort-sharing Regulation for 2021-2030: 'Fit for 55' package

OVERVIEW

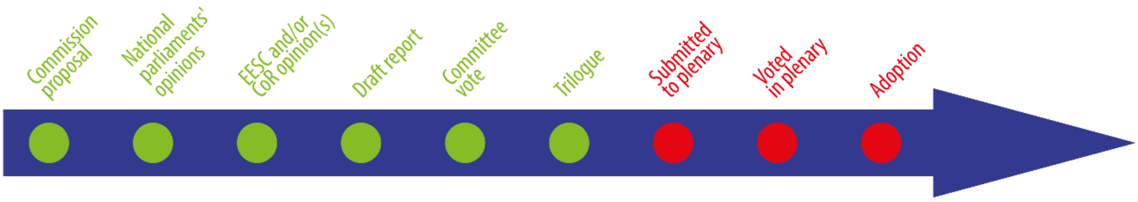
The EU's effort-sharing legislation covers greenhouse gas (GHG) emissions in sectors not included in the EU emissions trading system. A wide range of sources – such as fuels used for road transport, energy used for heating and cooling in buildings, animal digestion and fertilisers used in agriculture, waste treatment, and small industries – account for these emissions. To cut the emissions in these sectors, the EU Effort-sharing Regulation (ESR) establishes collective and national binding targets and sets up annual emissions allocations for each Member State for the 2021-2030 period.

On 14 July 2021, the European Commission submitted a proposal to amend the binding annual emissions reductions by Member States from 2021 to 2030. The proposal is part of the 'fit for 55' package, which aims to adapt EU climate and energy legislation to the new EU objective of a minimum 55 % reduction in net GHG emissions by 2030 compared to 1990, in accordance with the recent European Climate Law. To contribute to the new climate ambition, sectors covered by the ESR should achieve a collective reduction of 40 % in their emissions by 2030 compared to 2005.

The European Parliament and the Council adopted their positions on 8 and 29 June 2022, respectively. The interinstitutional negotiations concluded on 8 November 2022 with a provisional agreement, which was endorsed by COREPER on 21 December 2022, and approved by the ENVI committee on 16 January 2023. Parliament has now to vote on the agreement at first reading.

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement

Committee responsible:	Environment, Public Health and Food Safety (ENVI)	COM(2021) 555 14.7.2021
Rapporteur:	Jessica Polfjärd (EPP, Sweden)	2021/0200(COD)
Shadow rapporteurs:	Javi López (S&D, Spain) Linea Søgaard-Lidell (Renew, Denmark) Margrete Auken (Greens/EFA, Denmark) Silvia Sardone (ID, Italy) Anna Zalewska (ECR, Poland) Silvia Modig (The Left, Finland)	Ordinary legislative procedure (COD) (Parliament and Council on equal footing – formerly 'co-decision')
Next steps expected:	Vote at first reading by the Parliament	



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Introduction

On 14 July 2021, the European Commission put forward a legislative proposal amending Regulation No (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 (the Effort-sharing Regulation). The revision aims to bring the effort-sharing legislation into line with the revised EU-wide emissions reduction target for 2030 and to achieve a gradual trajectory towards climate neutrality by 2050. It would also implement the EU's commitments under the Paris Agreement.

The European Green Deal, adopted in December 2019, proposed increased EU climate ambition for 2030 as a stepping stone on the path to climate neutrality (net-zero GHG emissions) by 2050, which is one of its main objectives. It also announced a comprehensive plan to increase the EU 2030 emissions reduction target to at least 50 % and towards 55 %. This EU climate target plan, presented by the Commission in September 2020, pointed to the need to revise all key climate and energy policies and traced the path towards an EU-wide, economy-wide GHG emissions reduction by 2030 compared to 1990 of at least 55 % including emissions and removals. The European Climate Law (Regulation (EU) 2021/1119 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999), adopted in June 2021, revised the current EU 2030 climate and energy framework, designed to reduce GHG emissions by 40 % by 2030. The European Climate Law set a 55 % net GHG emissions target for 2030 and an EU-wide climate neutrality target for 2050. In line with these new climate targets, the Commission presented in July 2021 the 'fit for 55' legislative package, which includes interconnected and complementary legislative tools for implementing the new legally binding objectives across the EU's climate, energy, transport and taxation policies. All three main pieces of climate legislation – the Effort-sharing Regulation (EU) 2018/842, the EU ETS Directive 2003/87/EC, and the Land Use, Land-use Change and Forestry (LULUCF) Regulation (EU) 2018/841 – will be updated as part of this package in a consistent manner, which will also take into account the interaction between them.

Existing situation

Transport (except aviation and non-domestic shipping), buildings and agriculture are the largest sectors covered by the effort-sharing legislation. It is reported that emissions from the transport sector in the EU increased by 22 % between 1990 and 2018. Road transport accounts for about 70 % of transport emissions. During the 2005-2018 period, transport made a modest contribution to emissions reductions as part of effort-sharing, despite being responsible for more than a third of emissions in the sectors covered by this legislation. At EU level, emissions in the buildings sector, resulting mainly from the combustion of fossil fuels for heating and poor energy efficiency, decreased significantly, delivering the highest share in emissions reduction between 2005 and 2018. Conversely, in agriculture, which is the third largest source of emissions in the effort-sharing sectors, emissions remained almost stable in the EU during the same period.

The Effort-sharing Regulation (ESR), adopted in June 2018, aims to cut all GHG emissions[1] in the sectors not covered by the EU ETS or by the LULUCF Regulation. This includes emissions from transport, buildings, agriculture, small industrial installations, waste treatment, energy supply and product use. These emissions currently account for almost 60 % of EU total domestic GHG emissions.

The ESR firstly addresses the Member States, as the primary responsibility for implementing national and EU policies in many of the sectors covered by the effort-sharing legislation lies with them. At the same time, it leaves the Member States free to choose the measures they would need to fulfil their commitments. The regulation also introduces flexibilities to take into account the national particularities. The ESR is therefore a tool to encourage Member States to act flexibly and appropriately, and in congruity with other EU legislation.

The ESR is the successor to the Effort-sharing Decision No 406/2009/EC (ESD), adopted in April 2009, which set the national targets for the 2013-2020 period in order to deliver a collective reduction of

10 % in total EU-28 emissions from non-ETS sectors by 2020 compared with 2005. This is in line with the EU target of a 20 % reduction in all GHG emissions by 2020 (including those in the EU ETS), compared with 1990.

For the 2021-2030 period, the ESR sets binding GHG emission targets (expressed in percentages) for each Member State and sets maximum allowed GHG emissions for each year, 'annual emission allocations' (AEAs), calculated in tonnes of CO_2 equivalent. These AEAs are established on the basis of a linear trajectory for meeting the targets. The current 2030 national targets vary between 0 % and -40 %, and aim to achieve collectively an emissions reduction of 30 % (29 % for EU-27) by 2030, compared with the 2005 baseline, in the non-ETS sectors. This is coherent with the EU-28 reduction target of 40 % by 2030 compared with 1990 levels. In December 2020, the Commission adopted an implementing decision defining Member States' AEAs for each year from 2021 to 2030. The starting point of the current trajectory is defined by the average of the GHG emissions in 2016-2018 of each Member State as a value, placed on the time axis at five-twelfths of the distance from 2019 to 2020. The linear trajectory could also start in 2020, if this results in a lower allocation for a Member State (Article 4 of the ESR).

The national targets are based on the principles of fairness, cost-effectiveness and environmental integrity, and the methodology for setting them takes into account the Member States' different capacities to act and invest. The binding limits are thus defined according to per capita GDP, with adjustments made to reflect cost-effectiveness for those Member States where per capita GDP is above the average.

To ensure a fair and cost-efficient achievement of national commitments, the ESD had already introduced some flexibilities, which the ESR has kept, albeit with certain limitations. For instance, Member States are allowed to: bank surpluses and use them in later years; borrow a limited amount of allocations from the following year; or buy and sell allocations between each other. The ESR also provides two new flexibilities: 1) 'flexibility for certain Member States following reduction of EU ETS allowances'; and 2) 'additional use of up to 280 million net removals from LULUCF'. The first one allows nine Member States to use a limited amount of ETS allowances to achieve their targets in the effort-sharing sectors over the 2021-2030 period. These Member States have national reduction targets well above both the EU average and their own cost-effective reduction potential, or had not allocated any EU ETS allowances for free in 2013. The second one allows all Member States to use, under certain conditions, GHG removals from the LULUCF sector in order to comply with their national targets. Member States with a larger share of emissions from agriculture can have greater flexibility. This 'LULUCF flexibility' is available to each Member State but is non-transferable. At the same time, under the LULUCF Regulation, a Member State with net accounted emissions from land use and forestry can use allocations from the ESR.

In addition to the flexibilities, the ESR establishes a safety reserve, available in 2032 under strict conditions, to Member States with problems in achieving their 2030 GHG emissions target.

The ESR lays down rules for corrective action based on an annual evaluation of the progress of each Member State in meeting its minimum contribution. It also defines compliance rules, notably a compliance cycle in five-year intervals with non-financial penalties for non-compliance.

Planning, monitoring and reporting rules are set under Regulation (EU) No 2018/1999 on the Governance of the Energy Union and Climate Action (the Governance Regulation). This regulation repealed Regulation (EU) No 525/2013 (the Monitoring Mechanism Regulation), which streamlined climate-related reporting obligations until the end of 2020. The Governance Regulation also requires Member States to adopt national energy and climate plans (NECPs) for the 2021-2030 period in order to outline the existing and planned policies and measures in different areas, such as greenhouse gas reduction, renewable energy, and energy efficiency. Therefore, achievements under the ESR are linked with the effective implementation of the NECPs.

According to the Commission, if Member States continue to rely on the already implemented national policies, the EU-27 would reduce effort-sharing emissions by 19 % by 2030 compared to

2005, which is well below the 30 % overall emissions reduction target under the current ESR. If Member States fully implement the additional policies outlined in their NECPs, a reduction of 32 % could be achieved. However, the impact assessment of the EU climate target plan points to the need for increased emissions reduction in the effort-sharing sectors of around 39 %-40 % compared to 2005 in order to meet the EU 2030 target of -55 % compared to 1990.

Parliament's starting position

In its resolution of 15 January 2020 on the European Green Deal, the European Parliament stressed the importance of a legally binding EU commitment to climate neutrality by 2050 at the latest, and strongly underlined that the transition is a shared effort of all Member States, and that every Member State must contribute to implementing climate neutrality.

Welcoming the Commission's communication on A Clean Planet for all, which presented pathways towards a strategic long-term EU vision for a prosperous, competitive and climate-neutral economy, on 14 March 2019 the Parliament adopted a resolution on climate change highlighting that the objective of reaching net-zero GHG emissions by 2050 would require considerable efforts at local, regional, national and EU level. It calls on the Member States to establish clear short- and long-term targets and policies consistent with the goals of the Paris Agreement and to provide investment support for net-zero pathways, recalling their obligation to adopt national long-term strategies as laid down in the Governance Regulation.

Council starting position

The European Council, in its conclusions of December 2020, endorsed a binding EU target of a net domestic reduction of at least 55 % in greenhouse gas emissions by 2030 compared to 1990. This target has to be delivered collectively by the EU in the most cost-effective manner possible. All Member States should take part in this effort, applying the principles of fairness and solidarity, leaving no one behind. The achievement of the new 2030 target should be done in a manner that preserves the EU's competitiveness and takes into account the Member States' different starting points, specific national circumstances, and emissions reduction potential.

At its special meeting of 24 and 25 May 2021, the European Council discussed, alongside other issues, the effort-sharing legislation, its scope, the national targets and measures, and the principals of distribution of efforts among the Member States. The European Council also reaffirmed the common goals for the EU: climate neutrality by 2050 and a decrease in net emissions by at least 55 % by 2030.

Preparation of the proposal

The proposal is supported by an impact assessment, which considers different options in relation to: the scope of the ESR and the collective target; the distribution of national targets based on the principles of fairness and cost-efficiency; and the adjustment of existing flexibilities to ensure their adequacy to deliver objectives in a cost-effective way. This impact assessment complements the impact assessment accompanying the 2030 climate target plan and analyses three main policy options. The preferred one suggests:

- raising the national targets under the ESR in line with the EU climate ambition by 2030 while ensuring that Member States are accountable and have the relevant incentives and cost-effective solutions to implement the national and EU policies;
- maintaining the current scope of the ESR yet establishing emissions trading in the buildings and the road transport sectors as an additional support to reaching the targets;
- applying targeted corrections to the methodology to distribute the effort between Member States (based on per capita GDP) to address cost-efficiency concerns, aiming also for convergence of per capita emissions in the ESR sectors across the EU;

- keeping the role of the existing flexibilities unchanged, yet adapting that related to LULUCF.

The Commission's Regulatory Scrutiny Board issued a 'positive opinion with reservations' on the impact assessment.

The European Parliamentary Research Service has published an initial appraisal of the impact assessment.

In October 2020, the Commission published an inception impact assessment, which presented the context, objectives, and policy options of the future revision. One of the envisaged options was the phasing out of the ESR. The assessment was open for online feedback from 29 October to 26 November 2020. As regards the future of the ESR, stakeholders' views had already been collected during the public consultation on the EU climate target plan from 31 March 2020 to 23 June 2020. Between 13 November 2020 and 5 February 2021, the Commission organised a public consultation to gather stakeholders' and citizens' views on the revision of the ESR.

The changes the proposal would bring

The general objective of the ESR's revision is to contribute to the new climate ambition in a cost-effective and coherent way, taking into account the need for a just transition as well as the need for all sectors to contribute to the EU's climate efforts. The aim is to achieve a gradual trajectory towards climate neutrality by 2050. To this end, while keeping the architecture of the current legislation, the Commission introduces a number of changes:

Upgraded national targets

To align the contribution of the sectors covered by the ESR to the new EU-wide climate targets, the Commission proposes reducing the emissions from these sectors by at least 40 % compared to 2005 levels, which is an increase of 11 percentage points compared to the existing collective EU-27 target of a 29 % emissions reduction. The principles and calculation method for setting national targets would remain unchanged, based on per capita GDP with targeted corrections to reflect cost-efficient emissions reduction potential. Targets per country would however be more ambitious, ranging from -10 % applied to Bulgaria to -50 % applied to Germany, Denmark, Luxembourg, Finland, and Sweden, which is a spread of 40 percentage points between poorer and richer countries. The maximum target increase for a single Member State would be 12 percentage points.

Revised annual emission allocations

AEAs set in the 2020 Commission implementing decision would remain valid for 2021 and 2022. To adjust the trajectory to the new reduction target of 40 %, from 2023 to 2025, new AEAs for each Member State would be set based on the average of the reviewed emissions values for the years 2016, 2017 and 2018, with a limit defined by a linear trajectory starting in 2022. For the period from 2026 to 2030, the Commission intends to readjust the AEAs in 2025 on the basis of new data resulting from the review of the national inventory data, changing the calculation basis (average of GHG emissions in 2021-2023), with 2024 as starting point of the trajectory.

Dual status for transport and buildings

The proposal maintains the scope[2] of the current ESR in parallel with the inclusion of GHG emissions from the road transport and the building sectors in a new emissions trading scheme, which is expected to cover around half of the emissions regulated by the ESR. Its role would be to contribute to the achievement of the ESR target. The Commission believes that applying emissions trading to buildings and road transport would complement the current regulatory and enabling (e.g. fiscal) measures put in place by the national authorities, and that it would trigger more reductions. The carbon price tool is expected to drive the effort of the private sector and to incentivise consumers.

The new ETS would be established as from 2025, with the aim of achieving 43 % of emissions reductions by 2030.

Adapted flexibilities

As regards existing flexibilities, the proposal would not change banking, borrowing and transfers between Member States. ETS flexibility would also be maintained, with an adjustment for Malta, whose national reduction target is considered to be significantly above its cost-effective reduction potential, which enables it to have an increased (up to 7 %) access to that flexibility. Malta is required to confirm the use of its ETS flexibility by 31 December 2023. The Commission proposes keeping the LULUCF flexibility too, while splitting it up into two five-year sub-periods. Each period would be capped by a limit corresponding to half of the total amount of net removals set out for each Member State in Annex III of the ESR. This flexibility would be impacted by the Climate Law, which limits the contribution of net removals to the 2030 targets of 55 % emissions reduction to 225 million tonnes of CO_2 equivalent.

New voluntary mechanism

Taking into account the split-up of the LULUCF flexibility and the increased ambition targets in the LULUCF sector for the 2026-2030 period, which could result in less net removals available for ESR compliance, the Commission proposes creating an additional voluntary reserve. It would be based on the unused net removals generated by the participating Member States over 2026-2030 in excess of their targets under the LULUCF Regulation. This reserve would act as an insurance for Member States facing challenges in complying with their obligations both in the ESR and the LULUCF sectors. It would become effective if the EU reaches its target of reducing net GHG emissions by at least 55 % by 2030.

Post-2030 vision

The revised ESR would maintain the review provisions in place (Article 15). The Commission intends to review in 2027 the ESR, its relevance and its scope in relation to the post-2030 climate and energy framework. This will be done in the light of the development of the new carbon market for buildings and transport and the revision of the LULUCF Regulation.

Budgetary implications

The new climate ambitions in the effort-sharing sectors would force Member States to adopt more stringent strategies for action, including NECPs. In terms of budgetary implications, the proposal estimates that €1 750 000 would be needed for the implementation of capacity-building support measures for the 2023-2027 period.

Finally, as regards monitoring, reporting and compliance, the proposal preserves the existing system as laid down in the current ESR and the Governance Regulation. Under the latter, Member States have to report on their GHG annual emissions and on their planned national policies and measures. The Commission evaluates, and reports annually on, the Member States' achievements and requires them to submit corrective action plans if progress in meeting their obligations under the ESR is not sufficient. Every five years, it also performs a compliance control (comparing the reviewed emissions with the AEAs), in accordance with the five-year review cycle set out in the Paris Agreement. The first compliance check will be in 2027 for the years 2021-2025.

Advisory committees

In its opinion adopted on 8 December 2021, the European Economic and Social Committee (EESC) welcomed the proposal and agreed that differences between Member States needed to be taken into account to ensure both the fairness and the cost-effectiveness of the effort-sharing action. For this purpose, flexibility between Member States and through banking or borrowing should make a significant contribution. The EESC called for a transparent system to monitor the outcome of the flexibilities. It also pointed out that carbon removals in the LULUCF sector should not be seen as a mechanism to compensate for emission reductions in other sectors. The EESC is in favour of keeping road transport and buildings within the scope of the ESR even after the introduction of a new emissions trading system, so that the emission reductions resulting from the trading in these sectors will count towards Member States' efforts to comply with ESR obligations. It also asks the Commission to examine criteria other than GDP per capita when setting national targets (e.g. carbon intensity, vulnerable regions).

In its opinion on the revision of the LULUCF and Effort-sharing Regulations, adopted on 28 April 2022, the European Committee of the Regions (CoR) underlined the important role of regional authorities in the sectors covered by the both regulations. The Committee pointed out that transition should not put territorial cohesion or the most vulnerable groups and territories at risk. It urged the Commission to set out a methodology for regional and local authorities to calculate their emission reductions in line with the national goals. To ensure that all ESR sectors contribute to the achievement of climate objectives, the CoR asked the Commission to amend the regulation by the end of 2025, and introduce minimum sector contributions. It also proposed to reduce flexibilities regarding borrowing of AEAs and transfers between Member States and considered that the regional challenges should be taken into account in case of such transfers. The Committee stressed the importance of compliance checks and suggested the introduction of financial penalties in cases of non-compliance. Revenues should be invested in climate action with a focus on regional challenges. Finally, the CoR questioned the main role of GDP for setting national targets as it did not take regional situations into account.

National parliaments

The Commission's proposal was transmitted to the national parliaments and they had until 8 November 2021 to submit reasoned opinions on grounds of subsidiarity. The Irish parliament rejected the proposal for a new separate ETS for the road transport and the buildings sector arguing that it breaches the principle of subsidiarity, and decided to submit a reasoned opinion.

Stakeholder views[3]

Replying to different consultations, the vast majority of stakeholders rejected the phasing out of the ESR and supported the upgrade of the national binding targets. Maintaining the current scope of the ESR and setting up a carbon market for the transport and buildings sectors was supported by the majority of respondents.

Transport & Environment points out that loopholes remain, allowing countries to neglect their climate responsibilities. The NGO recommends monetary sanctions if Member States miss the targets or breach their AEAs, and considers that the corrective action plans should be more transparent. The LULUCF flexibility and the safety reserve should be removed and Member States should be incentivised to over-achieve on their AEAs through making extra revenue from the new ETS for road transport and buildings. Climate Action Network Europe welcomes the increased targets, considering however that a 50 % emissions cut would be needed in the ESR sectors to ensure that the Paris Agreement goal is reached. It also calls for removing the flexibilities and the new voluntary reserve and for enforcing the compliance rules. European Environmental Bureau believes that the overall EU target should be set at a level of at least 65 % net GHG reduction in order to limit the global temperature rise to 1.5°C by 2050, and underlines the crucial role of agriculture.

The European Trade Union Confederation (ETUC) calls on the Member States to develop, through social dialogue, sectoral decarbonisation roadmaps that would be integrated in their NECPs, in order to guarantee a just transition of the workforce and to properly manage the social dimension of the transition. It also considers that low-income countries should receive more financial support through EU funding for deployment of new infrastructures and low carbon technologies.

CEFIC, representing the chemical industry, calls for an ambitious revision of the ESR to rebalance the burden-sharing between ETS and non-ETS sectors and to reduce the ETS sector's share in the EU ambition. It also argues against the extension of the EU ETS to the transport and buildings sectors. UPEI, representing European fuel suppliers, considers that the option of a parallel system that covers the emissions from transport and buildings sectors under both the ESR and a new ETS could have negative consequences for the industry. Eurelectric, representing the electricity industry, takes a cautious approach to the inclusion of new sectors in a single EU ETS and calls for a test period if a dedicated ETS for one or two sectors should be established. As regards the distribution criteria based on wealth, the organisation considers that they need to be changed.

Legislative process

Within the European Parliament, the file was referred to the Committee on Environment, Public Health and Food Safety (ENVI), which appointed Jessica Polfjärd (EPP, Sweden) as rapporteur.

On 27 September 2021, ENVI committee members held their first exchange of views on the proposal, following a presentation given by the Commission. Several elements were highlighted, such as the need to ensure the alignment of the ESR with the EU ETS, the lack of a guidance framework for cutting emissions from non-ETS sectors after 2030, the complexity resulting from the establishment of a carbon market for road transport and buildings while keeping these sectors within the scope of the ESR, the investment challenge, and the need to strengthen the proposal with regard to accountability so as to ensure that each Member State meets its national target. Opinions were expressed in favour of stricter compliance rules, and against the maintenance of some flexibilities and the introduction of a voluntary reserve. The ENVI committee adopted its report on 17 May 2022.

On 8 June 2022, the European Parliament adopted its position by 437 votes in favour, 142 against and 40 abstentions. It supports the Commission proposal to upgrade the ESR targets, and introduces the following main changes to the proposed text.

The proposal is amended to strengthen the links with the European Climate Law and to align the ESR revision with the target of climate neutrality by 2050 at the latest, and the achievement of negative emissions thereafter. The title of the regulation thus indicates that the period covered should go beyond 2030. The Commission is asked to submit a report examining the adequacy of the current national targets for reaching the long-term objective in a cost-effective and fair manner, and setting out for each country an emissions-reduction pathway under the ESR, which is in line with the objective of climate neutrality by 2050. The Commission should also make proposals to limit GHG emissions for the sectors covered by the ESR to ensure a cost-effective and just distribution of the efforts across the EU based on the above-mentioned reduction pathways. The Scientific Advisory Board on Climate Change, established by the European Climate Law, is invited to provide scientific advice and publish reports on the ESR, also with a view to a possible future revision.

As regards the scope of the Regulation, an amendment specifies that only biofuels, bioliquids, and biomass fuels that meet the sustainability and GHG emission savings criteria set out in Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (RED II), which is currently under revision, can be considered to have zero emissions.

A new article added by the Parliament requires a legislative proposal fixing one or more EU-wide targets for non-CO_2 emissions covered by the ESR by July 2023. The Commission should assess the EU non-CO_2 emissions reductions planned and implemented under relevant EU and national laws and policies and recommend appropriate actions. Legislative proposals including sectoral targets or sector-specific measures could be envisaged if the progress towards meeting the EU minimum non-CO_2 emissions contribution is not sufficient.

The AEAs for the 2023-2030 period should be set in close consultation with the Member States and without readjustment in 2025, unlike the Commission proposal. The linear trajectory should start either at five-twelfths of the distance from 2019 to 2020 or in 2020, whichever results in a lower allocation for the Member State concerned. A new paragraph states that the implementing actions to limit the GHG emissions should be in line with a fair and just transition for all.

As regards flexibilities, the amendments restrict the rules on banking, borrowing, and trading emissions allocations. For instance, during the whole period, a country can borrow only up to 5 % from its AEAs for the following year. The transfers to another country are limited to the same percentage of AEAs for a given year, and the Member States have to inform the Commission of the transfer price and make this information public.

The proposed additional voluntary reserve is removed.

The amended text strengthens the corrective actions under the regulation. If a Member State fails to meet its obligations, it should submit to the Commission a corrective action plan identifying the reasons and explaining how the funding for climate action was or would be used. The corrective action plan is linked to the required revision of a Member State's national energy and climate plan and its national long-term strategy, in cases of non-compliance with the targets for two years in a row. The plan, as well as the Commission opinions and Member State's justifications, would be made public.

An article on access to justice under the ESR is added.

An amendment adds a reference in the recitals calling for the establishment of an EU scheme for the certification of stored carbon removals through technological solutions. Once in force, the scheme would be analysed with a view to accounting for these removals under EU law. However, such removals would be additional and would not offset the necessary emissions reductions in line with the targets set out in the European Climate Law.

In the recitals, Parliament stresses that the revised climate ambition needs to be accompanied by sufficient financial and policy measures to guarantee that those targets can be met in a socially fair way, also taking into account gender equality and vulnerable micro-, small and medium-sized enterprises.

In the Council, EU environment ministers held their first formal debate on the 'fit for 55' package on 6 October 2021, mainly addressing proposals that fall within the competence of the Environment Council. The exchange of views focused on the need for a balanced contribution to the EU's increased climate ambition; on the distribution of efforts between and within both Member States and different economic sectors; and on the impact of the proposals on citizens. The debate addressed in particular the new emissions trading system for buildings and road transport. The extension of the EU ETS to these sectors and the establishment of a new carbon market has already divided Member States' opinions. On 6 December 2021, with a view to the Environment Council meeting on 20 December 2021, the Slovenian Presidency communicated to Member State delegations a report on progress made on the files under the remit of the Environment Council. As regards the ESR, some Member States indicated that they considered their new targets as very challenging, concerning, in particular, the subsequent readjustment of their AEAs for the years 2026 to 2030. Further clarification regarding the changes to the LULUCF flexibility and the aim of the new additional reserve was also requested. The French Presidency, which took over the file, prepared a note for the Environment Council meeting on 17 March 2022, identifying a number of subjects on which technical discussions should continue, such as the flexibilities. On 10 June 2022, the presidency proposed a draft political agreement in view of the meeting of EU Environment Ministers on 28 June. Following negotiations between the Member States, on 29 June 2022, the Council of the EU adopted its negotiating positions, or 'general approaches', on the legislative proposals in the 'fit for 55' package that fall within the competence of the Environment Council.

As regards the revision of the ESR, the general approach supports the proposed EU-27 target of a 40 % GHG emissions reduction in 2030 as well as the long-term objective to reach climate neutrality by 2050, while introducing some changes to the Commission proposal.

The Council agreed to maintain the increased national contributions, including also a reference to the need for convergence of efforts by all Member States, while taking into account specific national circumstances.

The agreement also supports the Commission's approach to defining linear emissions trajectories for each Member State and to setting AEAs. However, it amends the provisions for the years 2026 to 2030. A Member State's linear trajectory for that period could be adjusted as proposed by the Commission (starting in 2024 at the average of reported GHG emissions in the years 2021-2023 comprehensively reviewed) only if this leads to higher AEAs for the Member State concerned, otherwise it would be a continued trajectory from the previous period (starting in 2022 at the average of the reviewed values of the emissions in 2016-2018).

The general approach reinforces the existing flexibilities by increasing the ceilings on transfers of AEAs between Member States (raised to 10 % from 2021 until 2025 and to 20 % from 2026 until 2030). It makes the use of the ETS flexibility easier for the nine Member States concerned, and maintains the flexibility related to LULUCF, which would be split into two periods, as well as the additional voluntary reserve the use of which would be more flexible.

Interinstitutional negotiations (trilogues) began on 1 September 2022. They concluded on 8 November with a provisional agreement that was endorsed by COREPER on 21 December and approved by the ENVI committee on 16 January 2023.

The provisional agreement keeps the national contributions set in the Commission's proposal as well as the common emissions reduction target of 40 % by 2030 for the sectors covered by the ESR. A new paragraph requires Member States to ensure a just and socially fair transition for all when undertaking actions to limit their GHG emissions. However, the Parliament's amendment to the title of the regulation, aimed at extending the ESR beyond 2030, was not accepted.

The negotiators agreed on the linear emissions trajectories which define the AEAs for each Member State. Thus, the agreement amends the Commission's proposal regarding the 2026-2030 period by placing the starting point of the linear trajectory at nine-twelfths between 2023 and 2024.

The co-legislators also reached a compromise on the existing flexibilities for borrowing, banking and trading emissions allocations. For instance, from 2021 to 2025, a Member State can borrow up to 7.5 % from its AEA for the following year compared to the 5 % proposed by the Parliament and the 10 % in the current ESR. However, for the 2026-2029 period, the 5 % ceiling set in the current regulation will remain unchanged. The current rules on banking are also amended. As regards transfers between Member States, the agreement increases the levels of AEAs that can be traded compared to those in the current legislation. The ceilings for transfers of AEAs for a given year are raised to 10 % and 15 % for 2021 to 2025 and 2026 to 2030 respectively, unlike the Parliament's proposal to limit them to 5 % for the whole period. Before making a transfer, a Member State must inform the Climate Change Committee. Information on how the revenues generated by transfers of AEAs are used must be made publicly accessible.

The provisional agreement supports the Commission's proposal regarding the LULUCF and ETS flexibilities. It also gives Member States listed under Annex II the possibility to notify the Commission by 31 December 2023 of their intention to use ETS flexibility.

The proposed additional voluntary reserve is removed, while the existing safety reserve is maintained.

In line with Parliament's amendments, the agreement reinforces the corrective actions under the regulation. Thus, the corrective action plan of a Member State that is failing to meet its annual targets must include a detailed explanation of the reasons and an assessment of how the funding for climate action was or would be used. The plan, as well as the Commission opinions and Member State's justifications, must be made public.

Regarding the review procedure, the Commission is required to assess a reduction pathway for the GHG emissions covered by the ESR that is compatible with the objective of climate neutrality by 2050 at the latest and to make legislative proposals if needed. It is important that the objective is achieved in a way that promotes both fairness and solidarity among Member States, and cost-effectiveness However, Parliament's amendment on access to justice under the ESR was not retained.

The importance of scientific advice under the new regulation, which Parliament had highlighted, is reflected in a new article specifying the role of the Scientific Advisory Board on Climate Change, established by the EU Climate Law.

In the recitals, the provisional agreement stresses the importance of establishing an EU scheme for the certification of safely and permanently stored carbon removals obtained through technological solutions. Once such a scheme is in force, an analysis can be performed on how to account for such removals under EU law. The provisional agreement also mentions the need for measures on non-CO_2 emissions from sectors covered by the ESR and for assessing the reduction of these emissions when reviewing the regulation.

The provisional agreement must be voted upon by the Parliament at first reading and adopted by the Council before it can enter into force.

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS

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ENDNOTES

[1] Carbon dioxide (CO_2) emissions and an important share of non-CO_2 emissions: methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), nitrogen trifluoride (NF_3) and sulphur hexafluoride (SF_6).

[2] The amendment of Article 2(1) aims to adapt the definition of the scope, taking into account the proposed inclusion of maritime transport in Annex I of the EU ETS Directive 2003/87/EC.

[3] This section aims to provide a flavour of the debate and is not intended to be an exhaustive account of all different views on the proposal.

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