

**Question for written answer E-005723/2021  
to the Commission**

Rule 138

**Jacek Saryusz-Wolski (ECR)**

**Subject:** Incorrect legal basis of two legislative proposals in the Fit for 55 package

On 14 July 2021, the Commission adopted 14 legislative proposals under the Fit for 55 package. Two of these proposals, namely the directive on the EU Emissions Trading System and the regulation on the Carbon Border Adjustment Mechanism, have been given the incorrect legal basis of Article 192(1) of the Treaty on the Functioning of the European Union (TFEU), while in the light of the Treaties they should actually be based on Articles 192(2)(c) and 192(2)(a) TFEU.

By their very design, both proposals are meant to comprise measures 'significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply', as clearly enshrined in Article 192(2)(c) TFEU. Moreover, both proposals involve 'provisions primarily of a fiscal nature', as laid down in Article 192(2)(a) TFEU.

If not amended in time, this choice of legal basis would constitute a breach of the Treaty as it would violate the rights of the Member States stipulated in the second subparagraph of Article 194(2) TFEU.

I would therefore ask the Commission to answer the following questions:

1. Is the Commission aware of the fact that the two proposals have incorrectly assigned legal bases?
2. What action does the Commission intend to take to rectify this legal flaw in order to prevent a breach of the Treaties?