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INFORMATION NOTE

from: General Secretariat of the Council
to: Permanent Representatives Committee/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 525/2013 as regards the technical implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change
- Outcome of the European Parliament's first reading
(Strasbourg, 14 to 17 April 2014)

I. INTRODUCTION

The Committee on the Environment, Public Health and Food Safety adopted four amendments to the proposal for a Regulation.

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the Committee presented a further, compromise, amendment (amendment 5). This compromise amendment had been agreed during the informal contacts referred to above. It was intended to supersede - rather than complement - the four amendments already submitted to the plenary.

II. VOTE

When it voted on 16 April 2014, the plenary adopted the compromise amendment (amendment 5). No other amendments were adopted.

The Commission's proposal as thus amended constitutes the Parliament's first-reading position, which is contained in its legislative resolution as set out in the Annex hereto ².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

¹ OJ C 145, 30.6.2007, p.5

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

Technical implementation of the Kyoto Protocol to the UN Framework Convention on Climate Change *I**

European Parliament legislative resolution of 16 April 2014 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 525/2013 as regards the technical implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (COM(2013)0769 – C7-0393/2013 – 2013/0377(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2013)0769),
 - having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0393/2013),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 26 February 2014¹,
 - after consulting the Committee of the Regions,
 - having regard to the undertaking given by the Council representative by letter of 19 March 2014 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A7-0171/2014),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ Not yet published in the Official Journal.

P7_TC1-COD(2013)0377

Position of the European Parliament adopted at first reading on 16 April 2014 with a view to the adoption of Regulation (EU) No .../2014 of the European Parliament and of the Council amending Regulation (EU) No 525/2013 as regards the technical implementation of the Kyoto Protocol to the United Nations Framework Convention on Climate Change

(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,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

¹ Opinion of 26 February 2014 (not yet published in the Official Journal).

² Position of the European Parliament of 16 April 2014.

Whereas:

- (1) ***On 8 December 2012, at its eighth session, the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) serving as the meeting of the Parties to the Kyoto Protocol, adopted the Doha Amendment, establishing a second commitment period of the Kyoto Protocol, starting on 1 January 2013 and ending on 31 December 2020 (the Doha Amendment).***

- (2) ***Article 4 of the Kyoto Protocol provides for the possibility for Parties to fulfil their commitments under Article 3 of the Kyoto Protocol jointly. At the time of adoption of the Doha Amendment, the Union and its Member States, together with Croatia and Iceland, stated that the quantified emission limitation and reduction commitments for the Union, its Member States, Croatia and Iceland for the second commitment period under the Kyoto Protocol are based on the understanding that these will be fulfilled jointly in accordance with Article 4 of the Kyoto Protocol. That statement is reflected in the Report of the Conference and was endorsed by the Council on 17 December 2012.***

- (3) *The Kyoto Protocol requires Parties that have reached an agreement to fulfil their commitments under Article 3 of the Kyoto Protocol jointly to set out in that agreement the respective emission level allocated to each of them. The Kyoto Protocol requires the Parties to a joint fulfilment agreement to notify the UNFCCC Secretariat of the terms of that agreement on the date of deposit of their instruments of acceptance.*
- (4) The conclusion of the Doha Amendment, the implementation of accompanying decisions of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol and *a joint fulfilment agreement will* require the establishment of rules to ensure the technical implementation of the *second commitment period of the Kyoto Protocol in the Union, including the transition from the first to the second commitment period*, to enable the effective operation of *a joint fulfilment agreement*, and to ensure its alignment with the operation of the Union's Emissions Trading System (the EU ETS) established by Directive 2003/87/EC of the European Parliament and of the Council¹ and Decision 406/2009/EC of the European Parliament and of the Council².

¹ 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).

² Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).

- (5) During the first commitment period of the Kyoto Protocol, the internationally agreed requirements for the accounting and management of emissions and units and the joint fulfilment by the Union and its Member States were implemented pursuant to Decision No 280/2004/EC of the European Parliament and of the Council¹, Commission Regulation (EC) No 2216/2004² and Commission Regulation (EU) No 920/2010³. Regulations (EC) No 2216/2004 and (EU) No 920/2010 have been replaced by Commission Regulation (EU) No 389/2013⁴, which contains provisions on unit management related to the implementation and operation of the EU ETS and Decision No 406/2009/EC. The recently adopted Regulation (EU) No 525/2013 of the European Parliament and of the Council⁵, ***which repealed and replaced Decision No 280/2004/EC, does not contain the legal basis that would enable the Commission to adopt the necessary technical implementation rules for the second commitment period of the Kyoto Protocol in accordance with the terms of the Doha Amendment, the decisions of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol and a joint fulfilment agreement.***

¹ Decision No 280/2004/EC of the European Parliament and of the Council of 11 February 2004 concerning a mechanism for monitoring Community greenhouse gas emissions and for implementing the Kyoto Protocol (OJ L 49, 19.2.2004, p. 1).

² Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ L 386, 29.12.2004, p. 1).

³ Commission Regulation (EU) No 920/2010 of 7 October 2010 establishing a Union Registry for the periods ending 31 December 2012 of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ L 270, 14.10.2010, p. 1).

⁴ Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (OJ L 122, 3.5.2013, p. 1).

⁵ Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

- (6) *Where a Member State is seriously disadvantaged by a specific and exceptional situation, including accounting inconsistencies in matching the implementation of Union legislation with the rules agreed under the Kyoto Protocol, without prejudice to the fulfilment of the Member State's obligations under Decision No 406/2009/EC, the Commission should, subject to the availability of units at the end of the second commitment period of the Kyoto Protocol, adopt measures to address that situation, by means of a transfer of certified emission reductions (CERs), emission reduction units (ERUs) or assigned amount units (AAUs) held in the Union registry to the registry of that Member State.*

- (7) ***In order to ensure uniform conditions for the implementation of Article 10(7) of Regulation (EU) No 525/2013, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹.***
- (8) Decision 1/CMP.8 of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol ('Decision 1/CMP.8') amends the rules for the establishment of eligibility to participate in the flexible mechanisms ***during the second commitment period of the Kyoto Protocol***. It also ***sets limits on the carry-over of units from the first to the second commitment period, and includes a requirement for each Party to establish an account for the previous period surplus reserve***. Moreover, that Decision provides for a 2 % share of the proceeds to be levied on the first international transfers of AAUs and ***on the issuance of ERUs for joint implementation projects immediately upon the conversion to ERUs of AAUs or of removal units (RMUs) previously held by Parties***. Further rules for the implementation of the second commitment period ***of the Kyoto Protocol*** are currently being negotiated.

¹ ***Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).***

- (9) *In the delegated acts to be adopted in accordance with this Regulation, the Commission should provide for a clearing process at the end of the second commitment period of the Kyoto Protocol, whereby any net transfers of annual emission allocations in accordance with Decision No 406/2009/EC, and any net transfers of allowances with third countries participating in the EU ETS which are not part of a joint fulfilment agreement with the Union and its Member States, are followed by a transfer of a corresponding number of AAUs.*
- (10) *The relevant international rules governing the accounting for emissions and progress towards achievement of commitments are expected to be adopted at the next climate conference to be held in Lima in December 2014. The Union and its Member States should work with third countries to help ensure this.*
- (11) *Pursuant to Decision 1/CMP.8, which requires Parties to revisit their commitment for the second commitment period at the latest by 2014, cancelling a number of AAUs, CERs and ERUs in order to increase the ambition of their commitment could be considered.*

- (12) In order to establish coherent rules to ensure the technical implementation of the *second commitment period of the* Kyoto Protocol in the Union, *including the transition from the first to the second commitment period*, to enable the effective operation of the joint fulfilment of the commitments of the Union, its Member States and Iceland *for the second commitment period*, and *to* ensure its alignment with the operation of the EU ETS and Decision No 406/2009/EC, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission, *from the date of conclusion by the Union of the Doha Amendment to the end of the additional period for fulfilling commitments under the second commitment period of the Kyoto Protocol. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.* The Commission, when preparing and drawing up delegated acts, should ensure *a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council, as well as* their consistency with internationally agreed accounting requirements, *a joint fulfilment agreement concluded between the Union, its Member States and third countries under Articles 3 and 4 of the Kyoto Protocol*, and relevant Union legislation.

- (13) *The Council conclusions of 9 March 2012 state that the Union's quantified emission limitation or reduction objective during the second commitment period is determined on the basis of the Union's total greenhouse gas emissions allowed during the period 2013-2020 under its climate and energy legislative package, thus reflecting the Union's unilateral commitment to a 20% reduction by 2020, and in this context confirm that with this approach, the emission reduction obligations of individual Member States should not exceed their obligations agreed in Union legislation.*
- (14) *Compliance with the limits established by the relevant decisions of the UNFCCC or Kyoto Protocol bodies on the carry-over of ERUs and CERs from the first to the second commitment period should be ensured.*
- (15) *Regulation (EU) No 525/2013 should therefore be amended accordingly,*

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 525/2013 is amended as follows:

(1) The following points are inserted in Article 3:

"(13a) 'commitment period reserve' or 'CPR' means the reserve established pursuant to the Annex to Decision 11/CMP.1 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies;

(13b) 'previous period surplus reserve' or 'PPSR' means the *account* established pursuant to Decision 1/CMP.8 of the Conference of the Parties to the UNFCCC serving as the meeting of the Parties to the Kyoto Protocol ('Decision 1/CMP.8') or other relevant decisions of the UNFCCC or Kyoto Protocol bodies;

(13c) 'joint fulfilment agreement' means the terms of an agreement, in accordance with Article 4 of the Kyoto Protocol, between the Union, its Member States and any third country to fulfil their commitments under Article 3 of the Kyoto Protocol, for the second commitment period, jointly;".

(2) Article 10 is amended as follows:

(a) in paragraph 1, the following *subparagraph* is added:

"The Union and the Member States shall *each*, in their *respective* registries *set up pursuant to the first subparagraph, account for their respective assigned amounts in the second commitment period of the Kyoto Protocol and perform the transactions referred to in the first subparagraph, in accordance with Decision 1/CMP.8 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies and with a joint fulfilment agreement. To that effect, the Union and each Member State shall each in their respective registries:*

- *set up and manage party holding accounts, including a deposit account, and issue an amount of AAUs corresponding to their respective assigned amounts for the second commitment period of the Kyoto Protocol into those party holding accounts;***
- *account for the issue, holding, transfer, acquisition, cancellation, retirement, replacement or change of expiry date of AAUs, RMUs, ERUs, CERs, tCERs and ICERs, as relevant, held in their respective registries for the second commitment period of the Kyoto Protocol;***

- *establish and maintain a commitment period reserve;*
 - *carry over AAUs, CERs and ERUs held in their respective registries from the first to the second commitment period of the Kyoto Protocol, and establish a previous period surplus reserve and manage AAUs held therein;*
 - *account for the transfer of AAUs or ERUs, as a share of proceeds following the issue of ERUs and on the first international transfer of AAUs.”;*
- (b) the following paragraphs *are* added:
- "5. The Commission shall also be empowered to adopt delegated acts in accordance with Article 25 *in order to give effect*, by means of the registries of the Union and of the Member States, to the necessary technical implementation of the Kyoto Protocol *pursuant to Decision 1/CMP.8 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies and a joint fulfilment agreement, in accordance with paragraph 1.*

6. *The Commission shall also be empowered to adopt delegated acts in accordance with Article 25 to ensure that:*
- *any net transfers of annual emission allocations in accordance with Decision No 406/2009/EC and any net transfers of allowances with third countries participating in the scheme established for greenhouse gas emissions trading within the Union by Directive 2003/87/EC which are not parties to a joint fulfilment agreement, are followed by a transfer of a corresponding number of AAUs through a clearing process at the end of the second commitment period of the Kyoto Protocol;*
 - *those transactions which are necessary to align the application of the limits established by decisions of the UNFCCC or Kyoto Protocol bodies on the carry-over of ERUs and CERs from the first to the second commitment period of the Kyoto Protocol with the implementation of Article 11a of Directive 2003/87/EC are performed; such transactions shall be without prejudice to the ability of Member States to carry over further ERUs and CERs from the first to the second commitment period for other purposes, provided that the limits for the carry-over of ERUs and CERs from the first to the second commitment period of the Kyoto Protocol are not exceeded.*

7. *Where a Member State is seriously disadvantaged by a specific and exceptional situation, including accounting inconsistencies in matching the implementation of Union legislation with the rules agreed under the Kyoto Protocol, the Commission may, subject to the availability of units at the end of the second commitment period of the Kyoto Protocol, adopt measures to address that situation. For that purpose, the Commission shall be empowered to adopt implementing acts to transfer CERs, ERUs or AAUs held in the Union registry to the registry of that Member State. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 26(2). The power to adopt those implementing acts shall be conferred on the Commission from the date of conclusion by the Union of the Doha Amendment to the Kyoto Protocol.*

8. *When adopting the delegated acts under paragraphs 5 and 6, the Commission shall ensure consistency with Directive 2003/87/EC and Decision 406/2009/EC and a consistent implementation of internationally agreed accounting requirements, optimise transparency and ensure accuracy of the accounting of AAUs, RMUs, ERUs, CERs, tCERs and lCERs by the Union and the Member States, while avoiding, to the extent possible, administrative burdens and costs, including those relating to share of proceeds and IT development and maintenance. It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts."*

(3) *In Article 11, the following paragraph is added:*

"3. The Union and the Member States shall each, at the end of the second commitment period under the Kyoto Protocol, and in accordance with Decision 1/CMP.8 or other relevant decisions of the UNFCCC or Kyoto Protocol bodies and a joint fulfilment agreement, retire from their respective registries AAUs, RMUs, ERUs, CERs, tCERs or lCERs equivalent to the greenhouse gas emissions from sources and removals by sinks covered by their respective assigned amounts."

(4) *Article 25 is amended as follows:*

(a) in paragraph 2, the first sentence is replaced by the following: "The power to adopt delegated acts referred to in Articles 6, 7 and Article 10(4) shall be conferred on the Commission for a period of five years from 8 July 2013.";

(b) *the following paragraph is inserted:*

"2a. The power to adopt delegated acts referred to in Article 10(5) and (6) shall be conferred on the Commission from the date of conclusion by the Union of the Doha Amendment to the Kyoto Protocol to the end of the additional period for fulfilling commitments under the second commitment period of the Kyoto Protocol."

(5) *In Article 26, the following paragraph is added:*

"3. In the case of Article 10(7), where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply."

Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at,

For the European Parliament
The President

For the Council
The President
