

Consultation on the preparation of a legislative proposal on the effort of Member States to reduce their greenhouse gas emissions to meet the European Union's greenhouse gas emission reduction commitment in a 2030 perspective

(This consultation addresses the Effort Sharing Decision. A separate public consultation "Addressing greenhouse gas emissions from agriculture and land use, land use change and forestry in the context of the 2030 EU climate and energy framework" is organised at the same time.

Fields marked with * are mandatory.

Introduction

The European Commission today launches a public consultation on the preparation of a legislative proposal on the effort of Member States to reduce their greenhouse gas emissions to meet the European Union's emission reduction commitment in a 2030 perspective. It concerns the continuation in the period 2021-2030 of the current Decision 406/2009/EC 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 (Effort Sharing Decision, ESD) (http://ec.europa.eu/clima/policies/effort/index_en.htm)

The Effort Sharing Decision sets greenhouse gas emission reduction targets for each Member State for the sectors not covered by the EU Emissions Trading System. Its scope currently covers some 55 % of total greenhouse gas emissions in the EU and includes greenhouse gas emissions from sources such as CO₂ emissions from road transport, heating of buildings, small-scale industry and so-called non-CO₂ emissions from agriculture and waste. The ESD does not include emissions or removals from land use, land-use change and forestry (LULUCF). Each Member State has an emission reduction or limitation commitment for 2020 under this Decision which varies between -20% and +20% as compared to its 2005 GHG emissions. Taken together, these commitments correspond to an EU-wide reduction in 2020 of around 10% compared to 2005 for the sectors covered by the ESD.

The objective of the ESD is to achieve its contribution to the EU's overall 20% reduction target in 2020 and to promote reductions of greenhouse gas emissions (GHG) within its scope in a cost-effective manner.

In addition to the 2020 targets, the ESD establishes binding annual GHG emission limits — so-called annual emission allocations (AEAs) — for all Member States for the period 2013–2020 with annual reporting obligations and compliance checks.

At the European Council meeting in October 2014, EU leaders expressed their wish to continue the ESD approach for the period 2021-2030, with the aim to reduce emissions in the non-ETS sectors by 2030 by 30% compared to 2005 as the contribution in implementing the overall economy-wide emission reduction target of at least 40% in 2030 as compared to 1990. (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145397.pdf)

The consultation launched today aims to collect evidence, experiences, suggestions and opinions related to the post-2020 design of the ESD itself and focuses on several issues, including:

- 1.) the flexibility mechanisms foreseen is the ESD to ensure overall cost efficiency,
- 2.) monitoring, reporting and compliance,
- 3.) the approach to setting the national greenhouse gas reduction targets in the ESD, and
- 4.) complementary EU-wide action to achieve the reduction targets.

It also asks for stakeholder feedback on the ongoing implementation of policies and measures in Member States to achieve their targets set out in the current Effort Sharing Decision that sets national targets until 2020.

This consultation addresses citizens, authorities and other stakeholders and seeks input on questions concerning the policy alternatives to be considered by the European Commission in its preparation of a legislative proposal to revise and maintain the ESD after 2020. It complements earlier consultations that the European Commission has conducted recently, notably the Consultation on the Green Paper on a 2030 framework for climate and energy policies (<http://ec.europa.eu/energy/en/consultations/consultation-progress-towards-2020-2030>)

Based on a questionnaire, the online consultation will run until 17 June 2015. Earlier replies are encouraged.

This consultation is launched in parallel with the consultation "Addressing greenhouse gas emissions from agriculture and land use, land use change and forestry in the context of the 2030 EU climate and energy framework" (http://ec.europa.eu/clima/consultations/articles/0026_en.htm), which addresses questions on how to integrate Land Use, Land Use Change and Forestry into the 2030 Climate and Energy Framework, on how this integration will relate to agricultural non-CO2 emissions and on the relation between such changes and the Effort Sharing Decision.

Background:

On 24 October 2014, EU leaders expressed their wish to work towards a domestic EU greenhouse gas emissions reduction target of at least 40% by 2030 compared to 1990 together with other building blocks for a 2030 policy framework for climate and energy (http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145356.pdf), following the policy proposals in a European Commission Communication of January 2014 (http://ec.europa.eu/clima/policies/2030/documentation_en.htm). The 2030 framework aims to make the EU's economy and energy system more competitive, secure and sustainable and also sets a target of at least 27% for renewable energy and energy savings by 2030, respectively.

The Commission has indicated in its February 2015 Roadmap for the Energy Union annexed to its Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy that it intends to present a legislative proposal on the Effort-Sharing Decision for the period 2021-2030 and on the inclusion of LULUCF into the 2030 Climate and Energy Framework in 2016. (http://ec.europa.eu/priorities/energy-union/docs/energyunion-annex_en.pdf)

0. Registration

*0.1. What is your profile?

- International administration
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- Regional government or association of regional governments
- Local government or association of local governments
- Academic/research organisation
- A small or medium-size enterprise
- Business other than small or medium-size enterprise
- Trade association representing business**
- Finance sector institution
- Non-governmental organisation
- Citizen
- Other

*0.2 Please enter the name and contact details of your organisation (address, e-mail, website, phone)

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3. Register ID number (if you/your organisation is registered in the Transparency register)

AFEP: 953933297-85

Cercle de l'Industrie: 60974102057-03

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AFEP and Cercle de l'Industrie are French associations, their headquarters are in France, and both associations have a Brussels office dedicated to monitor EU affairs. However, their members operate on a worldwide basis.

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1. Flexibility mechanisms

In order to provide for flexibility for Member States in implementing their commitments and as a means to enhance the overall cost-effectiveness of reaching the EU-wide 2020 target, the Effort Sharing Decision (ESD) provides a number of so-called flexibility mechanisms that can be used in the period 2013-2020 to comply with their annual targets. Should the greenhouse gas emissions exceed the annual emission allocations (AEAs) for the relevant year Member States are allowed to borrow 5% of their AEAs from the next year, buy AEAs from other Member States or use international project credit rights in order to fill any deficit for compliance. Should a Member State reduce its emissions by more than needed, thus exceeding its target for a given year, it can bank the surplus AEAs for use until 2020 or transfer it to other Member States. It is also possible for a Member State to transfer to other Member States up to 5% of its AEAs for a given year before compliance have been checked for that year. Member States are obliged to report on concluded agreements of AEA transfers among each other, but are otherwise free to decide on whether and how to engage in such transfers. As of early 2015, there were no known concluded agreements of AEA transfers between any Member States.

For the 2030 perspective the European Council has expressed its desire that *"the availability and use of existing flexibility instruments within the non-ETS sectors will be significantly enhanced in order to ensure cost-effectiveness of the collective EU effort and convergence of emissions per capita by 2030."* Flexibility instruments should be simple, transparent and easy to manage for Member States. The intention that international project credits will not be allowed in the ESD after 2020 means that a stronger emphasis on the two existing internal flexibility mechanisms will be needed:

1) Banking and borrowing of AEAs during the compliance period

As explained above, Member States already have flexibility in managing the use of their AEAs over the whole commitment period to cover any AEA shortage in specific years. Different levels of borrowing than the current 5% limit could be envisaged for the period after 2020 to help Member States achieve their annual targets by managing their own AEAs, bearing in mind that a higher level of borrowing early in the commitment period could increase the risk of individual Member States not meeting their targets later in the period.

2) Transfers of AEAs between Member States

There are several possible ways to stimulate AEA transfers among Member States. These include creating a more transparent market for AEA transfers, being less restrictive in how much Member States can transfer among each other before the compliance checks, and more direct measures to enhance availability of AEAs, such as project-based mechanisms or auctioning of a number of AEAs.

Market transparency could be enhanced by requiring Member States to report more openly and frequently on AEA transactions and prices or by encouraging transfers to pass through certain trading platforms.

The current 5% limit for AEA transfers before the compliance check could be increased, however, it should be noted that increasing this limit could also increase the risk of individual Member States not meeting their targets later in the commitment period 2021-2030.

Different kinds of project-based mechanisms for cost-efficient compliance within the ESD could be considered. Such an approach could attract targeted investments in ESD sectors prioritised by the host Member State and ensure more certainty that AEAs will become available for transfers by potentially allowing private sector initiatives. However, a verification and certification system would need to be established to guarantee the environmental integrity and validity of the credits which would entail upfront administrative costs.

Auctioning of a certain percentage of AEAs could ensure that an annual supply of AEAs becomes available for MS to acquire.

For all above aspects, alternative solutions might also be possible.

Question

1. How can the availability and use of the two existing internal flexibility instruments under the ESD be enhanced to ensure cost-effectiveness of the collective EU-effort in 2021-2030:

- a) for banking and borrowing; and
b) for AEA transfers among Member States, respectively?***

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Companies consider that if those two flexibility mechanisms are used by the States, there is absolutely no reason why economic actors under the scope of the ETS Directive would not be entitled to use flexibility mechanisms among which: international credits (CDMs) and domestic projects for sectors outside the scope of ETS. Of course, companies would understand the need to establish a threshold to cap the amount of usable emission reduction units.

With respect to the latter, is there need for more transparency in how Member States engage in AEA transfers? Could the current rules be further enhanced through more transparent reporting, the use of trading platforms, project-based mechanisms, auctioning, or through other means? Are there examples from other areas that could provide useful experience in designing a post-2020 transfer system?

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1. To ensure the cost-effectiveness of the collective EU effort in 2021-2030, companies believe that there is a need for more transparency on EU Member States' transfers of AEAs. Member States should be required to report each year not only on their emissions in the non-ETS sectors, but also on

their operations on AEAs. An overview of the volume of transferred AEAs should be made available ex post, possibly within 3 or 4 years, in order to provide a clear understanding of Member States' trajectory compared to their emission reduction targets, or the "carbon budget" (emission caps on a multi annual basis at national scale) that they may have adopted for non-ETS sectors.

Such requirements of transparency are necessary to **prevent the overlap between different political tools used to reach the same targets**. Furthermore, they would ensure a **fair symmetry** with the obligations made on companies in terms of transparency.

2. Concerning the option, put forward by the Commission, to encourage Member States to use project- based mechanisms to attract **investments in the non-ETS sectors**:

Until 2013 (the end of the first commitment period under the Kyoto Protocol), several Member States (inter alia, France and Germany) had used a process known as "domestic projects". Emission reduction projects were enhanced via the Joint Implementation mechanism used by a single Member State in its non-ETS sectors. In France, the State kept 10 % of the credits generated while 90 % were received by the investor (to be used for ETS compliance purpose).

This system has been a valuable tool to cut GHG emissions in a cost-efficient way for installations covered by the ETS (which could use the ERUs) and also for the non-ETS sector (which could cut its emissions). Therefore, **companies wish this system to be maintained during the second period of the Kyoto Protocol and after 2020**.

The system must be **simple and must not entail administrative burden on companies**.

2. Monitoring, reporting and compliance

The Effort Sharing Decision (ESD) and the Monitoring Mechanism Regulation (Regulation (EU) No 525/2013, MMR) have established an annual reporting and compliance cycle requiring an annual review of Member States' greenhouse gas inventories to ensure that compliance with the ESD is assessed in a credible, consistent, transparent and timely manner. The reviewed inventory data are used to check Member States' compliance with their annual emission limits. If a Member State's emissions exceed its annual emission allocation even when the flexibilities are taken into account, it will need to take corrective action in addition to the likelihood of the Commission launching regular infringement procedures. The corrective action includes a penalty of 1.08 times the Member State's excess annual emissions adjusted for the following year and temporary suspension of its right to transfer AEAs to other Member States.

The first annual inventory review will be carried out in 2015 and will concern Member States' inventories for the year 2013.

It needs to be considered whether more flexible rules for banking and borrowing and enhanced AEA transfers under the ESD will be possible with less frequent compliance checks.

Question

2. On the basis of experience with the present set of rules on reporting, monitoring, and corrective actions, which aspects should be maintained and which should be changed after 2020?

Please select one of the following:

- a) Keep it as it is: Annual reporting and annual compliance checks with existing corrective action (explain your reasons);**
- b) Annual reporting with biennial compliance checks with existing corrective action (explain your reasons);**
- c) Biennial reporting with biennial compliance checks and enhanced corrective action (explain your reasons and possible additional corrective actions); or**
- d) Other (with explanation).**

Please explain your selection:

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Companies believe that the current annual reporting and compliance checks should be kept as they are in order to **avoid further burdensome administrative obligations for MRV.**

3. Setting national targets for GHG emissions not covered by the EU Emissions Trading System

The Effort Sharing Decision sets Member State targets for GHG emissions between -20% and +20% by 2020 compared to 2005 based on economic capacity, with reduction targets for countries with higher GDP per capita than the EU average, and emission increase limits for countries with lower GDP per capita. This provides a distributive element among Member States. Various flexibility mechanisms, including AEA transfers between Member States (see question 1) enable cost-effective target achievement in principle.

The Commission impact assessment for the 2030 framework for climate and energy policies (Commission Staff Working Document SWD 2014/15, section 5.9, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014SC0015>) reconfirmed evidence that cost-effective mitigation potentials to reach the GHG emission reductions in ESD sectors in line with a 40% overall GHG reduction target continue to differ across Member States. The assessment noted that realising these potentials implied higher effort compared to GDP by lower income Member States. It also noted that a similarly large spread in targets for 2030 as established in legislation for 2020 would lead to very high ambition levels for some higher-income Member States whose domestic potential for making such reductions is relatively limited.

The October 2014 European Council on this issue expressed its wish that that *"the methodology to set the national reduction targets for the non-ETS sectors, with all the elements as applied in the Effort Sharing Decision for 2020, will be continued until 2030, with efforts distributed on the basis of relative GDP per capita."* The European Council also expressed its wish that the applicable target range be as follows: *"All Member States will contribute to the overall EU reduction in 2030 with the targets spanning from 0% to -40% compared to 2005."* This means that the methodology to set targets for Member States with a GDP per capita below the EU average in principle would not require modification. However, the European Council expressed a desire for a new element concerning higher income Member States, requesting that the *"targets for the Member States with a GDP per capita above the EU average will be relatively adjusted to reflect cost-effectiveness in a fair and balanced manner."* This would address concerns of higher income Member States by foreseeing the creation of a new flexibility for a limited number of Member States *"through a limited, one-off, reduction of the ETS allowances"* that can then be used for compliance in the ESD.

Question

3. How can cost-effectiveness be reflected in a fair and balanced manner in adjusting individual ESD targets for Member States with a GDP per capita above the EU average? What can be the role of the one-time reduction through a limited amount of ETS allowances in achieving these Member States' ESD targets, while preserving predictability and environmental integrity?

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The possibility opened by the European Council, for a number of high income Member States, to use a new flexibility through a reduction of the ETS allowances that can be used for compliance in the ESD, can be interpreted in the following way: certain Member States would be allowed to withdraw a part of their ETS allowances to be auctioned to reach their target in the non-ETS sectors.

The ETS Directive and Effort Sharing Decision must be consistent. Any discrepancies would undermine the credibility of the whole system and its acceptability by economic players. Furthermore, the principle to reduce emission in a cost-effective way must be respected. Consequently, Member States should be allowed to use ETS allowances to reach their target under the ESD, only if ETS participants are allowed to use credits from domestic project mechanisms for compliance with the ETS Directive. If not, the ability for Member States to transfer EAU's will not be acceptable.

4. Further evidence and studies on implementation of the Effort Sharing Decision at Member-State level and at regional level

In accordance with Article 14 of the Effort Sharing Decision (ESD), and to establish a solid knowledge-base for the 2030 proposal and its impact assessment, the European Commission is conducting an ex-post evaluation of the current ESD. Member States report their greenhouse gas emissions and on progress towards their 2020 commitments annually; the results of these reports are published each year by the European Environment Agency and the Commission. ([Report from the Commission to the European Parliament and the Council: Progress towards achieving the Kyoto and EU 2020 objectives](#) and [Annex; Trends and projections in Europe 2014: Tracking progress towards Europe's climate and energy targets](#))

[for 2020](#))

In the context of the European Semester, the European Commission also publishes annual reports on Member States' progress with respect to their 2020 targets.

(http://ec.europa.eu/europe2020/pdf/themes/16_energy_and_ghg_targets.pdf and http://ec.europa.eu/europe2020/making-it-happen/country-specific-recommendations/index_en.htm)

To support the evaluation process, the Commission would welcome any additional studies and evidence from stakeholders.

Question

4. Do you have studies on:

- *the implementation of the ESD at the level of Member States and at regional level;*
- *how the ESD incentivises greenhouse gas reductions in the different sectors concerned;*
- *good practices of policies and measures that are of particular interest for sharing with other Member States; and*
- *other benefits apart from greenhouse gas emission reductions*
- *that you think the Commission should be aware of?*
- *In your view, what are the key lessons learned of these studies relevant for the European Commission and other Member States, and what other benefits does ESD implementation bring (e.g. in terms of job creation, energy security, health benefits, ...)?*

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No.

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5. Complementary EU-wide action in the sectors covered by the Effort Sharing Decision

Member States are responsible for implementing policies and measures to meet their obligations under the Effort Sharing Decision (ESD) according to their national situation. These may include a variety of national actions ranging from economic instruments, such as tax regimes to support specific low-carbon fuels, information campaigns to promote public transport, integrated urban and transport planning, supporting improved energy performance in buildings and switching to renewable energy for district heating.

To a certain extent these national measures are also supported by other EU-wide climate and energy policies, including on CO₂ emission standards for light-duty vehicles ([cars](#) and [vans](#)), [non-CO₂ gases](#), energy efficiency (e.g. [Energy Performance of Buildings Directive](#), [Energy Efficiency Directive](#)) and on renewable energy sources ([Renewables Directive](#)).

Question

5. Is the current scope of EU-wide action and legislation OTHER than the ESD to support Member States' emission reductions in ESD sectors sufficient, or should it be enhanced?

- a) **The current scope is sufficient; or**
- b) *The current scope should be enhanced.*

Please explain your selection:

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In the current European energy and climate framework up to 2020, the main political tools of the EU have overlapped between each other (mostly: the ETS Directive, the Energy Efficiency Directive, and the Directive on Renewables). Furthermore, there is a lack of coordination between Member States to design their energy and climate policies, creating additional overlaps or distortions. Finally, there is a lack of will to curb the perverse effects of these overlaps. In this context, it appears that there is no steering board of the climate and energy policy matching at Member State level and at EU level, for each economic sector: the objective to be reached, the timeline, the tools to be used, the contribution to the target expected from each tool, the effective measurement and contribution of the tool to reach the objective.

Therefore, before reflecting on the scope of post 2020 EU-wide action and legislation other than the ESD, companies recommend a mapping be made of the current global European framework on climate and energy, and the principles of "better regulation" be implemented to this area (including fitness checks, ex ante and ex post impact assessment studies).

Those analyses would be an opportunity to compare the cost-effectiveness of national and EU tools to reduce emissions. The analyses should rely on a steering board as mentioned earlier. Companies believe that such a transversal approach is needed prior to any decision on the perimeter of the EU legislation on climate and energy policy post 2020. This must be part of the governance that is needed at EU level in this area.

6. Capacity building and other support to implementation at national, regional and local level

The EU and the European Commission are supporting the implementation of the current Effort Sharing Decision through, inter alia:

- Projects financed through the European Structural and Investment Funds, as well as other initiatives to build capacity and exchange best practices;
- Regional workshops on implementation, to facilitate exchange of best practice and experience with national policies and measures among Member States; and
- Annual guidance to Member States in the European Semester.

The European Commission's Climate Change Committee and its Working Groups is an important forum for exchange with Member States' administrators and experts on implementing measures at national level.

Question

6. Is there a need for additional EU action in terms of capacity building and similar support targeted at the regional and local level to facilitate national policies and measures under the ESD after 2020?

- a) Yes***
- b) No***

If you selected answer a), what kind of additional support do you have in mind?

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No answer.