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'A' ITEM NOTE

From: Presidency
To: Council

Subject: Fit for 55 package proposals (CBAM, ETD and SCF)
- Progress report

I. INTRODUCTION

1. The “Fit for 55” package¹ was presented by the European Commission on 14 July 2021. The package aims at aligning the EU’s climate and energy policy framework with its new economy-wide climate target for 2030 of reducing net greenhouse gas emissions by at least 55%, as compared to 1990 levels, and to put it on track to reach its objective of becoming climate neutral by 2050.
2. The European Council in its conclusions of 10-11 December 2020² endorsed the binding EU target of a net domestic reduction of at least 55% in greenhouse gas emissions by 2030 compared to 1990.

¹ Doc. ST 10849/21.

² Doc. EUCO 22/20, points 14 and 17.

3. Moreover, Article 2 of the European Climate Law³ provides that Union-wide greenhouse gas emissions and removals regulated in Union law shall be balanced within the Union at the latest by 2050, thus reducing emissions to net zero by that date, and that the Union shall aim to achieve negative emissions thereafter. Furthermore, the relevant Union institutions and the Member States shall take the necessary measures at Union and national level, respectively, to enable the collective achievement of this climate-neutrality objective, taking into account the importance of promoting both fairness and solidarity among Member States and cost-effectiveness in achieving this objective.
4. The “Fit for 55” package consists of a set of inter-connected proposals, and covers a range of policy areas and economic sectors: climate, energy and fuels, transport, buildings, land use and forestry.
5. The proposals of the “Fit for 55” package have been a major priority for the Presidency which, within the various Council formations involved, has sought as much progress as possible within the overall approach of ensuring the coherence of the package. The Presidency overview of progress on all files that constitute the “Fit for 55” package is set out in doc. ST 13977/21⁴.
6. Besides the overview Presidency progress report referred to above, the Presidency deems necessary that a more detailed Presidency progress report, as appropriate, is submitted for information to the Council (ECOFIN) on the following legislative proposals:
 - a) the proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism⁵ (CBAM);

³ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (OJ L 243, 9.7.2021, p. 1.).

⁴ Issued on 22 November 2021 and submitted to the Transport, Telecommunications and Energy Council meeting of 2, 3 and 9 December 2021, as well as to the Environment Council meeting of 20 December.

⁵ Doc. 10871/21 + ADD1-ADD6; (2021/0214 (COD)).

- b) the proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)⁶ (“the ETD proposal”), and
- c) at the request of some delegations, the proposal for a Regulation of the European Parliament and of the Council establishing a Social Climate Fund⁷ (“SCF Regulation”)

II. CARBON BORDER ADJUSTMENT MECHANISM (CBAM)

- 7. The European Council in its conclusions of 10-11 December 2020⁸ has invited the European Commission to propose a carbon border adjustment mechanism to ensure the environmental integrity of EU policies and avoid carbon leakage in a WTO-compatible way.
- 8. In its conclusions of 17-21 July 2020, the European Council, among other points, indicated that the European Commission will propose a carbon border adjustment mechanism, as a basis for additional own resources for the EU.⁹ Work on the carbon border adjustment mechanism is also referred to in the Roadmap towards the introduction of new own resources, which is part of the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 16 December 2020.¹⁰

⁶ Doc. ST 10872/21+ ADD 1-7.

⁷ Doc. ST 10920/21 + COR 1 + ADD1 + ADD1 COR 1; (2021/0206 (COD))

⁸ See doc. EUCO 22/20, points 14 and 17.

⁹ See doc. EUCO 10/20, point A29.

¹⁰ OJ L 433I , 22.12.2020, p. 28.

9. The principal objective of the Commission proposal for a Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism¹¹ CBAM (as an environmental measure) is to address the risk of carbon leakage, caused by asymmetrical climate policies of non-EU countries (where policies applied to fight climate change are less ambitious than those of the EU). The application of CBAM would prevent that the emissions reduction efforts of the Union are offset by increasing emissions outside the Union through relocation of production to non-EU countries or increased imports of carbon-intensive products. Without such a carbon border adjustment mechanism, carbon leakage is likely to result in an overall increase in global emissions.
10. The Commission proposes that CBAM initially covers a number of specific products in some of the most carbon-intensive sectors: iron and steel, cement, fertilisers, aluminium and electricity.
11. CBAM would function in parallel with the EU's Emissions Trading System ("EU ETS"), to mirror and complement its functioning on imported goods. It will gradually replace the existing EU mechanisms to address the risk of carbon leakage, in particular the free allocation of EU ETS allowances. Following a review planned to take place in 2025, the Commission intends to assess the possibility to extend the measure to indirect emissions and, in this context, analyse the compatibility with existing financial measures to compensate for indirect emission costs from increases in electricity prices due to the EU ETS.
12. To allow producers, importers and traders to adjust to the new regime, the reduction of free allocation should be implemented gradually, while the CBAM is phased-in, in order to ensure that these measures are not cumulative. In accordance with the Commission proposal, in 2023-2025, CBAM would function as a reporting obligation only, and be gradually phased-in from 2026 (over 10 years, until 2035).
13. CBAM would serve as an essential element of the toolbox to meet the EU climate-neutrality objectives, in line with the Paris Agreement, adopted in December 2015 under the United Nations Framework Convention on Climate Change ("UNFCCC").

¹¹ Doc. ST 10871/21 + ADD1-ADD6; (2021/0214 (COD)).

14. On 22 July 2021, the Committee of Permanent Representatives (Part 2) established an Ad Hoc Working Party on the carbon border adjustment mechanism ("AHWP CBAM"), to conduct the preparatory work related to the negotiations on this legislative proposal and to efficiently address the cross-sectoral subject matters covered by this dossier. AHWP CBAM works on the design of CBAM in accordance with its mandate¹² and draws on the expertise of Member State delegates working in the relevant areas, as appropriate. Under the authority of the Committee of Permanent Representatives, the AHWP CBAM reports to the Economic and Financial Affairs (ECOFIN) configuration of the Council.
15. During the term of Slovenian Presidency, six meetings of AHWP CBAM will have taken place (due to restrictions related to COVID-19 pandemic, in the form of an informal videoconference of the members, on 2 and 22 September, 14 October, 4 and 19 November, and 9 December 2021).
16. The AHWP CBAM meetings were principally devoted to a detailed presentation of the Commission proposal and the accompanying impact assessment, followed by article-by-article examination of the proposal. The first reading of the proposal was completed, and more detailed exchanges took place on a number of aspects, such as:
- a) correlation of CBAM with the EU ETS;
 - b) impact of applying CBAM to direct emissions of imported in-scope products;
 - c) provisions of the proposal for a CBAM Regulation, where it is suggested to empower the Commission adopt delegated acts (TFEU Art. 290) and implementing acts (TFEU Art. 291);
 - d) role of customs authorities in the administration of CBAM;
 - e) methods for calculation of embedded emissions;
 - f) provisions of the CBAM proposal concerning electricity sector.

¹² Doc. ST 10846/21.

17. On the basis of the discussions on CBAM that have taken place so far, the Presidency holds the view that, besides the overarching climate objectives, a number of guiding principles which have already been endorsed by the European Council on how to implement the “Fit for 55” package will have to be taken into consideration. For example - the need to preserve the EU’s competitiveness and taking account of Member States’ different starting points and specific national circumstances and emission reduction potential, the need to achieve the 2030 target collectively, etc.
18. While climate objectives are not contested, the discussions in the AHWP have confirmed that Member States attach significant importance to this proposal in the context of international trade, the competitiveness of EU industry and its effects on the economy, including the labour market. As already indicated in the explanatory memorandum of the Commission proposal, it will remain important to ensure that the design of CBAM is in compliance with World Trade Organization rules and other international obligations of the EU.
19. The Presidency believes that, due to the novelty of the proposed measure, further technical discussions at the AHWP CBAM will be required, as delegations need to ascertain how CBAM will function in practice, including the aspects related to the overall design and administration of the new mechanism. Among other issues, further insights would be beneficial on the following:
 - a) administrative aspects relating to the procedures at the border when goods are imported;
 - b) penalties for infringements and provisions to prevent circumvention of CBAM rules;
 - c) process of registration and relevant controls of operators and installations in non-EU countries;
 - d) record-keeping specifics as regards carbon price paid in the country of origin;
 - e) particularities of sale, price and surrender of CBAM certificates;
 - f) measures to ensure that relevant InfoTech systems and networks are adequate for control and co-operation pursuant to the rules of CBAM.

20. The Presidency notes that Member States are committed to continue the work on the basis of the Commission proposal. However, at this stage, it remains too early to draw any conclusive remarks on the contents of a possible compromise agreement for a general approach of the Council (its position in the future negotiations with the European Parliament) on this legislative file.

III. REVISION OF THE ENERGY TAXATION DIRECTIVE (ETD)

21. The proposal for a Council Directive restructuring the Union framework for the taxation of energy products and electricity (recast)¹³ (“the ETD proposal”) aims at the following objectives:
- a) providing an adapted framework contributing to the EU 2030 targets and climate neutrality by 2050 in the context of the European Green Deal. This would involve aligning the taxation of energy products and electricity with EU energy, environment and climate policies, thus contributing to the EU efforts to reduce emissions;
 - b) providing a framework that preserves and improves the EU internal market by updating the scope of energy products and the structure of rates and by rationalising the use of tax exemptions and reductions by Member States; and
 - c) preserving the capacity to generate revenues for the budgets of the Member States.
22. In the view of the Commission, these objectives would be achieved by switching from taxation based on volume to taxation based on energy content, by introducing a ranking of rates according to their environmental performance and by limiting incentives for fossil fuel use. According to this ranking, conventional fossil fuels, such as gas oil and petrol will be taxed at the highest rate and electricity at the lowest rate.

¹³ Doc. ST 10872/21 + ADD 1-7.

23. In 2011, the Commission already proposed to revise the ETD, but after inconclusive discussions, the Commission withdrew its proposal in 2015. On 11 September 2019, the Commission published a report¹⁴ on the evaluation of the ETD, pointing out that the current rules do not contribute to the new EU regulatory framework and policy objectives in the area of climate and energy. On 5 December 2019 the Council (ECOFIN) approved conclusions on the EU energy taxation framework¹⁵, emphasising the important role of the harmonisation of energy taxation through the ETD in ensuring the proper functioning of the internal market. The Council also supported an update of the legal framework for energy taxation contributing to wider economic and environmental EU policy objectives. The conclusions called on the Commission to ensure that the proposals were fully assessed in terms of their economic, social and environmental costs and benefits. In preparation of the ETD proposal, the Commission carried out a public consultation.¹⁶
24. On 20-21 July 2021, at the informal meeting of the Working Party on Tax Questions - High Level (HLWP), which was dedicated to the “Future challenges in the taxation area”, delegations could already express their preliminary views on the role of taxation in green transition during the working session “Taxation aspects of the Green Deal”. On 22 July 2021 the Commission presented the ETD proposal in the Committee of Permanent Representatives (Part 2).
25. The technical discussions in the Working Party on Tax Questions (Indirect Taxation – Excise duties/Energy taxation) were launched on 9 September 2021. At this meeting the Commission presented both the proposal and the impact assessment.
26. At the HLWP on 23 September 2021, the Presidency informed delegations about the state of play, the work planned and its intention to make as much progress as possible on this file during its term of office.

¹⁴ Doc. ST 12153/19.

¹⁵ Doc. ST 14608/19.

¹⁶ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12227-Revision-of-the-Energy-Tax-Directive-public-consultation_en

27. The technical examination of the proposal in the Working Party on Tax Questions (Indirect Taxation – Excise duties / Energy taxation) continued on 6 October, 20 October, 15 November and 24 November 2021 with an article-by-article analysis. The first round of analysing all articles was completed on 24 November 2021.
28. The examination of the proposal offered delegations the opportunity to ask questions of clarification, to which the Commission provided replies. Quite a few questions were asked about a variety of aspects of the proposal, such as switching from volume to energy content based taxation, introducing a ranking of rates according to the environmental performance, taxation of new products, indexation, aviation and maritime sectors as well as the links with other files of the “Fit for 55” package.
29. At the HLWP on 25 November 2021, the Presidency informed delegations about the results of the work and the progress on the dossier, also in the context of the “Fit for 55” package.

IV. SOCIAL CLIMATE FUND (SCF)

30. To mitigate the social and distributional impacts of the proposed separate emissions trading system for buildings and road transport, the Commission proposes to establish a Social Climate Fund (a proposal for a Regulation of the European Parliament and of the Council establishing a Social Climate Fund¹⁷ (“SCF Regulation”).
31. On 8 September 2021, the Committee of Permanent Representatives (Part 1) established an Ad Hoc Working Party on the Social Climate Fund (“AHWP SCF”)¹⁸, to conduct the preparatory work related to the negotiations on this legislative proposal and to efficiently address the cross-sectoral subject matters covered therein.

¹⁷ Doc. ST 10920/21 + ADD1 + COR1, (2021/0206 (COD)).

¹⁸ Doc. ST 11402/21 + COR1.

32. Under the authority of the Committee of Permanent Representatives, the AHWP SCF reports to the Environment (ENVI) configuration of the Council and, as appropriate, to the Economic and Financial Affairs (ECOFIN) configuration of the Council.
33. The main aspects of the state of play on this legislative proposal are outlined in the Presidency overview of progress on the “Fit for 55” package, set out in doc. ST 13977/21. As indicated in that Presidency overview, in line with the mandate of the Ad hoc Working Party on Social Climate Fund¹⁹, the Presidency has bracketed the relevant provisions in the proposal and its annexes, on the financial aspects, linked to the Multiannual Financial Framework and the Own Resources of the Union. Further progress on the SCF regulation will be set out in a progress report to be elaborated in view of the meeting of the Environment (ENVI) configuration of the Council on 20 December.

V. CONCLUSION

Against this background, and following the Committee of Permanent Representatives meeting on 1 December, the Council (Economic and Financial Affairs) is invited to take note of this Presidency progress report as an ‘A’ item in its forthcoming meeting.

¹⁹ Doc. 11402/21 + COR1.