



Council of the
European Union

Brussels, 20 April 2023
(OR. en, pl)

**Interinstitutional File:
2021/0211/A(COD)**

**8359/23
ADD 1**

**CODEC 624
CLIMA 200
ENV 383
ENER 192
TRANS 148
COMPET 339
ECOFIN 350**

'A' ITEM NOTE

From: General Secretariat of the Council
To: Council

Subject: Draft 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 and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system
(first reading)
- Adoption of the legislative act
= Statements

Statement by Lithuania

Lithuania endorses the final compromise text on amendment of the Directive on the EU Emissions Trading System (ETS).

Lithuania agrees that higher GHG mitigation ambitions are needed to achieve the long-term climate neutrality target. The strengthened EU ETS, extended to new sectors, is an effective tool for reducing GHG emissions. The extension of the EU ETS to transport, buildings and other sectors is an instrument that should provide an EU-level harmonised approach to mitigating non-ETS GHG emissions, especially in the transport sector. Nevertheless, it will also cause additional socio-economic challenges, with the most adverse effects borne by the Member States with lower GDP and the highest energy poverty rates.

In this regard, Lithuania welcomes the establishment of Social Climate Fund as a tool to mitigate the adverse social impacts of the proposed EU ETS for buildings and road transport (ETS BRT) on vulnerable households, micro-enterprises, and transport users, through measures and investments as well as temporary direct income support. It is critical to ensure that the Member States with lower GDP and experiencing the greatest energy poverty at least recover the expenses incurred under the ETS BRT through auctioning rights and the Social Climate Fund.

Lithuania regrets that the Social Climate Fund will be established at a fixed size, without any possibility of its size being increased dynamically in line with the increase in the price of allowances (especially over 55 euros) to adequately react to the changes in costs incurred by consumers.

It is also regrettable that the price regulation mechanism established for allowances may not effectively provide predictability of the carbon price for a longer period, as it is only set for the years 2028 and 2029 (Article 30h of amended Directive 2003/87/EC).

Statement by Hungary

Hungary supports and is strongly committed to the transition to climate neutrality and to adopt effective mitigation measures. We agree with the view, that the European Union needs to remain ambitious, but we need to act responsibly. At the same time, we have to ensure that energy is provided at a price that is affordable for households and companies in order to maintain the public support for a fair and socially inclusive green transition.

We are concerned that the BRT ETS will place an excessive burden on European households and undermine the competitiveness of our economies, especially in lower-income Member States, most of which are more exposed to the effects of the current crises, while these measures will not contribute significantly to the EU's emission reduction efforts.

During the times of a global energy crisis, the Russian invasion of Ukraine, rising inflation and uncertainties throughout Europe, we believe that now it is not the right time to adopt measures, which will further aggravate the life of the most vulnerable households, potentially increase energy poverty and risk undermining business confidence and the support for climate action. Therefore, Hungary cannot accept a decision that will force citizens to pay more due to the introduction of an EU-wide uniform carbon price.

Statement by Poland

In Poland's view, the EU ETS system requires in-depth reform, but a significant part of the modifications introduced in the directive do not go in the right direction or are insufficient. The proposed changes exacerbate the structural problems of the EU-wide Emissions Trading System without providing the required solutions.

Two points should be noted in particular. First, there is a need for an efficient and credible mechanism to regulate the price of allowances. The proposed solutions are insufficient and have a negative impact on EU energy prices and the competitiveness of European industry. In Poland, the cost of allowances can account for up to 40% of the price of electricity and 55% of the cost of district heating. This situation is unacceptable and unsustainable. It represents an overwhelming financial burden for households and an obstacle for businesses to modernise and make environmentally friendly investments, as the funds planned for this purpose are allocated to the purchase of allowances. Thus, in its current form, the EU ETS is actually slowing down the energy transition. During the negotiations, Poland made constructive proposals for potential improvements to the EU ETS and remains open to discussions on the matter.

Secondly, the inclusion of households in the ETS should be unequivocally considered negative. Households are already suffering as a result of the high price of EU ETS allowances, and now they will face higher heating and transport costs. The new market will be driven by allowance purchases for the most polluting fuels, which are used by the poorest households. They will bear the burden of this system, which deepens the social divide and directly contravenes the principles of justice and solidarity. Depriving households of funds does not lead to a gradual energy transition, but to energy poverty. The new fund does not offset the negative effects of the changes on Polish society, which accounts for 87% of coal-heated homes in the EU. This is why we cannot agree to a new allowances market that includes households.

Furthermore, given the impact of the proposed regulation on the energy mix of the Member States and the resulting negative social consequences, in Poland's view, the legal basis for the proposed act should be Article 192(2)(c) TFEU.

In view of the above, Poland cannot support the draft that has been presented, as we do not see adequate solutions to the problems highlighted above.

Poland also reiterates its negative position on the whole Fit for 55 package, which sets unrealistic goals and ambitions and significantly affects the Member States' energy mix. Poland is of the opinion that most of the package is being dealt with on an incorrect legal basis, which creates a dangerous precedent.

Statement by Slovakia

First of all, the Slovak Republic would like to thank the Council Presidencies and the Commission for their determination and work on the "Fit for 55" legislative package. The Slovak Republic remains committed to the increased ambition, as we have jointly agreed to reduce the greenhouse gas emissions by at least 55% by 2030 and to achieve climate neutrality by 2050.

The implementation of the "Fit for 55" legislative package will be a central topic in the near future. Therefore, we consider it extremely important to draw attention to the transposition deadlines. They do not provide a sufficient amount of time, nor take into account national legislative rules. In particular, the introduction of a new emission trading system for buildings, road transport and additional sectors enormously increases the administrative burden and extends the complexity of the entire emission trading system. The distribution of regulated entities of the new emission trading system in terms of administrative division and their number, which in the case of the Slovak Republic is up to ten times greater than the number of stationary installations in the current emission trading system, requires demanding implementation. The transposition deadlines do not take this into account at all. On the contrary, the transposition period is unusually short. In addition, the revision of the current emission trading system also changes the system for the stationary installations, the aviation and incorporates the maritime transport.

The Slovak Republic would like to point out that there is a significant risk of not being able to transpose the ETS Directive within the set deadline. For the reasons mentioned, we would like to ask the Commission to take these facts into account.

Statements by the Commission

Statement 1

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.

Statement 2

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.

Statement 3

The Commission considers that Articles 3d(4), 10(3) and 30d(6) 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.
