EURACOAL

European Association
for Coal and Lignite
AISBL

The President

March 2013

To Whom It May Concern,

EU Emission Trading Scheme – no short-term fixes to a long-term strategy

The legitimacy and credibility of the EU institutions depend on transparent decision-making and reliable laws. Unfortunately, the euro crisis has seen EU law twisted and stretched in ways that should never be repeated. Yet, intervention in a key directive linked to climate policy is now being considered. This could damage the future of EU climate policy.

We have a very ambitious climate strategy, beginning with the "20-20-20" targets for 2020. The climate and energy package, adopted unanimously in 2009 after lengthy debate, is demanding but acceptable to Member States because it includes hard-won compromises. Now, Parliament must vote on the Commission's proposals to intervene in the EU Emissions Trading Scheme (ETS) – a key element of that package.

The ETS is delivering its objective: the ETS sector will reduce its CO_2 emissions by 21% in a cost-effective and economically-efficient way. The scheme is a success. So why intervene? At a time of very high energy prices and in the midst of an economic crisis, raising CO_2 prices seems neither necessary nor justified. It would be like using higher taxes to stimulate the economy!

More seriously, it would undermine the legitimacy of EU law making. The Commission wants to ensure the "orderly functioning of the market" – but the technical measure it proposes would lead to tighter targets. The ETS directive stipulates that there would be no tightening of the EU's 2020 GHG reduction target unless an international agreement were to be reached – an important pre-condition for many Member States. There has been no new agreement. If this pre-condition is now ignored and a new burden placed on the ETS sector, then confidence and trust will be lost. Changing the rules mid-game is not the way to build a long-term climate policy.

By renewing its commitment to the 20-20-20 strategy and **by rejecting the back-loading proposal**, Parliament would calm the current frenzy. This would allow policy makers to focus on creating a stable, long-term framework for the period after 2020 – to 2030 and beyond – a framework that gives investors the confidence to invest in low-carbon technologies for the future with a price for CO_2 allowances that reflects their long-term value.

Yours faithfully,

Paweł Smoleń

enc: EURACOAL Position Paper on the "back loading" of auctioning and "set aside" of ETS allowances, 8 March 2013

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EURACOAL Position Paper

on the "back loading" of auctioning and "set aside" of allowances under the EU Emissions Trading Scheme (ETS) and why the Commission's proposal must be rejected

Introduction

The Commission proposes to amend the ETS Directive[1] and the ETS Auctioning Regulation[2] to "back load" the Phase 3 auctioning of EU ETS allowances and thus ensure "an orderly functioning of the market"[3,4]. In EURACOAL's position paper dated 29 September 2012, submitted in response to DG Climate Action's public consultation, we explain why the Commission's proposal should be rejected. Here, we further explore the legality of back loading.

Legal aspects of EU climate policy

In April 2002, the European Council agreed that the European Union would meet its Kyoto Protocol commitments by the joint and collective efforts of Member States.[5] This was the starting point for a number of policies with two key measures which were agreed as part of the EU climate and energy package of 2008:

- a strengthening of the EU Emissions Trading Scheme;[1] and
- the so-called effort-sharing decision.[6]

Under the climate and energy package's 20-20-20 targets, the 20% greenhouse gas (GHG) emissions reduction target, compared with emissions in 1990, was split between ETS sectors (with a 21% reduction on 2005 emissions) and non-ETS sectors (a 10% reduction).

Any tightening of the emissions reduction target over and above 20% is subject to the conclusion of an international agreement on climate change and on an accompanying legislative procedure to amend the ETS Directive and to renegotiate the effort-sharing decision.[7]

In assessing the Commission's proposals, it is important to understand that changing the emissions reduction target is not possible by a simple amendment to the Auctioning Regulation. The Commission recognises this since it is initially only planning to delay the auctioning of 900 million allowances, thus temporarily removing them from the market. However, behind this "back loading" proposal is the expectation that the Commission will permanently reduce the number of CO_2 emission allowance available in the EU ETS market through new structural measures. Already, possible "set-

[1] 2003/87/EC as amended by 2009/29/EC

[2] Commission Regulation No. 1031/2010

[3] COM(2012) 416 final

[4] Draft Commission Regulation amending Regulation (EU) No 1031/2010 in particular to determine the volumes of greenhouse gas emission allowances to be auctioned in 2013-2020 (DG CLIMA, 12 November 2012)

[5] 2002/358/EC

[6] Decision No. 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020

[7] see Article 8 in Decision 406/2009/EC and Article 1 and Article 28 in the Directive 2009/29/EC

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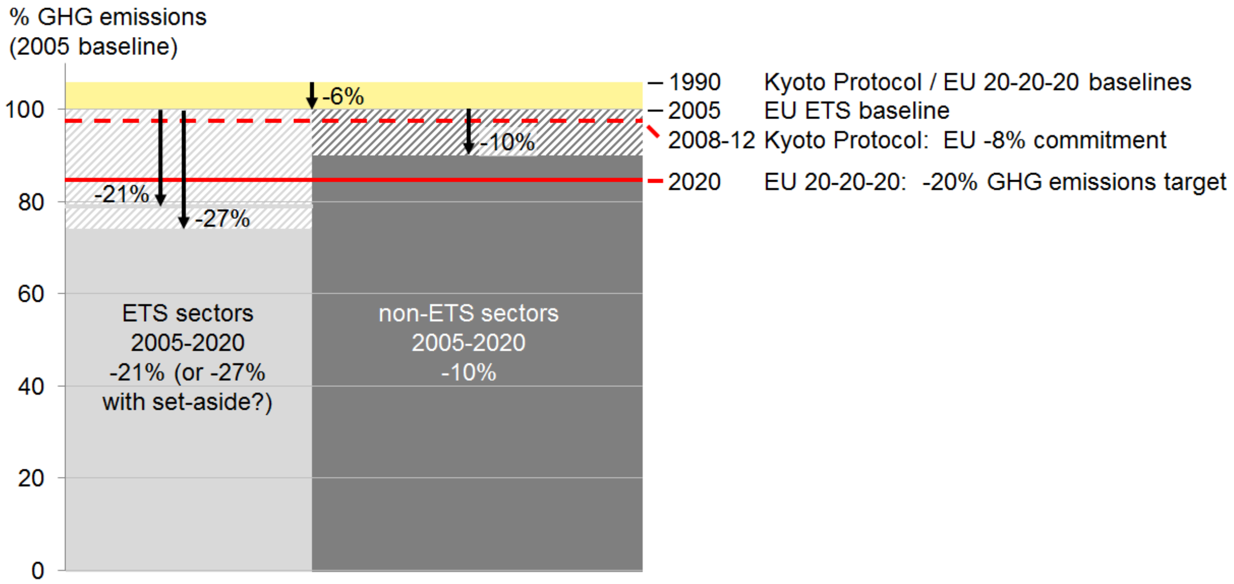
aside" measures have been announced in a report on the EU ETS published by the Commission ahead of schedule.[8]

The set aside of 900 million allowances in Phase 3 of the EU ETS would correspond to about 6% of the available ETS allowances. Already, the 21% reduction imposed on the ETS sectors makes a disproportionate contribution to the 2020 target. Setting aside 900 million allowances would see this increase to a reduction of approximately 27% from the 2005 baseline, as illustrated in the chart below. Compared with the Kyoto Protocol's 1990 baseline, this would be a reduction of approximately 33% – far exceeding the 8% that the EU has committed to achieve.

Figure 1 – GHG emissions reductions in the EU



Conclusions on the Commission's proposal

The Commission's proposals to amend the ETS Directive and the Auctioning Regulation to temporarily withhold allowances from the market raises important economic questions. The ETS has proven to be cost-effective and economically efficient, as required by Article 1 of the ETS Directive. Indeed, it has to an extent compensated for the difficult economic situation in the EU by lowering the cost of carbon at a time when any additional cost burden would be unwelcome. Europe faces historically high energy prices and economic recovery could be jeopardised if the Commission were to intervene in the ETS market to raise allowance prices.

If there is any tightening of the CO_2 targets before 2020, people will question the fundamental process of EU decision-making. **To provide legal certainty, the Commission proposals should be rejected. Today's political capital should be spent on agreeing post-2020 targets. These would send a clear signal to investors via the carbon price forward curve.**

8 March 2013

[8] Report from the Commission to the European Parliament and the Council, "The state of the European carbon market in 2012", COM (2012) 652 final – *n.b.* in the ETS Directive, this report was scheduled for the first year of Phase 3 (*i.e.* 2013), but the Commission chose to issue the report ahead of schedule

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