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#### INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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 – Outcome of the European Parliament's first reading (Strasbourg, 6 to 9 July 2015)

#### I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure <sup>1</sup>, a number of informal contacts have taken 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.

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<sup>1</sup> OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Ivo BELET (EPP, BE) presented a compromise amendment (amendment 21) to the proposal for Decision, on behalf of the Committee on the Environment, Public Health and Food Safety. This amendment had been agreed during the informal contacts referred to above.

## II. VOTE

When it voted on 8 July 2015, the plenary adopted amendment 21 to the proposal for a Decision. 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<sup>2</sup>.

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.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> 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.

(8.7.2015)

**Market stability reserve for the Union greenhouse gas emission trading scheme****\*\*\*I**

**European Parliament legislative resolution of 8 July 2015 on the 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 (COM(2014)0020 – C8-0016/2014 – 2014/0011(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM (2014)0020),
- 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 (C8-0016/2014),
- 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 4 June 2014<sup>3</sup>,
- after consulting the Committee of the Regions,
- having regard to the undertaking given by the Council representative by letter of 13 May 2015 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 59 of its Rules of Procedure,
- having regard to the report of the Committee on the Environment, Public Health and Food Safety (A8-0029/2015),

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<sup>3</sup> OJ C 424, 26.11.2014, p. 46.

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.

**Position of the European Parliament adopted at first reading on 8 July 2015 with a view to the adoption of Decision (EU) 2015/... 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**

(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 Committee<sup>4</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure<sup>5</sup>,

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<sup>4</sup> OJ C 424, 26.11.2014, p. 46.

<sup>5</sup> Position of the European Parliament of 8 July 2015.

Whereas:

- (1) *Directive 2003/87/EC of the European Parliament and of the Council<sup>6</sup> 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.*
- (2) *According to the European Council conclusions of 23 and 24 October 2014 on the 2030 climate and energy policy framework, a well-functioning, reformed EU ETS with an instrument to stabilise the market will be the main European instrument to achieve the Union's greenhouse gas emissions reduction target.*
- (3) Article 10(5) of Directive 2003/87/EC ■ provides that *each year the Commission is to submit a report to the European Parliament and to the Council* on the functioning of the European carbon market ■ .

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<sup>6</sup> *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) The report from the Commission to the European Parliament and *to* the Council on the state of the European carbon market in **2012** identified the need for measures in order to tackle structural supply-demand imbalances. The impact assessment on the 2030 climate and energy policy framework indicates that such imbalances are expected to continue, and would not be sufficiently addressed by adapting the linear trajectory to a more stringent target within that framework. A change in the linear factor only gradually changes the Union-wide quantity of allowances (EU ETS 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 EU ETS from delivering the necessary investment signal to reduce CO<sub>2</sub> emissions in a cost-efficient manner and from being a driver of low-carbon innovation contributing to economic growth and jobs.***

- (5) In order to address that problem and to make the *EU ETS* more resilient in relation to *supply-demand* imbalances, *so as to enable the EU 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 in the reserve and releasing them from *it*. *The reserve should function by triggering adjustments to the annual auction volumes*. Where the conditions are met, beginning in *2019*, an amount of allowances corresponding to 12% of the number of allowances in circulation, *as set out in the most recent publication of the total number of allowances in circulation by the Commission*, should be *deducted each year from the auction volumes and* placed in the reserve. *In any given 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 should be added to auction volumes if the relevant* total number of allowances in circulation is *less* than 400 million.



- (6) *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, of opt-out auction platforms are adjusted to take account of 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. Given the need for a smooth operation of the auction process, further details on the adjustment, where necessary, should be set out in Commission Regulation (EU) No 1031/2010<sup>7</sup>.*

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<sup>7</sup> *Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).*

- (7) Furthermore, in addition to the establishment of the ■ reserve, a few consequential amendments should be made to Directive 2003/87/EC in order to ensure consistency and the 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 could 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 to avoid artificially increasing supply towards the end of the trading period which started in 2013, allowances not allocated to installations pursuant to Article 10a(7) of Directive 2003/87/EC and allowances not allocated to installations 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.***

- (8) *The planned reintroduction of 300 million allowances in 2019 and 600 million allowances in 2020, as determined in Commission Regulation (EU) No 176/2014<sup>8</sup>, would undermine the aim of the reserve to tackle structural supply-demand imbalances. Accordingly, those 900 million allowances should not be auctioned in 2019 and 2020 but should instead be placed in the reserve.*
- (9) *It is important that the EU ETS incentivise carbon-efficient growth and that the competitiveness of the Union's industries at genuine risk of carbon leakage be protected. The abovementioned European Council conclusions 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 review Directive 2003/87/EC, in particular Article 10a thereof, and submit a proposal for the revision of that Directive within six months of the adoption of this Decision. In pursuing the goal of a level playing field, that review should also consider harmonised arrangements to compensate for indirect costs at Union level. The review should also consider whether up to 50 million unallocated 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.*

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<sup>8</sup> *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).*

- (10) The Commission should *monitor the functioning of the reserve in the context of its annual carbon market report. That report should consider relevant effects on competitiveness, in particular in the industrial sector, including in relation to 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 the experience gained from 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 of tackling structural supply-demand imbalances. *The review 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 changes in market developments and new information available at the time of the review, the Commission should swiftly submit a proposal to address such a situation. The review should also look into the impact of the reserve on growth, jobs, the 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.*

- (11) Since the objectives of this Decision, namely to establish a market stability reserve and make it operational in the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives.
- (12) ■ Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

## Article 1

### Market stability reserve

1. A market stability reserve shall be established *in 2018*, and *the placing of allowances in the reserve* shall operate from 1 January *2019*.
2. *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.*
3. *Allowances not allocated to installations pursuant to Article 10a(7) of Directive 2003/87/EC and allowances not allocated to installations 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 unallocated allowances and, if appropriate, submit a proposal to the European Parliament and to the Council.*

4. 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* given year ■, minus the cumulative tonnes of verified emissions from installations under the EU *ETS* between 1 January 2008 and 31 December of *that same* given 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.

5. *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 as referred to in paragraph 4 of this Article, 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, unless the number of allowances to be placed in the reserve would be less than 100 million. In the first year of the reserve's operation, placements shall also take place between 1 January and 1 September of that year of 8 % (representing 1 % for each calendar month) 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 point (b) of the first subparagraph of Article 10(2) of Directive 2003/87/EC shall not be taken into account when determining Member States' shares contributing to that total amount.*



6. In any year, if the total number of allowances in circulation is *less* 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.
7. In any year, if paragraph 6 of this Article 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.
8. Where, *following the publication of the total number of allowances in circulation*, action is taken pursuant to paragraph 5, 6 or 7, the auction calendars shall take account of 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 6 or 7, irrespective of the period during which the release takes place, it shall follow the Member States' shares applicable at the time the allowances were placed in the reserve and it shall also follow the order in which the allowances were placed in the reserve.*

Article 2  
Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

(1) Article 10 is amended as follows:

(a) paragraph 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 Articles 10a and 10c and are not placed in the market stability reserve established by Decision (EU) 2015/...<sup>+</sup> of the European Parliament and of the Council\*.

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\* Decision (EU) 2015/... 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 (OJ L ...).";

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<sup>+</sup> OJ: Please, insert the number and in the footnote, the number, the date and the publication reference of this Decision.

(b) the following paragraph is inserted after paragraph 1:

"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(5) of Decision (EU) 2015/...<sup>+</sup>, two-thirds of the difference between the volumes shall be deducted from the 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."

(2) In Article 13(2), the second subparagraph is replaced by the following:

"Member States shall issue allowances to persons for the current period to replace any allowances held by them which are cancelled in accordance with the first subparagraph. Similarly, allowances held in the market stability reserve and which are no longer valid shall be replaced by allowances which are valid for the current period."

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<sup>+</sup> OJ: Please, insert the number of this Decision.

*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. That report should consider relevant effects on competitiveness, in particular in the industrial sector, including in relation to 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 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 in the reserve pursuant to Article 1(5) of this Decision, 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(6) or (7) of this Decision. In its review, the Commission shall also look into the impact of the reserve on growth, jobs, the 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*<sup>9</sup> shall continue to apply until 31 December 2018.

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 ...,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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<sup>9</sup> *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).*