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*Plenary sitting*

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## **MOTION FOR A RESOLUTION**

pursuant to Rule 88(2) of the Rules of Procedure

by **Konrad Szymański**

on the draft Commission Decision determining transitional Union-wide rules for the harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC

**Committee on the Environment, Public Health and Food Safety**

**European Parliament resolution on the draft Commission decision determining transitional Union-wide rules for the harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC**

*The European Parliament,*

- having regard to Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community as amended by Directive 2009/29/EC aiming to improve and extend the greenhouse gas emission allowance trading scheme of the Community, and in particular Article 10a thereof,
  - having regard to the draft Commission decision determining transitional Union-wide rules for the harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC,
  - having regard to Article 5a(3)(b) of the Council Decision of 28 June 1999 (1999/486/EC) laying down the procedures for the exercise of implementing powers conferred on the Commission,
  - having regard to Rule 88(2) and (4)(b) of its Rules of Procedure,
- A. whereas the aim of the Emissions Trading Scheme, as stated in Article 1 of Directive 2003/87/EC as amended by Directive 2009/29/EC, is to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner;
- B. whereas the EU ETS should operate with the highest possible degree of economic efficiency (Recitals 13 and 15 in the preamble to Directive 2009/29/EC) whilst eliminating distortions of intra-Community competition (Recital 17 of the Directive 2009/29/EC);
- C. whereas such principles have been forcibly emphasised by the case law of the European Court of Justice (the “ECJ”) and in case T-374/04 *Germany v. Commission*, paragraph 124, the ECJ stated that “the functioning of [the EU ETS] is determined by certain ‘sub-objectives’, namely the maintenance of cost-effective and economically efficient conditions, the safeguarding of economic development and employment, and the preservation of the integrity of the internal market and of conditions of competition”;
- D. whereas according to ECJ jurisprudence there may be discrimination in not only different treatment of comparable situations, but also equal treatment of non-comparable situations (see case 1253/79 *Battaglia*, paragraph 37: “Discrimination in the legal sense consists in treating in an identical manner situations which are different or treating in a different manner situations which are identical”) and the fact that there are objective differences in the situation of the entities to which a given regulation relates, should determine different constructions of the conditions that are applicable to them (see ECJ judgment in case 152/73 *Sotgiu*);

- E. whereas the introduction of the “one product – one benchmark” principle in the draft decision is not laid down as a requirement of the Directive, and the draft decision does not take into account the differences in the specific nature of the production processes in the sectors covered by the EU ETS, and therefore this proposal leads to a violation of one of the general principles of EU law, which is equality and non-discrimination;
- F. whereas since the draft decision adopts natural gas as the reference fuel, it will result in the situation where in two identical production processes, in which both natural gas and other fuels with higher emission levels are used, producers using natural gas will find themselves in a more privileged position compared to producers using coal for example, even though the latter use cutting-edge technologies, and whereas this is contrary to the spirit of the Directive and moreover leads to a distortion of competition within the internal market;
- G. whereas the introduction of benchmarks which are too rigorous, without taking into account inter alia fuel or geographical specificity, could lead to a violation of the principle of proportionality, since the installations affected would be granted allowances at a level lower than would be necessary for the achievement of the envisaged emissions objectives of the Directive;
- H. whereas for Member States for which coal serves as the basic fuel, adoption of natural gas as the reference fuel would lead to a distortion of competition in the internal market and would be equivalent to the negation of the specific geopolitical context in which each Member State’s energy market operates;
- I. whereas in the ECJ judgments in cases T-183/07 *Poland v. Commission* (paragraph 88), T-263/07 *Estonia v. Commission* (paragraph 53) and T-374/04 *Germany v. Commission* (paragraph 80) the ECJ held that in exercising their powers, both the Commission and the Member States should, while deciding on the choice of measures they deem most appropriate for the attainment of the goal envisaged under Directive 2003/87/EC, take into consideration the specific context of the national energy market of the given Member State;
- J. whereas the draft decision, by not taking into account fuel and geographical factors when setting benchmarks, leads not only to economic burdens and increases the danger of carbon leakage, but also to additional CO<sub>2</sub> emissions, since the import of products from a third country to Member States will also have a negative environmental impact, which is against the spirit of the Directive;
- K. whereas the way the Commission determines the rules for the harmonised free allocation of emission allowances should not lead in effect to political outcomes but should reflect the technical nature of the problem,
  - 1. Considers that the draft Commission Decision is not compatible with the aim and content of Directive 2003/87/EC as amended by Directive 2009/29/EC and the principle of proportionality;
  - 2. Opposes the adoption of the draft Commission Decision determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC;

3. Recommends the exclusion of factors aimed at the further tightening of the benchmarks based on the average performance of the 10% most efficient installations and the inclusion in the draft Commission Decision of the application of the "fuel correction factor" in line with the above-mentioned ECJ judgments;
4. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.