

ESTONIA

Proposals on the EU ETS revision

Estonia would like to use this opportunity to recall the following proposals submitted on the revision of the EU ETS on the 12.05. The changes are made to the revised Presidency compromise text in document 7815/1/22 REV 2 and on article 29a to the compromise proposal in the Presidency steering note in document WK 5878/2022 INIT.

1. Timing of the phase-in of the maritime sector: pathway to reaching 100% obligation should be more gradual up to 2029 and winter navigation

Rationale: To give further time to the sector to adapt by developing the required alternative/ low emission technologies as well as the relevant infrastructure, the phase-in period should be extended until 2029. A later start of the obligation from 2024 should be also considered to enable time for transposition.

Article 3ga: "Shipping companies shall be liable to surrender allowances according to the following schedule:

- (a) 20 % of verified emissions reported for [...] [the first full year after the deadline of transposition of this amending Directive, **earliest in 2024**];*
- (b) ~~45~~ 30 % of verified emissions reported for [...] [the second full year after the deadline of transposition of this amending Directive];*
- (c) ~~70~~ 40 % of verified emissions reported for [...] [the third full year after the deadline of transposition of this amending Directive];*
- (d) ~~100~~ 50 % of verified emissions reported for [...] [the fourth full year after the deadline of transposition of this amending Directive] ~~and each year thereafter~~;*
- (e) 70 % of verified emissions reported for [...] [the fifth full year after the deadline of transposition of this amending Directive];*
- (f) 100 % of verified emissions reported for [...] [the sixth full year after the deadline of transposition of this amending Directive] and each year thereafter."*

For us, an essential part of the overall package is also to ensure a level playing field between ships sailing in ice conditions and other ships. We fully support previous proposals made to that effect (e.g. the proposals by Finland in document WK 1510/2022) and stand ready for further work on the matter.

2. Sharing the rebase over three years

Rationale: Estonia supports a LRF that would increase over the 2024-2030 period, while ensuring the achievement of the 61% target in order to avoid adverse negative effects a one off rebase could cause to the system. However, as a compromise we are willing to propose the following change in article 9 to share the rebase amount between three years after entry into force, if entry into force is in 2023, then over the period 2024-2026.

*Article 9: "In [the **three** years following entry into force of this amendment], the Union-wide quantity of allowances shall be decreased by [-- million allowances (to be determined depending on year of entry into force)]. In the ~~same~~ **year following entry into force**, the Union-wide quantity of allowances shall be increased by [79 -- million allowances (79 million allowances if entry into force in 2023 / 75 million allowances if entry into force in 2024)] for maritime transport. Starting in [the year following entry into force of this amendment], the linear factor shall be 4,2 %. The Commission shall publish the Union-wide quantity of allowances within 3 months of [date of entry into force of the amendment to be inserted]. The linear factor shall also apply to the allowances corresponding to the maritime transport activities' average emissions reported in accordance with Regulation (EU) 2015/757 for 2018 and 2019 that are addressed in Article 3g."*

3. Article 29a multiplier

Rationale: Presidency has made important proposals on the article 29a. To offer further certainty to the market, we propose to change the article 29a multiplier to 1,5. In addition, if the triggering of the article 29a would be limited to once per 12 months, the amount of allowances released should be 100 million.

Article 29a (1): If the average allowance price of the [three] preceding calendar months is more than [~~twice one and half times~~] the average allowance price of preceding two years reference period, ~~50~~ 100 million allowances shall be released from the Market Stability Reserve in accordance with paragraph 7 of Article 1 of Decision (EU) 2015/1814. Where fewer than 50 million allowances are in the reserve, all allowances in the reserve shall be released under this paragraph.

4. Market Stability Reserve (MSR) intake rate and MSR intake cap

Rationale: Over the last years the MSR has created a very short ETS market. There is a possibility that this could be again the case with the current proposal towards 2030. We see a need to mitigate this high risk and to keep the intake rate for 2024-2030 at 12%, to avoid market shocks at the end of the period. As a compromise that would also help to limit these risks, we could propose an intake rate of 18 % for the period 2024-2030 or to create a MSR intake cap at the level of 40% of the auctioning amount of the next 12 months.

Article 1 (5) - (MSR decision): In any given year, if the total number of allowances in circulation is between 833 million and 1 096 million, a number of allowances equal to the difference between the total number of allowances in circulation, as set out in the most recent publication as referred to in paragraph 4 of this Article, and 833 million, shall be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC and shall be placed in the reserve over a period of 12 months beginning on 1 September of that year. If the total number of allowances in circulation is above 1 096 million allowances, the number of allowances to be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC and to be placed in the reserve over a period of 12 months beginning on 1 September of that year shall be equal to 12 % of the total number of allowances in circulation. By way of derogation from the last sentence, until 31 December 2030, the percentage shall be ~~doubled~~ 18 %.

Or:

Article 1 (5c) (new) – (MSR decision): The number of allowances to be placed in the reserve during the 12 months beginning on 1 September of every year shall not exceed 40 % of the number of allowances to be auctioned during these next 12 months.

CROATIA

Comments for ETS Maritime following the WPE on 23 May

HR strongly supports the FR PRES efforts to deal with the risks of evasion via an opportunistic call or a relocation of transshipment operations at ports close to the Union. Considering the proposal for a modification of the definition of the port of call, HR suggests to additionally amend Article 3g with an extra paragraph/s to clearly define the case of transshipment in ports that will be listed in implementing acts as neighbouring container transshipment ports.

For example, if the ship starts the voyage in non EU port of call and unloads 65% or more of containers to another ship in one of the ports from the list, and then the other ship continues to the EU port of call to finally unload the containers. What is the route of the first ship that is relevant according to Article 3g, and what happens with the voyage of the other ship (is it counting as an individual route or is it to be disregarded as double counting)?

Also, the question arises as to how the MS administrative authority will prove the transshipment?

In relation to Article 3ga, paragraph 2, It is not clear why the cancellation of emission allowances is proposed instead of being auctioned, i.e. it is assumed that the difference between verified emission allowances (which are total annual emissions at the shipping company level) and the number of allowances they are obliged to submit would be cancelled. Namely, 20% of verified emissions are surrendered in the first year, but what if shipping companies want to buy more allowances than they need to submit?



Council of the European Union
General Secretariat

**Interinstitutional files:
2021/0211 (COD)**

Brussels, 30 May 2022

WK 7525/2022 ADD 2

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on the Environment
N° prev. doc.:	WK 7507/2022
Subject:	Fit for 55 package - ETS: Comments from delegations

Following the call for comments set out in WK 7507/2022, delegations will find attached comments by the BE, EE, HR, IT and FI delegations. Please note that the EE comments were also published in WK 6896/22.

FINLAND

Follow-up to WPE 23/5 on the ETS (stationary installations): written comments

Calendar for free allocation and compliance

- preference to have the date of the annual activity level report on April 30
- preference to have compliance date on October 30 (instead of September 30)
- preference to have the deadline for reporting to the Commission on the implementation of the ETS Directive by competent authorities only after all the previous deadlines because all the above information is needed for this report

Review clause on waste incineration

Finland welcomes the Presidency's proposal related to waste incineration as a positive first step. We support including waste incineration that is currently under the ESR into the ETS and are of the view that this should take place already well before 2030. Finland doesn't see the need to assess the inclusion of hazardous waste into the ETS and suggests removing this reference from the review clause. Instead, the assessment should cover the inclusion of all non-hazardous waste (i.e. not only municipal waste) and take into account also the effects on the recycling and safe material cycles – additional criteria to be added into the review clause text.

BELGIUM

Comments on the steering note from the Presidency (WK 7351/2022) for the purpose of WPE meeting on 23 May 2022 relating to the directive amending the EU ETS Directive (2003/87/EC)

In general

Belgium is of the opinion that the Presidency compromise text on the revised ETS directive (excluding maritime and ETS BRT) still needs further improvements.

I. Cluster 8 – Dispositions diverses

Seuil de 20MW (article 2(1)), installations dont les émissions proviennent à plus de 95% de la combustion de biomasse (Annexe I), autres dispositions

As already stated before, Belgium is flexible in making adjustments to the COM proposal in Article 2(1) (i.e. temporarily keeping installations no longer meeting the 20 MW threshold under ETS, if the reason is changes to production processes to reduce greenhouse gas emissions), hence also the Presidency proposal.

Belgium can agree with the modifications to Annex I (1) as proposed by the Presidency (with respect to the provision to exclude from the ETS installations whose emissions are more than 95% from biomass combustion). However, the exact wording of the new point (1) is still not unambiguous because of the “*or parts of installations*” provision.

Calendrier de distribution d’allocations gratuites et de conformité (articles 11(2), 12(3), 21)

Whereas Belgium was not requesting to change the compliance cycle, Belgium could agree going back to the 31 March (instead of the earlier 30 April) timeframe for submission of verified ALC reports, and with the proposed changes with respect to the new timeframes for issuing and surrendering free allowances (30 June and 30 September respectively). In that respect, it is important that any change is practically feasible after having had other timeframes for more than 15 years.

Inclusion de l’incinération des déchets municipaux

Whereas Belgium has no final position on whether inclusion of municipal and hazardous waste installations would be useful, it can agree with the new Article 30 (5) that would request the Commission to submit a report on this, if appropriate, accompanied by a legislative proposal to amend the Directive. Belgium is open to discuss whether 31 December 2026 is the most appropriate date, and whether « compulsory inclusion from 2031 onwards » needs to be already mentioned. Based on the results of the report, Belgium will finalise its position. Regarding the relevant criteria to be taken into account when drafting the report, Belgium would like to add two additional criteria: “*alignment with the objectives of the Waste Framework*

Directive” and « robustness and accuracy with respect to the monitoring and calculation of emissions ».

II. Clusters 4 et 7 – Plafond, facteur de réduction linéaire, MSR

Plafond de quotas, réserve de stabilité du marché

The editorial changes proposed for Article 9 can be supported. Notwithstanding that Belgium has no final position on different aspects of the MSR, the editorial changes to paragraphs 4 and 4a of Article 1 of the MSR Decision can be supported.

Facteur linéaire de réduction, rebasage (article 9), taux d’incorporation dans la MSR

Belgium shows openness, within the contours of the existing MSR, to consider reducing the MSR intake rate percentage in the event of the threshold being exceeded from 24% to 12% (as is foreseen in the current legal framework). On the other aspects of the MSR, Belgium has no final position.

Article 29a sur la fluctuation excessive des prix

Belgium deems it important that the EU ETS provides a stable and predictable carbon price to encourage decarbonisation , and is in that respect also inter alia examining the possible changes to Article 29a, which relates to measures to avoid excessive price fluctuations.

In order to choose between the sub-options presented in the steering note for the WPE of 29 April, Belgium calls upon the French Presidency to issue a specific non paper enabling Member States to better understand the impacts of the parameters chosen, including the impact of automatic releases on speculative behaviour. All relevant parameters are relevant in that respect, including the two years in par. 1, which also could be reassessed (and therefore put between brackets). The same holds for the 50 million allowances that would be released in the event of excessive price fluctuations, and the twelve months (minimum time between two interventions) in par. 2a.

III. Cluster 6 – Dispositions financières

Fonds d’Innovation (article 10a (8))

- *Volume du Fonds et origine des quota et répartition géographique des projets*

Belgium has a scrutiny reservation on the proposed volume and origin of allowances of the increased Innovation Fund, as there is inter alia a link with our proposal to partially continue with free allocations for exports.

Belgium can agree to modify Article 10a (8), as proposed by the Presidency when it comes to increasing transparency.

Belgium can agree with providing technical assistance to Member States, but does not see any merit in adding “*The Commission shall pursue effective, quality-based geographical coverage across the Union.*”

- Secteurs couverts par le MACF

In the medium to longer term, the Innovation Fund could be an option as proposed by the Commission and the French presidency, but Belgium would welcome further information as to how this would particularly help avoid carbon leakage for the export. Belgium considers that in the short term, continued partial free allocation for the export is in any case necessary.

Fonds de Modernisation (Article 10d, Annexe IIB)

- *Etats bénéficiaires, répartition du Fonds, part des investissements prioritaires, secteurs éligibles*

Belgium was able to agree with the proposed changes from the Commission, but holds a scrutiny reservation with respect to the changes to Article 10d (c) and recital 38 as proposed by the French presidency.

- *Quantité et origine de quota, éligibilité du gaz naturel*

At this stage, Belgium can not agree with the proposed increase in the Modernisation Fund.

- *Gouvernance du Fonds*

Belgium can agree with the proposed changes.

Utilisation des recettes nationales de la mise aux enchères (article 10(3))

Belgium still disagrees with the Presidency proposal to replace the term "shall" by the term "should". Belgium supports the Commission proposal to use the word "shall".

IV. Cluster 5 – Allocations gratuites et fuites de carbone

Réduction accélérée des référentiels (article 10a(2)), conditionnalité des allocations gratuites (article 10a(1a)), autres dispositions

Belgium supports the increase of the yearly maximum tightening of the EU wide product benchmarks from 1.6 % to 2.5 %, and is open to explore whether it can be justified to even remove this upper threshold to ensure faster incorporation of innovation and technological progress.

On the other hand, it seems appropriate that for the update of the fuel and heat benchmarks, an alternative yearly maximum tightening percentage or other alternative for the update of the benchmarks is explored, inter alia to ensure that benchmark values are sufficiently representative. In general, this is important for all benchmarks.

As already stated before, Belgium cannot support the proposal to delete the conditionality of free allocation and therefore sub-paragraph 3 of Article 10a (1). Belgium supports the conditionality of free allocation, also in order to reduce the

probability of application of the cross-sectoral correction factor (CSCF). Therefore, Belgium does not want sub-paragraph 3 of Article 10a (1) to be deleted.

Belgium can agree to keep the other proposals from the Commission as they are.

Réduction de l'allocation gratuite pour les secteurs MACF (article 10a(1a))

A proportionate and targeted WTO-compliant CBAM is a prerequisite to Belgium. Belgium welcomes the initiative of the French Presidency to accommodate the preoccupation of the risks of carbon leakage exposure for the export of products coming from sectors subject to the CBAM Regulation.

Regarding the proposed amendment to article 10a(8), Belgium asks the Presidency to further clarify how the “significant share” will be defined.

Regarding the proposed new paragraph 2a under article 30, we would like to stress that any assessment of the impact of CBAM on the risk of carbon leakage (including in relation to export) should include an analysis of the impact on Member State level. This should be specified in the wording of paragraph 2a. In addition, we support to include a reference to a corresponding Commission proposal in paragraph 10a, such as in the proposal circulated by Germany..

Notwithstanding the proposals by the French Presidency, we believe that a system of partial allocation of free allowances for export production is necessary and that it would be compatible with WTO rules. In this regard, we refer to the non-paper that we have submitted after the last Working Party Environment.

As such, we consider that a combination of CBAM (for import) and partial free allocation for export is an appropriate instrument to avoid carbon leakage, offering a level of protection comparable to the current system of free allocation. We therefore believe that in principle, a combination of CBAM with partial free allocation for export would not lead to more concerns regarding WTO compatibility than the current system of free allowances. In our view, it is thus possible to design a system of partial free allocation for export compatible with WTO rules, that and we are working on a concrete proposal that mirrors the existing free allocation rules in the ETS, based on benchmarks, activity level, CSCF etc, keeping in mind that the overall amount of the partial free allocation cannot correspond to the total emissions linked to the exported production in order to ensure WTO compatibility and to provide an incentive to reduce emissions for EU exporters. We invite the Council Legal Service to orally assess proposals on carbon leakage protection mechanisms for the export.

ITALY

Fit for 55 package - ETS revision: Follow-up to the WPE meeting on 23 May 2022

- Call for comments

As a follow up to the meeting of the last 23 May 2022 and complementing what has been pointed out during the meeting, we would like to submit our drafting proposals in writing on two specific issues.

- Concerning the proposals for provisions on **waste incineration**, Italy would like to recall the necessity for the directive to bring in the correct incentive to circularity following the principles and objectives of the European Green deal. In this respect we would like to put forward an amendment building up on the proposal made by the Presidency as follows (marked in red in the following text).

Addition to Article 30

5. By 31 December 2026, the Commission shall submit a report assessing the impact of the inclusion into ETS of the waste treatment, recovery and regeneration and incineration as well as utilization of recovered and regenerated waste as input of production processes and feasibility of a compulsory inclusion from 2031 onwards of installations for the incineration of hazardous or municipal waste in the Emissions Trading System covering the sectors listed in Annex 1 of Directive 2003/87/EC, taking into account relevant criteria such as the effects on the internal market, potential distortions of competition, and environmental integrity. The report shall, if appropriate, be accompanied by a legislative proposal to the European Parliament and to the Council to amend this Directive.

- Concerning the proposal for the **new article 3gaa** on the provisions for transfer of the costs of the ETS from the shipping company to another entity, Italy sees issues on the interpretation of which possible measures Member States should take in order to ensure that the 'other entity' reimburses the shipping company.

Furthermore, given the variety of contracts which may be used between the operators of the sector we would like to raise concerns on the feasibility and applicability of the provision the way it has been put forward by the Presidency, especially with regard to the autonomy of the contracting parties in relation to the ruling of 'reimbursement' of compliance costs.

In this respect we would like to encourage for a rephrasing of the provision, taking into account the proposals below.

New article 3gaa (after article 3ga)

Provisions for transfer of the costs of the ETS from the shipping company to another entity

The shipping company remains the responsible entity for surrendering allowances as required under Article 3ga and Article 12 of this Directive and for overall compliance with the provisions of national law transposing this Directive.

~~Member States shall take the necessary measure to ensure that When the ultimate responsibility for the purchase of the fuel or the operation of the ship is assumed by a different entity than the shipping company, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances. Operation of the ship for the purposes of this Article means determining the cargo carried, the route and the speed of the ship. The shipping company remains the responsible entity for surrendering allowances as required under Article 3ga and Article 12 of this Directive and for overall compliance with the provisions of national law transposing this Directive.~~ Member States shall ensure that shipping companies under their responsibility comply with their obligations to surrender allowances,

notwithstanding their entitlement to be reimbursed by the commercial operators for the cost arising from the surrender.

