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ENV 919  
ENER 463  
TRANS 602  
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ECOFIN 916  
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## NOTE

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From: General Secretariat of the Council

To: Permanent Representatives Committee

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Subject: 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 and

Proposal for a Decision of the European Parliament and of the Council amending Decision (EU) 2015/1814 as regards the amount of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading scheme until 2030

- Preparation for the trilogue

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## I. INTRODUCTION

1. On 14 July 2021, the Commission submitted three proposals to the European Parliament and to the Council, as part of the 'Fit for 55 package', relating to the Emissions Trading System (ETS):

- a) a proposal to amend the Directive on the EU Emissions Trading System, the Decision on the Market Stability Reserve (MSR) and the Regulation on monitoring, reporting and verification (MRV) in the maritime transport sector (general ETS);
  - b) a separate proposal to amend the Decision on the Market Stability Reserve (MSR Decision); and
  - c) a proposal to amend the Emissions Trading System Directive with regard to aviation (ETS aviation)<sup>1</sup>.
2. The overall aim of the proposals is to ensure that the ETS delivers its share of the increased overall EU ambition of reducing net greenhouse gas emissions by at least 55 % by 2030 and to put the EU on track to meet its objective of becoming climate-neutral by 2050.
  3. The European Economic and Social Committee delivered its opinion on 8 December 2021. The Committee of the Regions delivered its opinion at its session from 27 to 29 April 2022.
  4. In the European Parliament, on behalf of the Committee on the Environment, Public Health and Food Safety (ENVI), Mr Peter Liese (EPP, DE) was appointed rapporteur for the general ETS proposal, Ms Sunčana Glavak (EPP, HR) for the ETS aviation proposal and Mr Cyrus Engerer (S&D, MT) for the proposal for a separate MSR decision. The European Parliament adopted its negotiation mandate on the general ETS proposal on 22 June 2022, on aviation on 8 June 2022 and on the MSR Decision on 5 April 2022.

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<sup>1</sup> Informal trilogues with the European Parliament on the ETS aviation proposal are organised separately from the revision of the general ETS directive and the MSR Decision.

5. Within the Council, the three proposals related to the revision of ETS were dealt with together and on 29 June 2022, the Council reached general approaches on all three proposals<sup>2</sup>.
6. On 11 July 2022, the first trilogue was held on the ETS general proposal. On 6 September 2022, the first trilogue was held on the MSR proposal and on the same day the first trilogue on the ETS aviation proposal.

Going forward, it has been agreed to deal with the ETS general proposal and the separate MSR decision together, whereas the ETS aviation proposal will be dealt with separately.

7. The Working Party on the Environment examined the EP amendments at its meetings on 5 and 8 July 2022.
8. Following the first trilogues, a number of Technical Meetings have been held enabling progress on a number of issues in preparation of the second trilogue on the ETS and MSR proposals scheduled for 10 October 2022.
9. On 27 September 2022, the Working Party on the Environment held an exchange of views on the state of play of the preparations in view of the second informal trilogue on the ETS revision.

## **II. PRESIDENCY SUGGESTIONS IN VIEW OF THE TRILOGUE**

10. The second trilogue will focus on:
  - a) An exchange on main political issues;
  - b) Discussion on the way forward on more technical or less contentious issues identified in technical meetings.

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<sup>2</sup> Documents 10796/22, 10800/22 and 10798/22

Overall, the Presidency suggests a cautious but constructive approach. In relation to the main political issues, the Presidency will defend the general approach and in general be restrictive on the Parliament's numerous amendments. Conversely, on a number of more technical or less contentious issues, the Presidency, following comments from delegations and based on the technical discussions with the Parliament and the Commission, suggests that the Council show openness in order to move the negotiation process forward. The openness will be on the understanding that the Council's flexibility needs to be reciprocated by the Parliament and situated in the overall context of reaching a balanced compromise.

11. The Presidency in particular proposes the following flexibilities:

A) ETS installations

a) Free allocation

To be open to consider parts of the EP amendment relating to benchmarks that specifies further the aspects that need to be reviewed (row 187) to the extent that the Commission can agree and subject to simplified wording.

b) Scope

i) The EP amendments on *CCS/CCU/negative emissions* (rows 252b, 252d, 252f) – to show openness to additional wording on reporting/review as long as it does not prejudge the Commission's upcoming proposal and to the extent the Commission can agree and finds it feasible.

ii) The EP amendment on the *20 MW threshold* (row 83) - as the Council and EP texts go in the same direction on the aspect of an option to stay within the scope of EU ETS, the Council could consider a joint text provided that the reference to Member States' role is kept. The EP suggestion to review the 20 MW threshold could be considered as part of an agreement on the general ETS review clause in Article 30 of the ETS Directive and subject to Commission assessment. The review should be based on a proper cost-benefit assessment, including taking into account the administrative burden.

c) Financial mechanisms

- i) *Innovation Fund* – the numerous EP amendments need to be further analysed but the Council could show some openness to work on certain elements: frontloading (last part of row 206) depending on developments on RePowerEU negotiations; technologies and sectors covered provided they are in line with the current nature of the Innovation Fund (parts of rows 208, 208b); finding common language on geographical balance while maintaining the main elements of the general approach (row 211a); the mention of medium-scale projects subject to Commission assessment (first part of row 209); and transparency and knowledge sharing (row 211). Further progress on these aspects will also depend on EP's flexibility towards the Council text and additional discussions on EP amendments on including funding of upscaling projects and earmarking.
- ii) *Modernisation Fund* – to show openness to look at EP amendment on cross-border projects (row 171) if feasible and clarified that it is on a voluntary basis for the beneficiary Member States. The Council would consider exploring some additions to the list of priority projects based on analysis by the Commission comparing these to the current list. Nonetheless, consideration of extending the list depends on decision on percentage for priority and non-priority projects and the overall balance of the text (rows 231a, 233, 235, 236, 236a).
- iii) *Use of Member States' revenues* – in general, a very restrictive position should be taken on this issue. If part of the overall balanced text on the use of Member States' revenue, the Council could be open to explore inclusion of at least some additional funding areas based on a Commission comparison with existing areas so as to ensure that any additions do not lead to restrictive interpretation of the current broad funding areas (rows 173b to 175f).

a) Market functioning

EP amendments on *market monitoring and follow up to final ESMA report* (rows 177 b-f) – to be open to look into additions if simplified and streamlined and wording agreeable to the Commission with the intention to increase transparency of the market. It is worth noting that this is linked to EP amendments on *Market Access* (rows 237 b-d, 269 l-m and 269r-s), which are deemed unacceptable.

B) ETS Maritime (incl. MRV)

b) Scope

EP amendments relating to *evasion* (incl. review) (rows 97a to c, 155, 155g and 375h) – to be open to work further on a joint text, subject to decision on type of vessels covered and percentage of port traffic.

c) Derogations

EP amendment on *excluding humanitarian voyages, search and rescue voyages and force majeure* (row 481) – to be open to consider it if proved feasible and implementable (it would require clarifying what "humanitarian voyages" would entail). As regards other derogations, the intention is to maintain the Council position at this stage. The Presidency would like to signal to delegations that on the issue of derogations, the Council will have to consider a compromise package while aiming to keep the balance between the different types of derogations.

c) Review - IMO and evasion

EP amendment and Council text (rows 154 and 155) – to be open to explore the possibility of merging the two texts while retaining key elements of the Council text (such as co-existence and alignment and avoiding double burden).

d) Other

Furthermore, the EP is expected to accept that the MRV proposal will be adopted as a separate Regulation. EP also showed willingness to accept the Council's text on EMSA and a number of technical changes made by the Council in both the ETS Directive and the MRV Regulation. Work at technical level will be undertaken to establish a joint text on the MRV Regulation except for the political issues (i.e. issues related to scope or timing).

C) Horizontal issues

EP amendments on *long-term ambition and international climate negotiations* (rows 11 to 14, 16, 17, 81a) – to be open to look at these provisions as long as they reflect accurately the European Climate Law (Regulation/EU) 2021/1119) and remain factual. Specifically on row 81a, the openness on including wording in the Article (Article 1) is limited to parts of the amendment that relate only to the European Climate Law.

D) MSR decision.

Part of the EP amendments to the recital part of the MSR Decision is similar to EP amendments to recitals in the ETS Directive. The Council could show openness to similar amendments as mentioned above.

12. The abovementioned proposed flexibilities are subject to examination of and agreement on concrete text proposals. To this end, the Presidency will revert to delegations in due time.
13. The proposed mandate for the second trilogue is set out in detail in the **fourth column** of the tables contained in ADD 1 and 2 to this note.

### III. CONCLUSION

14. The Permanent Representatives Committee is invited to agree to the Presidency's suggestions as set out in this note and its ADD 1 and 2 (the four-column tables) in view of the upcoming trilogue.
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