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Subject: Proposal for a Decision of the European Parliament and of the Council
concerning the establishment and operation of a market stability reserve
for the Union greenhouse gas emission trading scheme and amending
Directive 2003/87/EC
- analysis of the final compromise text with a view to agreement

1. On 25 March 2015, the Permanent Representatives Committee gave the Presidency a mandate to enter into negotiations with the European Parliament with a view to reaching a first-reading agreement on the abovementioned proposal. The first informal trilogue took place on 30 March 2015 in the European Parliament. Coreper was informed about the outcome of the trilogue on 1 April 2015.
2. On 29 April 2015, Coreper agreed on a mandate for the second informal trilogue on the basis of a revised four-column table (set out in doc. 8513/15) and taking account of the two statements made by the Commission, which are contained in Annex I to this note.

3. The second informal trilogue was held on 5 May 2015 in Council premises, and Coreper was informed about its outcome on 6 May 2015. As a result of the discussions at the second informal dialogue, an agreement *ad referendum* was reached between the institutions on an overall compromise package.
4. The outcome of the trilogue, which contains the new compromise elements listed below, can be found in the consolidated text contained in Annex II (all changes compared to the original Commission proposal are marked).
 - Recital 3b, last sentence: A new sentence has been added at the end of the recital, stating that the review of the ETS Directive should also consider whether a limited number of allowances should be used to supplement existing resources to promote projects referred to in Article 10a(8) of the ETS Directive and low-carbon industrial innovation projects in all Member States, including small-scale projects, before 2021; a slight adjustment to the wording was also made in the previous sentence of the same recital, whereby the words "*look into*" have been replaced with "*consider*".
 - Article 1(3), second subparagraph: The duration of the temporary exemption concerning the allowances referred to in Article 10 (2) (b) of the ETS Directive has been limited to 31 December 2025;
 - Recital 2: Explanatory wording has been included in the recital in relation to the provision set out in the last sentence of Article 1(6) concerning the release of allowances in relation to their placement in the reserve ("*allowances should be released from the reserve to Member States in the same proportions and order as applied when placing them in the reserve*");
 - Article 4: The date of applicability of the transitional provision was adjusted (until 31 December 2018 instead of 2020) in order for it to be consistent with Article 1(1) and Article 2(1).
5. The Permanent Representatives Committee is invited to:
 - analyse the consolidated text as set out in the Annex II to this note and confirm final agreement on an overall compromise text on this basis; and

- authorise the Presidency, if appropriate, to send a letter to the European Parliament stating that if the Parliament were to adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form as set out in the Annex II to this note, subject to the previous revision of the text by the lawyer-linguists, the Council would, in accordance with Article 294 paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.
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Statements by the Commission

- "In line with European Council Conclusions of October 2014 the ETS review will inter alia consider whether unallocated allowances should be used for addressing the risk of carbon leakage."

- "The temporary exemption foreseen in Art 1.3, 2nd subparagraph does not constitute a precedent for the ETS review."

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of
concerning the establishment and operation of a market stability reserve for the Union
greenhouse gas emission trading scheme and amending Directive 2003/87/EC
(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (-1) **Directive 2003/87/EC of the European Parliament and of the Council³ establishes a system for greenhouse gas emission allowance trading within the Union (EU ETS) in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.**
- (-1a) **The European Council conclusions of 23 and 24 October 2014 on the 2030 Climate and Energy Policy Framework state that a well-functioning, reformed Emissions Trading System (ETS) with an instrument to stabilise the market will be the main European instrument to achieve the Union's greenhouse gas emissions reduction target.**
- (1) Article 10(5) of Directive 2003/87/EC **█** provides that **each year the Commission is to submit a report to the European Parliament and the Council** on the functioning of the European carbon market **█** .
- (2) The report from the Commission to the European Parliament and **to** the Council on the state of the European carbon market in **2012⁴** identified the need for measures in order to tackle structural supply-demand imbalances. The impact assessment on the 2030 climate and energy policy framework⁵ indicates that this imbalance is expected to continue, and would not be sufficiently addressed by adapting the linear trajectory to a more stringent target within this framework. A change in the linear factor only changes gradually the cap. Accordingly, the surplus would also only gradually decline, such that the market would have to continue to operate for more than a decade with a surplus of around 2 billion allowances or more, **thereby preventing the ETS from delivering the necessary investment signal to reduce CO₂ emissions in a cost-efficient manner and being a driver of low-carbon innovation contributing to economic growth and jobs** In order to address

³ **Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).**

⁴ **16352/12 - COM(2012)652 final.**

⁵ **5644/14 ADD1 – SWD(2014)15 final.**

this problem and to make the **EU ETS** more resilient to **supply-demand** imbalances **so as to enable the ETS to function in an orderly market**, a market stability reserve (**the "reserve"**) should be established **in 2018 and it** should be **operational** as of **2019**. **The reserve will also enhance synergy with other climate and energy policies**. In order to preserve a maximum degree of predictability, clear rules should be set for placing allowances into the reserve and releasing them from **it**. **The reserve should function by triggering adjustments to the annual auction volumes**. Where the conditions are met, **each year**, beginning in **2019**, allowances corresponding to 12% of the number of allowances in circulation, **as set out in the most recent publication**, should be **deducted from the auction volumes and** put into the reserve. **In any year, a** corresponding number of allowances should be released from the reserve **to Member States in the same proportions and order as applied when placing them in the reserve and be added to auction volumes if the relevant** total number of allowances in circulation is **fewer** than 400 million. **To this end, the Commission and the Member States should, without undue delay following the publication of the total number of allowances in circulation by the Commission by 15 May of a given year, ensure that the auction calendars of the common auction platform and, where applicable, opt-out auction platforms are adjusted to take into account the allowances placed in or to be released from the reserve. The adjustment of the volume of allowances to be auctioned should be spread over a period of 12 months following the change to the relevant auctioning calendar. Taking into account the need for a smooth operation of the auction process, further details on the adjustment, where necessary, should be set out in the regulation adopted pursuant to Article 10(4) of Directive 2003/87/EC.**

- (3) Furthermore, in addition to the establishment of the **■** reserve, a few consequential amendments should be made to Directive 2003/87/EC to ensure consistency and smooth operation of the **EU** ETS. In particular, the **implementation** of Directive 2003/87/EC may lead to large volumes of allowances **being** auctioned at the end of each trading period which can undermine market stability. Accordingly, in order to avoid an imbalanced market situation of supply of allowances at the end of one trading period and the beginning of the next with possibly disruptive effects for the market, provision should be made for the auctioning of part of any large increase of supply at the end of one trading period in the first two years of the next period. ***In order to further enhance the stability of the European carbon market and avoid artificially increasing the supply towards the end of the trading period starting in 2013, allowances not allocated to installations pursuant to Article 10a(7) of Directive 2003/87/EC and because of the application of Article 10a(19) and (20) of that Directive (" unallocated allowances") should be placed in the reserve in 2020. The Commission should review Directive 2003/87/EC in relation to those unallocated allowances and, if appropriate, submit a proposal to the European Parliament and to the Council on options for further action.***
- (3a) ***Moreover, the planned reintroduction of 300 million allowances in 2019 and 600 million allowances in 2020, as determined in Commission Regulation (EU) No 176/2014⁶ pursuant to Article 10(4) of Directive 2003/87/EC, would undermine the aim of the reserve to tackle structural supply-demand imbalances. Accordingly, the 900 million allowances should not be auctioned in 2019 and 2020 but should instead be placed in the reserve.***

⁶ ***Commission Regulation (EU) No 176/2014 of 25 February 2014 amending Regulation (EU) No 1031/2010 in particular to determine the volumes of greenhouse gas emission allowances to be auctioned in 2013-20 (OJ L 56, 26.2.2014, p. 11).***

(3b) *It is important that the ETS incentivises carbon efficient growth and that the competitiveness of the European Union's industries at genuine risk of carbon leakage is protected. The European Council conclusions of 23 and 24 October 2014 on the 2030 Climate and Energy Policy Framework gave clear guidance on the continuation of free allocation and carbon leakage provisions after 2020. Building on this strategic guidance, the Commission should within 6 months following the adoption of this Decision make a proposal to review Directive 2003/87/EC and in particular Article 10a thereof. In pursuing the goal of a level playing field, that review should also consider harmonised arrangements to compensate for indirect costs at the Union level. That review should also consider whether up to 50 million allowances should be used to supplement existing resources to promote projects referred to in Article 10a(8) of that Directive and low-carbon industrial innovation projects, with projects in all Member States including small-scale projects, before 2021.*

(4) The Commission should **monitor the functioning of the reserve in the context of the annual carbon market report. This report should consider relevant competitiveness effects, in particular in the industrial sector, including GDP, employment and investment indicators. In addition, the Commission should, within three years of the date of operation of the reserve and periodically thereafter** review the functioning of the **reserve** in the light of experience of its application. The review of the functioning of the **reserve** should in particular consider whether the rules on placing allowances in the reserve **and releasing them** are appropriate with regard to the aim pursued to tackle structural supply-demand imbalances. **This should include an analysis of the market balance, including all relevant factors affecting supply and demand, and of the appropriateness of the predefined range triggering adjustments to annual auction volumes, as well as the percentage rate applied to the total number of allowances in circulation. Where the analysis indicates that the range is no longer appropriate in the light of changed market developments and new information available at the time of the review, the Commission should swiftly submit a proposal to address this situation. The review should also look into the impact of the reserve on growth, jobs, the European Union's industrial competitiveness and on the risk of carbon leakage. The review of the functioning of the reserve should be objective and take into account the need to preserve regulatory stability and ensure long-term predictability in the transition to a low-carbon economy.**

(5) **Directive 2003/87/EC** should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

Article 1

Market stability reserve

1. A market stability reserve is established **in 2018**, and **the placing of allowances in the reserve** shall operate from 1 January **2019**.

- 1a. The quantity of 900 million allowances deducted from auctioning volumes during the period 2014-2016, as determined in Regulation (EU) No 176/2014 pursuant to Article 10(4) of Directive 2003/87/EC, shall not be added to the volumes to be auctioned in 2019 and 2020 but shall instead be placed in the reserve.**
- 1b. Allowances not allocated to installations pursuant to Article 10a(7) of Directive 2003/87/EC and because of the application of Article 10a(19) and (20) of that Directive shall be placed in the reserve in 2020. The Commission shall review Directive 2003/87/EC in relation to those allowances and, if appropriate, submit a proposal to the European Parliament and to the Council.**
2. The Commission shall publish the total number of allowances in circulation each year, by 15 May of the subsequent year. The total number of allowances in circulation **in a given** year ■ shall be the cumulative number of allowances issued in the period since 1 January 2008, including the number issued pursuant to Article 13(2) of Directive 2003/87/EC in that period and entitlements to use international credits exercised by installations under the EU **ETS** in respect of emissions up to 31 December of **that** year ■, minus the cumulative tonnes of verified emissions from installations under the EU **ETS** between 1 January 2008 and 31 December of **that same** year ■, any allowances cancelled in accordance with Article 12(4) of Directive 2003/87/EC and the number of allowances in the reserve. No account shall be taken of emissions during the three-year period starting in 2005 and ending in 2007 and allowances issued in respect of those emissions. The first publication shall take place by 15 May 2017.

3. **Each** year **■**, a number of allowances equal to 12% of the total number of allowances in circulation, **as set out in the most recent publication under paragraph 2, 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 in September of that year**, unless this number of allowances to be placed in the reserve would be **fewer** than 100 million. **In the first year of the reserve's functioning, placements shall also take place between the month referred to in Article 1(1) of this Decision and September of that year of 8%⁷ of the total number of allowances in circulation as set out in the most recent publication.**

Without prejudice to the total amount of allowances to be deducted pursuant to this paragraph, until 31 December 2025, allowances referred to in Article 10(2)(b) of Directive 2003/87/EC shall not be taken into account when determining Member States' shares contributing to that total amount.

4. In any year, if the total number of allowances in circulation is **fewer** than 400 million, 100 million allowances shall be released from the reserve **and added to the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC. Where fewer** than 100 million allowances are in the reserve, all allowances in the reserve shall be released under this paragraph.
5. In any year, if paragraph 4 is not applicable and measures are adopted under Article 29a of **■** Directive **2003/87/EC**, 100 million allowances shall be released from the reserve **and added to the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC. Where fewer** than 100 million allowances are in the reserve, all allowances in the reserve shall be released under this paragraph.

⁷ **1% for each calendar month which this represents.**

6. Where, **following the publication of the total number of allowances in circulation**, action is taken pursuant to **the preceding** paragraphs **■**, the auction calendars shall take into account the allowances placed in the reserve or to be released from the reserve. **The allowances shall be placed in the reserve or released from it over a period of 12 months** **Where there is a release of allowances pursuant to paragraph 4 or 5, irrespective of the period during which the release of allowances takes place, it shall follow the Member States' shares applicable at the time of their placement into the reserve and it shall also follow the order in which the allowances were placed into the reserve.**

Article 2

Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

1. Article 10(1) is replaced by the following:

■ "1. From **2019** onwards, Member States shall auction all allowances that are not allocated free of charge in accordance with Article 10a and 10c and are not placed in the market stability reserve established by Decision [**OJ**: please insert number of this Decision when known **and add footnote**] of the European Parliament and of the Council(*)."

- 2.** In Article 10, the following paragraph **is** inserted:

"1a. Where the volume of allowances to be auctioned by Member States in the last year of each period referred to in Article 13(1) exceeds by more than 30% the expected average auction volume for the first two years of the following period before application of Article 1(3) of Decision [**OJ**: please insert number of this Decision when known], two-thirds of the difference between the volumes shall be deducted from auction volumes in the last year of the period and added in equal instalments to the volumes to be auctioned by Member States in the first two years of the following period. "

3. In the second subparagraph of Article 13(2), the following sentence is added:

"Similarly, allowances held in the market stability reserve established by Decision [**OJ**: please insert number of this Decision when known] and which are no longer valid shall be replaced by allowances which are valid for the current period."

Article 3

Review

The Commission shall monitor the functioning of the reserve in the context of the report provided for in Article 10(5) of Directive 2003/87/EC. This report should consider relevant competitiveness effects, in particular in the industrial sector, including GDP, employment and investment indicators. Within three years of the start of the operation of the reserve and at five year intervals thereafter, the Commission shall, on the basis of an analysis of the orderly functioning of the European carbon market review the market stability reserve and submit a proposal, where appropriate, to the European Parliament and to the Council. **Each** review shall pay particular attention to the percentage figure for the determination of the number of allowances to be placed into the reserve **pursuant** to Article 1(3), **as well as** the numerical value of the threshold for the total number of allowances in circulation **and the number of allowances to be released from the reserve pursuant to** Article 1(4) **or (5). In its review, the Commission shall also look into the impact of the reserve on growth, jobs, the European Union's industrial competitiveness and on the risk of carbon leakage.**

Article 4

Transitional provision

Article 10(1) of Directive 2003/87/EC as amended by Directive 2009/29/EC **of the European Parliament and of the Council**⁸ shall continue to apply until 31 December **2018**.

⁸ **Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).**

Article 5
Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

Done at Brussels,

For the European Parliament

The President

For the Council

The President
