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Subject: 'Fit for 55' package - ETS
(a) Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757
(b) Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure
(c) Proposal for a Decision of the European Parliament and of the Council amending Decision (EU) 2015/1814 as regards the amount of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading scheme until 2030
- General approach

I. INTRODUCTION

1. On 14 July 2021, the Commission submitted three proposals to the European Parliament and to the Council, as part of the ‘Fit for 55 package’, relating to the Emissions Trading System (ETS):
 - a) a proposal to amend the Directive on the EU Emissions Trading System, the Decision on the Market Stability Reserve (MSR) and the Regulation on monitoring, reporting and verification (MRV) in the maritime transport sector (general ETS);
 - b) a proposal to amend the Emissions Trading System Directive with regard to aviation (ETS aviation); and
 - c) a separate proposal to amend the Decision on the Market Stability Reserve (MSR Decision).

2. The aim of the proposals is to ensure that the ETS delivers its share of the increased overall EU ambition of reducing net greenhouse gas emissions by at least 55 % by 2030 and to put the EU on track to meet its objective of becoming climate-neutral by 2050. In this context, the general ETS proposal introduces carbon pricing in sectors not yet covered by the ETS (maritime, and buildings and road transport) and strengthens existing provisions. In addition, the proposal takes into account the establishment of a Carbon Border Adjustment Mechanism (CBAM). The ‘ETS aviation’ proposal also contains provisions aimed at implementing CORSIA¹. With regard to the existing ETS, the proposals should result in an overall emissions reduction of 61 % in sectors under the ETS by 2030 compared to 2005, compared with the current objective of 43 %. The proposed separate ETS for buildings and road transport should provide a 43 % emissions reduction in these sectors compared to 2005 levels, in order to contribute to Member States meeting their national targets under the Effort Sharing Regulation.

The separate proposal for an MSR Decision is aimed at continuing the double intake rate of 24 % until 2030.

¹ Carbon Offsetting and Reduction Scheme for International Aviation, adopted by the International Civil Aviation Organization (ICAO) in 2016.

3. In the European Parliament, on behalf of the Committee on the Environment, Public Health and Food Safety (ENVI), Mr Peter Liese (EPP, DE) was appointed rapporteur for the general ETS proposal, Ms Sunčana Glavak (EPP, HR) for the ETS aviation proposal and Mr Cyrus Engerer (S&D, MT) for the proposal for a separate MSR decision. The ENVI Committee adopted the report on the proposed MSR decision on 15 March 2022 with a confirmation of this vote in the plenary on 5 April 2022. The ENVI Committee adopted its reports on the general ETS and ETS aviation proposals on 16 May 2022. On 8 June 2022 the Parliament adopted a series of amendments to the ETS aviation proposal and on 22 June the Parliament adopted a series of amendments to the general ETS proposal.
4. The European Economic and Social Committee delivered its opinion on 8 December 2021. The Committee of the Regions delivered its opinion at its session from 27 to 29 April 2022.
5. At working party level, the French Presidency continued to examine the revision of the three proposals at around 20 meetings. During this examination, the Presidency put forward a large number of compromise suggestions aimed at reconciling the delegations' positions.
6. On the basis of the work done, the Environment Council held a policy debate on 20 December 2021 and a policy debate on 17 March 2022. The latter was dedicated to the examination of the establishment of a separate ETS for the buildings and road transport sectors (BRT ETS) in connection with the establishment of a Social Climate Fund.
7. The Permanent Representatives Committee exchanged views on the BRT ETS and on the ETS excluding BRT on 1 and 8 April, 4 May and 13 May 2022 respectively, in order to provide guidance for further work. Subsequently, the Presidency continued work with a view to presenting a compromise package on the three proposals.

8. In preparation for the Environment Council on 28 June 2022, at its meetings on 15, 17, 22 and 24 June the Permanent Representatives Committee examined the revised compromise texts drawn up by the Presidency. The latest general compromise on the three texts mainly concerned the following aspects:

ETS installations

- a) keeping the main ETS parameters as proposed by the Commission unchanged (linear reduction factor, rebasing, main MSR parameters, including the 24 % intake rate until 2030), and ensuring that measures are taken in the event of excessive price fluctuations;
- b) for the Modernisation Fund, maintaining the increase of 2.5 %, the increase of the share of priority investments to 80 %, and the addition of new eligible sectors, but adjusting the Modernisation Fund eligibility criteria from minus 65 % to minus 75 % of the Union's average GDP. In addition, it is proposed that the governance and transparency of the Fund be strengthened. As a transitional measure, the Presidency proposed that Member States which are existing beneficiaries of the Modernisation Fund under certain conditions could on that basis continue to finance natural gas projects in respect of existing allocations;
- c) for the Innovation Fund, strengthening certain provisions to contribute to a better geographical balance of projects, while preserving the principle of excellence inherent in the existing operation of the Fund, and increasing its transparency. In addition, the Presidency proposed that particular attention would be paid to the maritime sector, with the possibility of launching dedicated calls for projects for the sector;

- d) as regards the CBAM, maintaining a ten-year time-limit for removing free allowances for the sectors covered and adjusting the pace of phasing out free allowances, with a slower pace at the beginning and a faster pace at the end of the 10-year period (-5 % from 2026 to 2028, -10 % from 2029 to 2032 and -15 % from 2033 to 2035). The text has been strengthened, including in connection with the issue of limiting potential carbon leakage connected with exports, to support the sectors covered by the CBAM: (i) by earmarking a significant proportion of newly auctioned allowances for those sectors; (ii) by organising dedicated calls for projects for sectors under the Innovation Fund and (iii) by introducing a review clause requiring the Commission to analyse the effects of the CBAM on the risks of carbon leakage for those sectors and, where necessary, propose additional measures to address that issue;
- e) accepting most of the proposals on the free allocation of allowances, including benchmarks, except for the proposal on conditionality;
- f) in order to take account of the specific circumstances of the district heating sector in those Member States where it represents a high share of emissions in relation to GDP, the Presidency proposed allocating 30 % of additional free allocations for the period from 2026 to 2030, with the introduction of strict conditions;
- g) other provisions: maintaining the current scope but adding a review clause on the inclusion of municipal waste incinerators; adding an opt-in mechanism for installations below the 20 MW threshold, applying the ETS exclusion for installations where emissions from the combustion of biomass account for more than 95 % only per five-year allocation subperiod.

BRT ETS

- h) establishing the BRT ETS maintaining the scope proposed. However, an opt-in has been introduced for all fossil fuels and a provision aimed at lightening the burden for regulated entities whose emissions are below 1000t CO₂eq. In order to address the concerns of many delegations, the Presidency proposed to postpone the introduction of this system by one year, without changing the linear reduction factor or the provisions relating to reporting and monitoring. It also proposes to strengthen Article 30h in order to make the measures in the event of excessive price increase more responsive;
- i) introducing an additional article allowing Member States which so wish to exempt regulated entities from surrendering BRT allowances for a given period of time if they are subject to a carbon tax at national level which is above the BRT auction price;
- j) making the creation of the BRT ETS conditional on an agreement to establish a Social Climate Fund (SCF) to address the social impact of the BRT ETS.

ETS Maritime

- k) the Presidency proposed keeping the proposal on the geographical scope and the gradual introduction of the requirements applicable to the maritime transport sector. In addition, it proposed the inclusion of methane and nitrous oxide emissions in the maritime MRV as of 2024. Their inclusion in the ETS is referred for a review clause; the inclusion of vessels below 5000 GT is referred for a review clause in the MRV and in the ETS;
- l) strengthening the Directive with an operational measure against the risk of evasion in transshipment ports close to the EU;

- m) redistributing 2.5 % of maritime auctions to those Member States which have the largest number of companies in relation to the population in order to take account of the administrative burden involved;
- n) introducing certain derogations and provisions to take account of specific geographical circumstances, specifically concerning journeys relating to the outermost regions, journeys subject to public service obligations, journeys to or from small islands, and winter navigation;
- o) strengthening the review clause on developments in the IMO;
- p) introducing a provision on the transfer of ETS costs from the shipping company to the commercial operator, while the shipping company remains the responsible entity under the ETS.

ETS Aviation

- q) keeping the provisions on the removal of free allowances for aviation and the arrangements for linking the ETS and the CORSIA;
- r) in order to further encourage the use of alternative fuels in the aviation sector, allocating 20 million of the free allowances cancelled for aviation to cover the additional costs of alternative fuels taken into account to achieve the objectives set by the ReFuelEU Aviation Regulation;
- s) in order to take account of the specificities linked to geographical circumstances, clarifying that the temporary derogation for journeys relating to the outermost regions and reinforcing the derogation as regards journeys subject to public service obligations.

II. STATE OF PLAY

9. These compromise texts modified many aspects of the Commission's proposals in response to requests from delegations, and ensured that the general approach and the level of contribution remained in line with the objective of the 'Fit for 55' package.
10. At the meetings of the Permanent Representatives Committee on 22 and 24 June 2022, the Presidency compromise texts were broadly welcomed. Thus, other than a few technical adjustments, the Presidency maintains the compromise proposal concerning the substance.
11. The amended compromise texts are set out in ADD 1 (general ETS), ADD 2 (ETS aviation) and ADD 3 (MSR decision²).
12. In addition, it should be noted that, for legal reasons, the general ETS proposal must be divided into two separate acts when it is adopted: a Directive with amendments to the ETS Directive (Article 1 of the proposal) and to Decision 2015/1814 on the market stability reserve (Article 2 of the proposal), and a Regulation containing amendments to the MRV Regulation proposed by the Commission in Article 3 of the proposal. The operational arrangements will be adjusted accordingly.

² This text is fully in line with the Commission proposal.

III. CONCLUSION

13. The Council is invited to resolve the outstanding issues and to adopt general guidelines on the basis of the texts set out in ADD 1, ADD 2 and ADD 3 to this note.

These general guidelines will serve as the negotiating mandates for the Council with the European Parliament in the ordinary legislative procedure.
