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MEETING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on the Environment
Subject:	Non-ETS (ESR): WPE 29 November - revised Presidency non-paper

With a view to the WPE meeting on 29 November delegations will find attached a revised non-paper from the Presidency, with a correction in the second last paragraph of page 1 (words in **bold and underlined**).

Effort-Sharing Regulation: Presidency non-paper with a view to discussion at the meeting of the Working Party on the Environment on 29 November 2017

1) Starting point of the emission reduction trajectories

The definition of the starting point of the emission reduction trajectories has significant impacts on a Member State's expected surplus/shortfall in the period from 2021 to 2030.

In contrast to the Council, the European Parliament (EP) has proposed changes to the Commission's starting point, which would significantly increase the ambition of the Commission proposal by reducing allocations in the 2021 to 2030 period by more than 500 MT. The European Parliament did so by 1) moving forward the starting year of the trajectory from 2020 to 2018 and 2) by adding that a Member State's 2021 allocation cannot be higher than its 2020 targets under the Effort Sharing Decision (ESD). The change in the starting year would be responsible for 2/3 of the increase in ambition. According to the assessment of the Commission (WK 12980 2017) this would have a significant impact on market liquidity and would create tight market conditions where practically every ton would need to be traded.

The Parliament has suggested during the ESR trilogue of 21 November, that if the Council could consider changes to the starting point to raise ambition, the Parliament could in its turn look at making steps towards the Council on the size and modalities of the reserve. Considering the complexity of the issues, however, those two elements should not be discussed in isolation but keeping in mind their interlinkages, as well as the overall ambition level of the Regulation.

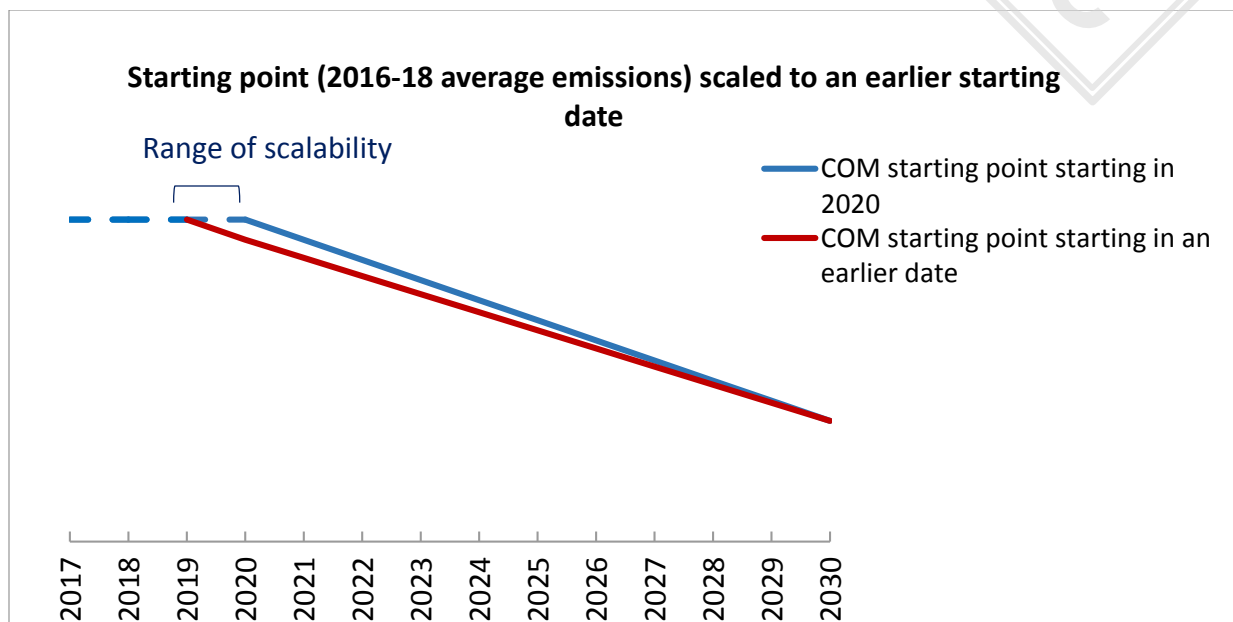
In the run up to the General Approach, Germany proposed an alternative starting point to raise ambition, similar to the second change suggested by the European Parliament: no Member State receives a starting point which is more favourable than their 2020 target as defined in the current ESD. The proposal was notably criticized for putting the additional disproportionate burden on a certain number of Member States and for punishing Member States which relied on flexibilities to meet their ESD targets, although the ESD does not oblige Member States to bring down their real emissions to the level of the ESD targets.

Revised German starting point (DE/SE proposal). The German proposal has since been revised with a view to no longer "punish" the use of flexibilities. If a Member State has average 2016-2018 emissions below its 2020 ESD target **or** below its reviewed emissions in 2020, the starting point proposed by the Commission remains unchanged. However, if a Member State has average 2016-2018 emissions above its 2020 ESD target **and** above its reviewed emissions in 2020, the Member State's starting point is changed to either its 2020 target or its reviewed emissions in 2020, whichever results in a higher 2021 allocation. This proposal could reduce allocations in the 2021-2030 period by around 80 MT, whereby the most important impact would be on a few higher income Member States.

Earlier starting date. The ambition could also be increased by moving forward the starting point to an earlier date, similarly to what has also been proposed by the Parliament. In contrast to the (revised) German proposal, this option would be scalable in that the date can be adjusted to a mathematical point in time between years 2019 and 2020 using a weighted average of those

years (e.g could also be described as 2019 and X months) to achieve a given volume of additional allocation reductions. Under this option, the additional effort is proportional to the total reduction effort necessary from 2017 to 2030 with a more important effort required from higher income Member States. The bigger the early efforts made under ESD period by a Member State, the less impacted it is by the earlier starting date. For a few Member States, advancing the starting point to an earlier date results in additional allocations. As an example of an intermediate option, moving the starting date to 2019, would reduce allocations in the 2021-2030 period by 190 MT (based on MS data).

Illustrative graph of the earlier starting date option



Simplified Belgian proposal. Another scalable option, building on a proposal by Belgium, would be to apply a uniform „correction factor“ (%) to each Member State to reduce allocations. Under this option, the increase in effort would be proportional to the effort compared to the General Approach and the contribution would be equal regardless of GDP per capita.

All of the options above would respect the 2030 target agreed by the European Council.

Proposed ways forward:

- Move the starting point (average emissions of 2016-2018) forward to an earlier date (between 2019 and 2020) scaled to a total volume of **X** MT additional allocation reductions.
- Discussion on the possible total volume **X** = [80] MT of additional allocation reductions.

Guiding questions: *Up to which (X MT) total EU volume of additional allocation reductions would a starting point (average emissions of 2016-2018) moved forward to an earlier date be acceptable? Could this solution be combined with a revised DE/SE compromise proposal (presented in WPE on 8/11)?*

2) Reserve

The overall setup and conditions of the safety reserve of the Council and the early action reserve of the European Parliament are similar. However, there are a few notable **differences** between the two, which are outlined in the table below:

	Council	European Parliament
Size of the reserve	115MT	90MT
Distribution key	First round: maximum share 20% of MS 2013-20 surplus allocation. Pro rata downwards adjustment in case total amount of the reserve exceeded. Possible second round: based on MS' remaining shortfall.	First round: maximum share corresponding to around 8% of MS 2013-20 surplus allocation. No second round.
Conditions for the size of the reserve	Size of the reserve subject to the fulfilment of the Union target referred to in Article 1.	Determination of the size of the reserve ambiguous.
Eligibility conditions to the reserve	MS has made maximum possible use of LULUCF credits, even if that quantity does not reach the individual level set in Annex III.	MS has made maximum use of LULUCF credits up to the individual level set out in Annex III (would exclude MS which are not able to create LULUCF credits up to the individual level set in Annex III)

Guiding question: *Which elements of the reserve are of utmost importance (to the eligible Member States) in order to compensate for their contribution to the ambition increase in the starting point?*

3) Long-term trajectory and review

In its amendments, the EP is making several references to the efforts required in the period post 2030 and introduces a long-term emission reductions trajectory. The relevant amendments are:

- **Recital 4a (amendment 6):** European Council Conclusion from October 2009.
- **Recital 9a (amendment 9), Article 1, paragraph 1a (new) (amendment 26) and Article 4a (new) (amendment 30):** on a long-term emission reductions trajectory from 2031 [and the aim to achieve a balance between emissions and removals by second half of the century.]
- **Recital 20 (amendment 24) and Article 14(1) and (2) (amendment 47):** on the increase of ambition in the context of the review.

While the **majority of the amendments** above, and in particular the introduction of a long-term trajectory, are **unacceptable**, there may be some room to move towards the Parliament with a view to pave the way for a possible compromise, notably by setting out in the recitals the long-term goals under the Paris Agreement, as well as the commitment to prepare, communicate and maintain national determined contributions that represent the highest possible ambition and a progression over time. Article 1 and Article 14 could make a general link to the Paris Agreement, as well as the long-term low emission strategies under the MMR/Governance.

Firstly, the EP amendment 6 (**recital 4a**) quoting the European Council Conclusions from October 2009 could be taken on board.

Secondly, the long-term objectives under the Paris Agreement could be elaborated in a **new recital**:

“The Paris Agreement, inter alia, sets out a long-term goal of keeping the global temperature increase well below 2°C above pre-industrial levels and to pursue efforts to limit it to 1.5°C above pre-industrial levels. The nationally determined contributions (NDCs) of the Parties to the Paris Agreement are to reflect their highest possible ambition and represent a progression over time. In addition, Parties to the Paris Agreement should strive to formulate and communicate long-term low greenhouse gas emission development strategies, mindful of the objectives of the Paris Agreement.”

In addition, a **new recital** could refer to the Council (Environment) Conclusions of 13 October 2017:

“The Council conclusions of 13 October 2017 recognise the importance of the long term goals and the five-year review cycles in the implementation of the Paris Agreement and highlight the importance of long-term low greenhouse gas emission development strategies as a policy tool for developing reliable pathways and the long term policy changes needed to achieve the goals of the Paris Agreement. Furthermore, Parties to the Paris Agreement are invited to communicate, by 2020, their mid-century, long-term low greenhouse gas emission development strategies.”

It could be added at the end of **Recital 20** that:

“The review for the period after 2030 should be in line with the long-term objectives and the commitments made under the Paris Agreement, and to this end, it should reflect a progression over time”.

In **Article 1** it could be clarified that the ESR contributes to achieving of the Paris Agreement.

“This Regulation lays down obligations on the Member States with respect to their minimum contributions [...] for the period from 2021 to 2030 to fulfilling the Union's [...] target of reducing its greenhouse gas emissions by 30% below 2005 levels in 2030 in the sectors covered by Article 2 and that contribute to achieving the objectives of the

***Paris Agreement**, as well as rules on determining annual emission allocations and for the evaluation of Member States' progress towards meeting their minimum contributions.”*

EP AM 47 in **Article 14 paragraph 2** regarding the review of the emission reductions beyond 2031 could be addressed as follows:

*“The Commission shall report to the European Parliament and to the Council within six months following each global stocktake agreed under Article 14 of the Paris Agreement on the operation of this Regulation, its contribution to the Union's overall 2030 greenhouse gas emission reduction target and its contribution to the goals of the Paris Agreement, in particular with regard to the need for additional Union policies and measures, in view of necessary greenhouse gas reductions by the Union and its Member States, and may make proposals if appropriate. **Those reports shall also take into account the long-term low emission strategies prepared pursuant to Article 4 of Regulation (EU) No 525/2013 with a view to contributing to the formulation of a long-term EU strategy.**”*

Guiding question: Do MS agree with the proposed way forward? How else could the long-term perspective of EU climate policy be reflected in ESR?

4) MSR

In response to calls for clarifications on how EP AM48 would function please find a brief explanation below. According to the current MSR rules, cancelled allowances are not taken into account, but EP AM48 says that allowances which are cancelled as a result of using the ETS flexibility under the ESR are considered as part of the amount of allowances in circulation. A short description below shows how the amount in circulation is calculated. The EP AM48 is added in bold.

The total number of allowances in circulation in a given year is the cumulative number of allowances issued in the period since 1 January 2008.

- including the number issued pursuant to ETS directive Article 13(2) and entitlements to use international credits,
- **Including the allowances cancelled for ETS flexibility (EP AM48)**
- minus the cumulative tonnes of verified emissions between 1 January 2008 and 31 December of that same given year, any allowances cancelled in accordance with Article 12(4) and the number of allowances in the reserve.

The maximum amount of allowances cancelled for the ETS flexibility is 10 million per year. Taking into account the option of downwards revision, the amount is likely to be smaller in the second half of the next period. However, as the cumulative number of allowances is taken into account, the likelihood of possible market impacts may also be higher at the end of the ESR period as the surplus of allowances will decrease but at the same time the cumulative number of

cancelled ETS flexibility allowances will increase. Options to move towards Parliament could be to mention the issue as something to consider in the context of the 2021 MSR review, or alternatively, to take on board the EP amendment to not account for cancelled allowances in surplus calculations and to reconsider the issue in the review.

Guiding question: *In the spirit of compromise, would one of the proposed ways forward be acceptable? Are there other possible options that could be considered?*

5) Corrective action and compliance check

In the second trilogue, EP proposed additional compliance checks in the years 2024 and 2030 because of their concerns related to the risk of non-compliance. EP has also proposed a technically complex way to align it with the 5-yearly compliance cycles under LULUCF Regulation, which, however, would limit the use of LULUCF credits as a by-product.

At the same time, in order to ensure annual compliance with ESR Member States and the Commission will continue to have numerous annual and biennial planning, reporting and monitoring obligations under Governance Regulation and other legislative acts.

Thus, strengthening wording on corrective action in Article 8 could be foreseen along the following lines:

Article 8 paragraph 1

“If the Commission finds, ~~after an~~ in its annual assessment under Article 21 of Regulation (EU) No 525/2013 and taking into account the intended use of flexibilities referred to in Articles 5 to 7 of this Regulation that a Member State is not making sufficient progress towards meeting its obligations under Article 4 of this Regulation, that Member State shall, within three months, submit to the Commission a corrective action plan that includes:”

Guiding question: *Would strengthening the wording for example as above be a possible way forward?*

6) Recitals

Compromise amendments to the recitals listed in Chapter “Other issues” as well as the ones related to Article 7 on LULUCF flexibility will be circulated early this week and the delegations are kindly invited to send their written comments on the proposed changes by **Thursday, 30 November COB** to the Presidency (Birgit.Aru@mfa.ee and kristi.polluveer@envir.ee) with copy to the Council Secretariat (Sari.Hanninen@consilium.europa.eu).