

DECISION OF THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY

No 2022/05/MC-EnC: amending Annex I to the Treaty establishing the Energy Community and incorporating Implementing Regulation (EU) 2018/2066, Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC in the Energy Community *acquis communautaire*

THE MINISTERIAL COUNCIL OF THE ENERGY COMMUNITY,

Having regard to the Treaty establishing the Energy Community (“the Treaty”) and in particular Articles 24, 25, and 79 thereof;

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Energy Community Decarbonization Roadmap adopted by the Ministerial Council on 31 November 2021 in Belgrade foresees a continuous alignment of the legal framework of the Contracting Parties with the European Union energy and climate *acquis communautaire*;
- (2) the European Union continues to pursue an ambitious reduction in greenhouse gas emissions by 2030 and thus is updating its legal acts and targets in line with the objectives of the European Green Deal;
- (3) the discussions on the 2030 targets for greenhouse gas reduction, for the minimum share of renewable energy and for energy efficiency in the Energy Community have been conducted and finalised;
- (4) the proposed European Union regulation on the Carbon Border Adjustment Mechanism sets out rules entailing the payment of costs equal to the value of emission allowances in the European Union to certain imported goods including those produced in Contracting Parties;
- (5) Contracting Parties are to pursue similarly ambitious energy and climate policies as the European Union in order to contribute to the achievement of a carbon neutral continent by 2050;
- (6) carbon pricing is as essential tool to assign and charge the market value of emissions to the polluters, thus facilitating a cost-effective and gradual phase-out of emissions-intensive technologies and practices;
- (7) the establishment of appropriate greenhouse gas emissions-related monitoring, reporting and verification rules in Contracting Parties in line with the European Union *acquis communautaire* is a pre-condition for the consequent design of the main elements of a carbon pricing system;

(8) the policy discussions on the concept of carbon pricing in Contracting Parties pursuant to the Energy Community Decarbonization Roadmap should commence without delay, in parallel to the transposition and implementation of the legal acts contained in the present decision of the Ministerial Council;

(9) the Permanent High Level Group, at its meeting on [xx.xx.xxxx] endorsed the present Decision,

HAS ADOPTED THIS DECISION:

Article 1

Amendments to the Treaty

The list of acts included in the "Acquis Communautaire on Energy" in Annex I. to the Treaty shall be amended as follows:

Points (13) to (15) are added:

"(13) Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012;

(14) Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council;

(15) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC."

Article 2

Transposition and implementation deadlines

1. Each Contracting Party shall bring into force the laws, regulations and administrative provisions necessary to comply with Commission Implementing Regulation (EU) 2018/2066, Commission Implementing Regulation (EU) 2018/2067 and Directive 2003/87/EC, as adapted by this Decision, by 31 December 2023.
2. Upon transposition, Contracting Parties shall immediately inform the Energy Community Secretariat thereof and communicate to the Energy Community Secretariat the text of the provisions of national law, which they adopt in the field covered by this Decision.

Article 3

General adaptations

1. The text of the acts referred to in Article 1 shall be adapted as follows:
 - a) the terms 'Member State' and 'Member States' shall be replaced by 'Contracting Party' and 'Contracting Parties', respectively, save as otherwise stipulated in this Decision;
 - b) the term 'Union' shall be replaced by 'Energy Community', save as otherwise stipulated in this Decision;
 - c) the term 'Commission' shall be replaced by 'Energy Community Secretariat', save as otherwise stipulated in this Decision;
 - d) the terms "the European Parliament" and "the Council" shall be replaced by "the Ministerial Council" save as otherwise stipulated in this Decision;
 - f) references to European Union acquis incorporated in the Energy Community by the Ministerial Council shall be complemented by the term "as adapted and adopted by Ministerial Council Decision [xxxx]", whereas "[xxxx]" shall be replaced by the number of the respective Ministerial Council Decision;
2. The adaptations referred to in Articles 4 to 6 of this Decision shall apply in addition to the adaptations referred to in paragraph 1 of this Article.

Article 4

Specific adaptations of Commission Implementing Regulation (EU) 2018/2066

Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 shall be adapted as follows:

- 1) In Article 1 the following text shall be deleted: "pursuant to Directive 2003/87/EC in the trading period of the Union emissions trading system commencing on 1 January 2021 and subsequent trading periods";
- 2) In Article 2, the term "It" shall be replaced by the following text "Without prejudice to Article 78, it". The text "1 January 2021" shall be replaced with the following text "1 January 2024".
- 3) In Article 3,
 - in point (2), the text "as referred to in Article 13 of Directive 2003/87/EC" shall be replaced with the following text "of ten years starting from 1 January 2024";

- in point (12) the following text shall be deleted “or, for tonne-kilometre data, the monitoring year as referred to in Articles 3e and 3f of Directive 2003/87/EC”;
 - in point (54) the following text shall be deleted “permitted under Directive 2009/31/EC”;
 - in point (55) the following text shall be deleted “permitted under Directive 2009/31/EC”;
 - in point (56) the following text shall be deleted “as defined in Article 3(1) of Directive 2009/31/EC”;
 - a new point (64) shall be inserted, which shall read as follows “‘tentative period’ means the period stemming from 1 January 2024 until 1 January 2026, during which the public authorities of Contracting Parties, operators, aircraft operators and other legal and natural persons falling under the scope of this Regulation shall continuously work on complying with and implementing the provisions of this Regulation being subject to penalties for non-compliance not earlier than 2 January 2026.”;
- 4) In Article 4, the text “5 to 9” shall be replaced by the following text “5 to 8”;
- 5) In Article 5, the following text shall be deleted in the first paragraph “activities included pursuant to Article 24 of that Directive”;
- 6) In Article 6 a new paragraph shall be inserted as paragraph (3) which shall read as follows “Competent Authorities shall endeavour to design the monitoring and reporting templates in line with the latest templates published by the European Commission in order to ensure compatibility and comparability with the European Union reporting.”
- 7) In Article 13,
- in the first sub-paragraph of paragraph (1) the following text shall be deleted “, without prejudice to Article 12(3)”;
 - in the second sub-paragraph of paragraph (1) after the text “those monitoring plans”, the following text shall be inserted “in line with Article 6(3)”;
 - in the second sub-paragraph of paragraph (1), the term “European” shall be inserted before the term “Commission”;
- 8) In Article 15, sub-point (iv) of point (a) of paragraph 4, the following text shall be deleted “or with regard to one of the thresholds provided by Article 28a(6) of Directive 2003/87/EC”;
- 9) In Article 20, second sub-paragraph of paragraph (1), the following text shall be deleted “and from activities and greenhouse gases included by the Member State in which the installation is situated, pursuant to Article 24 of that Directive”;
- 10) In Article 31, point (b) of paragraph (1), the following text shall be inserted at the end of the text “if applicable, and for the submission to the Energy Community Secretariat in the framework of Regulation (EU) 2018/1999 as adapted and adopted by Ministerial Council Decision 2021/14/MC-EnC”;
- 11) In Article 32,

- in the second sub-paragraph of paragraph (1) the following text shall be deleted “suitable draft standards,”;
 - in the second sub-paragraph of paragraph (1) the following text shall be deleted “or other scientifically proven methodologies”;
- 12) In Article 38,
- in the fifth sub-paragraph of paragraph (5), the following text shall be deleted “Article 29(10) of Directive (EU) 2018/2001 shall apply to an installation as defined in Article 3(e) of Directive 2003/87/EC.”;
 - in paragraph (6), all instances of the term “2022” shall be replaced with the term “2024”;
- 13) In Article 39, the third sub-paragraph of paragraph (2) shall read as follows “The Contracting Parties shall take into account guidelines provided by the European Commission on further applicable estimation methods.”;
- 14) In Article 42, in the second sub-paragraph of paragraph (1) the term “European” shall be inserted before the term “Commission”;
- 15) In Article 43, in point (c) of paragraph (4) the term “European” shall be inserted before the term “Commission”;
- 16) In Article 47,
- In point (a) of paragraph (2) the term “trading” shall be replaced with the term “tentative”;
 - In point (a) of paragraph (2) the following text shall be deleted “immediately preceding the current trading period”;
- 17) In Article 48,
- in the first sub-paragraph of paragraph (2) the following text shall be deleted “or included pursuant to Article 24 of that Directive”;
 - the second sub-paragraph of paragraph (2) shall read as follows “However, where inherent CO₂ is emitted, or transferred out of the installation to entities not covered by Annex I of that Directive or this Regulation, it shall be counted as emissions of the installation where it originates.”;
- 18) In Article 49, in the first sub-paragraph of paragraph (2) the following text shall be deleted “the operator of the transferring installation shall provide the receiving installation's installation identification code recognised in accordance with the acts adopted pursuant to Article 19(3) of Directive 2003/87/EC, if the receiving installation is covered by that Directive. In all other cases,”;
- 19) In Article 50, paragraph (2) shall be deleted;
- 20) In Article 51, in paragraph (2) the following text shall be deleted “intending to apply for an allocation of allowances free of charge pursuant to Articles 3e or 3f of Directive 2003/87/EC”;
- 21) In Article 52,
- in the third sub-paragraph of paragraph (1), the following text shall be deleted “referred to in Article 18a of Directive 2003/87/EC”;

- paragraph (2) shall be deleted;
- 22) In Article 55, in the second sub-paragraph of paragraph (2) the following text will be inserted “Energy Community Secretariat, upon consultation of the European” before the term “Commission”;
- 23) In Article 57,
- in paragraph (1), the following text shall be deleted “intending to apply for an allocation of allowances free of charge pursuant to Article 3e or 3f of Directive 2003/87/EC”;
 - the following text in paragraph (4) shall be deleted “However, the tier selected shall apply to all flights in the monitoring years relevant for applications pursuant to Article 3e or 3f of Directive 2003/87/EC.”;
- 24) In Article 58, the second sub-paragraph of paragraph (1) shall be deleted;
- 25) In Article 68, paragraph (2) shall be deleted;
- 26) In Article 71, the text shall read as follows “Emission reports held by the competent authority shall be made available to the public by that authority subject to national rules adopted. Operators or aircraft operators may indicate in their reports what information they consider commercially sensitive.”;
- 27) In Article 73, the following text shall be deleted “d) the NACE code in accordance with Regulation (EC) No 1893/2006 of the European Parliament and of the Council.”;
- 28) In Article 74,
- in the second sub-paragraph of paragraph (1), the term “European” shall be inserted before the term “Commission”;
 - in point (a) of paragraph (2), the term “European” shall be inserted before the term “Commission”;
- 29) The following articles shall be deleted: Article 76 and 77;
- 30) Article 78 shall read as follows “This Regulation shall enter into force on the day of its adoption. Contracting Parties shall transpose this Regulation by 31 December 2023. Contracting Parties, operators, and aircraft operators shall fully comply with and implement the provisions of this Regulation not later than the end of the tentative period defined in Article 3(64) ending on 1 January 2026.”;
- 31) In Annex I, sub-point (d) of point (7) of heading 1., the following text shall be deleted “identification of the receiving and transferring installations according to the installation identification code recognised in accordance with Regulation (EU) No 1193/2011.”;
- 32) In Annex II, in point (2.4) of heading (2), the term “European” shall be inserted before the term “Commission”;
- 33) In Annex IV, in sub-point (A) of heading 8, the term “European” shall be inserted before the term “Commission”;
- 34) In Annex IV, in sub-point (C) of heading 16, the following text shall be deleted “and surrendering allowances”;

35) Annex XI shall be deleted.

Article 5

Specific adaptations of Commission Implementing Regulation (EU) 2018/2067

Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council shall be adapted as follows:

- 1) In Article 1,
 - in the second paragraph, the following text shall be deleted "without prejudice to Regulation (EC) No 765/2008";
 - in the second paragraph, the following text shall be deleted "pursuant to Article 15 of Directive 2003/87/EC";
- 2) In Article 2,
 - the text "1 January 2019" shall be replaced by the text "1 January 2024";
 - the following text shall be deleted "reported pursuant to Article 14 of Directive 2003/87/EC";
 - the following text shall be deleted "and for the determination of free allocation to installations pursuant to Article 10a of that Directive";
- 3) In Article 3,
 - in point (3), the following text shall be deleted "or a natural person otherwise authorised, without prejudice to Article 5(2) of that Regulation";
 - point (7) shall read as follows "'operator's or aircraft operator's report' means the annual emission report to be submitted by the operator or aircraft operator and the tonne-kilometre report to be submitted by the aircraft operator";
- 4) In Article 4 the following text shall be deleted "the references of which have been published in the Official Journal of the European Union,";
- 5) Article 5 shall be deleted;
- 6) In Article 10, point (p) of paragraph (1) shall read as follows "where the verification concerns the emission report of an installation carrying out the geological storage of greenhouse gases in a storage site, the monitoring plan and the reports, covering at least the reporting period of the emissions report to be verified,";
- 7) In Article 17, in point (d) of paragraph (3) the following text shall be deleted "and pursuant to delegated acts adopted pursuant to Article 10b(5) of Directive 2003/87/EC";
- 8) In Article 27, point (f) of paragraph (3) shall be deleted;

- 9) In Article 35 the following text shall be deleted “Regulation (EC) No 765/2008 and”;
- 10) In Article 37, in paragraph (5), the text “or Contracting Party” shall be inserted after the text “The verification team shall also include one person who is able to communicate in the language required for the verification of an operator’s or aircraft operator’s report in the Member State”;
- 11) In Article 38,
 - the following text shall be inserted at the beginning of paragraph (1) “ The provisions of this Article will be applicable from 24 months from the deadline for transposing this Regulation in national legislation.”;
 - in point (a) of paragraph (1) the text “or Contracting Party” shall be inserted following the term “Member State”;
- 12) In Article 40, in paragraph (3), the text “verification team or the” shall be inserted before the text “independent reviewer”;
- 13) In Article 43, the second sentence of the second sub-paragraph of paragraph (1) shall read as follows “The verifier shall also be independent from bodies that trade emission allowances under any greenhouse gas emission allowances trading system.”;
- 14) In Article 46, the first sub-paragraph of paragraph (1) shall read as follows “Any legal person established under national law of a Member State or Contracting Party may request accreditation pursuant to the provisions of this Chapter.”;
- 15) In Article 48, the text “– as soon as it becomes applicable in the Energy Community –” shall be inserted before the text “shall carry out at least the following activities”;
- 16) In Article 50, paragraph (5) shall read as follows “Where a verifier carries out a verification in another Member State of the European Union or Contracting Party, the national accreditation body that has accredited the verifier may request the national accreditation body of the Member State of the European Union or Contracting Party, where the verification is performed to carry out surveillance activities on its behalf and under its responsibility.”;
- 17) The following articles shall be deleted: Article 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79;
- 18) Annex IV shall be deleted.

Article 6

Specific adaptations of Directive 2003/87/EC

Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC shall be adapted as follows:

- 1) Article 1 and 2 shall be deleted
- 2) In Article 3,
 - in the first line, the following text shall be deleted "For the purposes of this Directive";
 - in point (a), the following text shall be deleted "which shall be valid only for the purposes of meeting the requirements of this Directive and shall be transferable in accordance with the provisions of this Directive";
 - in point (h), the following text shall be deleted "within the period starting from three months before the date for submission of the list under Article 11(1), and ending three months before the date for the submission of the subsequent list under that Article";
 - points (i), (j), (k), (l), (m) and (n) shall be deleted;
 - in point (q), the text "EU ETS" shall be replaced by the following text "monitoring, reporting and verification of greenhouse gas emissions for the purpose of carbon pricing and emission allowance trading". The following text shall be deleted "in accordance with Article 18a";
 - points (r), (s) and (u) shall be deleted;
- 3) The following articles shall be deleted: Article 3a, 3b, 3c, 3d, 3e, 3f, 3g and 3h;
- 4) In Article 4,
 - the text "1 January 2005" shall be replaced by the text: "1 January 2024";
 - the following text shall be deleted "or the installation is excluded from the EU ETS pursuant to Article 27. This shall also apply to installations opted in under Article 24";
- 5) In Article 5, in point (d), the following text shall be deleted: "in accordance with the acts referred to in Article 14";
- 6) In Article 6,
 - in point (c), the text "under the acts referred to in Article 14." shall be replaced by the following text "defined in national rules related to the monitoring, reporting and verification of greenhouse gas emissions."
 - point (e) shall be deleted;
- 7) In Article 8, the following text shall be deleted "of the European Parliament and of the Council (1)";
- 8) The following articles shall be deleted: Article 9, 9a, 10, 10a, 10b, 10c, 10d, 11, 11a, 11b, 12, 13 and 14;
- 9) In Article 15,
 - in the first paragraph, the following text shall be deleted "pursuant to Article 14(3)";
 - in the first paragraph, the following text shall be deleted "in accordance with this Article";

- in the first paragraph, the term "European" shall be inserted before the term "Commission", and the text "by the Energy Community Secretariat" shall be inserted at the end of the paragraph;
 - the second, third and fourth paragraphs shall be deleted;
- 10) The following articles shall be deleted: Article 15a, 16 and 17;
- 11) In Article 18, the second paragraph shall be deleted;
- 12) The following articles shall be deleted: Article 18a, 18b, 19, 20, 21, 21a, 22, 22a, 23, 24, 24a, 25, 25a, 26, 27, 27a, 28, 28a, 28b, 28c, 29, 29a, 30, 31, 32 and 33;
- 13) In Annex I,
- in paragraph (3), the following text shall be deleted "in order to decide upon its inclusion in the EU ETS";
 - paragraph (4) shall be deleted;
 - in paragraph (6), the text "1 January 2012" shall be replaced by "1 January 2024". In the same paragraph the following text shall be deleted "to which the Treaty applies";
 - in the table of Annex I, under the heading "Aviation":
 - o the following text shall be deleted "to which the Treaty applies";
 - o point (i) shall be deleted;
 - o in point (j) the following text shall be deleted "Flights referred to in points (l) and (m) or performed exclusively for the transport, on official mission, of reigning Monarchs and their immediate family, Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point;";
 - o in point (k) the following text shall be deleted "(including emissions from flights referred to in points (l) and (m))";
 - o points (l) and (m) shall be deleted;
- 14) Annex IIa shall be deleted;
- 15) Annex IIb shall be deleted;
- 16) In Annex IV,
- in the title of Annex IV, the following text shall be deleted "REFERRED TO IN ARTICLE 14(1)";
 - in part A, the heading "Monitoring of emissions of other greenhouse gases" and its content shall be deleted;
 - in part B in the first line under the heading "Reporting of emissions" the following text shall be deleted "under Article 14(3)";
 - in part B, the heading "Monitoring of tonne-kilometre data for the purpose of Articles 3e and 3f" and its content shall be deleted;
 - in part B, the heading "Reporting of tonne-kilometre data for the purpose of Articles 3e and 3f" and its content shall be deleted;
- 17) In Annex V

- in the title of Annex V, the following text shall be deleted “REFERRED TO IN ARTICLE 15”;
- in part A, paragraph (2) of the heading “General Principles”, the following text shall be deleted “pursuant to Article 14(3)”;
- in part A, paragraph (11) of the heading “Report”, the following text shall be deleted in all instances “pursuant to Article 14(3)”;
- in part A, paragraph (12) of the heading “Minimum competency requirements for the verifier”, the following text shall be deleted “Commission pursuant to Article 14(1)” and shall be replaced by the following text “Ministerial Council of the Energy Community”;
- in part B, the following text shall be deleted from the title of second heading “data submitted for the purposes of Articles 3e and 3f”;
- in part B, paragraph (15) the following text shall be deleted “under Article 14(3)”;
- in part B, paragraph (16) shall be deleted.

Article 7

Entry into Force and Addressees

This Decision enters into force on the day of its adoption and is addressed to the Parties and the institutions of the Energy Community.

Done in Vienna, on 15 December 2022

For the Ministerial Council,

Presidency

