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From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

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Subject: Draft Council conclusions on Special Report No 06/2015 from the European Court of Auditors entitled "The integrity and implementation of the EU ETS"
- Adoption

1. The European Court of Auditors' Special Report 06/2015 "The integrity and implementation of the EU ETS" was published on 3 July 2015 ¹.
2. Pursuant to the rules set out in the Council conclusions on improving the examination of special reports drawn up by the European Court of Auditors ², the Permanent Representatives Committee instructed on 2 September 2015 the Working Party on the Environment to examine the report ³.

¹ OJ C 218, 3.7.2015, p. 4.

² Doc. 7515/00 FIN 127 + COR 1

³ Doc. 11488/15

3. The Working Party on the Environment examined the report at its meetings on 22 September and 5 October 2015 and agreed on the draft Council conclusions as set out in the Annex.
 4. The Permanent Representatives Committee is therefore invited to confirm the agreement reached by the Working Party and to recommend that the Council adopt, as an "A" item at one of its forthcoming meetings, the attached draft Council conclusions.
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Draft Council conclusions
on Special Report No 06/2015 from the European Court of Auditors entitled
"The integrity and implementation of the EU ETS"

THE COUNCIL OF THE EUROPEAN UNION

1. WELCOMES Special Report No 06/2015 from the European Court of Auditors entitled "The integrity and implementation of the EU ETS" and takes NOTE of the Court's findings and recommendations.
2. RECALLS the European Council conclusions of 23 and 24 October 2014 which stated that a well-functioning, reformed ETS with an instrument to stabilise the market will be the main European instrument to achieve the EU's 2030 greenhouse gas emissions reduction target; RECALLS also that the Decision on the establishment of a Market Stability Reserve was adopted recently and discussions have started within the Council on the Commission's new proposal on the wider revision of Directive 2003/87/EC (the "ETS directive").
3. ACKNOWLEDGES the importance of ensuring the integrity and efficient implementation of the EU ETS; NOTES that many of the improvements implemented during phase 3 address the concerns raised by the Court regarding carbon market regulation and oversight as well as the implementation of the EU ETS.

4. HIGHLIGHTS in particular the measures taken under the ETS directive, as amended in 2009, to protect the security of information held in the integrated registries system and to avoid fraud, which inter alia provide for adequate and harmonised requirements on opening of accounts, authentication and access rights; CONSIDERS that the review of these requirements should be considered in the future in the light of experience of their implementation, with a view to ensuring their effectiveness while taking into account proportionality.
5. RECALLS that in order to reinforce the integrity and safeguard the efficient functioning of markets in EU emission allowances, including comprehensive supervision of trading activity, measures taken under the ETS directive have been complemented by bringing emission allowances fully into the scope of the new rules on markets in financial instruments (MiFID/MiFIR) and on market abuse (MAR/MAD), by classifying them as financial instruments; CONSIDERS that any remaining issues in emission market regulation and oversight, including the regime for exemptions under MiFID and the overall monitoring of transactions, should be addressed in the context of the assessment of the implementation of the new rules which will fully apply as of January 2017.
6. NOTES also that an increasing number of Member States are making effective use of the possibility to apply, under Council Directive 2010/23/EU, the reverse charge mechanism to prevent MTIC (or "carousel") VAT fraud.
7. NOTES that the rules for monitoring and reporting of emissions, as well as verification and accreditation activities, were strengthened and harmonised in the light of experience gained during phase 2, which should lead to improved implementation during phase 3.
8. ACKNOWLEDGES the importance of timely reporting by the Commission and the Member States on the application of the EU ETS, as well as increasingly efficient cooperation and information exchange between relevant authorities.

9. RECOGNISES that in accordance with the ETS directive, it is up to Member States to lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to the ETS directive and to take all measures necessary to ensure that such rules are implemented; NOTES the recommendation to Member States to further improve the consistent and transparent application of penalties and the information kept on penalties applied.

 10. NOTES the Commission's intention to undertake further analysis and consideration in response to some of the recommendations made by the Court of Auditors; WILL DULY CONSIDER any future proposals for possible improvements to the integrity and the implementation of the EU ETS.
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