



Council of the European Union  
General Secretariat

Brussels, 04 October 2021

---

**Interinstitutional files:**

2021/0211 (COD)

2021/0207 (COD)

2021/0202 (COD)

---

WK 11300/2021 ADD 1

**LIMITE**

**CLIMA**

**ENV**

**ENER**

**TRANS**

**AGRI**

**COMPET**

**ECOFIN**

**CODEC**

**DOCUMENT PARTIALLY  
ACCESSIBLE TO THE PUBLIC  
(06.12.2024)**

*This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.*

## **CONTRIBUTION**

---

From:	General Secretariat of the Council
To:	Working Party on the Environment

---

N° prev. doc.:	WK 10737/2021
----------------	---------------

---

Subject:	Fit for 55 package - ETS: Comments from delegations
----------	---

---

Following the call for comments on the above set out with WK 10737/2021, delegations will find attached comments from the DK, DE, EE, EL, HR, IT, HU, MT, NL, FI and SE delegations.

## **DENMARK**

### **Proposal for 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 (Emissions Trading System) – Initial Danish questions**

Denmark is currently analysing the Commission's proposal regarding the EU Emissions Trading System (ETS) in its entirety and reserves the right to ask further questions at a later stage.

#### **Stationary installations**

- In the determination of the use of revenues from auctioning of allowances in article 10 (3), the Commission's has proposed to delete the sentence "the equivalent in financial value of these revenues". Can the Commission elaborate the consequences the deletion will have for the use of revenues in the Member States?
- In the amendment to Article 14, it is specified that implementing acts concerning monitoring and reporting of emissions "shall specify how to account for storage of emissions from a mix of zero-rated sources and sources that are not zero-rated." Will the Commission use this option to consider integrating BECCS in the ETS, which could create better economic incentives for the deployment of this technology?
- Could the Commission elaborate on the reflections behind not choosing the scenario AMB2b from the impact assessment, which leads to a more steep adjustment of the cap?

#### **Market Stability Reserve**

- What is the reasoning of continuing with an upper threshold of 833 million in the market stability reserve and not lowering it to 700 million as assessed in the impact assessment?

#### **ETS and the Carbon Boarder Adjustment Mechanism (CBAM)**

- How does the phase-out of free allowances for the sectors included in the CBAM affect the cumulated amount of free allocation, the application of the cross-sectoral correction factor and the expected auction revenues?
- Besides the phase-out of free allowances, how will the CBAM affect other mechanisms - e.g. compensation of indirect carbon costs referred to in Article 10a (6) - under the ETS addressing the risk of carbon leakage?
- In the impact assessment to the ETS, the Commission has analyzed the effects of a phase-out of free allowances on the auctioning share (page 85). What is the reasoning behind maintaining the auctioning share in the proposal?

#### **Separate ETS for buildings and transport/all fossil fuels**

- The Commission discarded the option of establishing a separate ETS for all emissions from the combustion of fossil fuels in the impact assessment mainly due to the cost of inclusion for small emitters in industry. What is the reasoning behind not including other sources of emissions (other than small emitters in industry) from combustion of fossil fuels? Does the Commission see merit in establishing an ETS for all fossil fuels in the longer term?

- In some Member States, waste incineration is already subject to the ETS. Why has the Commission not chosen to include waste incineration in the existing or the new separate ETS?

### **Shipping**

- How will the Commission ensure proper enforcement when it comes to third country shipping companies that charter ships on a short-term contract ending before the reporting year?
- In the case of penalties for non-compliance, it is foreseen that expulsion orders can be issued against ships under the responsibility of a shipping company that has failed to surrender allowances for two or more consecutive reporting periods with the result that ships under its responsibility can be detained by the flag Member State and denied entry into a port under the jurisdiction of a Member State other than the flag State (Article 16(11a)). Would this apply to all ships belonging to the company or for example only apply to a specific bareboat charter?
- Would aggregated MRV reporting be the responsibility of the ship owner or the entity, which has assumed (temporary) responsibility for a ship?
- The Commission's Impact Assessment concludes that the sector would to a large extent demand allowances from other sectors of the ETS, as it would be cheaper in the short-term than investing in green technology or bunkering alternative fuels. How will the Commission ensure shipping begins to decarbonise in-sector too and not solely rely on "off-setting" before 2030?
  - How can the EU ensure that the regulation does not just attract "green ships" to European ports, while older and more GHG-intense ships are rerouted to other markets?
  - How will the Commission support the IMO process, so the international fleet is covered by ambitious climate rules?

### **Aviation**

- Is it legally possible to implement CORSIA in a way where extra-EEA flights are still only temporarily exempted from the ETS, and where this exemption has to be continually extended?
  - Does the Commission operate with an estimate for the flight activity in 2023 that determines the amount of allowances from 2024 and onwards? If yes, can the Commission share the estimate for calculation purposes?
  - Have extra-EEA flight emissions been counted so far in the fulfillment of the EU's climate targets under the Climate Law, even though they have been temporarily suspended from the ETS?
  - Can the Commission confirm that emissions from extra-EEA flights will not contribute to the fulfillment of the climate targets under the Climate Law if the Commission's proposal is adopted, wherein the emissions are regulated by CORSIA and not the ETS?
  - Is it possible to implement CORSIA for extra-EEA flights as proposed by the Commission, but where it is still regulated by EU law in such a way that all or half of the emissions fall under the scope of the Climate Law and thus the EU's climate targets?
  - Can the Commission confirm that if ETS full scope (option C0WIDE) was implemented, the emissions from all extra-EEA flights would then be counted under the 2030 climate target? And how would it affect the target overall?
-

## ETS Aviation – Questions from Germany:

As announced in the working group on September 20th, we would like to add some more technical questions regarding the ETS in aviation:

- CORSIA includes exemptions for Least Developed Countries (LDCs), Small Island Developing States (SIDS), and Landlocked Developing Countries (LLDCs). The proposal presented by the Commission includes exemptions for LDCs and SIDS (p.19, Article 1, para (9) No 6), but not for LLDCs. We ask the Commission to explain why in the context of CORSIA implementation LLDCs are not exempted?
  - On one side, the proposal envisages that flights from and to countries that do not implement CORSIA face full ETS surrender requirements beginning from 2027 because the exemption in Art. 25a (5) will expire at the end of 2026. On the other side, flights to and from countries that implement CORSIA in a “less stringent manner” potentially face no cancellation or surrender requirements at all (Art. 25a (7)). Have we understood this correctly and is this difference intended?
  - The proposal in the reference document ST 10917/21 e.g. on page 13 (in para 22) and on page 19 (Article 1, para (9) No. 7.) refers to countries “[...] applying CORSIA in a less stringent manner [...]”. We ask the Commission to please specify what is meant by “in a less stringent manner”?
  - Please elaborate why Art. 25a (3) refers to a specific CORSIA baseline 2019-2020 after 2024 and does not assume the baseline to be given by ICAO through the ICAO Assembly?
  - In recital 16 of the reference document ST 10917/21 the proposal lists several topics related to Article 6 of the Paris Agreement. We ask the Commission to explain, how the Commission plans to conduct the necessary administrative steps?
  - Why does the proposal not provide options to further align EU ETS monitoring, reporting and verification provisions towards CORSIA to reduce administrative burden, especially for non-EU operators complying with the EU ETS.
  - Please confirm our understanding that non-EU operators would be obliged to report emissions on flights to and from the European Economic Area (EEA).
  - The proposal in the reference document ST 10917/21 foresees in several cases, among others those in Article 1, paragraph 5 (amended Art. 11a para 3 and new para 8) and Art. 1 paragraph 9 (Art. 25a added paragraph 8) (recitals 15, 16, 23) that implementing powers in flights regulated under ICAO should be conferred from Member States to the Commission. We ask the Commission to explain the need of additional and centralized regulation?
-

## **ESTONIA**

### **Questions on the proposed new ETS for transport and buildings**

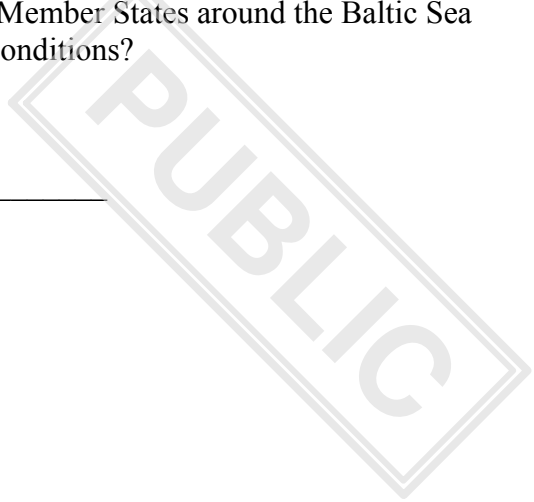
- 1) For the new ETS, the LRF calculation is based on the average 2016-2018 emissions reported under ESR. The proposal itself also states that the ESR data for the relevant sectors is not readily available and describes the methodology. According to our analysis, the Estonian share of the greenhouse gas emissions in the respective sectors in 2016-2018 was 0,35%. However, in the Impact Assessment the Estonian share is only shown as 0,2% of the allowances. Could you please share the methodology and Member States data used for this calculation?
- 2) The proposed Annex III that the emissions of Combined Heat and Power Generation (CHP) (source category code 1A1a ii) and Heat Plants (source category code 1A1a iii), shall correspond insofar as they produce heat for categories under (c) and (d) of this point, either directly or through district heating networks. However, the proposed Article 3(x) states that the “regulated entity” under the new ETS will be any natural or legal person that has paid the excise duty for releasing fuel to consumption. Will all the CHPs using fossil fuels, but not covered by EU ETS, be covered in the new ETS?
- 3) When the cap is set at 2024 based on the average emissions of respective sectors in 2016-2018, does the LRF apply from 2024 and is not directly linked to the 2005 emissions?
- 4) Could the Commission provide any further information on the timing of the own resources proposal?

### **Questions on the EU ETS**

- 1) On the linking the full free allocation with implementation of recommendations made in energy audits:
  - a. What will be the additional documents that installations have to submit to the Competent Authorities that they have implemented the recommendations?
  - b. Who will be tasked verify the implementation of recommendations? What would be the process of deciding if the operator has met the threshold to receive the full free allocation?
- 2) On the proposed to change Annex I of the Directive to remove barriers for innovative low-carbon technologies: What type and how many of installations does the Commission see benefiting from these changes? What is their estimated need of allowances? How big is the potential increase of administrative burden?
- 3) Article 10a (4) states that free allocation is given to district heating, but in the proposal this is deleted. Does the proposal change the way free allocation is given to district heating installations?
- 4) Could the increased LRF and one of rebase of the EU wide cap in 2024 impact the free allocation foreseen in the Commission Decision adopted in June 2021 regarding National Allocation Tables?

- 5) Regarding the inclusion of the maritime sector to the EU ETS, could the Commission elaborate further on the impacts arising to the Member States around the Baltic Sea due to their geographic position and climatic conditions?

---



## GREECE

**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**  
(COM(2021) 551 final/ 14.07.2021)

### **Comments/ Questions on the extension of the EU ETS to maritime transport**

#### **General Comments**

Greece fully shares the goals of the European Green Deal as regards the decarbonisation of shipping and supports the objectives of the "Fit for 55" legislative package. However, pending the development and commercialization of innovative technologies and fuels, in a broad scale, the ambitious objectives of the European "Green Deal" and "Fit for 55 Package" for the decarbonization of shipping industry seem challenging.

Shifting to sustainable low and zero emission fuels is a highly complex issue, starting with the development and deployment of safe and quality-certified alternative fuels and technologies, accomplished with radical changes in the supply chain of those fuels in order to be available at scale everywhere in the world at reasonable prices.

In view of the deliberations on the above-mentioned proposal for a Directive within the Environment Working Party, Greece would like to highlight the particularities of shipping, *namely its international nature*, as well as the implications of the implementation of the proposed Directive to this sector, *namely the financial impacts and administrative burden, for the shipping industry, in particular the SMEs*. In addition, Greece would like to stress the economic and social impacts of the said Directive (in conjunction with the other legislative proposals in the "Fit for 55" package) in coastal shipping, which will not only put at stake the long-term sustainability of the extensive coastal network in Greece, but most importantly the country's territorial and social cohesion.

Apart from this, the proposal has, in line with "the polluter pays" principle, recognized the structural role of the ship's commercial operator who is, at least in the bulk/tramp sector, responsible for the choice of the ship's fuel, route, cargo and speed and the related cost of the fuel consumed (*see recital 20*). However, one of the main concerns is the fact that the option of passing through the compliance cost under this Directive to the entity which is responsible for the decisions affecting the CO<sub>2</sub> emissions of the ship, is left merely on the contractual arrangements of the involve parties Taking into account realities of international bulk/ tramp shipping, Greece would like to suggest the *de lege* responsibility of the **commercial operator of the ship**, where applicable, by including this requirement in the operative part of the Directive. Greece understands the associated organizational difficulties, but is of the view that this is the only way to address the core of the issue (i.e. achieve emissions' reductions at source, by disincentivising the commercial operator as the

real polluter). Further, the proposed provision fails to address the complexities at source, by simply transferring them to the contractual relationships and/or to future litigations.

### Questions

1) *Does the Commission intend to elaborate a cumulative impact assessment for all the proposals of the “Fit for 55” package concerning the maritime transport sector with a view to evaluate, apart from the environmental benefits, also the economic and social impacts in the maritime industry and the European citizens, in particular those living in islands and peripheral regions, in the light of Art 174 TFEU? Greece intends to contribute to this process through an informal note on the estimated costs rising from the future enforcement of “Fit for 55” package to the Greek coastal shipping sector.*

2) *In the same context and considering that the impact assessment highlights the fact that the inclusion of shipping in the EU ETS is expected to increase its operational costs by 16-20%, how does the Commission intend to address the increased transport and living costs for the EU citizens in particular those living in islands and peripheral regions, with the impacts multiplied in cases of numerous transshipments with smaller vessels (feeder services) in order for a product to reach its final destination?*

3) *More general, we would be grateful to hear the Commission’s views on potential*  
▪ *sharp increase in the price of the ETS allowances, in relation to the cost of fossil fuels or any adverse impacts of the proposed measures, in order to avoid possible negative macroeconomic consequences? Are there any safeguard measures envisaged?*  
▪ *carbon leakage though possible increase of emissions of other transport sectors, as well as for countries bordering third states?*

4) *As regards the scope of application we would like to request the Commission to elaborate more on how the percentage “50% of the emissions” from international shipping was decided and how this choice of extraterritorial application conforms with UNCLOS provisions as regards regulation of environmental issues in maritime zones beyond the EU Member States’ jurisdiction (e.g. international waters).*

5) *How will the Commission address the implementation difficulties and administrative burden for the shipping industry, especially shipping SMEs, given the fact that neither an adequate transition period, nor exceptions or free allowances are provided, unlike other industries? In our view, the assumptions made that 95% of SMEs are excluded from the scope of the said proposal because of the 5.000gt threshold<sup>1</sup> is overestimated and perhaps misleading (as many ships of 5000gt and above may be operated by companies fulfilling all SMEs criteria).*

6) *How does the Commission intend to avoid global regulatory fragmentation, in view of the on-going discussions within IMO to be soon focused on MBMs? How will double counting of emissions, once an international system is established, be avoided? Greece is*

---

<sup>1</sup> See page 102 of the the IA SWD(2021) 601 final/ 14.07.2021 PART 1/4: “By limiting the scope of the measure to ships above 5.000 gross tonnage, it would reduce the number of ships covered by at least 44% and exclude around 95% of maritime transport SMEs.”

See page 153 of the SWD(2021) 601 final/ 14.07.2021 PART 2/4: “...if we assume that all companies in the 50 – 249 category are SMEs and that a ship over 5.000 GT requires more than around 20 people to be operated, retaining a threshold of minimum 5.000GT for regulated entities would exclude around 95% of all SMEs in the water transport sector.”



*of the view that a much stronger alignment and/or an escape clause should be introduced, in case of a robust international MBM, before shipping companies will have to surrender 100% of their verified emissions.*

*7) How did the Commission come to the figure 37 at SWD (2021) 601 final PART 2/4 - Origin of companies that reported under the EU maritime transport regulation in 2018. Since the conclusions drawn are possibly based on factual criteria, what is the relation with the legal requirement that the administering authority is determined based on where the shipping company is registered? How is the latter (company registration) determined?*

---

## CROATIA

### *EU ETS - written questions to the European Commission*

- Whether the Commission plans to specify allocation of the allowances for a special case such as voyages for which the carrier is not the ship-owner but the lessee, and accordingly exempt the ship-owner from the ETS (or take into account some reduced factor)?
- Foreign ship-owners could avoid ETS by targeted ship guidance. There is no tool for post festum influence on ship-owners based outside the Union, thus possibly putting domestic ship-owners in a discriminatory position. Whether the Commission plans to more specifically define cases of breaches of the Directive and the issue of penalties?
- Aircraft and engine technology currently do not allow the aircraft to fly on 100% SAF fuel (future hydrogen, electricity technologies will be available after 2040), nor will it be enough on the market in the coming period. The adoption of the current proposals will put aircraft operators at a disadvantage compared to other modes of transport. Does the Commission plan to provide financial support to aircraft operators during the transition period? Is it planned to include aircraft operators in the scope of the modernization fund?
- Benchmarks should be based on actual, current data and reflect what all actors in a given sector can realistically achieve. The current free allocation system is based on benchmarks that are declining in parallel with the reduction in greenhouse gases. What are the proposed benchmarks based on?
- The decarbonisation requirements identified during the energy audit carry some business risk that in a rapidly changing technological and regulatory environment (the required investments will not show a return in the proposed five-year period). The results of the Commission's impact assessment during the revision of the Energy Efficiency Directive (EED) confirmed that requiring operators to implement energy audit recommendations is too burdensome as it would require a complex certification process and potentially affect companies' business decisions. How does the Commission see the complementarity of the EED and ETS Directive in this context?
- Is it planned to include in the EU-ETS heat suppliers to the building sector that produce heat in combustion plants with a nominal input heat power lower than the current limit power of 20 MW, and which produce heat from natural gas?

- Natural gas distributors distributing and supplying the building sector will be included in the EU-ETS? What definition should be taken into account when talking about buildings, i.e. for which types of buildings will gas distributors and suppliers be included in the EU-ETS?
  - Who can be a beneficiary of Carbon Contracts for differences and increase the innovation fund?
  - Which definition should be taken into account when talking about innovative technologies and solutions?
  - CBAM sectors have certain emissions that cannot be reduced (process emissions), so it is necessary to strengthen the Innovation Fund specifically for the CBAM sectors or establish another mechanism specifically for the CBAM sectors.
-

## **ITALY**

### **Preliminary comments and questions on ETS proposal**

#### **General remarks**

As a general premise, Italy is ready to increase its national target to contribute to the 2030 European objective of a net domestic reduction of 55% and to play its role in this transformational path towards decarbonization of our economy.

Italy is still analyzing the proposal and its IA also considering the interlinkages with other relevant proposals of the “Fit for 55 Package”.

We would like to present some questions on the proposal and its impact assessment, grouped by sector, as follows:

#### **ETS – Stationary installations**

- We do see the rationale behind the new provision on the obligation for installations falling below the 20MW to stay in the scope at least for the relevant five years period in which the thermal input drops because of the deployment of innovative solutions, so that free allocation in a way, incentivizes the innovation implemented. Could the Commission elaborate more on such a measure also in the case of installations receiving part of their free allocation based on fall-back benchmark approaches? Would they keep their level of free allocation in case innovative solutions are put forward or electrical heat is employed instead of heat from fuels?
- Concerning the increased scope, has the Commission assessed the impacts of those changes in terms of the increase of free allocation due to it and if and how it will impact the application of the CSCF? During the WPE it was mentioned that the impact was deemed to be rather small: could the Commission provide for quantitative data on this aspect?
- Concerning the conditionality of free allocation linked to the energy audit, could the Commission elaborate more on how this provision will apply in practice? Will the change in allocation affect only a five-years period and how does this relate temporarily with the energy audit performance (which should take place every 4 years)? Will the operator have the possibility to appeal?
- The legal text mentions (art. 1 para (12)) that the benchmarks should be reviewed before 2026 and, in particular, that the ‘system boundaries’ should be modified, without adding specific description of which kind of modification could be included. Could the Commission elaborate more on the kind of modifications it will insert? Will they be related to the increased scope and how? Will they be related to the CBAM sectors and definitions?
- Concerning the gradual phase out of free allocation in respect of the production of products listed within the CBAM Regulation we see the need for a rigorous approach that would allow the application of the CBAM factor in a feasible way without undue burden both for operators and for competent authorities, meaning that the legislative text should set out all the necessary details, for example, concerning the system boundaries of the relevant processes, without postponing such details in the implementing legislation. This is particularly relevant when fall-back benchmarks apply for the evaluation of the free allocation of an installation. Furthermore, we believe that such details should be mirrored or referred to in the CBAM text.
- Art 1 paragraph (15) of the proposed text (Art. 12 (3b) of the consolidated text) establishes that the Commission shall adopt implementing acts concerning the requirements to consider

that greenhouse gas have become permanently bound in a product so that they do not enter the atmosphere under 'normal use'. Could the Commission elaborate more on this concept? Would it refer only to the use of the product or rather to the lifetime of the relevant product?

### **ETS – Buildings and Road Transport**

- CO<sub>2</sub> cars and vans regulation applies across all Member States, therefore its achievements affect all the EU. ETS as well would apply in a cross cutting way with a declining trajectory of the cap and a cost effective reduction of -43% compared to 2005. The two sectors though stay in the ESR Regulation as well where different reduction objectives are attributed to the Member States. This might imply that in MSs with higher targets, reductions in sectors other than RT might need to go well beyond the attributed share of effort, while in MSs with less ambitious targets this might not be the case. This might lead to uneven distribution of efforts and costs among Member States. Has the Commission assessed the combined effects of the different pieces of legislation, and could the Commission provide more insights on the effects at MS level of possible uneven distribution of costs among sectors and MS?
- The increased ambition of the CO<sub>2</sub> standards regulation might have a detrimental effect on the CO<sub>2</sub> price in the new ETS. Did the Commission assess this potential effect, or would it consider assessing it?
- ETS BRT requires making a distinction in sectors or even subsectors (like the example of agriculture vehicles) where fuel is consumed, in order to be able to identify the correct scope. The Annex 5 of the IA states that *it has to be ensured that the regulated entity is able to distinguish energy flows for road transport and buildings from other energy flows*. And that *Regulating at the point of the excise duty would in principle be beneficial because of the already existing monitoring and reporting mechanisms for tax purposes*. Could the Commission please elaborate on how such distinctions could be made efficiently?
- The IA states that *Most emission reductions induced by the new ETS would need to come from the end consumers. It is therefore important that the price signal coming from the new ETS is passed on to the consumers*. Concerning the expected price of CO<sub>2</sub> for the BRT sectors, could the Commission provide for more information and elaboration?
- The Impact Assessment provides for limited information on the design elements of the market stability reserve for BRT sectors. The IA states that given the future integration between the current ETS and BRT ETS it makes sense to consider similar design elements and that, *The initial thresholds could be set based on estimates of hedging demand in the new sectors, which are however difficult to anticipate at this stage and which would therefore need to be improved later*. Despite that, the legislative text does not foresee review clauses or reporting requirements on this specific aspect. Could the Commission clarify how it plans to monitor and eventually improve the functioning of the MSR for BRT sectors?
- Concerning excluded installations under art.27 and 27a and district heating installations and other kind of installations used for heating purposes the Commission identifies complexities involved in combining and delimiting upstream and downstream approaches. This could lead to different price signals and unequal treatment. Despite the limited impact in terms of emissions, this aspect might have implications concerning the number of installations it concerns: could the Commission elaborate more on how it intends to address such issues?

## ETS – Maritime

- Provided that further in-depth analyses are being carried out on the scope definition and interlinkages with ESR scope, we would like to raise the issue of anchorage areas/sites used for stationing of ships and/or ship to ship transfers. Emissions occurring do not appear to fall under the ‘at berth’ definition. Could the Commission clarify if those emissions are to be considered as navigation/cruise emissions?

## ETS – Aviation

- [REDACTED]
- Article 1 para (1), amending Art. 3c para 5 describes the calculation of the cap. Can the Commission confirm that no new data collection will be needed and that the calculation will be only based on consolidated 2010 data and that no new data collection will be required?
- Art 1 paragraph (2), amending Art. 3d paragraph 3 first sentence refers to a delegated act concerning the detailed arrangements for the auctioning of aviation allowances. Could the Commission clarify whether this would imply that a separate auctioning regulation is put in place for aviation allowances only?
- Concerning art. 1 paragraph (6) adding art. 12 paragraph 7, the Commission would get delegation powers for ‘*laying down the methodology for calculating offsetting responsibilities for aircraft operators*’. Could the Commission clarify the purpose of such empowerment and eventually consider this clarification to be included in the legal text?

## MSR

The Market Stability Reserve as stated in the IA, *the MSR plays a supporting role in increasing certainty on the EUA price path, but the MSR also adds to regulatory complexity. To the extent that the MSR helps ensure price stability it will also support competitiveness. However, this is unlikely to significantly impact competitiveness as excessive volatility has not been observed since the introduction of the MSR.*

The MSR functioning already provides for a release mechanism in case of decrease of TNAC under 400 Million tons, though it doesn’t foresee any correction of such a mechanism in case of excessive price increases except for the review clause (Art. 3 of Decision (EU) 2015/1814), which foresees the reporting and eventual review every five years. Could the Commission elaborate more on this aspect and explain whether it considered possible amendments related to that?

## **HUNGARY**

### **Initial comments and questions on the general revision of the EU ETS Directive**

#### **Comments in general:**

We welcome the start of negotiations on this very important dossier.

For us, the politically most important point is that Hungary does not support the introduction of EU-wide uniform carbon pricing for the building and road transport sectors as we think that it is not the people who should pay the cost of combatting climate change.

#### **Questions on free allocation:**

- The size of the EU ETS cap will be changed during the 2021-2025 period, which theoretically could result in a need for correction of the free allocation of installations for the years between the amendment of the cap and 2025 through an application of the cross-sectoral correction factor, or the 3% buffer has to be used to avoid it. What is the opinion of the Commission, what changes can be expected in the free allocation before the end of 2025?

- The Commission proposed to make 25% of the free allocation dependant on the execution of investments suggested by the energy audit with pay-offs less than 5 years or other equivalent investments). Under the energy efficiency directive COM came to the conclusion that is it not appropriate to make the investments proposed by the energy audit legally obligatory. Why did the COM propose under this file to establish a punishment for not executing these investments? How will this new provision work for those companies who operate an ISO 50001 system instead of energy audits? How is it possible for the competent authorities responsible for free allocation to determine which investment is equivalent to another one proposed by the energy audit? How would this new provision function from time-wise in the yearly process of the administration of free allocation? How is it possible to ensure that the energy auditors carry out the calculation of pay-off time in a faultless quality, with an EU-wide harmonised methodology?

- The 28th of February free allocation deadline under the EU ETS is very hard to comply with in the practice, furthermore, the (EU) 2019/1842 Regulation allows free allocation to be postponed. Why does COM think that there is no need for a revision of this deadline?

#### **Questions on the Modernisation Fund:**

- Is our understanding correct that the exclusion of fossil fuels from the Modernisation Fund does not apply to, for example, project of energy efficiency of buildings, but only to power- and district heating generators? Is it possible to give support to modernize district heating pipelines regarding energy efficiency on transmission losses in cases when the heat is provided by a natural gas-based heat producer? Is it possible to give support to projects of such power plants that use fossil fuels only at the start of combustion, otherwise they run completely on biomass?

- Regarding point c) of the priority list of the Modernisation Fund, which is about energy efficiency, the expression of 'demand side' is present in the text of the proposal, which expression is usually used regarding power networks. Does that mean that it will be possible to finance energy efficiency investments only related to electricity consumption, and for example, the insulation of buildings is no longer part of the priority list?

- The priority list and the excluded operations in the Modernisation Fund will be changed. What will happen to such multi-year long schemes and projects which get approval under the current rules but the new rules get into effect during their execution to which they do not comply?

### **On the new emission trading scheme on buildings and road transport**

- How is it possible to exclude the fuel consumption of agriculture vehicles from this new obligation in the practice as the tractors buy fuel from the same petrol station as all other vehicles? If this would result in having two separate diesel price in petrol stations, what is the vision of the Commission on preventing deceits and frauds?

- COM proposes a certain mechanism under the new emission trading system for buildings and road transport which would serve to limit the rise of prices. Would there be any disadvantages if this solution would be formulated in a way to react faster from an administrative point of view and would interfere at lower price increases?

- Encouraged by the Energy Efficiency Directive, Hungary and lots of other Member States have established an Energy Efficiency Obligation Scheme, with the inclusion of energy traders. The new emission trading system on buildings and road transport seems to be very similar to these schemes. What is the vision of the Commission on avoiding duplication of the burden and the alignment of the two schemes?

- Does the new carbon pricing on road transport create a cost advantage for diesel compared to petrol?

- As the new buildings – road transport emission trading system will exist in parallel with the Effort Sharing Regulation, both system having some kind of allowances that can be traded, but they will cover the same emissions, how can the EU ensure that no double counting of emissions and emission reductions take place?

---



## **MALTA**

### **Questions/observations in view of the Fit for 55 Package: ETS Reform**

As a follow up to the Informal Environment Working Parties of 13 and 20 September on the Fit for 55 package: EU Emissions Trading System (ETS) Reform, Malta would like to put forward the below questions/observations:

#### **ETS General**

- Article 10 includes a new clause to the effect that an additional 2.5% of the total quantity of allowances between the year following the entry into force of the revised EU ETS Directive and 2030 shall be auctioned for the Modernisation Fund. Can the Commission confirm if this amount forms part of the overall 57% of the total cap to be auctioned, and thus a further distribution of auctioning rights in favour of eligible Member States, rather than being an amount over and above the 57%?

#### **ETS Aviation**

- Can the Commission illustrate further how the implementation of CORSIA will impact a number of design elements of the EU ETS as applicable to aviation, such as the de minimis threshold? Will the concept of full scope as currently used for the determination of whether an aircraft operator is subject to the EU ETS continue to apply for the future, revised EU ETS for aviation?
- Certain technical design elements of the ETS aviation trace their legal basis to Annex IV of the Directive, such as the emission factor to be used and the methodologies for determination of fuel consumption. In this respect, no substantive changes to this annex have been proposed, in respect of aviation activities, that would facilitate the alignment of the EU ETS technical elements with those applicable under CORSIA. In this vein, can the Commission elaborate further if these elements can be changed without changes to Annex IV of the Directive, or otherwise? Can the Commission further explain why it did not feel it would be opportune to make the necessary changes to address these matters?
- Amended Article 3f retains the reference to “tonne-kilometre data for the purpose of an application under Article 3e” (formerly relating to applications by aircraft operators for free allowances). However, the allocation of free allowances to aircraft operators is now to be based on their share of verified emissions from aviation activities reported in 2023, and presumably meaning that Article 3e, at least in its existing form, will no longer remain relevant. Can the Commission elaborate further on why it was deemed appropriate to retain references to tonne-kilometre data (similarly why such references were also retained in Article 14 and Annex IV, which cross-refer both Articles 3e and 3f)?

## ETS Maritime

Malta notes that it is still not clear as to the exact methodology to be used to attribute auctioning rights to Member States under the 'combined' EU ETS (EU ETS for stationary installations + aviation + maritime). We observe that Article 3d, para 3 states that the number of aviation allowances to be auctioned by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for a defined reference period. Currently, in respect of the part of the EU ETS covering activities occurring in stationary installations, 90% of the total quantity of allowances to be auctioned are distributed among Member States in shares identical to the share of verified emissions of stationary installations under the EU ETS for 2005 or the average of the period 2005-2007, whichever is the highest, as well as a separate distribution of the remaining 10% on the basis of a solidarity distribution key.

- In respect of the inclusion of the maritime sector, amended Article 3g states that Article 10 shall apply to maritime transport activities in the same manner as it applies to other activities covered by the EU ETS. Therefore, can the Commission provide further information whether the distribution of the additional auctioning rights, created by virtue of the inclusion of maritime activities in the EU ETS, be based on the same key that currently only takes into account verified emissions from stationary installations or will the key also take into account maritime emissions, e.g. the share of a Member State's maritime emissions in total maritime emissions?
- To the extent possible, a preliminary indicative analysis of the attribution of non-EU shipping companies to Member States would be appreciated, by way of giving an idea of the administrative responsibilities that the inclusion of maritime in the EU ETS may entail to different Member States.

## NETHERLANDS

### *EU ETS - Written questions to the European Commission (2<sup>nd</sup> batch)*

#### ETS-S:

- Is the intended possibility to obtain a carbon removal certificate limited to CO<sub>2</sub> which is chemically bound in a product? Or can this also apply to (BE)CCS? Is it a correct interpretation that the bound CO<sub>2</sub> will not be subtracted from an installations' emissions, but would instead produce a (tradeable) carbon removal certificate which can be used for ETS-compliance?
- Regarding recital 40:  
*"Where recycled carbon fuels and renewable liquid and gaseous fuels of non-biological origin are produced from captured carbon dioxide under an activity covered by this Directive, the emissions should be accounted under that activity"*  
Is it a correct interpretation that this means the emission reduction would be ascribed to whatever sector or activity combusts the fuel, and not the ETS installation from where the CO<sub>2</sub> originates? In terms of monitoring, is it correct that this would require changes, e.g. for installations that apply a mass balance method?  
Could the Commission, possibly at a later stage, also reflect on potential differences of this approach with UNFCCC accounting methods?
- Regarding the RED-conditionality for zero-rating biomass: ETS installations will be required to surrender EUA's for ETS-compliance for emissions coming from non-sustainable biomass combustion. Will the related emissions from non-sustainable biomass also be considered to be fossil, or is a separate accounting of biogenic and fossil emissions envisaged? The rationale is that this might have an impact on the ESR emissions in the relevant Member State.

#### ETS-BRT:

- On several occasions the IA refers to a study by ICF et al. (2020): Possible extension of the EU Emissions Trading System (ETS) ( see for example footnote 42 on p. 128). Could the Commission please make this study available to us?
- Would it be possible to elaborate more about the expected fluctuation of price levels and the instruments that are proposed to prevent excessive fluctuation? Under what conditions could these instruments operate?

- Has the Commission considered to mitigate ETS-BRT price volatility by means of a maximum price, e.g. at the price level of EUA's under the current EU ETS? For example by releasing a certain volume of allowances from the MSR whenever the ETS-BRT price exceeds the EUA price, or by auctioning more allowances by extending the ETS-BRT cap (which would not be an issue given that the ESR guarantees the environmental integrity)?

#### ETS-Aviation:

1. Has the Commission thought about the possible perverse incentive the base year (2023) for the allocation of allowances might provoke? Has the Commission considered other years as a base for the allocation of allowances?
2. Why is the baseline for CORSIA for future years not in line with the decision yet to be made within the ICAO Council?
3. Article 25a (4) determines that aircraft operators do not have to cancel units for flights between countries that are listed in article 25(3). They should, however, possibly compensate emissions for flights after 2027 that are stated under (5). The directive only prescribes EEA aircraft operators to use offsetting units and not for aircraft operators from third countries. Why is the terminology 'cancel units' being used here?
4. Could the Commission clarify which cap will be used for aviation? Article 2 (s) describes the historical emissions for aviation, to which is being referred to in article 3c, paragraph 2. This proposal deletes this reference, which is being replaced with a reference to 2023 emissions levels.
5. Article 12 (8) determines aircraft operators to only cancel offsetting units that are equal to the amount calculated by the CA. The CA calculates this by means of the delegated act in article 12 (7) for the scope stated in article 12 (6). Namely, EEA and ORDT aircraft operators who emit >10,000 t CO<sub>2</sub> for Annex 1 flights, with the exception of domestic flights. Is this correct? If so, does this mean that non-EEA airlines have a surrender obligation for EU ETS, as well as an offsetting obligation for CORSIA on these flights? Does the Commission expect to make additional agreements on this at ICAO level?
6. Can the Commission clarify the choice for a slower phase out of the allocation of free allowances, whereas the impact assessment describes that carbon leakage is minimal which allows for a quicker phase/immediate out?
7. In which manner will the Commission stimulate equal treatment by temporarily excluding EU ETS obligations until 2027 on certain routes? Which other options has the Commission explored?
8. Does the Commission foresee a possibility to include an explicit base in the directive for national further reaching measures, so that flexibility is created to achieve the climate goals for the EU in 2030 and possibly realize more than 55% reduction?
9. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
10. What will be the effect on European operators, who operate on routes between two third countries from 2027? Will these also fall under EU ETS if both of these third countries do not implement CORSIA or will they be exempted?

11. Given that the EU ETS is the legal vehicle through which CORSIA is being implemented and operationalized, how will operators' offsetting requirements under CORSIA be calculated and how will legislation be kept in line with potential changes to this calculation by ICAO?
12. What is the status of the dependencies and territories and how will they appear on the list of art 25a (3)? For example Aruba does not itself implement CORSIA as it falls under the ICAO state 'The Netherlands'. However Aruba does not directly fall under EU jurisdiction either. Do member states with dependencies and territories need to implement additional legislation for these regions? How can these countries be included unambiguously so that all users of the list categorize the countries in the same way?
13. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

---

## FINLAND

### Questions on the ETS

#### Changes to the existing ETS

- Did the Commission analyze different **combinations for MSR intake rate after 2023 and a one-off cap reduction**? If yes, what were the analyzed combinations?
- **Carbon removals** and the possibility to create a certification system for the removals are mentioned in recital 13. The proposed changes to Article 12 recognize the captured emissions in case of CCU. However, neither the current articles nor the proposed changes make it clear how the ETS emissions would be counted in case carbon removals lead to negative emissions. New developing technologies such as BECCS will make it possible to create negative carbon removals in addition to zero emission removals. In what way technologies leading to negative removals are planned to be recognized in the ETS in order to maintain the incentive to their development and introduction?
- The Commission informed that at the EU level there are approximately 300 stationary installations that use over **95% of biomass**. Could the Commission elaborate more precisely what is the use of biomass in these installations – does this figure include also installations that use 100% biomass, or just installations that use over 95% and under 100% of biomass? Has the Commission analyzed how many installations use biomass just below the proposed threshold of 95% and how the threshold would impact their willingness to increase the level of biomass use in the coming years?
- The proposed change to Annex I of the ETS directive strikes out pipelines as the only mode of transport for **CCS** purposes. However, the CCS- directive defines transport network as a network of pipelines and, consequently, provisions are written for this mode of transport. Is the COM planning to make amendments also to the CCS directive so that the contents of the ETS and CCS directives are aligned as regards all possible modes of transport? We would also like to get more information regarding issues such as MRV and accounting regarding other means of transport e.g. ship transport.

#### ETS for maritime transport

- 1) We would like to understand how the Commission arrived to the 79 million allowances that are to be added to the Union wide quantity of allowances to take into account the inclusion of the maritime transport into EU ETS.

According to recital 26 the inclusion of emissions from maritime is based on emissions from maritime transport activities reported in accordance with MRV regulation for 2018 and 2019 and adjusted from yet 2021 by the linear reduction factor.

What was the quantity of the emissions from maritime transport reported according to the MRV regulation in 2018 and 2019 based on the same geographical scope as of the proposal? Furthermore, has the Commission estimated emissions from maritime transport for the same scope for years 2005 and 2008 that are in general used as reference years in climate policy and IMO's GHG strategy?

According to the proposal, the emissions from maritime transport shall be adjusted from year 2021 with the linear reduction factor.

Does this mean that the emissions that determine the basis for the increase of allowances to take into maritime transport are calculated in the following way (assuming entry into force 31 December 2023)?

Readjusted emissions for 2021: average of emissions in 2018 and 2019 multiplied with (1- linear reduction factor in force)

Readjusted emissions for 2022: Readjusted emissions for 2021 multiplied with (1- linear reduction factor in force)

Readjusted emissions for 2023: Readjusted emissions for 2022 multiplied with (1- linear reduction factor in force)

Readjusted emissions for 2024: Readjusted emissions for 2023 multiplied with (1- new linear reduction factor 4,2%)

- 2) Has the commission estimated how the impact on competitiveness and GDP will change if the emission allowance price is significantly higher than in the EC impact assessment, for example double or triple compared to the assumed 45,5 €/tCO<sub>2</sub>?
- 3) According to the impact assessment, the net impact to the EU-27 GDP as a result of the increase in maritime transport's costs caused by emissions trading is expected to be marginal. Does the EC assessment include just emissions trading or also FuelEU Maritime (Figure 87, part 4/4 of the IA)?

According to the IA, in 2030, the EU-27 GDP is expected to decrease by 0,0002% in 2030 and in 2050 the GDP is expected to drop by 0,002% as a result of the increase in the costs of maritime transport. Based on our own analysis, the impact of the ETS on maritime transport to GDP is on a different scale for Finland. According to our analysis, Finland's national income will be 0.04–0.06% lower in 2040 compared to the baseline scenario without emissions trading in maritime transport. The assumed price used in the study for the emissions allowance in 2040 was EUR 50 per tonne CO<sub>2</sub> in 2040.

Our conclusion is that the information on the average impact within the EU does not provide that relevant information on the impacts to the national income to those member states that are heavily dependent on maritime transport. Could the Commission elaborate on this?

- 4) We are looking forward to the publication of the Ricardo study "EU ETS for maritime transport and possible alternative options or combinations to reduce greenhouse gas emissions". We would especially like to receive further information on the assessment regarding winter navigation.

## **New ETS**

- The fuel consumption of small heating installations is proposed to be covered by the new ETS. However, some of these installations have already been included in the current ETS via opt-in procedure. How will the overlaps between the two systems be addressed?

- According to Annex III, IPCC source categories Residential and Commercial/Institutional (source categories 1A4 a and 1A4b) are included into the scope. However, it is unclear to us, whether these categories in the new ETS include **only heating** of residential and institutional/commercial buildings. Or is the **fuel consumption of machinery** used in those sectors also included? According to IPCC Guidelines for national greenhouse gas inventories, following categories are applied:

1.A. Fuel combustion

1.A.4 Other sectors

**a. Commercial/institutional<sup>(12)</sup>**

1.A.4.a.i Stationary combustion

1.A.4.a.ii Off-road vehicles and other machinery

**b. Residential<sup>(13)</sup>**

1.A.4.b.i Stationary combustion

1.A.4.b.ii Off-road vehicles and other machinery

1.A.4.b.iii Other (please specify)

*(12), (13) If data are available, Parties are encouraged to report at the disaggregated level available from the pre-defined drop-down menu. Furthermore, Parties are encouraged to the extent possible to use the pre-defined category definitions rather than to create similar categories. This ensures the highest possible degree of comparability of the reporting.*

- For clarification: would the new ETS cover all companies that release fuels for consumption regardless of the amount of fuel that they release? Did the commission consider options that would have excluded the smallest companies, for example by setting a minimum threshold for released fuel that would trigger the applicability of the provisions?
- Why was different carbon prices used for the assessment of budgetary implications of the new ETS and for the assessment of its impacts?
- Does the table 74 in part 4/4 of the IA present additional reductions deriving from the new ETS in comparison with the reference scenario without taking into account effects from other FF55 proposals relevant for road transport and buildings? What was the allowance price that was used as a basis for the estimation presented in the table?
- In part 2/4 of the IA, Annex 5, section "Cap setting and linear reduction factor" and especially in Table 46, data is given for emission caps in years 2024, 2025 and 2030 as well as for the two LRFs. What would be caps for each year between 2024-2030?
- Has the Commission assessed the effects of the new ETS to companies that are highly dependent on logistics? If yes, what were the main findings?
- Could the Commission elaborate more in detail its assessment on the impacts of the new ETS for border regions?

## Auction revenues

- The proposed changes to the first subparagraph of Article 10 (3) and the intact Article 10 (3) subparagraph 2 seem to be inconsistent. Could the Commission clarify its suggestion related to the use of auction revenues?



- Could the Commission provide more information regarding the expected auction revenues from current ETS extended to maritime sector and new ETS (buildings and road transport) at Member State level?

**Written questions on Aviation ETS proposal**

In addition to aviation ETS proposal, there are also proposals to boost the uptake of sustainable aviation fuels (ReFuelEU Aviation) and to introduce an aviation fuel tax for intra-EEA flights (Energy Taxation Directive). It is very important that the combined impacts for aviation sector and climate are assessed carefully. Based on that assesment it would be possible to choose correct methods and measures to ensure we reach our climate targets without unnecessary burden to our aviation sector. Has the Commission a plan to further analyze the combined impacts?

[REDACTED]

[REDACTED]

---

## **SWEDEN**



### **EU ETS revision – written questions from Sweden**

#### *Removal of barriers for low-carbon technologies*

In Annex 9 of the impact assessment, the Commission concludes that installations that eliminate all their GHG emissions through zero-carbon techniques will face unequal treatment if they fall out of the system and lose their free allocation.

- Does the proposal in article 2(1) include installations that reduce all GHG emissions?
- If not, and with reference to the conclusions in Annex 9 of the IA, why were no such proposal included in the directive?
- If article 2(1) does cover installations that have reduced all GHG emissions, how will *new* zero-emitting installations conducting an activity referred to in Annex I of the Directive be treated in relation to the product benchmarks and free allocation?

#### *Free allocation*

What will happen to the free allocation for installations in sectors not covered by CBAM? Will their free allocation end in 2030, in accordance with article 10b(1)?

What will happen to the free allocation for installations covered by article 10a(11)? Will they continue to receive 30 % of the benchmark after 2030?

Will the proposal for free allocation be able to be adjusted based on CBAM's actual effect of counteracting carbon leakage, given that the proposals in their current form for several reasons, mainly the lack of export rebates, risk increasing carbon leakage?

Why does the proposal require the implementation of energy efficiency measures that are identified within the framework of article 11 in the proposal of EED, while in the EED there is no requirement for implementation?

In the impact assessment accompanying the CBAM proposal there is just one option with a phase out of free allocation of allowances and that option (option 4) has a timeline of 10 years. Has the Commission analysed different timelines for the phase out? If not, why, when option 4 shows that a phase out is the most efficient compared to the other options. If more analyses have been made, could the Commission share results from analyses of different timelines for the phase out of free allocation?

#### *Carbon Contracts for Difference*

How will the proposed CCFD mechanism within the Innovation Fund work in practice and how big share of the Fund will be allocated to CCFD?

#### *District heating*

With respect to which criteria is the Commission proposing that district heating and cogeneration plants are included in EU ETS or the newly proposed system for road transports and buildings respectively? Are there risks of plants being included in both?

#### *Biomass*

The proposal states that the emission factor for biomass that complies with the sustainability criteria and greenhouse gas emission saving criteria for the use of biomass established by Directive (EU) 2018/2001, should be zero. What emission factor is proposed for biomass that does not comply with the sustainability criteria?

### *Road transports and buildings*

In article 1a(3) with respect to the operation of the Market Stability Reserve for the buildings and road transport sectors, it is stated that by the 1 January 2031 allowances referred to in the aforementioned paragraph, that are not released from the reserve, shall no longer be valid. Does this mean that there will be a one-off cancellation of all allowances in the reserve at this point, or should it be interpreted in some other way?

How would the possibility to reach the 2030 climate target be affected if legislators dismissed the proposal on ETS-BRT? Could the Commission consider other measures in such a scenario, such as amendments to the ETD proposal?

### *Funding the climate transition*

Could the Commission and the CLS share the legal basis for suggesting funds from FuelEU Maritime be assigned as external revenue into the Innovation Fund?

Could the Commission share calculations or the expected revenues per MS from freed up allowances from the aviation sector, and the expected allocations to each MS from the new emissions trading system for road transports and buildings?

The Commission states that the new ETS should provide economic incentives to reduce the use of fossil fuels. This would, all other things equal, increase the incentives to use renewable energy and invest in technology that would enable use of renewable energy sources/technology. Thus, the costs on renewable energy investments should decrease over time. How has the Commission factored this probable price reduction on clean energy and fuel into the calculation of the timeframe for the proposed fund and the amounts suggested?

Could the Commission substantiate how it intends to treat measures that finance purely transitional energy forms – e.g. replacing coal-powered heating with gas-fired heating – especially with regards to the marginal effect this will have on households' disposable income given the price increases of such unsustainable forms of energy that will likely result from the ETS-BRT?