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Subject:	Non-ETS sectors: a) Proposal for a Regulation of the European Parliament and of the Council on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 for a resilient Energy Union and to meet commitments under the Paris Agreement and amending Regulation No 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change (First Reading) b) Proposal for a Regulation of the European Parliament and of the Council on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework and amending Regulation No 525/2013 of the European Parliament and the Council on a mechanism for monitoring and reporting greenhouse gas emissions and other information relevant to climate change (First Reading) - Information from the Presidency on the state of play

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1. At its meeting on 23-24 October 2014, the European Council agreed on the 2030 climate and energy policy framework for the European Union and endorsed a binding EU target of an at least 40% domestic reduction in greenhouse gas emissions by 2030 compared to 1990[1]. This target also represents the Intended Nationally Determined Contribution (INDC) of the EU and its Member States, which was submitted to the UNFCCC on 6 March 2015. The European Council conclusions contain specific guidance, *inter alia*, on the methodology to be used for setting the national emission reduction targets for 2030 in the non-ETS sectors, and on the availability and use of flexibility instruments within those sectors.

2. On 20 July 2016, the Commission adopted two legislative proposals on the contribution of the non-ETS sectors towards the overall effort: on binding annual greenhouse gas emissions reductions by Member States from 2021 to 2030 ("Effort Sharing Regulation")[2] and on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry into the 2030 climate and energy framework ("LULUCF Regulation")[3]. Together with the proposal for the revision of the EU ETS, the two new proposals are intended to ensure achievement of the EU's overall target for greenhouse gas emission reductions by 2030 and the commitments of the EU and the Member States under the Paris Agreement.

3. The proposal for an Effort Sharing Regulation (ESR) sets the national reduction targets based on relative GDP per capita, with the targets for Member States with a GDP per capita above the EU average adjusted to reflect cost-effectiveness within that group. The proposal maintains existing flexibilities (banking and borrowing, transfers between Member States), and proposes two new flexibilities: a limited use of net removals from certain LULUCF accounting categories towards the targets in the effort-sharing sectors; and the possibility for certain Member States to use a limited number of ETS allowances (in total 100 million) to offset emissions in the effort sharing sectors.

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[1] Doc. EUCO 169/14
[2] Doc. 11483/16 + ADD 1 + ADD 2 + ADD 3.
[3] Doc. 11494/16 + ADD 1 + ADD 2 + ADD 3.

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4. The aim of the proposed LULUCF Regulation, which builds on the existing EU-wide accounting rules laid down in Decision No 529/2013/EU, is to define how to include the LULUCF sector in the 2030 climate and energy policy framework. The proposal requires Member States to ensure that accounted greenhouse gas emissions and removals stay in balance and that the overall LULUCF sector does not generate net emissions ("no-debit rule"). Several flexibilities are included to help Member States ensure compliance with that rule: the possibility to use excess allocations from the ESR, compensating emissions from one land category with removals from another, accumulating net removals over the period 2021-2030, and trading of excess removals among Member States. The proposal also introduces a new EU governance process for the determination of forest management reference levels.

5. The Commission presented its proposals to the Permanent Representatives Committee and the Working Party on the Environment (WPE) on 20 July 2016. Following initial examination of the proposals and their impact assessments by the WPE, Ministers held a first policy debate on the proposals at the meeting of the Council (Environment) on 17 October 2016. Among key topics raised by the Ministers were the starting point of the linear reduction trajectory towards the 2030 target in the ESR, the flexibilities put forward in the two proposals, and the proposed LULUCF accounting rules.

6. Given the importance and significant economic impacts of the legislative proposals, the Presidency decided to hold a debate on the impact assessments accompanying the legislative proposals at Coreper on 11 November 2016, with a view to providing guidance for further discussion at the technical level. The WPE continues its examination of the proposals, with the impact assessments remaining an integral part of the discussion.

7. The European Parliament has appointed as Rapporteurs for the Committee on the Environment, Public Health and Food Safety (ENVI) Mr Gerben-Jan Gerbrandy (ALDE) on the ESR proposal and Mr Norbert Lins (EPP) on the LULUCF proposal. The Committee is expected to vote on the former proposal in May 2017; the vote on the latter will probably take place in June 2017. On 25 August 2016, the Council decided to consult the Economic and Social Committee and the Committee of the Regions on both proposals.

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8. Following the initial discussions on the proposals, and identification of a certain number of main issues, work will continue at the technical level under the incoming Maltese Presidency.

9. Against this background, the Presidency has prepared an information note (in Annex) containing the Presidency's assessment of the state of play. The note will be dealt with under "Any other business" at the Council (Environment) meeting on 19 December 2016.

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ANNEX

PRESIDENCY BACKGROUND NOTE ON THE STATE OF PLAY OF THE PROPOSALS ON THE NON-ETS SECTORS:

- Binding annual greenhouse gas emission reductions by Member States from 2021 to 2030

- Inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework

At this relatively early stage some delegations maintain general scrutiny reservations on the two proposals. Several delegations have also entered parliamentary scrutiny reservations. Positive progress has been made in discussions at WPE level. More and more delegations have already defined their national positions, and several have come with their own proposals on specific articles of these proposals.

On the basis of the discussions so far, the Presidency has identified the key issues in both proposals. These are summarised below together with the preliminary views expressed by delegations.

Effort Sharing Regulation

According to the October 2014 European Council conclusions, the methodology to set the national reduction targets for the non-ETS sectors, with all the elements as applied in the Effort Sharing Decision for 2020, will be continued until 2030, with efforts distributed on the basis of relative GDP per capita. All Member States will contribute to the overall EU reduction in 2030 and targets for the Member States with a GDP per capita above the EU average will be relatively adjusted to reflect cost-effectiveness in a fair and balanced manner. Article 4 lays down the Member States' GHG emission reductions in 2030, which are set out in Annex I to the proposal. The annual emission levels are determined based on a linear trajectory, starting in 2020, from the average emissions for 2016-2018 based on the most recent reviewed GHG emission data.

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The proposal is generally recognised as a good basis for discussions and most delegations have already indicated that they could accept the proposed national reduction target for 2030, in some cases subject to certain conditions. Many delegations indicate that further work is needed in particular on issues such as the starting point and/or flexibilities.

1) Starting point of the linear reduction trajectory

Many delegations indicated that they support the Commission proposal. For some delegations, the choice of average emissions for 2016-2018 as the starting point does not adequately take into account early efforts to reduce emissions, and some of them suggest that the Member States' 2020 targets should be used as the basis instead. Others agree with the Commission's assessment that the 2020 target value as the starting point would lead to a too large of a surplus of emission allocations and therefore to a risk of not achieving the 2030 target. A third option has also been suggested: should the approach as proposed by the Commission lead to a Member State's emission allocation for 2021 exceeding its 2020 target, the 2020 target value of that Member State should be used instead. Some delegations want the trajectory to start in 2021 instead of 2020, as proposed. Some delegations see links between this point and the next one.

2) Adjustment to the allocation for Member States with a positive limit under Decision 406/2009/EC

To address distributional impact concerns of those Member States which were allowed to increase emissions in 2020 compared to 2005, the proposal provides for an adjustment to the allocation in 2021 for Member States with both a positive limit under the Effort Sharing Decision and increasing annual emission allocations between 2017 and 2020. The adjustment increases the ESR allocation for the Member States concerned by an amount equal to the increase in allocations over the period 2017-2020 under the existing Effort Sharing Decision compared to their average allocation in the period 2016-2018. Several of the benefiting Member States wonder whether the proposed method of adjustment adequately addresses the issue, with some asking for higher adjustment. Others entirely disapprove of the idea of adjustment.

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3) Continuation of existing flexibilities

The October 2014 European Council concluded that the availability and use of existing flexibility instruments within the non-ETS sectors should be significantly enhanced in order to ensure cost-effectiveness of the collective Union effort and convergence of emissions per capita by 2030. The flexibilities available to Member States to achieve their annual limits include flexibility over time through banking and borrowing of AEAs within the commitment period, flexibility between Member States through transfers of AEAs, and use of credits from projects issued pursuant to Article 24a of the ETS Directive.

A number of delegations have suggested that those flexibilities should be further enhanced, for example by raising the limit for transfers and/or borrowing, through the creation of an active market for AEAs, or the development of project mechanisms.

4) New flexibilities

<u>One-off flexibility</u>

The proposal provides for a new one-off flexibility - through the cancellation of ETS allowances up to a certain fixed limit - in order to facilitate the achievement of targets for Member States with national reduction targets significantly above both the Union average and their cost-effective reduction potential, as well as for Member States that did not allocate any allowances for free to industrial installations in 2013. In discussions so far, some delegations have raised questions concerning the overall amount of flexibility and the requirement for eligible Member States to decide before 2020 if they want to use this flexibility.

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LULUCF credits

The proposal also provides for the possibility to use up to 280 million net removals from the accounting categories deforested land, afforested land, managed cropland and managed grassland. The new flexibility is available to all Member States but the distribution takes account of the relative share of agricultural emissions in the ESR. Some delegations consider the flexibility to be too limited, and questions have been raised, *inter alia* about the proposal not including removals from sustainable forest management under Article 7.1 of the present proposal, as well as about the grouping of Members States to define differentiated levels of access to the flexibility. In this respect two alternative proposals were suggested by two Member States.

5) Review

Article 14 provides for a review of the Regulation to be carried out in 2024. A few Member States suggested a more explicit link to the Paris Agreement timeline, with one Member State making a written proposal to refer to 2018 (facilitative dialogue). Several Member States are open to a discussion of this proposal, while some are satisfied with the current text.

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LULUCF Regulation

Concerning the proposal in general, most delegations expressed a favourable opinion concerning the LULUCF as a third and separate legal element of the EU's climate policy with a separate commitment, i.e. the no-debit rule. However, some delegations question the choice of maintaining the LULUCF sector in a separate pillar rather than integrating it fully within the non-ETS sectors. In this context, various delegations have indicated that the LULUCF flexibility is closely linked with the ESR and that clearer cross-references should be made in both regulations. On the contrary, some other delegations asked why the LULUCF sector is only treated as a flexibility mechanism, arguing that the LULUCF sector should be treated in the same way as the other sectors and contribute directly to the reduction target itself.

1) Alternative transition period for the conversion of Afforested Land

According to the proposal, afforested land (cropland, grassland, wetland, settlements and other land from the category of such land converted to forest land) may be transitioned after 30 years from the date of conversion (instead of the default 20 years for the remaining land categories). Overall, the switch from a static base year to a "moving window" was accepted.

Many delegations welcomed the possibility of a longer transition period for afforested land, with a few suggesting that it could be even longer than 30 years. Several delegations mentioned the need for objective, scientific justification in the case of a longer transition period being applied, as well as the need for consistency with international decisions or guidelines. It has also been suggested that that the choice of a longer transition period should not be limited to afforested land but also available to other land categories.

2) Agricultural land Management - base period 2005-2007

The specific accounting rules for managed cropland, grassland and wetland, including categories of land changing from and to these categories are set out in Article 7 of the proposal. The land-use change has to be accounted relative to emissions or removals compared to a historical reference period, i.e. 2005-2007, which represents a change from current rules.

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Among the differing views expressed so far on the proposed new base period, some view it positively, others consider it as too short or too "historical" and suggest a longer period or/and in line with the Common Agricultural Policy. Others again would prefer to keep the base year/period applicable under the Kyoto Protocol.

3) Accounting rules for forest land: cap on Managed Forest Land removals in LULUCF accounts, Forest Reference Levels and the role of national experts in the process of setting the Forest Reference Levels

The proposal sets a "cap" on the use of credits generated by Managed Forest Land in their LULUCF accounts, equal to 3.5% of the Member State's total emissions in its base year or period. The provision is based on the current calculation method and represents the internationally agreed status quo but some delegations consider that it should be updated in view of both recent developments and increasing accounting experience. Some Member States even consider this cap to be obsolete and propose to exclude it from proposal.

The use of the Forest Reference Level (FRLs) is aimed at including the effects of natural and country-specific characteristics. The Commission proposes to continue with the FRLs approach which is used today. However, as the Kyoto Protocol expires in 2020, the Kyoto governance system for review of the FRLs is to be replaced with an EU mechanism on the basis of National Forestry Accounting Plans submitted by Member States, which would include their new FRLs for the post-2020 period. The Commission will review the National Forestry Accounting Plans together with national experts and may recalculate the proposed FRLs if they are not compliant with the criteria and requirements spelled out in the legislation.

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Some delegations consider the proposed determination of FRLs to be oriented more to GHG inventories and historical data than to the future. Delegations argue that estimated future projections of removals (or emissions) and expected harvest rates should be the main criteria in setting FRLs. While the need to demonstrate transparent and consistent FRLs was welcomed by some, many Member States call for a stronger role for national experts in the process of FRLs determination and question the proposed role of the Commission in the review process, particularly with regard to giving it the possibility to recalculate the submitted FRLs under certain conditions. Some Member States also asked for a specific timeline for the Commission to adopt new FRL values.

4) Accounting rules for Harvested Wood Products

Forest mitigation potential can be generated not only by carbon sequestration in biomass and harvested wood products, but also by substitution of material and energy. Article 9 determines the accounting approach to this carbon pool for materials passed from afforested land and managed forest land.

One Member State presented a written non-paper on the inclusion of Harvested Wood Products as an accounting category, separate from managed forest land. A group of countries expressed their support in principle for this proposal. Some others are still studying the proposal to better understand how this would affect the rest of the accounting framework.

5) Review

Article 15 provides for a review of the Regulation to be carried out in 2024. A few Member States suggested a more explicit link to the Paris Agreement timeline, with one Member State making a written proposal to refer to 2018 (facilitative dialogue). Several Member States are open to a discussion of this proposal, while some are satisfied with the current text.

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