

**EU Climate Policies after 2020:
Robust Review and Ratcheting Up Targets**

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4 January 2017

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About the funder

The French Ministry of Environment funded this report. The Ecologic Institute is appreciative of this support. Opinions expressed in this report represent the views of the author and do not necessarily represent the official position or policies of the French Ministry of Environment. The responsibility for the content of this publication lies solely with the author.

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I. Summary

The **Paris Agreement** (PA) commits Parties to hold the increase of global average temperature well below 2°C and to pursue efforts to hold it below 1.5°C. The PA also obliges Parties to aim for climate-neutrality in the second half of this century. It states that Parties will scale up their commitments with every nationally determined contribution (NDC). To help ensure compliance, the PA contains the nucleus for a comprehensive review mechanism. **Currently, EU climate policies lack the long-term perspective of the PA.** They also lack a dedicated mechanism for scaling up reduction efforts over the coming decades.

There are various ways in which EU legislation can address these shortcomings and help implement the PA. As the strongest option, **EU legislation should include quantified interim and long-term EU targets for 2040, 2050 and beyond, combined with a robust review system and a mechanism for ratcheting up targets.** In line with the PA, these reduction targets should progress over time and reflect the level of ambition the PA requires. They are a litmus test whether the EU is genuinely committed to the PA. They also constitute the backbone for reviewing EU progress towards meeting the obligations under the PA. As an additional element, the Commission would be required to review whether EU reduction targets constitute an adequate contribution of the EU to global climate action – or not. Based on these reviews, the Commission would be required to propose higher targets. The Commission proposals would start the ordinary legislative process. To ensure high levels of scientific credibility, this review and target adjustment mechanism should be based on a preparatory report from the European Environment Agency (EEA) or another independent scientific body.

There are **three main pieces of legislation** that could set out the EU's reduction targets and that could anchor the review and ratcheting up of EU climate targets: the EU Emission Trading Directive (ETS), the successor of the Effort Sharing Decision (ESD) or the Regulation for the Governance of the Energy Union (GR). All three instruments are currently being negotiated. These negotiations are an essential opportunity for the EU to help meet its legal obligations under the PA.

There is an argument for including the EU target, the review and ratcheting up of the EU target in the GR because it is the only instrument that covers EU emissions as a whole. It would facilitate the review and adoption of ever more ambitious EU NDCs and would ensure that only one process would review the overall EU target. At same time, it is currently not within the logic of the GR to set (legally binding) targets because it largely sets a procedural framework for planning and reporting of the Energy Union. **Regardless of its best legislative home, it is essential that EU legislation includes quantified long-term targets, combined with a robust review and target adjustment mechanism.** For a synchronized and coherent review of EU climate policies and adjustment of targets, it is also essential that the GR takes account of the relevant processes under the ESD successor and the ETS – and vice versa.

2. Introduction

The **Paris Agreement (PA)** entered into force on 4 November 2016. It commits Parties to hold the increase of global average temperature well below 2°C. As another essential commitment, the PA requires Parties to submit nationally determined contributions (NDCs) every five years. Crucially, the PA states that Parties will scale up their commitments with every nationally determined contribution, i.e. also every five years. This provision has also been dubbed as a “ratchet”, as it only allows parties to increase their commitment. To help ensure compliance with these obligations, the PA contains the nucleus for a comprehensive review mechanism, the so-called global stocktake.

A great number of **EU rules are relevant for the implementation of the PA** – ranging from energy requirements for products and buildings to emission values for cars. Currently, the EU is negotiating three legislative dossiers with particular importance for the implementation of the commitments on review and progression: (1) the legislative proposal for an Effort Sharing Regulation (ESR), (2) the reform of the EU Emission Trading Scheme (ETS), and (3) the proposal for a Regulation on Governance for the Energy Union (GR).¹

These **negotiations of these dossiers are at different stages**. As initial votes in the relevant committees in the European Parliament are about to be completed, the ETS negotiations are the most advanced. The discussions of the ESR in Parliament and Council have begun; while the Commission presented its proposal for the GR on 30 November and discussions have not yet started. In principle these negotiations are independent of each other but given the many interlinkages between these files it is possible that they will be agreed as a package.

It is the **purpose of this paper** to contribute to the negotiations on making the review and ratcheting up of EU climate targets compatible with the PA. Using the proposals for the ESR², the ETS and the GR as a starting point, the paper proposes specific changes to these legislative files. The paper focuses on those provisions of the ESR proposal, the ETS and the GR that could set emission reduction targets and review the implementation of the instruments. Before presenting concrete wording for reforming these pieces of legislation, the paper presents the best option for review and ratcheting up of targets. In its next section, it discusses where target setting, review and ratcheting of target should be enshrined – in the ESR, the ETS and / or the GR. Because the name of the proposed ESR disguises its real purpose – i.e. to reduce emissions in the sectors not covered by the ETS – this paper uses a more appropriate name: **Climate Protection Regulation (CPR)**.³

¹ The Commission’s LULUCF proposal is another relevant piece of legislation. Given the limited scope of the paper, this proposal is not covered.

² Concerning the reform of the existing Effort Sharing Decision (ESD), this paper builds on previous reports by the Ecologic Institute Nils Meyer-Ohlendorf, Ralph Bodle: EU Effort Sharing after 2020: Review and Ratcheting Up EU Climate Targets: <http://ecologic.eu/sites/files/publication/2016/2124-eu-effort-sharing-after-2020.pdf>.

³ Other names are possible but any name should be able to clearly communicate its content to the broader public. Names can be inspired by the positive example of the “US Clean Air Act” – which has a catchy and positive name. Nils Meyer-Ohlendorf:

3. Long term reduction targets: backbone for review and target distribution

There are various ways in which EU legislation can help implement these requirements through target setting, review and ratcheting up of targets. A previous paper by the Ecologic Institute discussed these options.⁴ As the **most robust and credible option**, EU legislation should include a system composed of the following elements⁵:

- **Long term and interim targets:** Legally binding and quantified interim and long-term EU targets for 2040, 2050 and beyond are the bases of this option. To be credible and to ensure investor certainty these targets must be legally binding. To be legally binding, these targets must be enshrined in the legal provisions of EU law, not only in a recital. Recitals help interpret the legal text but do not constitute a legal obligation. In line with the PA, these targets progress over time and reflect the level of ambition the PA requires. They would be the backbone or reference point for the EU's reviews of progress.
- **Review of progress:** The Commission reviews progress towards meeting the targets – as part of its annual review. To ensure high levels of scientific credibility, the Commission review should be based on a preparatory report from the EEA or another independent scientific body.
- **Review of adequacy of EU targets:** As another element, this system would require the Commission to assess whether EU reduction targets constitute an adequate contribution of the EU to global climate action – or not. This assessment could include reviewing the adequacy of the ETS and CPR targets. Review of target adequacy should also be based on a preparatory report from the EEA or another independent body.
- **Ratcheting up of targets:** Based on these reviews, the Commission could be required to propose higher targets. For the distribution of Member State efforts, the Commission could also be required to propose national targets in line with the EU's long-term targets and the obligations under the PA. The Commission proposals would start the ordinary legislative process. The Commission proposal should be based on recommendations by the EEA or another independent body.

Other options for reviewing EU climate policies and target adjustment

There are other options for reviewing EU climate policies and target adjustment, but each of them has

Commission Proposal for an Effort Sharing Regulation: Comments, <http://ecologic.eu/sites/files/publication/2016/2120-commission-proposal-for-effort-sharing-regulation.pdf>.

⁴ An Ecologic paper explores options for scaling up targets in detail: Nils Meyer-Ohlendorf, Ralph Bodle: EU Effort Sharing after 2020: Review and Ratcheting Up EU Climate Targets: <http://ecologic.eu/sites/files/publication/2016/2124-eu-effort-sharing-after-2020.pdf>.

⁵ For more specific details of this option see below.

its specific flaws:

- **Automatic scaling-up of target: not possible:** There are proposals for an automatic target adjustment. The CPR could provide that targets are automatically increased, for example, according to a previously agreed formula which integrates indicators on responsibility, capability, mitigation potential and the global emissions gap.⁶ The 2009 NGO Proposal for the Copenhagen Agreement envisaged an automatic ratcheting-up procedure based on a fixed percentage number.⁷ Although (potentially) environmentally ambitious, such a mechanism is problematic. It seems impossible – politically and even scientifically - to design a fully pre-defined formula that quasi-automatically accommodates all aspects of target setting. It is hard to take account of additional information, such as new scientific findings or larger economic developments. Last but not least, such an automatism seems politically unviable.
- **Scaling up delegated to the Commission:** The CPR could delegate the future scaling up to the Commission. However, authorising the Commission to determine the EU's future efforts and targets raises legal and acceptability problems. Only elected parliaments and governments should take decisions as fundamental as target setting (Article 290 of the TFEU, as discussed above). Similar political feasibility issues arise.

4. Where best to regulate review and ratcheting up of EU climate targets?

There are **three main pieces of legislation** within which the EU could set its reductions targets and where it could anchor the review and ratcheting up of its climate targets:

- **CPR:** This instrument distributes national reduction targets among Member States for the sectors not covered by the ETS. The existing ESD and the current proposal for the CPR by the Commission do not include a legally binding EU target. The proposal contains no more than the core of review clause that is standard to many other pieces of EU legislation.
- **ETS:** The ETS covers emissions from installations listed in Annex I. Like the ESD, it does not set an overall target for the EU, but rather determines an annual emission budget for the installations it covers (these currently cover some 45% of EU emissions). This budget is reduced every year by a fixed linear reduction factor.
- **GR:** In its current form, the proposal would introduce reporting and planning requirements for Member States – not only in the area of climate change but also in all other four dimensions of the Energy Union. The proposal does not set targets, neither for the EU as a whole nor for Member States or sectors.

⁶ Donat, Lena and Ralph Bodle: A Dynamic Adjustment Mechanism for the 2015 Climate Agreement, Rationale and Options.

⁷ Alden Meyer et al. (2009): "A Copenhagen Climate Treaty, Version 1.0", A Proposal for a Copenhagen Agreement by Members of the NGO Community, June 2009.

All three dossiers are currently being negotiated as part of the legislative process. In principle, this provides for a good opportunity and time for improvement of the Commission’s proposals. The following table provides an **overview of arguments** for and against including review and target ratcheting in the CPR, the ETS and / or the GR.

	Pro	Con
CPR	<ul style="list-style-type: none"> • Instrument is an established and tested system setting <u>legally binding</u> targets for Member States. • Implements a sectoral target through a legally binding budget for the emissions covered. • It contains a review clause that is linked to the Paris Agreement. 	<ul style="list-style-type: none"> • Limited to emissions not covered by the ETS. • Current proposal and its predecessor contain no EU targets. • It could duplicate processes if the CPR <u>and</u> the ETS contained an EU target and a mechanism for reviewing and ratcheting up the EU target.
ETS	<ul style="list-style-type: none"> • Implements a sectoral target through a legally binding budget for the emissions covered. • Contains a review system. 	<ul style="list-style-type: none"> • Limited to emissions in the ETS sectors. • Current proposal and its predecessor contain no EU targets.
GR	<ul style="list-style-type: none"> • Covers all EU emissions. • Contains processes to monitor progress on all 2030 EU energy and climate targets. • Implements the PA’s five year cycle in part (foresees updates of national plans). 	<ul style="list-style-type: none"> • Only contains procedural requirements, hardly any obligations on substance. • Plans are at the heart of the instrument, not measures or budgets. There is an obligation to formulate a plan, but no obligation to fulfill it (since plans are not legally binding). • Instrument regulates reporting and planning and is currently <u>not</u> a system that sets reduction targets. Target setting sits uneasy with the procedural logic of the regulation. • No role for the European Parliament, generally the vanguard for ambitious climate policies. • Regulation covers Energy Union as a whole, not only climate change. It is not clear to what extent this instrument is able to ensure review and ratcheting up of <u>all five</u> dimensions of the Energy Union. • The ESD and the ETS are established instruments, and will continue to set targets for the emissions they cover (and between the two the overall EU target). The relationship between these different instruments and the GR is unclear.

There are several possibilities how such review and ratcheting up provisions could also be combined across the different instruments. For example:

- **Example 1:** The ETS and the CPR continue to have their specific targets and review clauses and make reference to the overall EU target. The GR would set the overall EU target.
- **Example 2:** The ETS and the CPR continue to have their specific targets and review clauses and make reference to the EU target (example 1), but in addition, they also contain an adjustment mechanism for the EU target. The GR would not contain an EU target.
- **Example 3:** The GR reviews the EU target as a whole and target adjustment. The ETS and the CPR continue to have their specific targets and review clauses; reference to the EU target would be an important clarification but not a necessary component.

There is an argument for including the review and ratcheting up of the EU target in the GR because this is the only instrument that covers all EU emissions. It would facilitate the review and adoption of successively more ambitious EU NDCs and would ensure that only one process reviews the EU target. At same time it is not within the logic of the GR to set (legally binding) targets. The GR addresses EU energy policies as a whole and has no focus on climate policies, which could weaken the case for setting climate targets in this instrument. The coming negotiations on the three different legislative dossiers will have to assess the available options and the respective arguments in favour or against. **Regardless of the best legislative home of this system, it is essential that EU legislation includes a quantified long terms, combined with a robust review and target adjustment mechanism.**

5. Timing of the review and increasing targets

The PA provides for the first regular global stocktake in 2023 and every five years thereafter (Article 14 PA). Unless Parties decide otherwise the first global stocktake takes place in 2023 and then again in 2028 and so on. The outcome of the each stocktake informs subsequent new NDCs or updates of NDCs. The PA does not prescribe the timeframe for which an NDC has to apply, although it mandated the first Conference of the Parties to consider common time frames at its first session. This happened in Marrakech in November 2016, but it was too early to agree on an outcome and work continues. But whatever the timeframe of its content, **each NDC has to be renewed or updated every five years** (see Article 4.9 PA and paragraphs 23-24 of the Paris Decision, 1/CP.21).

Because the first global stocktake will take place only in 2023, the Paris Decision convenes a so-called **facilitative dialogue in 2018**. This dialogue is likely to be the precursor of the global stocktake in terms of mitigation efforts. It is the purpose of the facilitative dialogue to take stock of the collective efforts of the Parties “in relation to progress towards the long-term PA goals under Article 4.1”, which addresses mitigation. The facilitative dialogue also has the purpose to inform

the preparation of the NDCs. Following the facilitative dialogue in 2018, the Paris Decision requests all Parties to communicate or update their NDCs with a time frame up to 2030 no later than 2020.

Thus, the EU is so far still free to choose whether to maintain the 10-year time frame for its NDC, but it has to communicate or update its contributions in 2020, 2025 and every five years thereafter. The update or new NDC has to be communicated at least 9 to 12 months ahead of the relevant Conference of the Parties, which normally takes place around the beginning of December. This means the **EU has to submit its updated or new NDC in January-March 2020, 2025** and so on. To ensure that the EU processes of preparing and adopting its NDCs fit this international schedule, the review of relevant EU legislation plus a proposal for amending these rules from the Commission could be due – tentatively – by October 2023 (see below). If this review and target adjustment process were based on a preparatory report by the European Environment Agency or another body, the deadline for submitting this preparatory report could be – tentatively – 31 March 2022.

Member States should not fall into the trap of agreeing on weak targets now, in the hope (and expectation) of increasing ambition in subsequent revision cycles. There are several reasons why this is not a good idea: first, action is urgently required, and delayed mitigation results in higher cumulative emissions over time. Second, setting ambitious targets sends a clear signal – to investors, financial sector players, consumers, policy makers at all levels – that the EU is committed to decarbonising its economy. Third, a less ambitious starting point implies a steeper reduction trajectory in later years, which may be difficult to agree on. Fourth, the EU has experienced on several occasions that targets that seemed daunting when adopted turned out to be lax – because emission reductions were easier and cheaper than expected, or because other factors beyond climate policy drove down emissions – most notably in the case of the EU ETS and the accumulated surplus.

6. Long term target

6.1. Explicit long term target in the CPR

Article 1 Subject matter (bold text amends current ESR proposal)

1. This Regulation lays down obligations on the minimum contributions of Member States to meeting the greenhouse gas emission reduction commitment of the Union for the period from 2021 to 2030, rules on determining annual emission allocations and for the evaluation of Member

States' progress towards meeting their minimum contributions. **This Regulation requires the EU to reduce the greenhouse gas emissions covered by this Regulation by at least 30 %⁸ compared to 2005 in 2030.**

2. It is the objective of this Regulation to contribute to reducing the greenhouse gas emissions of the Union by x % in 2040, 80-95 % in 2050 and to achieving climate neutrality in the second half of the century. To achieve these objectives, Member States shall continue reducing the greenhouse gas emissions covered by this Regulation annually in a linear manner beyond 2030, leading to reductions of the emission covered by the Regulation of - x % compared to 2005 levels by 2050 and - y % by 2040 compared to 2005.

Justification

- **Binding long-term objectives under the Paris Agreement:** A legally binding obligation to hold the increase of global average temperature well below 2°C and efforts to pursue efforts to hold it below 1,5°C are at the heart of the PA. The PA also obliges Parties to aim for peaking emissions as soon as possible, and to aim for achieving climate-neutrality in the second half of this century. Legally binding interim and long-term EU targets in the CPR are essential in order to help meeting these obligations. They are a litmus test whether the EU is genuinely committed to the PA. The CPR proposal contains no long term target. Not even the preamble of the proposal makes reference to the EU ambition of an 80-95 % reduction of GHG by 2050. Only the so-called context mentions these long-term reductions. There is also no mentioning of achieving climate neutrality after 2050, which is part of the PA.
- **Quantification of the EU long term target:** For an adequate contribution to keeping temperature increases “well below 2°C”, the EU would probably have to commit to reductions of -95 % in 2050 for the economy as a whole and to climate neutrality in the second half of the century. It should be noted, however, that the European Council agreed only on reductions for 2050 that range between 80-95 %.⁹ This agreement sets the current political framework for quantifying the EUs long term target. It should also be noted that comprehensive scientific analysis of how much developed countries need to reduce their emissions to be in line with global efforts to stay “well below 2°C” or 1.5°C has yet to be carried out. As a much weaker alternative, the CPR could include qualitative objectives whereby the regulation would commit the EU and its Member States to emission reductions that constitute a scientifically sufficient contribution to meeting the objectives of the PA. This alternative would not fit within the logic of current EU climate policies that are largely based on legally binding targets and emission budgets.
- **Long term targets for the sectors not covered by the ETS:** The level of the CPR target obviously depends on the overall EU target. In the event that the EU adopts an overall

⁸ The 30 % reduction target was set by the European Council in October 2014. However, the EEA has shown that this would set the EU on an unrealistic reduction trajectory towards its 2050. According to the EEA, annual reductions of 3.3 % are required after 2030 if the EU intends to reduce emissions by 80 % in 2050. If the EU aims to reduce emission by - 95 % in 2050, annual reductions of 4.6 % would be necessary. As the EU has achieved average annual reductions of 1 % since 1990, such a reduction path appears unrealistic. Long-term targets are an adequate response to this problem. It would be a strong signal that the EU is seriously committed to the PA.

⁹ European Council of December 2009 (15265/1/09), para 7.

reduction target of -80 % (compared to 1990), the Commission estimated that the ESD sectors would have to reduce their emissions by nearly -70 % by 2050 (compared to 2005). The ESD target would increase proportionally in the event that the EU accepts a target of, for example, -90 or 95 %. The Commission has not calculated ESD reduction contributions for EU targets above 80 % yet. There are also no reliable estimates on the 2040 ESD interim target yet.

- **Interim targets in the CPR:** For a credible reduction path, the CPR should contain a long-term EU target for 2040, 2050 and even beyond that progress over time. In principle it is also possible that the CPR contains reduction targets for the years 2035 and 2045. Interim targets would send a clear signal to investors about the path towards a low carbon economy. Interim targets give clear and robust guidance to review processes (see below).

6.2. Explicit long term target in the ETS

Article 1 ETS Directive

1. This Directive establishes a scheme for greenhouse gas emission allowance trading within the Community (hereinafter referred to as the 'Community scheme') in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner

2. **To contribute to overall reductions of greenhouse gas emissions in the Union of 80-95 % in 2050 and x % in 2040 compared to 1990**, this Directive also provides for ~~the reductions of greenhouse gas emissions to be increased so as to contribute to~~ **reducing the emissions covered by this Directive by x % in 2040 and y % in 2050 and climate neutrality in the second half of the century** ~~—the levels of reductions that are considered scientifically necessary to avoid dangerous climate change.~~

3. ~~This Directive also lays down provisions for assessing and implementing a stricter Community reduction commitment exceeding 20 %, to be applied upon the approval by the Community of an international agreement on climate change leading to greenhouse gas emission reductions exceeding those required in Article 9, as reflected in the 30 % commitment endorsed by the European Council of March 2007.~~

Justification

- **Long-term target to support the linear factor:** This provision would introduce a legally binding reduction target for the overall emissions of the EU as a whole, as well as targets for the emissions covered by the EU ETS. The long-term target of the EU and the ETS would introduce the yardstick for quantifying the linear reduction factor (see below).
- **Quantifying the long term target:** In the event that the EU adopts an overall reduction target of -80 % by 2050 (compared to 1990), the Commission estimated that the emissions from the

ETS sectors would be reduced by around - 90% (compared to 2005). There are no estimates for the required reductions in the ETS sectors in case the EU would opt for a - 95 % reduction target by 2050.

Article 9 - Community-wide quantity of allowances

1. The Community-wide quantity of allowances issued each year starting in 2013 shall decrease in a linear manner beginning from the mid-point of the period from 2008 to 2012. The quantity shall decrease by a linear factor of 1,74 % compared to the average annual total quantity of allowances issued by Member States in accordance with the Commission Decisions on their national allocation plans for the period from 2008 to 2012. The Community-wide quantity of allowances will be increased as a result of Croatia's accession only by the quantity of allowances that Croatia shall auction pursuant to Article 10(1).

Option 1:

2. Starting in 2021, the linear factor shall be ~~2.2~~ **2,6** %.

Option 2:

2. ~~Starting in~~ **From 2021 to 2030, the linear factor shall be 2.2 %. The linear factor shall increase to x % between 2031 and 2040 and to y % between 2041 and 2050, contributing to the achievement of the Union's reduction targets set out in Article 1 and leading to the decarbonisation of the installations covered by this Directive by 2050.**

Option 3:

2. Starting in 2021, the linear factor shall be 2.2-% **and shall be reviewed in line with Article 28 (see below).**

3. ~~The Commission shall review the linear factor and submit a proposal, where appropriate, to the European Parliament and to the Council as from 2020 to ensure that, with a view to the adoption of a decision by 2025.~~

Justification

- **Adequate linear factor:** The Commission estimates that a linear reduction factor of 2,2 % annually would reduce ETS emissions by 90 % in 2050 compared to 2005.¹⁰ Emission reductions of this magnitude would be compatible with overall EU emission reductions of 80 % in 2050. However, to reduce overall EU emissions by - 95 % in 2050, a linear reduction factor of at least 2.6% would be required (Option 1).¹¹ Given the Conclusions by the European

¹⁰ https://ec.europa.eu/clima/policies/ets/cap/index_en.htm.

¹¹ Carbon Market Watch Policy Briefing, September 2015.

Council of October 2014, it seems politically difficult to call for such an increase but the PA – adopted in the meantime – dictates a more ambitious factor. As another option, the linear factor could increase over time – possibly at the beginning of each new commitment period (Option 2). At this point there is no analysis on quantifying a continuously increasing linear factor. As a third option, the linear factor would be set at 2.2 % – as agreed in the European Council – but it would be reviewed in line with Article 28 (see below).

- **Review:** Although it is quite likely that a higher linear factor – as outlined in paragraph 2 – would be an adequate contribution of the ETS, the Commission should review its adequacy. The proposed Article 28, however, already contains a review (see below). For this reason Article 9.3 should be deleted.

Market Stability Reserve (MSR)

Another aspect to be considered in this context is the current, accumulated surplus of an estimated 2.2 billion EUAs in the EU ETS, and the Market Stability Reserve (MSR) that was adopted as the EU's response to the surplus. In practice, this has the following implications: any increase in the linear reduction factor as discussed above does not translate directly into a proportionate fall of emissions, as the surplus (and the MSR) would cushion the impact on allowance scarcity. This cushioning effect would hold until the surplus is used up, and the MSR eventually depleted. Until then, the EU ETS emissions would fall by less than the increase in the linear reduction factor would suggest. It is also conceivable (and quite likely), for instance, that the tightening of the linear reduction factor from 2.2 to 2.6 percent would initially barely register in terms of the actual emissions, but if anything raise the price of EUAs.

At least in theory, the MSR would also add another entry point, to which review provisions for tightening the cap and increasing ambition could be anchored. Rather than increasing the linear reduction factor, it is also conceivable to cancel allowances that are stored in the MSR - either on a regular basis, or as a one-off intervention, possibly as an element of the review / ratcheting up process. Both approaches – adjustment of the linear reduction factor and cancellation of allowances from the MSR – would have the same effect, i.e. to tighten the cap. One main difference is the timing and intensity of this adjustment. An adjustment of the linear reduction factor has a more subtle, gradual effect: raising the factor from 2.2% to 2.6% corresponds to a cap shrinking by 48.4 million vs. 57.2 million allowances each year, i.e. a difference of 8.8 million allowances. In contrast, a one-time adjustment through a partial cancellation of surplus allowances held in the MSR could, in principle, run into the hundreds of millions of allowances. For the EU, such a change would have the added benefit of restoring a more meaningful carbon price much sooner than currently expected – a carbon price that would thereby be high enough to function as a driver of decarbonisation.

It should be noted, though, that a review through cancellation of allowances held in the MSR would be clouded by substantial legal and political uncertainty. Legally, it is unclear whether a cancellation of EU allowances is compatible with the EU ETS Directive, as well as general rules for

public budgets. Politically, within the EU, the idea of cancelling allowances is likely to encounter significant opposition from some of its Member States, while the resulting (possibly rapid) increase of the carbon price would be opposed by the affected emission-intensive, trade-exposed industries. Internationally, it is unclear whether a cancellation of allowances would be accepted as an increase in ambition – or whether it would rather merely be seen as an attempt to fix past mistakes in the design of the EU ETS.

Given the risks and uncertainties involved, a review / ratcheting up via the MSR is not the most convincing solution, and less suitable than an adjustment of the linear reduction factor. It could, however, be kept in mind as an additional design option – possibly to be invoked if a) significant international momentum for ambitious climate action can be maintained, including the introduction of carbon prices in other major economies, which would also alleviate the concerns about the competitiveness effects of a rise in carbon prices, and / or b) if emission in the EU ETS should be reduced beyond expectations, either because abatement costs turn out to be lower than expected, or because the EU fails to restore economic growth – and, as a result, the surplus accumulated in the MSR continues to grow.

6.3. Long term target under the Governance Regulation

Article 1 Subject matter and scope

1. This Regulation establishes a Governance mechanism to

(a) implement strategies and measures designed to meet the objectives and targets of the Energy Union, and for the first ten-year period from 2021 to 2030 in particular the EU's 2030 targets for energy and climate;

(b) ensure the timeliness, transparency, accuracy, consistency, comparability and completeness of reporting by the Union and its Member States to the UNFCCC and Paris Agreement secretariat;

(c) support achieving the objective of reducing the greenhouse gas emissions of the Union by 80-95 % below 1990 levels in 2050, – x % below 1990 levels in 2040 and to achieve climate neutrality in the second half of the century.

....

Justification

- **Reference to long-term emission reductions by developed countries:** It is important to note that the long-term strategies envisaged in the GR have the explicit objective of contributing to achieving long term emission reductions. Specifying these reductions, the proposed Regulation makes reference to “necessary reductions according to the IPCC by

developed countries as a group, to reduce emissions by 80-95 % by 2050 compared to 1990 levels in a cost-effective manner”.

- **No EU long-term target in the GR:** The Regulation, as currently proposed, does not set long-term targets for the EU as a whole. To address this shortcoming, the Regulation should include a long-term target.

7. Review and ratcheting up of targets

7.1. Review and ratcheting up under the CPR

Article 14 review and target adjustment (amendments not in bold because largely new)

1. The Commission shall report to the European Parliament and to the Council by 31 October 2023 and every five years thereafter on the operation of this Regulation, progress towards meeting the targets set out in Article 1, its contribution to the Union's overall 2030, 2040, and 2050 greenhouse gas emission reduction targets and its contribution to the goals of the Paris Agreement. Regarding the period after 2030, the report shall be accompanied by a proposal for amendments to this Regulation or new legislative acts which distribute the Union's overall effort and set Member State reduction targets, based on the preparatory report mentioned in paragraph 2 and taking into account the then relevant overall reduction targets of the Union, GDP/capita in Member States, and cost effectiveness. If latest scientific evidence, particularly as set out in relevant IPCC assessments, suggests that the EU targets constitute an insufficient contribution to global climate action, the report shall also be accompanied by a proposal to increase the Union's reduction targets and a proposal on reduction targets for the emissions covered by this Regulation. In accordance with Articles 3 and 4.3 of the Paris Agreement, the proposed reduction targets shall represent a progression beyond previous targets.

2. The Commission's report and proposal shall be informed by a preparatory report published by the European Environment Agency (or another independent body) on the implementation of this Regulation. The preparatory report shall include recommendations on more ambitious targets if appropriate. The European Environment Agency (or the independent body) shall publish its report by 31 March 2022. If the Commission intends to deviate from the recommendations contained in the report, it shall coordinate with European Environment Agency (or the independent body) and publish explicit reasons for the deviation after that coordination.

Justification

- **Effective climate action and the Paris Agreement require continuous ratcheting up:** Article 3 of the PA stipulates that efforts of Parties in response to climate change “will represent a progression over time”. Article 4.3 of the PA determines that “each Party's successive nationally determined contribution will represent a progression beyond the Party's then current nationally determined contribution and reflect its highest possible ambition, reflecting common but differentiated responsibilities and respective capabilities [...]”. Although

the wording of these provisions does not contain an explicit obligation to scale up individual efforts (“*will* represent a progression” is factual language, instead of e.g. the common legal “*shall*”), the objective and spirit of this provision requires a constant increase in the level of ambition and thus ever more stringent reductions. This interpretation is supported by Article 31.1 of the Vienna Convention on the Law of Treaties. According to this provision treaties are interpreted – among others – “in the light of its object and purpose”. To some extent, progression or continuously scaled-up efforts over time are a leitmotiv of the PA.

- **EU required to scale-up targets:** These provisions require the EU to scale-up targets continuously and to take additional measures necessary to ensure that the EU makes contributions that are required for the attainment of the PA’s long-term objectives. It is important to note that these provisions apply to the EU reduction efforts and targets as a whole, not only to the CPR targets. According to our proposal, interim reduction targets set out in Article 1 ensure that the CPR contributes to scaled-up reduction efforts. There are other options for the EU to help implement the progression requirements under the PA but interim targets combined with a robust review and target adjustment mechanism seem to be the strongest option.¹²
- **Review of the EU target in the CPR:** The CPR only covers the non-ETS sectors. For this reason it is essential that the review of the EU target under the CPR closely coordinates with the ETS review and – as another alternative – with a review under the GR (see below). If the review leads to a ratcheting up of the EU target, the legislative processes of amending the ETS and the CPR would have to be synchronized accordingly. It is possible that only the GR would be tasked with reviewing the EU targets. If that were the case, the GR review and – possibly target adjustment – would be the basis for the review of the CPR (and ETS Directive).
- **Independent and science-driven advice:** There are a number of reasons why the review and target adjustment should be based on independent and scientific advice:
 - **Dimension of the challenge:** The EEA has shown that the EU is currently not on a realistic reduction trajectory towards 2050.¹³ According to the EEA, annual reductions of 3.3 % are required after 2030 if the EU intends to reduce emissions by 80 % in 2050. If the EU aims to reduce emission by 95 % in 2050, annual reductions of 4.6 % would be necessary. As the EU has achieved average annual reductions of 1 % since 1990, such a reduction path appears unrealistic. The great dimension of the challenge argues for a more science-driven mechanism.
 - **More balanced legislative proposals:** Over the last decade, the European Council has taken a more active role in EU climate policies, voicing its position in its conclusions. Since such conclusions represent a high-level political indication of what Member States would be willing to commit to, it made sense for the Commission to include the essence of these conclusions in its policy and legislative proposals. However, because the European Council decides by consensus, this development has not contributed to

¹² It should also be noted that higher targets are not the only eligible contributions under the PA; international offsets remain possible contributions but scaled up domestic mitigation efforts – expressed in higher targets – continue to be the backbone of (EU) climate action.

¹³ EEA (2015): Trends and projections in Europe 2015 — Tracking progress towards Europe's climate and energy targets.

- the adoption of policies that are adequate for the decarbonisation of Europe's economy. Public and independent advice could help to balance the Commission proposal and to shield it – to some extent – from interference by the European Council.
- **Ensure higher levels of independence and credibility:** Independent advice could also help ensure that scientific evidence is a particularly important consideration in the proposal for increased targets.
 - **Numerous examples for independent bodies in EU policy making:** There are numerous examples for cases in which the EU bases its policies on the review and advice of independent bodies. The European Food Safety Authority (EFSA) and the European Chemicals Agency (ECHA) are examples for such bodies. The European Securities and Markets Authority (ESMA) is another example – with particularly far-reaching powers.
 - **Independent advice by the European Environment Agency (EEA):** The review by the Commission could be based on advice by a new independent body, but there is a stronger case to mandate the EEA. The EEA has a strong record of providing sound and credible advice to environmental policy making in the EU. In times when the EU is under high pressure, and struggles to maintain its legitimacy, there is a strong argument for strengthening existing EU institutions. If the independence of the EEA were an issue, it would make more sense to strengthen the agency's independence than to establish another body, making an already complex governance system even more complicated. However, tasking the EEA with the review also has its downsides. The EEA's mandate to propose targets would significantly change its current role and could entail its politicisation – with uncertain consequences. This new mandate might also require changing the regulation that establishes the EEA.¹⁴
 - **May the Commission deviate from the recommendations by the EEA (or independent body):** In principle, there are at least three models for addressing this:
 - **Commission is bound by the report:** In this model, the Commission could not deviate from the report. This not only a politically unrealistic but also legally problematic because it would undermine or infringe the Commission's right and virtual monopoly to initiate legislation – according to Article 17(2) TEU.
 - **Commission must provide and make public its reasons:** As another option, the European Commission could be allowed to deviate from the recommendations of the EEA, but be obliged to provide and make public its reasons for doing so. EU legislation contains relevant examples. Article 241 TFEU, for example, states that the Council may request the Commission to submit to it any appropriate proposals. If the Commission refuses to make a proposal, it must inform the Council of the reasons. The public exposure and potential related pressure could be a fairly strong way to avoid that the Commission deviates from the recommendations in an unaccountable way.

¹⁴ Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network. It is beyond the scope of this paper to analyse whether the new mandate would require amending this regulation.

- **Coordination between the Commission and the independent body:** The process of adopting regulatory technical standards under the ESMA Regulation¹⁵ is another model. According to Article 10 of the ESMA-Regulation, the European Securities and Markets Authority (ESMA) drafts regulatory technical standards. The standards enter into force after endorsement by the Commission. Where the Commission does not endorse a draft standard, it sends the draft back to ESMA for further adjustments. If ESMA continues to disagree with the Commission's proposed amendments, the Commission may adopt the regulatory technical standards with the amendments or reject them. In this case, the Commission must coordinate with the Authority. Applying the ESMA model to the CPR entails that (1) the EEA would draft the report and (2) that the Commission would have to send back the report for further adjustment in case of disagreement. If disagreement continues, the Commission could only deviate from the initial report and its recommendations after coordination with the EEA or the independent body.¹⁶

It is **possible to combine these options** and fine-tune each of its elements in terms of stringency. However, in any combination, the Commission proposal starts the regular legislative process. The rationale behind it is that the legislator should decide whether targets will increase or not. In other words, the legislator maintains control of whether targets are strengthened – or not. It should be kept in mind, however, that the Council and the Parliament have to ensure that the EU fulfills its obligations under the PA, which requires regular scaling up and new or updated NDCs that reflect its highest possible ambition.

Proposal by Commission for review and ratcheting up inadequate

Article 14 of the ESR proposal stipulates that the Commission reports to the European Parliament and to the Council. If appropriate, the Commission may make proposals, i.e. the Commission may propose changes to legislation or new policies. It may also propose new targets, either more or less ambitious. This system allows the Commission to propose a target adjustment but it contains no requirement to do so. It is within the discretion of the Commission whether or not it presents a legislative proposal at all, and whether this proposal contains more ambitious targets or not. It remains possible that the Council request the Commission to propose higher targets. In essence, the Commission proposes a standard review clause that is common to many other pieces of EU legislation – not more. The Commission's proposal maintains the status quo in terms of future adjustments and does not contain a

¹⁵ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority).

¹⁶ It is important to note that the Commission may adopt a regulatory technical standard without a draft from the Authority only where the Authority did not submit a draft to the Commission within a specific time limit.

dedicated mechanism for scaling up targets and ambition. This clause is weak and does not take account explicitly of the PA system.¹⁷ Given the size of the challenge this business as usual approach is insufficient.

7.2. Review and ratcheting up under the ETS

ETS: Article 28 (new): Adjustments upon global stocktake under the UNFCCC and the Paris Agreement

1. Within six months, respectively, of the facilitative dialogue in 2018, the global stocktake under Article 14 of the Paris Agreement in 2023 and subsequent global stocktakes thereafter, the Commission shall submit a report to the European Parliament and to the Council assessing the need to update and enhance the Union's climate action, taking into account the efforts undertaken by other major economies, and competitiveness in the context of carbon and investment leakage risks. The report shall be accompanied by a proposal, based on the preparatory report mentioned in paragraph 2, for amendments to this Directive or new legislative acts which the Commission considers necessary for achieving the EU's long term climate targets set out in Article 1 of this Directive and Articles 3 and 4 of the Paris Agreement.

2. In its report, the Commission shall assess in particular the appropriate increase of the linear factor referred to in Article 9 and the necessity for additional policies and measures enhancing the greenhouse gas reduction commitments of the Union and of Member States, and may look into the feasibility of introducing an emission performance standard. The Commission shall also assess the carbon leakage provisions are justified with carbon pricing spreading in other economies with a view to phase out of temporary free allocation.

3. The review shall be informed by a preparatory report published by the European Environment Agency (or another independent body) on the implementation of this Regulation. The report shall include recommendations on the linear factor if appropriate. If the Commission intends to deviate from the recommendations contained in the report, it shall coordinate with European Environment Agency (or the independent body) and publish explicit reasons for the deviation after that coordination.

Justification

- For a synchronized and coherent review and target adjustment, the ETS should mirror the system under the CPR (and vice versus). With the important difference of the linear reduction factor, the same reasoning applies – as presented above.

¹⁷ It should be noted, however, that the ESR proposal contains a number of specific target adjustment provisions (Article 10). The target adjustment regime under the ESR allows for adjusting the MS' individual annual emission budgets in specific circumstances, such as adjustment of emission budgets because of changes in the coverage of ETS emissions or because of adjustments in line with Annex 4 of the ESR. However, this specific adjustment mechanism does not allow for scaling up targets as an effort to increase the EUs overall reduction efforts.

7.3. Review and ratcheting up under the Governance Regulation

Article 37

1. The Commission shall report to the European Parliament and to the Council by 31 October 2023 and every five years thereafter on the operation of this Regulation, its contribution to the Governance of the Energy Union and the conformity of the planning, reporting and monitoring provisions of this Regulation with other Union legislation or future decisions relating to the UNFCCC and the Paris Agreement. The Commission may make proposals if appropriate.

2. The Commission shall report to the European Parliament and to the Council on progress towards meeting the targets set out in Article 1.1 c and its contribution to the goals of the Paris Agreement by 31 October 2023. If latest scientific evidence, particularly as set out in relevant IPCC assessments, suggests that the EU targets set out in Article 1.1 c constitute an insufficient contribution to global climate action, the report shall also be accompanied by a proposal to increase the Union's reduction targets set out in Article 1.1. c. In accordance with Articles 3 and 4.3 of the Paris Agreement, the proposed reduction targets shall represent a progression beyond previous targets .

2. With regard to the review of the objectives according to Article 1.1c, the review shall be informed by a preparatory report published by the European Environment Agency (or another independent body) on the implementation of this Regulation. The preparatory report shall include recommendations on increased targets if required. The European Environment Agency (or the independent body) shall publish its report by 31 March 2022. If the Commission intends to deviate from the recommendations contained in the report, it shall coordinate with European Environment Agency (or the independent body) and publish explicit reasons for the deviation after that coordination.

Justification

- For a synchronized and coherent review of EU climate policies and adjustment of targets, the GR must take account of the relevant processes under the CPR and ETS (and vice versus). For this reason, the GR would only review and ratchet up the EU's targets, not the ETS and the non-ETS targets which would be the task of the ETS and the CPR. Logically, the review and ratcheting up the EU's targets under the GR would be the basis for the processes under the ETS and CPR. In terms of timing, however, the review and ratchet up the EU's targets under the GR would be carried out simultaneously.
- Concerning the procedural elements of this proposal, the same reasoning applies as presented above.

8. Review and Ratcheting up of Targets: Graphical overview

