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NOTE

from: General Secretariat
to: Delegations

Subject: Commission Decision determining transitional Union-wide rules for the
harmonized free allocation of emission allowances pursuant to Article 10a of
Directive 2003/87/EC
- Information from the Polish delegation

Delegations will find attached an information note from the Polish delegation on the above topic, to be dealt with under "other business" at the meeting of the Council (Environment) on 20 December 2010.

**Non-paper on the allocation rules and benchmarks for the free allocation of greenhouse gas emission allowances in the period 2013 to 2020
(Directive 2003/87/EC, as amended by Directive 2009/29/EC, on the Emissions Trading Scheme)**

- Information from the Polish delegation -

1. Background

Article 10a(1) of Directive of the European Parliament and of the Council 2003/87/EC of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community (EU ETS), as amended by Directive 2009/29/EC, requires the Commission to adopt fully harmonised Community-wide implementing measures for the free allocation of greenhouse gas emission allowances in sectors covered by the EU ETS by 31 December 2010. A draft Decision on benchmarks and rules for the free allocation of allowances, agreed within the Commission (DG CLIMATE ACTION) was sent to Member States for consultation on 22 October 2010; a subsequent version, dated 2 December 2010, was put to the vote in the Climate Change Committee (CCC) on 15 December 2010. From that date, the European Parliament and the Council have a period of three months to scrutinise the draft.

2. EC position

Right from the outset of the process of working out rules for the free allocation of emission allowances, the European Commission was against any form of differentiation in benchmark levels, whether on the basis of technology or fuel or even particular regional conditions (e.g. the raw materials used in a region), to reflect the conditions in particular sectors in specific Member States. The broad thrust of the Commission approach is as follows:

- one benchmark per product, in order to limit the number of benchmarks (there may be a difference of up to 20 % in emission levels in a group of products covered by a single benchmark);

- irrespective of differences between Member States, neither fuel, technology or other characteristics are taken into account (for example, the same benchmark will apply to production of a given product, whether the fuel used in the installation is coal or natural gas). This will put coal-fired installations at a considerable disadvantage, even if state of the art production technology is used.
- natural gas is used as the reference fuel (not only to calculate the benchmark for the production of heat, but also to estimate the potential for further emission reductions);
- benchmarks are to be calculated on the basis of the average performance of the 10 % most efficient installations in a given sector/subsector in the EU ETS system, taking into account the potential for further emission reduction according to the criteria listed in the Directive (Article 10a(1): the most efficient techniques, alternative production processes, substitutes, biomass, CHP, efficient use of energy from waste gases and CCS).

3. State of play

At the CCC meeting on 15 December 2010, the European Commission proposed the following compromise:

- a transitional period for heat providers supplying private consumers (households);
- calculation of allowances for heat production based on historical emissions from the years 2005-2008, assuming that in the period 2013 - 2020 historical emissions will be gradually reduced by 10 pp. per annum (from 100 % in 2013 to a level determined by the benchmark for heat production in 2020).

The draft Decision containing the above proposal was adopted by qualified majority vote at a meeting of the Climate Change Committee on 15 December 2010 (with 57 votes against (including Poland) and 7 abstentions).

4. Poland's position

For those countries which were against adoption of the Decision, it is crucial to take into account the type of fuel used in industrial processes and heat production in a given Member State when setting emission benchmarks. **The Commission proposal provides a good basis for further discussion to find a more constructive solution, which is essential to ensure competitiveness on the EU market.** This is particularly important for installations equipped with state of the art technology but using a fuel which produces more emissions than natural gas in order to produce the heat needed for production processes. Such an approach, providing a level competitive playing field for installations on the EU market, is consistent with the basic, fundamental principles of European Union action. It is also consistent with the provisions of the EU ETS Directive.

Such a system would still force the pace of technological development, making the process feasible in countries dependent on coal and other high-emission energy sources. **Taking into consideration the possibility of gas shortages on the European market it is very risky for the EU's energy security for benchmarks to be based on gas alone.** The EU should focus on promoting the development of clean coal technologies (one of the most accessible fuels globally, in the long term).

If benchmarks are set on too restrictive a basis, without taking into account the specific characteristics of particular industries and countries, this may undermine the key protection mechanism for sectors where there is a risk of carbon leakage laid down by Directive 2003/87/EC on the EU ETS, as amended by Directive 2009/29/EC, and stop it working properly. This mechanism is increasingly important, especially at a time of crisis. It is essential to hold an in-depth discussion on the Commission proposal, as this issue is so important that it needs further, detailed debate, which was unfortunately not possible when the vote was taken.