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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	<p>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 and</p> <p>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</p> <p>- Analysis of the final compromise text with a view to agreement</p>

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 separate proposal to amend the Decision on the Market Stability Reserve (MSR Decision); and
- c) a proposal to amend the Emissions Trading System Directive with regard to aviation (ETS aviation).
2. The overall 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 and the aim to achieve negative emissions thereafter.
3. 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.
4. 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 European Parliament adopted its negotiation mandate on the general ETS proposal on 22 June 2022, on aviation on 8 June 2022 and on the MSR Decision on 5 April 2022.
5. Within the Council, the three proposals related to the revision of ETS were dealt with together, and on 29 June 2022, the Council reached general approaches on all three proposals¹. In the context of the general approach on the ETS general proposal it was agreed that the amendments to the MRV Regulation should be adopted as a separate legal act.
6. In the subsequent interinstitutional negotiations, the ETS aviation proposal has been dealt with separately, and a provisional agreement was reached on the proposal at the trilogue held on 6 December 2022².

¹ Documents 10796/22, 10800/22 and 10798/22

² The text of the provisional agreement is contained in document 5440/23.

7. Six trilogues have taken place on the ETS general proposal: on 11 July, 10 October, 10, 22 and 29 November and on 16/17 December 2022. On 6 September 2022, a separate trilogue was held on the MSR proposal. The sixth trilogue resulted in a provisional agreement between the Parliament and the Council.
8. The final compromise texts on the ETS general proposal, the MRV regulation, and the separate MSR Decision are set out in Addenda 1 to 3 to this note. The main elements of the provisional agreement are set out below.
9. The Commission intends to make the three statements set out in the Annex to this note. The statements will be entered into the minutes of the Council at which the legislative acts will be adopted.

II. MAIN ELEMENTS OF THE FINAL COMPROMISE TEXTS

A. ETS INSTALLATIONS - SCOPE AND FREE ALLOCATION (INCL. CBAM INTERACTION)

10. As concerns issues related specifically to the functioning of the current ETS applied to installations the main elements set out below were agreed.
11. The scope of surrendering obligations for installations is retained as proposed by the Commission and agreed in the general approach.
12. As regards inclusion of municipal waste incineration, as a compromise with the Parliament that had requested its full inclusion from 2026, it was agreed to start monitoring from 1 January 2024 (cf. Annex I). A review clause was agreed whereby the Commission by 31 July 2026 must assess the feasibility of such inclusion from 2028 and the potential need for an opt out for Member States until 31 December 2030 (Article 30(4c)).
13. The Council text on installations using biomass was agreed (cf. Annex I).

14. On Free allocation:

a) On conditionality, the following was agreed (Article 10a (1)):

- Conditionality based on energy audits and certified energy management systems with a percentage value for reduction set at 20 % (compared to the Parliament's position of up to a 50% reduction). The payback period is set at maximum 3 years (in line with the same condition applied for indirect costs compensation schemes) compared to the Parliament position of 8 years. Further, provisions were included whereby the Commission must ensure a harmonised application of conditionality that does not jeopardise a level playing field, environmental integrity and equal treatment between installations across the Union.
- In addition, the 20% "worst performers" (approximately 500 installations) must draw up climate neutrality plans in line with the conditions for receiving additional free allocation for district heating. No additional reduction of free allocation (above the 20% due to the energy audits/certified energy management systems) for installations that do not draw up climate neutrality plans will be made. Parliament had proposed that all installations be required to draw up such plans with additional reduction of free allocation of up to 50% in the absence of such plans.

b) The Council position on additional free allocation for district heating (Article 10b (4)) was kept with certain precisions of the text.

- c) As a compromise with the Parliament that had proposed to delete Article 10c on free allocation for electricity generating installations, a new provision on setting an earlier end date of 31 December 2024 for giving free allocation to these installations has been included (Article 10ca). Member States must by that date either add remaining free allocation to the allowances to be auctioned or transfer allowances to the Modernisation Fund. Allowances transferred to the Modernisation Fund will be subject to the same rules as allowances that were transferred in accordance with the notification set out in Article 10d(4) of the existing Directive.
- d) Linked to conditionality, it was agreed to include a modified version of the bonus/malus system proposed by the Parliament, whereby the 10 % best performing installations are exempted from the (possible) application of the cross sectoral correction factor, using a priori saved free allocation from the application of the energy audits conditionality (Article 10a (1) and (5)).
- e) It was agreed to increase the minimum update rate for setting benchmark values for free allocation from 0,2 to 0,3 %. The maximum update rate is kept at 2,5 %. As set out in the general approach, the hot metal benchmark will be exempted from the update of benchmark values (Article 10a (2)).

15. On the interaction with CBAM, including exports:

- a) As part of the final overall compromise, agreement was reached on a phase out of free allocation starting in 2026 and ending in 2034, i.e. one year earlier than in the Council position (the Parliament had proposed a full phase out from 2032) and with a slower rhythm in the first years (Article 10a (1a)). By 2030, 48,5 % of free allocation will have been phased out representing 165 million allowances. The text on phase out of free allocation now specifies that the phase out of free allocation is subject to the application of the CBAM regulation beyond its transitional phase, including the obligation to surrender CBAM certificates.

- b) The phased out free allocation will go to the Innovation Fund as originally proposed by the Commission, and the Council text on giving special attention to and on dedicated calls for sectors covered by CBAM has been retained. In addition, to accommodate the Parliament, provisions have been included to strengthen support to CBAM sectors and address carbon leakage risks:
- Member States will be able to use auctioning revenues to address any residual risk of carbon leakage in the CBAM sectors, supporting the transition and promoting their decarbonisation in accordance with state aid rules (Article 10 (3) new point l), and 50 % of any remaining free allowances due to the conditionality requirements that are not used to avoid the triggering of the cross sectoral correction factor will be allocated to Member States and the revenue should be used for that new purpose (cf. Article 10a (1), penultimate subparagraph).
 - The agreement provides for a specific review one year before the end of the transitional period under the CBAM regulation, where the Commission on the basis of certain criteria is requested to assess the carbon leakage risk for goods covered by the CBAM regulation destined for exports and, where appropriate, submit a legislative proposal to address that risk in a WTO compliant manner (Article 10a (1a)). Article 30(2) of the general approach on the assessment every two years, in the context of the CBAM regulation, of the impact of the CBAM on the risk of carbon leakage was maintained subject to updating the text to reflect the agreement found on the CBAM regulation and the timing of the specific review referred to above.

B. INCLUSION OF MARITIME, INCL THE MRV REGULATION

16. As part of an overall balanced compromise, where critical elements of the Council's position were retained in their entirety, an earlier phase in of surrender obligations was agreed: 40 % surrendering obligation for verified emissions from 2024, 70 % for verified emissions for 2025 and 100 % for 2026 verified emissions (Article 3ga). It is recalled that the Parliament's position was to apply the 100 % surrender obligation already from 2024.
17. The geographical scope was maintained as agreed in the general approach (Article 3g).
18. On the scope of greenhouse gases, a compromise was found whereby methane and nitroxides are to be included in the MRV regulation from 2024 as per the Council's position and to be included in the ETS from 2026 allowing for two years monitoring before inclusion (MRV regulation, Article 2(1c) and ETS Directive, Annex I).
19. On the scope of vessels (where the Parliament's proposal was to include all ships above 400 gross tonnage automatically in the MRV and in the ETS):
 - a) For bigger vessels - of 5000 gross tonnage and above – it was agreed to include offshore vessels in the MRV regulation from 2025 with an automatic inclusion in the ETS from 2027, allowing for two years of monitoring before inclusion (MRV regulation, Article 2(1b), and ETS Directive, Annex I).
 - b) For smaller vessels – below 5000 gross tonnage, but above 400 gross tonnage - the Council's suggestion to include general cargo vessels in the MRV from 2025 was retained with the addition of smaller offshore vessels, also from 2025 (MRV regulation, Article 2(1a)).
 - c) Further, as concerns smaller vessels, the Council's position on providing only for review clauses in the MRV and in the ETS on inclusion of those ships was maintained, including the proposed dates for these reviews (MRV regulation, Article 22a, and ETS Directive, Article 3ge (3)).

20. The Council's texts on exemptions/derogations on ice class vessels, small islands, PSO/PSC and outermost regions were retained in their entirety, save for a clarification of the small island derogation to the effect that only islands with no road or rail connections are covered by the provision (Article 12 (3-e to 3-b)).
21. As regards provisions on evasion and transfer of costs, the Council and the Parliament had made amendments that went in the same direction, albeit it with different wording and on some aspects differing on substance. The agreed provisions correspond to the Council's position and are based on the wording provided by the Council (Articles 3, point (wa), and 3g (1a), and 3gaa).
22. In relation to the IMO review clause (Article 3ge (1)), an agreement was found on a text that contains elements both from the Council's and the Parliament's positions. The Council's text on avoiding significant double burden was retained and the notion of "possible co-existence or alignment" with the IMO measure is now covered by the notion "coherence" between the ETS and the IMO measure. As regards the timing of the review, the text has been made more precise specifying that the review must be submitted at the latest within 18 months after the adoption of any IMO measure but before it becomes operational. As a compromise with the Parliament that had proposed 100% geographical coverage as the basic rule, a further revision clause was agreed (Article 3ge (1a)) whereby in the event that the IMO by 2028 has not adopted a global measure, the Commission shall examine the need to extend the geographical scope, in light of a number of factors, including progress at IMO level and the risk of an increase in evasive practices.
23. On financial aspects specifically related to the inclusion of maritime:
- a) The Council's texts on 3,5% redistribution of additional allowances due to the inclusion of maritime in the ETS and on giving special attention to the maritime sector and on dedicated calls on maritime topics in the Innovation Fund were retained (the latter with the inclusion of some additional elements to be considered cf. below) (Articles 3g (2) and 10a (8)).

- b) The Parliament conceded on the establishment of an Ocean Fund. As a compromise, it was agreed that additional allowances resulting from the extension of the scope of the ETS to additional greenhouse gases and big offshore vessels will be allocated to the Innovation Fund (Article 9). In addition, the Commission intends to make the statement set out in the Annex to this note stating that the dedicated topics for maritime in calls for proposals referred to in Article 10a(8) should deploy 20 million allowances up to 2030 in these areas.
- c) Further, in the texts on the Innovation Fund and on the Member States' use of revenues, it has been agreed to address maritime specificities and biodiversity aspects. (Articles 10a (8) and 10 (3), points (c), (f) and (k)).
24. For legal reasons and as reflected in the Council's position, it was agreed to split from the main ETS proposal the amendments to the MRV regulation and include them in a separate amending regulation.

C. MARKET FUNCTIONING

25. The Council's text on making Article 29a on "Measures in the event of excessive price fluctuations" more responsive was retained in its entirety save for a slight adjustment of the multiplier in paragraph 1 from 2,5 to 2,4.
26. The Parliament dropped its amendment relating to market restrictions. To respond to the Parliament's concerns, a strengthening of the provisions on market monitoring was agreed, including as regards the follow up of the final ESMA report (Articles 10(5) and 10(6) and Article 29). Further, the Commission intends to make the statement set out in the Annex to this note.

D. FINANCIAL MECHANISMS

27. As regards the Innovation Fund, its name was retained. On substance the following was agreed:

- a) In comparison to the Council's position, it was agreed to increase the size of the Innovation Fund by 25 million allowances – 5 million sourced from Member States' auction revenues and 20 million from free allocation. In addition to the increase due to the extension of the scope on maritime (cf. above), as part of the agreement on ETS aviation 5 million allowances from the phase out of free allocation to aircraft operators will be dedicated to the Fund (Article 10a (8)). Further, 50 % of any remaining free allowances due to the conditionality requirements that are not used to avoid the triggering of the cross sectoral correction factor will be allocated to the Fund (Article 10a (1), penultimate subparagraph). It should also be noted that, as a consequence of the agreement on the increase of scope of the CBAM regulation to hydrogen, some additional allowances will flow into the Innovation Fund. A provision on frontloading of funding has been included.
- b) The Council's position on redirecting towards the Social Climate Fund the 150 million allowances from the new ETS and 50 million allowances from free allocation and auctioning, proposed by the Commission to go to the Innovation Fund, was retained in the agreed text (Articles 10a (8b) and 30d (3a)).
- c) It was agreed to accommodate the Parliament partly on upscaling by clarifying that the concept of innovation can also include upscaling. This should be read in conjunction with the new recital (32a) stating that "breakthrough innovation should be prioritized in the selection of projects supported through grants." Further, the listing of areas that can be supported by the Fund was expanded to cover a number of issues, including - as part of the agreement on ETS aviation - a reference to some specific aviation issues. The Parliament's text on earmarking for renewables was not included.

- d) The Council's texts on geographical balance (i.e. on technical assistance and on pursuing effective quality based geographical coverage) and information to Member States on applications and the list of pre-selected projects were maintained. As stated above the Council's position on giving special attention to CBAM sectors and maritime transport is also part of the agreement found.
- e) Finally, on competitive bidding and in order to provide the necessary detailed clarifications and framework, including safeguards to protect the Union budget and derogations from the Financial Regulation, the text on competitive bidding has been considerably expanded and is now included in a separate paragraph (Article 10a (8a)).

28. As regards the Modernisation Fund:

- a) The top up of 2,5 % of allowances was agreed with the inclusion of Slovenia as a beneficiary Member State (Article 10 (1) and Annex IIb, Part B).
- b) It will be possible for beneficiary Member States to fund cross border projects and the list of areas of priority projects has been expanded (Article 10d (1) and (2)).
- c) As regards the existing 2 % envelope and voluntarily transferred allowances, the 80-20 share of priority and non-priority projects was maintained (Article 10d (2)). As agreed in the general approach, Member States can continue to fund projects involving natural gas from the non-priority share in certain cases. This concerns revenue from allowances transferred from free allocation to electricity generating installations, including those transferred in accordance with the new Article 10ca. In addition, and subject to the conditions agreed in the general approach, revenue from allowances can finance projects involving natural gas, albeit by way of a compromise within a somewhat shorter timeframe for auctioning for this purpose than agreed in the general approach: 31 December 2027 for energy generation, and, for downstream uses of gas, 31 December 2028. The Parliament's initial position was to exclude all funding of projects involving natural gas (Article 10d (1)).

- d) As regards the top up of 2,5%, the share of priority projects was raised to 90% (Article 10d (2)).
- e) As part of the compromise, the Parliament conceded its request to make funding from the Modernisation Fund conditional on rule of law requirements and commitment to climate neutrality at Member State level.
29. For the Innovation Fund and the Modernisation Fund (the existing 2 % and 2,5 % top up), it has been agreed to apply the “do no significant harm” principle to investments (new Article 10e).
30. On the Member States’ use of revenues:
- a) It was agreed to expand/elaborate further the list of purposes for the use of auctioning revenue, including to maritime issues, biodiversity aspects and support to CBAM sectors as referred to above, as well as to issues related to buildings (Article 10 (3)).
- b) No earmarking for specific purposes was included but as concerns support to developing countries to accommodate the Parliament, wording was agreed whereby Member States shall take into account the need to continue scaling up international climate finance in vulnerable third countries (Article 10(3), first subparagraph).
- c) Reporting on the use of revenues was strengthened but no requirements of additionality or reporting on ex-ante plans as proposed by the Parliament were included (Article 10(3), third subparagraph).
- d) As part of the final overall agreement, it was in Article 10(3) agreed to change “should” to “shall” with the inclusion of the term “equivalent financial value”. In addition, the Commission intends to make the statement set out in the Annex to this note.

31. A new provision on visibility on the use of funding from the ETS has been included based on the provisions agreed for a number of programmes under the Multiannual Financial Framework, such as the LIFE programme, adapted to the ETS context (Article 30ic). For the Innovation Fund and the Modernisation Fund this will include the introduction of an EU ETS label. As regards the use of auctioning revenues, Member States, taking into account national circumstances, shall endeavour to ensure visibility of the source of funding.

E. ETS 1 AMBITION, INCLUDING MARKET STABILITY RESERVE (MSR)

32. As part of the final overall compromise, on the ambition of ETS 1, the following was agreed:

- a) A reduction of 62 % in emissions by 2030 compared to 2005. The Commission proposal, supported by the Council, aimed at a reduction of 61 % and the Parliament's position at a reduction of 63 %. This is achieved by (Article 9):
- increasing the linear reduction factor (LRF) from the 4,2 % proposed by the Commission to 4,3 % from 2024 to 2027 and 4,4 % from 2028 (compared to the Parliament's position of 4,4 % from 2024, 4,5 % from 2026 and 4,6 % from 2029); and
 - spreading the originally proposed one-off rebasing of 117 million tonnes CO₂ equivalent over 2 years (90 million in 2024 and 27 million in 2026).

In terms of the overall volume of emissions (cap), this will according to the Commission reduce the overall cap for the period until 2030 from 12 309 million tonnes CO₂ equivalent in the Commission proposal to 12 295 million tonnes.

The agreement on ETS 1 ambition should be seen in the context of the Parliament's position that an increased ETS 1 ambition was directly linked to its agreement to the establishment of a new ETS on buildings and road transport.

- b) The 24 % intake rate as proposed by the Commission in its separate proposal on the MSR Decision.
- c) The threshold values for triggering the intake to the MSR will be set as proposed by the Commission and agreed in the general approach and not lowered as proposed by the Parliament (MSR Decision, Article 1(5)).
- d) As a compromise on the MSR, wording has been included in the review clause whereby the Commission in the review of the MSR as regards the numerical value of the threshold should also consider a potential adjustment of the threshold in line with the LRF (MSR Decision, Article 3).

F. NEW ETS FOR BUILDINGS, ROAD TRANSPORT AND ADDITIONAL SECTORS

- 33. As part of an overall balanced compromise on the establishment of a new separate emissions trading, fundamental elements of the general approach were preserved, while accommodating the Parliament's concerns on a number of points. Importantly, the Parliament conceded its proposed split scope between commercial and private users, and the budgetary architecture of the Social Climate Fund through external assigned revenues as set out in the general approach was maintained.
- 34. On scope, it was in addition agreed to accommodate the Parliament, at least partly, on the extension of the scope of fuels, notably to process heating from small industry not covered by the ETS 1, which accounts for a substantial number of emissions (Annex III). The Commission's suggested approach of having a positive list of sectors included in the scope was retained. The Parliament had suggested an "all fuels scope" with exemptions.

35. As a consequence of the increased scope of the new ETS and in line with the direct link and the principle of parallelism between the scope of the new ETS and the size of the Social Climate Fund, it has been agreed to increase the size of the Social Climate Fund correspondingly, from EUR 59 000 000 000 to EUR 65 000 000 000, based on the Council's methodology for calculating the share of allowances to be dedicated to the Fund (Article 30d (3a)).
36. The delayed start of the system in 2027 as per the Council's position was agreed. However, as a compromise with the Parliament that called for additional safeguards, a new provision ("emergency brake") has been included, whereby the start will be delayed until 2028 in the event of exceptionally high energy prices (new Article 30k). In this context, it is recalled that the Parliament had proposed an emergency brake that could be triggered recurrently. The "emergency brake" can be triggered either by exceptionally high gas prices or by exceptionally high oil prices. The trigger is based on the average 6-month price on 30 June 2026 – for gas if that price is higher than the average price for February and March 2022, and for oil if that price is more than 2 times the average oil price during the five preceding years. A possible delay until 2028 will also entail a reduction of the size of the Social Climate Fund (Article 30d (3a)) and the postponement of the application of a number of other provisions of the new emission trading system.

37. The Council's position on the allowance price mechanism (Article 30h "Measures in the event of excessive price increase") that represents a strengthening of the Commission proposal has been retained. To accommodate further concerns on the level of the price of allowances and its impact, in particular on the vulnerable groups and households, the Council text has been combined with a provision partly based on an amendment by the Parliament, whereby a release from the MSR of 20 million allowances will be triggered if the three-month average allowance price exceeds 45 EUR over two consecutive months (Article 30h (1a)). The amount of 45 EUR is based on 2020 prices and will be indexed based on the consumer price index. Further, the release from the MSR can only be triggered once every 12 months, except where within the second half of that period, the condition is met again and the Commission, assisted by the Climate Change Committee, decides to derogate therefrom. The provision expires at the end of 2029, unless it is decided by a legislative act to continue it (Article 30h (2b)).
38. The Parliament agreed to drop its request for an elaborate "cost pass through" measure aimed at ensuring that a maximum of 50 % of carbon costs were passed on to the final consumer. Instead, a provision was agreed on monitoring by the Commission based on annual reporting by the regulated entities on cost pass on and with a possible legislative follow up if the Commission detects improper practices (Article 30f (2b)).
39. The Council's position on the national carbon tax derogation (Article 30e (3), opt in (Articles 30j and 30c (4)) and simplified reporting (Article 30(7)) has been retained as well as the main thrust of the provisions on double counting, including on compensation to the final consumer (Articles 30c (3), 30d (5) and 30f (4)).

40. On the Member States' use of auctioning revenues from the new ETS (Article 30d (5)), it was agreed in parallel to the agreement reached on Article 10 (3) to refer to “shall” use the revenues paired with “or the equivalent financial value thereof”. The spending purposes agreed in the general approach were retained with two additions. Firstly, as a compromise with the Parliament that had deleted the reference to Article 10(3) altogether and replaced it with a reference to provisions of the Social Climate Fund, it was agreed to keep the reference to Article 10 (3) of the Directive, while adding “giving priority to activities that can contribute to address social aspects of the emission trading under this Chapter”. Secondly, given that co-financing of the Member States' Social Climate Plans was agreed in the context of the Social Climate Fund, a reference to the possibility to use these revenues for such co-financing was re-introduced, but without any obligation to, partly, use the revenue for that purpose as proposed by both the Commission and the Parliament.
41. Finally, on the ambition of the new ETS in terms of emissions reductions, the provision setting out the LRF to be applied has been adjusted to reflect the inclusion of new sectors (Article 30c (1) and (2)). As elaborated in recital 48, for the buildings and road transport sector the overall ambition continues to be 43 % emission reductions by 2030 compared to 2005, whereas the required contribution of the additional sectors will be a 42 % emissions reduction. As regards the MSR for the new ETS, the substance of the Commission proposal has been agreed with the necessary adaptations to align it with changes to other provisions.

G. OTHER

42. In addition to the main elements of the final compromise outlined above, a number of other changes, including as regards more technical elements, to the Commission proposal have been agreed. Notably:

- a) In addition to the revision clauses on waste and CBAM, it has been agreed to provide for Commission assessments regarding the accounting of negative emissions and how these negative emissions could be covered by emissions trading, the feasibility of lowering the 20 MW total rated thermal input thresholds, and whether all greenhouse gas emissions covered by the ETS Directive are effectively accounted for (Article 30 (4a)).
- b) To accommodate the Parliament, a provision (Article 30ib) has been agreed to reflect the establishment of the European Scientific Advisory Board and its role in providing scientific advice in the context of the ETS, in accordance with the mandate set out in the European Climate Law.
- c) The changes to the ETS 1 compliance cycle agreed by the Council were maintained. As a consequence, to further mitigate any issues of double counting, the compliance cycle of the new ETS has been adjusted so that the deadlines for monitoring and surrendering in the new emission trading system come one month after the deadlines in ETS 1.
- d) Finally, it was agreed to postpone the transposition deadline for the new ETS with six months to 30 June 2024, except as regards the reporting of emissions as set out in Article 30f (3) (Article 3 of the amending Directive).

III. CONCLUSION

The Permanent Representatives Committee is invited to:

- confirm the agreement on the final compromise texts as set out in Addenda 1 to 3 to this note with a view to reaching an agreement at first reading with the European Parliament;
- take note of the statements set out in the Annex to this note; and
- authorise the Presidency to inform the European Parliament that, should the European Parliament adopt its positions at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the texts contained in Addenda 1 to 3 to this note (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's positions at first reading and the acts shall be adopted in the wording which corresponds to the European Parliament's positions.

Commission statements

1) Revenue use for ETS1 and ETS2

“The Commission considers that Articles 3d(4), 10(3) and 30d(5) of Directive 2003/87/EC do not oblige Member States to set aside any funds at national level. That Directive establishes both the source of the revenue and sets general purposes for the Member States to choose from for the use of that revenue.

The Commission confirms that Member States are not required to earmark the revenues from the auctioning of ETS allowances but may use ‘the equivalent in financial value’ of these revenues.”

2) Deployment of 20 million allowances in the Innovation Fund for maritime

“The dedicated topics for maritime in calls for proposal referred to in Article 10a(8) should deploy 20 million allowances up to 2030 in these areas, following the applicable rules thereunder.”

3) Upcoming amendments to the ETS implementing legislation to follow up on the recommendations of the European Securities and Markets Authority (ESMA) on market functioning.

“In order to further enhance the integrity and transparency of the European carbon market, the Commission will introduce changes in the delegated acts which govern the auctioning of emission allowances and functioning of the Union Registry, to improve regulatory reporting and market monitoring in the market of emission allowances and derivatives thereof, promote the prevention and detection of market abuse and help in maintaining orderly markets for emission allowances and related derivatives.

Article 36 of Commission Regulation (EU) No 1031/2010 (Auctioning Regulation) establishes an obligation for the auction platform to report the complete and accurate details of every auctioning transaction to their competent national authority designated under Directive 2014/65/EU (MiFID 2). In the upcoming revision of the Auctioning Regulation, the Commission will provide for data on auctions to also be reported directly to the European Securities and Markets Authority (ESMA). This will enhance the efficient monitoring of auctions in emission allowances and relevant linkages with the secondary market.

Article 55(4) of Commission Regulation (EU) No 2019/1122 (Registry Regulation) provides that purely bilateral OTC transactions have to be marked upon the initiation of a transfer of emission allowances in the Union Registry. However, this marking is not done systematically by market participants. The Commission will amend the requirement of marking of purely bilateral OTC transaction, in order to better inform account holders and to ensure a better implementation of this provision. In addition, the Commission will implement technical adjustments in the system of the Union Registry to make this marking a mandatory requirement for the execution of transactions.

In order to improve the quality of data available to market regulators for the so-called spot market of emission allowances, the Commission will also amend the Registry Regulation to allow the market regulators to request regular access to data from the Union Registry. This will allow regulators to receive timely information which can be cross-checked with regulatory data received on derivatives markets and to intervene if appropriate in order to uphold the proper functioning of the European carbon market.

Finally, the Commission would like to remind that, as from January 2018, emission allowances are classified as financial instruments by the Directive on Markets in Financial Instruments (MiFID2). Previously, only the derivative contracts of emission allowances were in the scope of financial market rules. In practice, this classification creates very specific obligations for entities trading in the European carbon market.

According to Article 58 of Directive 2014/65/EU (MiFID2), all market participants must report on a daily basis the number of positions they are holding in the carbon market (position reporting). These position reports are submitted to relevant national competent authorities and are published on a weekly basis by ESMA.

According to Article 26 of Regulation (EU) No 600/2014 (MiFIR), market participants must also report details of all their financial transactions in emission allowances and derivatives thereof, including over-the-counter transactions, to national authorities (obligation to report transactions). According to Article 16 of Regulation (EU) No 596/2014 (Market Abuse Regulation), all market participants are subject to strict rules on preventing market abuse, including legal obligation to notify any suspicious trading behavior to the relevant financial authorities.

Market participants must report their transactions in allowances and derivatives thereof to the relevant national competent authorities, which are responsible for the oversight of the carbon market. At European level, their actions are coordinated by the ESMA, as is the case for other financial instruments.”