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Ensuring annual cuts are met in the Commission's Effort Sharing proposal¹

Comments and lobby recommendations for the June Environment Council 2008

Quick Overview

This paper gives a quick overview on the background of the Effort Sharing proposal and how a better compliance structure could be integrated in the current process for reducing the EU greenhouse gas emissions in the period 2013-2020. You can also find additional demands on binding domestic and non Annex I emission cuts to be achieved by the EU in order to stay below a 2°C temperature increase as well as the need for financing adaptation in developing countries. **In this briefing we are focusing on the Council debate only.**

Our key demands, which we explain more fully below, are:

- **At least 30% domestic emission** reductions by 2020, which should be reached through legally binding annual emission cuts in all EU Member states.
- Introduction of a **direct penalty mechanism** enabling the Commission to directly issue levies against Member States not achieving annual emission cuts.

¹ Proposal for a Decision of the European Parliament and of the Council 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 {COM(2008) 30 final} {SEC(2008) 85}

- **Speeding up the reporting and processing of the data** to be able to assess whether or not reductions have been achieved each year.
- **Binding mitigation effort in non-Annex I** (developing countries) for the EU on top of domestic emission reductions.
- **Binding financing for adaptation in non-Annex I** (developing countries) to climate change.

Background

1) Strong domestic action of at least 30% is needed

The European Council has, at its meeting in March 2007, endorsed a unilateral EU emission reduction target of 20% compared to 1990. The Council also agreed to do 30% under the condition of reaching an international deal with other developed countries committing themselves to comparable emission reductions, and economically more advanced developing countries committing themselves to contributing adequately according to their responsibilities and capabilities.

The industry emission reductions under the EU Emission Trading Scheme (ETS) will now be clearly linked to efforts in reducing emissions not covered by the ETS. The reduction efforts under the ETS Directive and the Effort Sharing Decision add up to a reduction of greenhouse gas emissions of 20% compared to 1990 levels. The Commission has included a “trigger” mechanism in the proposals which allows it but does not obligate it, to increase the EU target to 30% as soon as an international climate agreement is concluded. This means for example that in the Effort Sharing mechanism the national targets are only given for a 20% scenario and their targets under a 30% scenario are not even mentioned.

Both the 20% and the 30% objective in the current proposals are not domestic and allow a huge amount of external credits e.g. coming from the Clean Development Mechanism (CDM). This would mean for example that about a third of the emission reductions under a 20% scenario could be reached with external credits coming from the CDM.

Both the ETS Directive and the Effort Sharing Decision proposals are therefore inconsistent with achieving the reductions demanded by evidence presented by the IPCC and to keep the rise of global average temperatures below 2°C. Especially the 20% target is clearly contradicting what the EU was lobbying for at COP13 in Bali where all EU Member States called for reductions of emissions in a range of 25 - 40% by 2020 for industrialised countries. According to the IPCC and recent studies from the Wuppertal institute this range has to be domestic to reach the 2°C target.

FoEE proposal: We are calling for **at least 30% domestic reductions in the EU** by 2020 compared to 1990 levels. Both the ETS Directive and the Effort Sharing Decision should have at least a 30% target.

In support of the 30% domestic reductions we call on:

- a speedy adoption of the renewables directive,
- a EU 20% legally binding energy efficiency target,
- strengthening the targets of the CO2 and cars legislation and
- a revision of the Energy Efficiency in Buildings Directive (EPBD)² which sets efficiency targets for all buildings.

The Commission proposal only requires the sectors covered by the Effort Sharing decision (non- ETS sectors) to reduce their emissions by 9% below 2005 levels – equivalent to approx. 240 Mt CO2 eq. However, their real potential to reduce emissions is much higher than this. For instance, an analysis by the construction industry demonstrates that a revised and strengthened EPBD could alone deliver 460 Mt CO2 eq of emissions reductions, so almost double the total proposed for all sectors in the Effort Sharing Decision³. This is a good argument to show that it is easy to reach the cuts under the Effort Sharing Decision since the cuts in non-industry emissions will be mainly in the transport and buildings sector.

2) Annual cuts are foreseen in the Effort Sharing Decision but need to be ensured...

Given the urgent need for steep emission reductions, Friends of the Earth is calling for **binding annual emission cuts**. These short-term targets will ensure that emissions decline year-by-year across the EU and across sectors. Short-term targets as opposed to long- term objectives will also make today's politicians accountable and ensure that Europe leads the world in showing that climate change can be tackled.

In fact, legally binding annual emission cuts are already introduced in the Effort Sharing Decision: Article 3, paragraph 2 outlines that

“Member States shall annually limit those greenhouse gas emissions [from sources not covered by the ETS.] in a linear manner to ensure that those emissions do not exceed the maximum level for that Member State in 2020 as specified in the Annex.”

The formulation “shall limit those greenhouse gas emissions in a linear manner” is legally speaking very strong and means that the effort sharing targets and annual reductions are binding for Member States. Therefore, the European Commission is entitled to enforce annual targets. However, the current tool available for the Commission to enforce the targets, the infringement procedure, is clearly not sufficient to ensure that yearly emission cuts will be made. The infringement procedure is a lengthy penalty procedure involving the European Court of Justice and which can take up to seven years until penalties will be paid by the Member State.

That means that such a procedure would probably not start in the first years of the period 2013-2020 covered by the Effort Sharing Decision. Though the formulation “Member States shall” annually limit their emissions is really strong and could theoretically be enforced year by year, it is really improbable that the European Commission will start infringement against Member States year by year. Also, a Member State could easily fail in the first year but comply in the

² Directive 2002/91/EC of the European Parliament and of the Council of 16 December 2002 on the energy performance of buildings. Find more at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0091:EN:NOT>

³ Find more at Eurima: www.eurima.org/fix-it

second year. Since the Commission introduced a special evaluation in 2016 this could be a moment where infringement procedures would probably start. But with the average duration of several years this procedure is too long until fines are to be paid and it could be responsible of missing the overall target of the Effort Sharing Decision to reduce non-ETS emissions until 2020.

Watch out: While we are demanding a mechanism to ensure that these annual cuts which are already legally binding will be really met, several Member States (see text below taken from the Presidency Summary ahead of the Council next week) even try to get rid of the annual binding targets in the proposal. Thus, **please first stress here that we need annual cuts and why** (steep emission reductions are vital to avoid climate change, long term targets are not effective enough, make today's politicians accountable etc). This absolutely needs to be ensured first and with friendly governments you could try to go further and talk about the direct penalty mechanism from Commission against Member States, the speeded up reporting etc.

This is extracted from the Presidency Summary ahead of the Environment and Energy Councils (attached on the email) next week and shows that there's even some reluctance in the Council to adopt the annual emission reductions:

“While welcoming in principle the Commission proposal for an annual reduction of the non ETS emissions in a linear manner, several delegations pointed out some difficulties related to this linear reduction: a) it is very difficult to control very different/diverse sectors in order to have a linear reduction annually; b) it can work as a perverse incentive for Member States to increase emissions if the starting point is 2008-2010; c) the level of flexibility is not sufficient to take into account difficult years (climatic conditions, economic situation). Moreover, some delegations consider that the nature of the intermediate targets should be indicative and that the obligation to comply with these intermediate targets can be counter-productive for Member States in their efforts to meet, cost-effectively, the 2020 target.”

As regards the last sentence of the previous paragraph, arguments to counter this are:

- binding annual targets for the non ETS sectors will put all Member States on a level playing field and will not allow for any outlaw Member States underachieving and not respecting their targets,
- the emission reductions to be achieved under the Effort Sharing Decision could cost-efficiently be met through a well implemented buildings directive which would even allow for almost the double of the emission reductions (460 Mt CO₂ eq instead of 240 Mt CO₂ eq. , see page 3 of this briefing)
- if there are no binding annual targets in the Effort Sharing Decision, the only effective compliance tool will be in the ETS directive, and this will be an unfair burden lying on the back of the industry sector only; the other sectors will also have to be accountable and demonstrate genuine emission reductions; the potential in the housing sector alone is huge.

3) ...and strengthened through a direct penalty mechanism for the non ETS sectors

The limited enforcement and compliance provisions in the Effort Sharing Decision impose a further risk to the achievement of the reduction targets. To keep EU Member States on track to meet their 2020 reduction targets, enforcement and compliance measures of equivalent strength as those under the EU ETS have to be introduced in the Effort Sharing Decision. The Effort Sharing proposal should be given the strongest enforcement tools available to make sure that Member States reduce their emissions in a linear annual manner, as foreseen in the Decision. The penalty procedure should be applied to Member States not reducing their emissions and not reporting on an annual basis.

Currently the European Union proposes a balancing system for the annual cuts in introducing a specific borrowing mechanism in between the periods of around 2% per year from 2013 onwards. We recommend that this is changed into 1% since a 2% banking (or borrowing) would represent for several Member States a major part of their reduction obligation, and therefore it could jeopardise a true linear reduction. Using instead a 1% as the maximum quantity provides a higher certainty that indeed Member States' emissions will take a downward trajectory.

The reporting procedure as it functions now is a lengthy process since the EU's emission results from the year X are only published in the year X+2. This is a serious dysfunction that cannot be maintained as such if we want to achieve annual emission cuts. Therefore we strongly believe that reporting needs to be speeded up significantly and that all Member States need to hand in their reports 3 months after the end of the year (March) and the Commission needs to have done the analysis one month after the deadline for Member States (April).

The moneys from the penalties should be collected in a special fund and be reinvested into climate friendly measures. It could be redistributed to those countries having difficulties and underachieving (in accordance with a set of strict criteria) or it could also be used to reward countries having good emission reduction results.

FoEE proposal:

- **A swift penalty procedure**, as opposed to the current lengthy infringement procedure involving the European Court of Justice, is key to make emission cuts happen across the EU in the short- and long-term.
- The **annual targets** need to be made binding and established on a linear reduction path as foreseen in both ETS Directive and Effort Sharing Decision.
- **Strong penalties** should be applied to **Member States not reaching the targets** for both ETS and Effort Sharing. The same penalties should be applied per tonne CO2 equivalent for underachieving in both the ETS Directive and Effort Sharing Decision. This could be equivalent to the 100 Euro/tonne of the national ETS fines.
- **Flexibility in between the periods** needs to be given **for the Effort Sharing Decision**. In this case, Member States should have the flexibility of at most 1% by borrowing from emissions of the next year as foreseen in the Commission's proposal. If Member States underachieve, the amount of emissions they underachieve by should be added to the target of the following year. If Member States overachieve, than the target of the next year can be reduced accordingly.

- Member States should **report** on their emissions of year X in March of year X+1. The Commission **verifies** this before end of April of year X+1.
- If Member States do not hand in their **reports in time**, a meaningful penalty should be enforced immediately.
- If Member States do not pay the penalty than the Commission should have the right to **withhold emission allowances** distributed under the ETS directive.

Please consult the attached summary with the compliance demands for more detailed information.

4) Supporting mitigation in developing countries

Industrialised nations including the EU have both the present and historic responsibility, as well as the financial and technological means to take effective action to address climate change more quickly than developing countries. Whilst moving towards a low carbon economy the EU emission reduction target therefore has to be based on the principles of equity and fairness. As such, it must fulfil two goals:

- put the EU on a low carbon trajectory which ensures that it plays its fair part in keeping the mean global temperature increase as far below 2°C as possible,
- provide certainty that substantial long term support will be provided to developing countries to assist them in decarbonising their economies, reducing emissions from deforestation, developing sustainably and adapting to climate change.

EU (and other Annex I = developed countries) support for mitigation in non-Annex I countries (developing countries) is a necessary condition to reach a post 2012 global deal on climate change in which developing countries are put on a decarbonisation path.

FoEE proposal: The EU should offer the necessary support to non-Annex I countries for greenhouse gas mitigation, as mentioned under the Bali roadmap, through EU binding reduction targets in non-Annex I countries. **These targets must come on top of domestic reductions. The mitigation effort by the EU shall increase in a linear way and reach 883 Mtonnes CO₂-equivalent in 2020⁴, compared to a business as usual scenario.**

5) Financing adaptation in developing countries

⁴ The figure of 883 Mt CO₂-equivalent mitigation is based on calculations done by the Ecofys and Wuppertal Institute. They estimate the necessity of a 5.7 Gt reduction compared to Business as Usual in non-Annex I countries by 2020. Assuming a 50/50 split in the effort between Annex I (developed countries) and non Annex I (developing countries) for realising this, we arrive to the number of 2.85 Gt of CO₂ equivalent for Annex I countries. With the EU emitting over 31% of all Annex I countries for the Kyoto Protocol base-year (1990), the fair share for the EU in the 2.8 Gt CO₂-eq is around 0.883 Gt of CO₂-equivalent.

Additionally, Member States must commit to financial support to ensure adaptation capacity in developing countries, achieving a Community contribution by 11 billion Euro by 2020.

FoEE proposal: For adaptation in developing countries, the estimates as to the needed funds vary, but OXFAM (2007) has calculated 50 Billion USD/year, which for the 30% EU share of 1990 Annex I emissions and a conversion to EUR this gives around **11 Billion Euro to be paid for by the EU**. This financial support obligation should be allocated to Member States according to ability to pay, with a GDP/capita key, exempting Member States without reduction targets in the Annex to this Directive.

6) **Dangerous demands from the CEE Member States**

On 20 May a common submission by **Hungary Bulgaria, Estonia, Latvia, Lithuania, Romania and Slovakia (not yet Poland, but the Poles are considering this!)** was done (attached in the email). These 7 Member States support the polish ETS proposal asking for more than 20% of the auctioning revenues to be redistributed to those Member States having had so called early action. They refer to those emission reductions that were achieved with the shutdown of the industry in these countries (hot air). The Hungarian submission is very bad, but very clever, as it provides something to many Member States. Key summary points of the 7 page proposal:

- half of the 7.9 % reductions done by 2005 have been achieved by 9 new Member States, they want their “early action” to be accounted for since 1990
- they want a common goal for ETS/non-ETS sector, based on the Kyoto Protocol targets (so an **18% reduction from 2012 overall, for everybody which is weaker as the 20% obviously that we already criticise**), and just % targets, not absolute numbers. Therefore the reference to the limitation to non-ETS in Article 1 is removed, Article 3 is changed to overall cap, instead of just non-ETS sectors. Member States can choose between their Kyoto Protocol target basis (1990) or the average annual emissions 2008-10. They created a new Annex table with reduction figure 18% for all Member States. They also want extra negotiation for Cyprus and Malta, as these aren't Annex I countries.
- They want to introduce yet **another trading mechanism** in the case of the non-ETS emissions between Member States as “national emissions rights”
- Art. 6: Only if international global deal exceeds the -20% provisions in force should there be an upgrade, which would still have to be defined: **so this means that they reject the 30% even if there is a global deal!**

FoEE proposal specifically directed at CEE campaigners: CEE (mainly Hungarians) campaigners should react very rapidly to this dangerous proposal trying to weaken the 20% agreed target. All this is meant to achieve further flexibility for Member States and will result in less emission reductions.

