



European Parliament

Conference of Committee Chairs
The Chair

Mr Martin SCHULZ
President of the
European Parliament

Geda ref.: D(2015)61937

D 300736 14.01.2016

Subject: Request for association under Rule 55 by the Committee on Industry, Research and Energy (ITRE) regarding a legislative report of the Committee on the Environment, Public Health and Food Safety (ENVI) entitled **“Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments”** (COM(2015)0337 – 2015/0148(COD))

Dear President, *Dear Martin,*

By letter dated 6 October 2015, the Committee on Industry, Research and Energy (ITRE) requested association under Rule 55 to the above-mentioned legislative report of the Committee on the Environment, Public Health and Food Safety (ENVI) that was announced in plenary on 7 September 2015. The ENVI Committee has thereafter opposed the association request in its letter dated 27 October 2015.

Despite this exchange of letters, which you will find attached, meetings between the Chairs as well as consideration in the Conference of Committee Chairs, it has not been possible to find a solution acceptable to both committees. Therefore, the Conference of Committee Chairs has mandated me to make a recommendation concerning the ITRE Committee's request.

Purpose and legal basis

The current proposal (2015/0148(COD)) builds upon the 2030 policy framework for climate and energy, agreed by the European Council in October 2014, and namely its binding target to reduce overall EU greenhouse gas emissions by at least 40% domestically below 1990 levels by 2030.

To achieve this cost-effectively, the sectors covered by the EU emissions trading system (EU ETS) will have to reduce their emissions by 43% compared to 2005, while non-ETS sectors will have to reduce their emissions by 30% compared to 2005.

The proposal thus seeks to introduce amendments to Directive 2003/87/EC¹ ("the EU ETS Directive") in order to:

(1) translate the 43% greenhouse gas reduction target in 2030 in the ETS into a cap declining by 2.2% annually from 2021 onwards, corresponding to an additional reduction of around 556 million tonnes of carbon dioxide in the period 2021-2030;

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 (OJ L 275, 25.10.2003, p. 32).

- (2) further develop predictable, robust and fair rules for free allocation of allowances to address the potential risk of carbon leakage in an adequate manner;
- (3) propose several funding mechanisms to support economic actors in the power sector and industry in the innovation and investment challenges they face in the transition to a low-carbon economy.

The current proposal is based on Article 192(1) TFEU ("Environment").

Arguments of the parties

In its letter dated 6 October 2015, the ITRE Committee has requested to be associated under Rule 55 to the proposal in question. It first refers to its competences for industrial policy and energy as well as for the aspects related to the decarbonisation of the industry. ITRE argues that the current proposal does not address environment and climate targets, but the measures to implement them in a cost-effective way, thus affecting substantially the industry and energy sectors and aiming to directly influence their actions, investments and working processes.

In more concrete terms, ITRE refers to the provisions (Article 1(4), (5) and (6) of the proposal) touching upon industrial policy (growth, competitiveness which can include climate financing actions, skill formation, reallocation of labour, windfall profits, carbon leakage), energy policy (the fund, electricity prices, diversification, innovation, renewable energy) and technology (innovation and research). It claims that the majority of the provisions of the proposal - apart from auctioning, allowances and formal provisions - concern carbon leakage, assessment of windfall profits in relation to technological progress, financial measures for the industry, support and modernisation of the energy sector and the innovation fund for the industry. These issues belong in ITRE's view under its exclusive competence pursuant to Annex VI.

Moreover, ITRE draws attention to the title of the proposal whereby the aim of the draft Directive is "to enhance cost-effective emission reductions and low-carbon investments". It argues that such cost-effectiveness is directly linked to the competitiveness of the industry and the risk of carbon leakage, whereas investments to be borne by the industry are among the main objectives of the proposal. Furthermore, in its view low-carbon solutions are closely related to technology and innovation in the energy sector.

Finally, ITRE refers to its association at the time of the adoption of the original EU ETS Directive under enhanced cooperation procedure (Rule 162a) and during its amendment via Directive 2009/29/EC² (Rule 47 at the time). Given that those procedures constituted the closest form of cooperation between committees at the time, it argues that the current equivalent procedure to be applied should be Rule 55 (procedure with joint committee meetings). ITRE however finds the Market Stability Reserve revision³ not to constitute a valid precedent, as it had concerned a specific arrangement between ITRE and ENVI on certain legislative files.

In its letter dated 27 October 2015, the ENVI Committee has objected to the association of ITRE under Rule 55 as unfounded and running against 15 years of precedent on the consideration of

² 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).

³ Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 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 264, 9.10.2015, p. 1)

emissions trading system (ETS) legislation in Parliament. It notes that the proposed Directive principally seeks to amend Articles 9 and 10 of the EU ETS Directive concerning linear reduction factor and the auction share. Moreover, the legal basis of the current revision is identical to the previous amendments of the EU ETS Directive, i.e. Article 192(1) TFEU ("Environment").

ENVI further recalls that in each legislative phase of the ETS, it has consistently been designated as the lead committee, whereas ITRE has been involved under the so-called "Rule 53+" procedure (Market Stability Reserve (Decision (EU) 2015/1814) and the back-loading proposal (Decision 1359/2013/EU⁴)) or under the predecessor of Rule 54 (climate and energy package of 2008).

Finally, ENVI refutes certain claims of the ITRE Committee that it considers inaccurate. Namely, ENVI rejects the argument of ITRE that the latter is responsible for decarbonisation legislation and recalls in this regard ENVI's competences for legislation delivering the EU's climate policy objectives, e.g. the ETS or the decarbonisation of transport. Moreover, ENVI finds it erroneous on the part of ITRE to assert that the proposal does not address environment and climate goals, while its principal aim is to deliver the EU's 2030 greenhouse gas emission reduction target. Lastly, ENVI admits that the provisions concerning carbon leakage and the innovation fund are relevant to the delivery of the target in a cost-effective and sustainable manner, but rejects the argument that these issues would fall under ITRE's exclusive competence, as it is not supported by ITRE's mandate described in Annex VI or by any precedent.

Findings

As described above, the proposal in question seeks to contribute to the aim of a high level of environmental protection in accordance with the principle of sustainable development in the most economically efficient manner while providing installations adequate time to adapt and providing for more favorable treatment in certain cases in a proportionate manner.

In concrete terms, it introduces amendments to the EU ETS Directive (Directive 2003/87/EC) that concern the linear reduction factor (Article 9), auction share (Article 10), free allocation and carbon leakage (Articles 10a and 10b), indirect carbon costs (Article 10a(6)), installations with low emissions (Article 11(1)), innovation support (Article 10a(8)), modernization of the energy systems in lower income Member States (Articles 10c and 10d), validity of allowances (Article 13) and the transition to the system of delegated and implementing acts ("Lisbonisation").

As you recall, Annex VI of the Rules of Procedure attributes to the ENVI Committee the competence over:

- "1. environmental policy and environmental protection measures, in particular concerning:
(a) climate change,"

whereas the ITRE Committee is responsible for:

1. the Union's industrial policy and related measures, and the application of new technologies, including measures related to SMEs;

⁴ Decision No 1359/2013/EU of the European Parliament and of the Council of 17 December 2013 amending Directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances (OJ L 343, 19.12.2013, p. 1).

2. the Union's research and innovation policy, including science and technology as well as the dissemination and exploitation of research findings; (...)
5. Union measures relating to energy policy in general and in the context of the establishment and functioning of the internal energy market, including measures relating to:
 - (a) the security of energy supply in the Union,
 - (b) the promotion of energy efficiency and energy saving and the development of new and renewable forms of energy,
 - (c) the promotion of interconnection of energy networks and energy efficiency including the establishment and development of trans-European networks in the energy infrastructure sector;".

Moreover, as you recall, Rule 55 is applied where the matter falls indissociably within the competences of several committees and the Conference of Presidents is satisfied that the question is of major importance.

You equally recall that Rule 54 applies where the Conference of Presidents considers that the matter falls almost equally within the competence of two or more committees, or that different parts of the matter fall within the competence of two or more committees.

The original Directive 2003/87/EC was at the time of its adoption deliberated under ENVI lead with ITRE involved pursuant to the procedure of enhanced cooperation between committees (Rule 162a) that currently bears most similarities to the procedure prescribed in Rule 54. During the following seven revisions of Directive 2003/87/EC, ENVI was in all cases the lead committee, while ITRE was once involved under Rule 47 at the time (procedure with associated committees for Directive 2009/29/EC), twice under "Rule 53+" (enhanced opinion-giving committee) and in the remaining cases gave an opinion under current Rule 53.

A major part of the current revision concerns the rules for harmonized free allocation of allowances (Article 10a), measures to support certain energy-intensive industries in the event of carbon leakage (Article 10b), option for transitional free allocation for the modernization of the energy sector in lower income Member States (Article 10c) and the creation of a Modernization Fund to support investment in modernizing energy systems and improving energy efficiency in lower income Member States (Article 10d). Articles 10a, 10b and 10c were introduced into the EU ETS Directive during the revision under Directive 2009/29/EC when ITRE was associated to the legislative procedure under the current Rule 54, while Article 10d is a new provision to be inserted into the text.

It thus appears from the above that the ENVI Committee has consistently kept the lead over the EU ETS revisions, while ITRE has been contributing to the procedure with a varying degree of involvement - from association to drafting a simple opinion. It should also be noted that the draft Directive has a single legal basis (Article 192(1) TFEU ("Environment")) that places the proposal firmly within the ENVI remit. In this context I believe that the draft Directive does not belong "indissociably" under the competences of both committees and the association of Rule 55 would not seem justified.

On the other hand, there is a clear precedent of the involvement of ITRE both for the underlying Directive 2003/87/EC as well as for the revision under Directive 2009/29/EC, when the main Articles to be amended under the current proposal (10a, 10b and 10c) were introduced into the EU ETS Directive.

Moreover, several provisions of the proposal touch upon the competences of the ITRE Committee, be it in terms of energy policy (modernisation of energy sector, improvement of energy efficiency), innovation policy (innovation support *inter alia* for low-carbon technologies and processes in industrial sectors and for innovative renewable energy technologies) or industrial policy (e.g. benchmark values for free allocation to industry to reflect technological progress, carbon leakage). As regards carbon leakage, it should be noted that under the agreement between ENVI/ITRE on Rule 50 at the time (current Rule 54) on the ENVI own-initiative report "*Analyses of options to move beyond 20% greenhouse gas emission reductions and assessing the risk of carbon leakage*" (2011/2012(INI)), carbon leakage was placed under joint competence between the two committees.

I therefore believe that the remit of the ITRE Committee under the current proposal is affected to the extent that would justify the application of Rule 54. This conclusion is supported by the precedents of prior association (original EU ETS Directive, Directive 2009/29/EC) as well as the scope of the provisions to be amended that touch upon the ITRE competences and where in my view the ITRE Committee's expertise could usefully be engaged.

My recommendation to the Conference of Presidents would thus be:

1. that the ITRE Committee's request for association under Rule 55 be dismissed;
2. that the ITRE Committee be associated under Rule 54 to the ENVI report with the division of competences as set out in the Annex to this recommendation.

Yours sincerely,



Jerzy BUZEK

cc: Mr Giovanni LA VIA, Chair of the Committee on the Environment, Public Health and Food Safety

Annexes

ANNEX: Division of competences under Rule 54 - proposal 2015/0148(COD)

Exclusive ENVI competence - amendments to EU ETS Articles:

- Article 3d(3) and Article 3f(9) (Lisbonisation);
- Article 9 (Linear reduction factor);
- Article 10(1), first and third new subparagraphs (Auctioning of allowances);
- Article 10(2) (Composition of the total quantity of allowances to be auctioned);
- Article 10(3), new points k and l (use of auctioning revenues for climate finance measures in third countries and skill formation and reallocation of labour);
- Article 10(4) (Lisbonisation);
- Article 10a(1); (Transitional Community-wide rules for harmonised free allocation);
- Article 10a(5) (adjustment of free allocations);
- Article 10a(7) (allowances to be set aside for new entrants and significant production increases);
- Article 10a(9)-(11) (deletion of provisions linked to Lithuania; deletion in para 11);
- Article 10c(4) (Option for transitional free allocation for the modernisation of the energy sector - proportion of free allocations);
- Article 11(1) (National implementation measures);
- Articles 11a, 11b, 13 (Validity of allowances);
- Articles 14(1), 15, 16(12), 19(3), 22, 22a, 23, 24, 24a, 25(2), 25a (Lisbonisation);
- Annexes IIa and III;
- Articles 2-5 of the proposal 2015/0148(COD)
- Recitals 1-3, 6 and 14-22 of the proposal 2015/0148(COD)

Exclusive ITRE competence - amendments to EU ETS Articles:

- Article 10c(2) (Option for transitional free allocation for the modernisation of the energy sector - bidding procedure);
- Article 10d (Modernisation Fund) and Annex IIb (Distribution of funds from the Modernisation Fund);
- Recital 11 of the proposal 2015/0148(COD)

Shared ENVI/ITRE competence - amendments to EU ETS Articles:

- Article 10(1), second new subparagraph (Auctioning of allowances - allowances foreseen for the Modernisation Fund);
- Article 10(3), new point j (financial measures in favour of sectors exposed to a risk of carbon leakage);
- Article 10a(2), new third subparagraph (adjustment of benchmark values for free allocation);
- Article 10a(6), first subparagraph (financial measures in favour of sectors in genuine risk of carbon leakage)
- Article 10a(8) (innovation support in low-carbon industrial technologies, CCS and renewable energy technologies);
- Article 10a(12)-(18) (deletion of paragraphs on carbon leakage);
- Article 10b (Measures to support certain energy-intensive industries in the event of carbon leakage);
- Article 10c (1),(3),(5)-(6) (Option for transitional free allocation for the modernisation of the energy sector);
- Recitals 4, 5, 7-10 and 12-13 of the proposal 2015/0148(COD)

COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

The Chair

D 316192 06.10.2015

Mr Jerzy BUZEK
Chairman
Conference of Committee Chairs
European Parliament

D (2015) 45403
RvA/mu

Brussels,

Subject: Request for application of Rule 55 on the proposal for a directive amending Directive 2003/87/EC to enhance cost effective emission reductions and low carbon investments (COM (2015)148(COD)).

Dear Chair,

The Coordinators of the ITRE Committee have mandated me to request application of Rule 55 on the proposal for a directive amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments (COM (2015)148(COD)).

While ITRE, of course, recognises that the ENVI Committee is the first committee responsible for the environment and climate change, ITRE is the first committee responsible for industrial policy and energy, also in the aspects related to decarbonisation of the industry.

Annex VI to the Rules of Procedure states that the ITRE Committee is exclusively responsible for the following policy areas:

- Industry: see articles 1(4), 1(5), 1(6) of the proposed directive (growth, competitiveness which can include climate financing actions, skill formation, reallocation of labour, windfall profits, carbon leakage);
- Energy: see articles 1(4), 1(5), 1(6) of the proposed directive (the fund, electricity prices, diversification, innovation, renewable energy);
- Technology: see articles 1(4), 1(5), 1(6) of the proposed directive (innovation, research).

The current proposal from the Commission doesn't address the environment and climate targets, but the measures to implement them in a cost-effective way, thus not only affecting the industry and energy sectors substantially, but aiming to directly influence the actions, investments and working processes of the industry and energy sectors.

Apart from auctioning, allowances and formal provisions, the vast majority of the Commission proposals' provisions concern carbon leakage by which the industrial production in Europe risks being replaced by industrial production outside the EU, windfall profits in relation with technological progress to be assessed, financial measures for industry, support and modernisation of the energy sector and the innovation fund for the industry. All this clearly falls within the scope of the exclusive competences of the ITRE Committee as per Annex VI to the Rules of Procedure.

Further, the title of the present proposal from the Commission explicitly states its aim being "to enhance cost effective emission reductions and low-carbon investments". It is clear that:

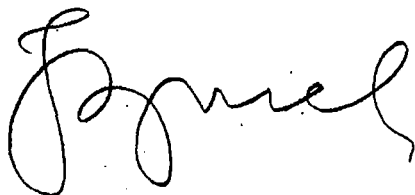
- cost effectiveness of emission reductions is directly linked to competitiveness of the industry and the risk of carbon leakage;
- investments to be bore by the industry are among the main objectives of the proposal;
- low-carbon solutions are indistinguishably related to technology and innovation in the energy sector.

Finally, I would like to draw your attention to the fact that in the past ITRE has been granted enhanced cooperation in the field of Emission Trading, which in 2001 took the form of the enhanced Hughes procedure (see A5-0303/2002) and in 2008 application of Article 47 of the Rules of Procedure (see A6-0406/2008). At the time those procedures indicated the highest possible form of cooperation between committees. Since then this has been inscribed in Rule 55, providing for the procedure with joint committee meetings, which did not then exist.

In this context, Market Stability Reserve, which is another ETS-related proposal, does not constitute a precedent for this Commission proposal, as it concerned a specific arrangement between ITRE and ENVI on certain legislative files which is still valid, now and in the future.

In view of the excellent cooperation with the ENVI Committee, the ITRE Committee is confident that cooperation under Rule 55 with the ENVI Committee will proceed smoothly and constructively.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Buzek', with a stylized, cursive script.

Jerzy BUZEK

Committee on the Environment, Public Health and Food Safety
The Chair

IF/ia
D (2015) 50769

D 203593 27.10.2015

Jerzy Buzek
Chair of the Conference of Committee Chairs
European Parliament
LOW T12063

Dear Chair,

I refer to the letter dated 6 October 2015 from the Chair of the Committee on Industry, Research and Energy (ITRE) in which he requests the application of Rule 55 of the European Parliament's Rules of Procedure (procedure with joint committee meetings), on the proposal for a Directive amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments (2015/148 (COD)), Rapporteur: Ian Duncan MEP.

After consulting the Coordinators of the Committee on the Environment, Public Health and Food Safety (ENVI), I am writing firmly to reject this request from the ITRE Committee. I believe, for the reasons set out below, that this request is entirely without foundation and, were it to be accepted, would run contrary to 15 years of precedent as regards consideration of emissions trading system (ETS) legislation in Parliament.

The aim of the Commission proposal is to implement, within those sectors covered by the ETS, the 2030 greenhouse gas reduction target of 40% as laid down in the conclusions of the European Council adopted in October 2014. As indicated in the explanatory memorandum to the proposal itself, a centrepiece of the 2030 framework is the binding target to reduce overall EU greenhouse gas emissions by at least 40% domestically (at EU level) below 1990 levels by 2030. In relation to those sectors covered by the ETS, the Commission proposes a reduction in emissions of 43% compared to 2005 (non-ETS sectors will have to reduce their emissions by 30%, which will be the subject of a separate legislative proposal foreseen for adoption in the first half of 2016). To achieve this target in a cost-effective manner, the Commission principally proposes amendments to Articles 9 and 10 of the ETS Directive (2003/87/EC) concerning the linear reduction factor and the auction share.

In order to ensure that the target can be implemented in a cost-effective manner, and to secure a sustainable transition to a low-carbon economy, the Commission proposes to continue to make provision for free allocation of allowances to safeguard those sectors at genuine risk of carbon leakage and to continue support through Innovation and Modernisation Funds. For this reason I very much welcome the opinions of both the ITRE and DEVE Committees on this proposal.

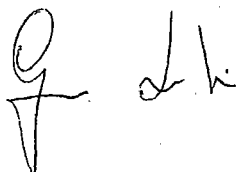
It is worth recalling that the legal basis of the Commission proposal is identical to that of previous revisions of the ETS Directive - most recently, the Decision on the adoption of the market stability reserve, which was concluded earlier this year and on which the ITRE Committee was associated under an enhanced Rule 53 procedure. Moreover the Commission proposal would address phase IV of the ETS (from 2020-2030). In each legislative phase of the ETS, the ENVI Committee has consistently been designated as the lead Committee in Parliament, and has always cooperated closely with the ITRE Committee, whether most recently under Rule 53 in the market stability reserve and backloading proposals or in the context of the climate and energy package of 2008, under the predecessor to Rule 54. My experience is that the ENVI Committee has always ensured close and constructive cooperation with the ITRE Committee on these dossiers, thus securing a positive overall outcome. I am therefore somewhat disappointed and surprised to have been made aware of such an unprecedented request from the ITRE Committee.

Finally, it is my duty to highlight a number of inaccurate assertions contained in the letter. Annex VI to the European Parliament's Rules of Procedure clearly set out the powers and responsibilities of Parliament's Committees. It provides that the ENVI Committee is responsible for environmental policy and environmental protection measures, in particular concerning (a) climate change. This includes legislation which delivers the EU's climate policy objectives, whether for example through the ETS or the decarbonisation of transport. It is therefore incorrect to state that the ITRE Committee is responsible for decarbonisation legislation. Secondly, for the reasons set out above, it is erroneous to assert that the Commission proposal "doesn't address the environment and climate targets" when its principal aim is to deliver the EU's 2030 greenhouse gas emission reduction target. Thirdly, whilst it is true that the provisions concerning carbon leakage and the innovation fund are relevant to the delivery of the target in a cost-effective and sustainable manner, it is entirely wrong to suggest that such matters are the exclusive competence of the ITRE Committee; on the contrary this is not specified among the competences of the ITRE Committee as per Annex VI to the Rules of Procedure nor is it supported by any precedent.

Finally, the Chair of the ITRE Committee alludes to the traditional constructive cooperation achieved in the context of previous legislative proposals on the ETS - more recently in the context of Rule 53 and prior to that the predecessor to Rule 54. It is very much my hope that we can continue to cooperate in a similar vein in relation to this latest legislative proposal of high public importance.

Yours sincerely,

Giovanni La Via



cc Jerzy Buzek MEP, Chair, Committee on Industry, Research and Energy
Dr Ian Duncan MEP, ENVI Rapporteur