CAN Europe Response to Consultation on Revision of the EU Emission Trading System (EU ETS) Directive

Brussels, 16 March 2015

1. Free allocation and addressing the risk of carbon leakage

1.1 The European Council called for a periodic revision of benchmarks in line with technological progress. How could this be best achieved in your view and, in particular, which data could be used to this end? How frequently should benchmarks be updated, keeping in mind administrative feasibility?

Adequate European benchmarks can be a major driving force towards a profitable, innovative and greenhouse-gas efficient manufacturing industry in Europe, and promote and reward early action and innovation in manufacturing.

From 2021 onwards, the benchmarks should be set at the level of best available practice and technology (in terms of greenhouse gas emission performance) on the global market. The Commission should focus on developing credible and transparent product benchmarks and avoid fall-back options such as heat and fuel benchmarks which are, on average, less stringent. In its determination of the ETS cross sectoral reduction factor, the Commission admitted that the generosity of the fall-back approach also contributed to a higher overall free allocation to European industry than anticipated.

Benchmarks have not been updated since 2007-2008. The reference year for setting benchmarks should be updated in the context of the post-2020 review of the ETS Directive and every 5 years thereafter, to take into account technological advances.

In order to avoid post-2020 benchmarks to become outdated they should be adjusted with a pre-determined annual improvement factor, in line with the overall reduction of the emission ceiling.

The Commission should mandate operators of installations covered by the ETS Directive to make the necessary data publicly available in a transparent manner and independently verified. Detailed data on benchmarks should be reported by the operators to the Commission and a database should be established to facilitate future reviews.

1.2 The European Council has defined guiding principles for the development of post-2020 free allocation rules which provide inter alia that "both direct and indirect costs will be taken into account, in line with the EU state aid rules" and that "the most efficient installations in these sectors should not face undue carbon costs leading to carbon leakage" while "incentives for industry to innovate will be fully preserved and administrative complexity will not be increased" and while "ensuring affordable energy prices". Do you have views how these principles should be reflected in the future free allocation rules?

We advocate for full auctioning as it is the most cost-efficient, simplest, fairest, and most transparent way to allocate emission allowances. It generates revenues to support further climate policies in the EU and abroad. Auctioning also prevents overallocation of free allowances to specific sectors. Overallocation has been a serious issue in the past and current trading phases. There is no evidence of carbon leakage occurring in the ETS Phases I and II and no evidence of free allocation being an effective measure to protect European energy-intensive industries from being disadvantaged due to EU carbon pricing policies.

Unfortunately the Council decided that free allocation should continue post-2020. Nevertheless free allocation should be minimized from 2020 onwards and phased out as soon as possible. The Commission needs to signal in a clear and upfront manner that the amount of free allocations to installations will continue to decline rapidly after 2020. In addition, Member States need to be clearly informed about the impacts on their auctioning revenues of different allocation and auctioning scenarios.

Any exemptions for specific sectors at tangible risk of carbon leakage have to be based on independently verified information and the burden of proof should lie with the operators of installations covered by the ETS Directive under clear and strict conditions.

The European Commission should develop a more gradual approach to defining sectors at risk of carbon leakage, as opposed to the current in/out practice. The process of qualitative assessment of carbon leakage risk should be enhanced so as to also allow for the removal of sectors from the carbon leakage list in order to avoid them being overcompensated.

The criteria for the assessment of the risk of carbon leakage should be updated and should be based on realistic carbon costs and trade intensity parameters, while also taking into account the overcompensation of sectors during past trading periods. Current EUA prices are 85-90% lower than the assumed price of 30 EUR that underlies the carbon leakage calculations. This raises the larger question of how the carbon price should be determined. A price based on projections and modelling is always highly uncertain, since models cannot forecast economic recessions. We therefore recommend for the carbon price to be based on historic prices and not on long term modelling. This would also be more in line with the other parameters used in the ETS, which are all based on historic data and not on projections (e.g. CVA, trade activity)

Several studies confirm that the carbon leakage list is currently too long. Of 220 sectors in total, over 154 are included; some of which do not have any emission intensive installations (e.g. musical instruments). This is because the list is based on trading intensity alone. We therefore recommend that the list be determined by trading intensity AND carbon price. This would shorten the list and make it more relevant.

Finally, the cross sectoral correction factor should remain a key element in the ETS Directive after 2020 in order to ensure the environmental integrity of the European carbon market. A more stringent approach to issuing free allowances will reduce the level of intervention needed through the cross sectoral correction factor.

1.3 Should free allocation be given from 2021 to 2030 to compensate those carbon costs which sectors pass through to customers? How could free allocation be best determined in order to avoid windfall profits?

Full auctioning of all emission allowances is the most reliable way of avoiding windfall profits of companies. Allowances are a public good as they represent rights to pollute. If they are handed out for free to industry,

they in effect are an industry subsidy at the cost of citizens since free allocation means a significant loss of auctioning revenues to EU Member States.

In the period 2015-2019 free allocation will result in a hand-out to EU industries worth about €40 billion. In order to maintain the credibility of the ETS in the eyes of EU citizens, it is crucial that the 'polluter pays' principle of the EU Treaty is respected and free allocations are phased out.

In order to avoid windfall profits when the market price of free allocations is passed through to consumers, it's important to note that all sectors have the possibility, to a greater or lesser extent, to pass on their costs. Therefore, an overall discount rate to the issuance of free allowances to avoid windfall profits should apply. For sectors proven to have passed through their carbon cost, a quantitative assessment of the pass through rate should lead to a dynamic and ex-post deduction of relevant amounts of free allowances in future years.

Question 1.4 [no answer]

2. Innovation fund

2.1 [no answer]

2.2 Do you consider that for the extended scope of supporting low-carbon innovation in industrial sectors the modalities should be the same as for CCS and innovative renewable energy technologies or is certain tailoring needed, e.g. pre-defined amounts, specific selection criteria? If possible, please provide specific examples of tailored modalities.

Public funding for the decarbonisation of the power sector should prioritise investment flows to support energy efficiency improvements and the further development of renewable energy generation technologies. Public support for tackling industrial emissions, which is also necessary, might need a more elaborate approach. The extended scope of support for low carbon innovation in industrial sectors should reflect the following themes:

- Product innovation with the goal of developing products essential to a low-carbon and resource-efficient society;
- Value chain and business model transformation with the goal of further reducing emissions, enhancing resource efficiency and finding new and smart opportunities for energy-intensive industries;
- De-risking (venture) capital and debt by grants and loans to facilitate access and enhance entrepreneurship and the market readiness of low-carbon products and processes. Facilitate upfront capital access through project milestones;
- Industrial co-benefits through productivity increase and resource efficiency should be acknowledged, while encouraging cross-sectoral and cross-company collaboration;
- Social innovation to train and re-train the workforce with skills needed in the transition to a low-carbon economy.

2.3 Are there any complementary aspects regarding innovation funding you would like to add to the replies given to the previous written consultation in the light of the European Council conclusions?

Almost half of NER300 funding has gone to bio-energy projects so far. Advanced bioenergy projects, although potentially sustainable, have limitations from the supply of feedstocks side. The innovation fund should focus on technologies that have the potential and scalability to decarbonise our economy.

EU policy on bioenergy has not been fully clarified and there are still several unsolved issues such as ILUC factors, sustainability criteria for non-liquid bioenergy, etc. Strong safeguards have to be put in place that can ensure the long-term sustainability of bioenergy projects.

3. Modernisation fund

3.1 Implementation of the modernization fund requires a governance structure: What is the right balance between the responsibilities of eligible Member States, the EIB and other institutions to ensure an effective and transparent management?

Irrespective of the governance structure, the functioning of the modernisation fund should be guided by clear funding criteria that ensure the best and fastest possible transition away from the use of fossil fuels. These criteria need to ensure no funding is provided to fossil fuel based projects while priority should be given to projects promoting energy savings and renewable energy. Such criteria should build upon the criteria the EIB already has in place to select projects in their climate and energy portfolio.

The EIB should play a prominent role in the modernisation fund's governance structure. Strong involvement of the EIB would help to effectively attract private funding to co-finance the selected projects, guarantee increased transparency and ensure a level-playing field for projects and Member States eligible to access the Modernization Fund. The EIB should be responsible for the evaluation and selection of projects.

Not just the beneficiary Member States but all EU Member States should be involved in the governance of the Fund, as setting aside 2% of allowances decreases the total number of allowances, and thus effects the quota (and income) of higher-income Member States. This could be done by transferring the governance of the Fund to the Board of the EIB, which consists of Directors from each Member State and one by the European Commission. This would be in line with the European Council conclusion on the 2030 climate and energy framework, stating that "a [modernisation] fund will be managed by beneficiary Member States with the involvement of the EIB in the selection of projects".

Member States responsibility should be to timely submit the list of projects clearly meeting the eligibility criteria and accompanied by environmental assessments (for each of the projects).

Given its experience in management and implementation of the NER300 programme, the European Commission should also play a significant role in the Fund's governance. The Commission should be responsible for overall management (including development of eligibility criteria) and monitoring and verification of projects' implementation. Moreover the European Commission should carry out mandatory assessments in order to evaluate whether projects proposals submitted by Member States are consistent with the EU's 2030 and 2050 climate objectives. Such an assessment would have to be taken into account by the EIB in the projects' evaluation and selection.

To guarantee transparency of the selection procedure, before approving the final list of projects to receive support from the Fund, the EIB should carry out an extensive public consultation in line with the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies. Information and views gathered during the public consultation should be carefully considered and taken into account in the choice of the winning projects.

3.2 Regarding the investments, what types of projects should be financed by the modernisation fund to ensure the attainment of its goals? Should certain types of projects be ineligible for support?

The Modernisation Fund should support exclusively investments in energy efficiency and renewable energy, focusing on improving energy efficiency in the building sector (building renovation including refurbishment of

residential and public buildings), decentralised power and heat production (facilitating participation of consumers in the energy market), grid connections (smart grids, super-grids) and storage infrastructure enabling further uptake of renewables.

These could include:

- Grants and loans to increase energy efficiency in the residential sector, dominated in many lower income Member States by multiple apartment blocks where residents face difficulties in obtaining funds for renovation due to legal ownership arrangements*;*
- Grants and loans for private investors for both construction of new energy-neutral or energy-positive buildings and the retrofitting with energy efficiency measures of existing buildings;
- Loans aiming to reduce energy use through the refurbishment of public buildings including schools, hospitals, public administration buildings and prisons;
- Credit lines to small and medium sized businesses to invest in new, sustainable energy technologies (energy efficiency, renewable energy solutions).

Investments in coal-fired generation (refurbishment, modernization, life extension, biomass-cofiring) should be strictly forbidden as they are incompatible with the EIB lending criteria and the EU's 2050 decarbonisation target since they lead to "carbon lock in" in the high emitting infrastructure.

To ensure that the Modernization Fund will deliver on its main goal "to improve energy efficiency and to modernise the energy systems (…) to provide (…) cleaner, secure and affordable energy" precise, strict and binding projects' eligibility criteria should be developed and rigorously followed.

All projects should be additional to investments Member States must undertake in order to comply with other objectives or legal requirements accruing from Union law (for instance post-2020 LCP BREF standards

Post-2020 financial support for the transformation of lower income Member States' energy systems must be conditional on these countries pursuing policies designed to attract renewable energy investment, overcome barriers to energy efficiency, phase out fossil fuel subsidies as well as the full and timely implementation of the revised Directives that will constitute the EU's 2030 framework.

3.3 Should there be concrete criteria [e.g. cost-per-unit performance, clean energy produced, energy saved, etc.] guiding the selection of projects?

While all projects should contribute to achieving the EU's 2030 and 2050 climate objectives, projects with the following criteria should be promoted:

- Projects contributing not only to cost-efficient emission reductions, but also improved air quality and other co-benefits;
- Projects deepening cooperation between Member States and promoting regional integration;
- Medium and small-scale projects in energy efficiency and renewable energy solutions;
- High-tech, innovative investments in grid connections and storage infrastructure enabling the further uptake of renewable energy.

The European Commission should develop strict project eligibility criteria. These criteria should be transparent and developed through a separate, dedicated open consultation with stakeholders. The awarding of support should also follow an open and objective process. Overall, the criteria should prioritise energy savings, the displacement of fossil fuel use by renewable energy, and the reduction of costs for energy saving and renewable energy technologies. The criteria should build on and expand from the most recent EIB lending criteria for energy investments, including an Emission Performance Standard for power plants.

The European Commission Communication on the Energy Union (COM2015/80) recognises the need for treating energy efficiency as an energy source in its own right that can compete on equal terms with generation capacity in energy planning. Therefore, it should always be assessed whether it would be more

effective to implement energy efficiency measures and reduce energy demand instead of making investments to increase supply.

3.4 How do you see the interaction of the modernisation fund with other sources of funding available for the same type of projects, in particular under the optional free allocation for modernisation of electricity generation (see section 4 below)? Would accumulation rules be appropriate?

As long as projects deliver on the EU's mid- and long-term climate objectives and are compatible with binding eligibility criteria, EU state aid rules and other relevant legislation, accumulation rules should be appropriate.

In case of two separate sources of funding for the same project (the modernisation fund and funding under the optional free allocation for modernisation of electricity generation), it would be necessary to very precisely indicate and report which part of the investment is carried out with funding acquired from free allocation of allowances under art. 10c and which part is funded with financial means from the Modernisation Fund.

All projects receiving funding from both the Modernisation Fund and under the optional free allocation for modernisation of electricity generation, must comply with each of the eligibility criteria for the projects benefitting from the Modernisation Fund (see points 3.2 and 3.3).

3.5 Do you have views how the assessment of the projects should be reflected in the forthcoming 2030 governance process (e.g. national climate programmes, and plans for renewable energy and energy efficiency)?

Within the forthcoming 2030 governance process a set of transparent, binding and strict rules for management of the Modernisation Fund should be established (including the eligibility criteria and rules allowing timely and accurate monitoring of the progress in projects' implementation).

The projects to be selected should be compatible with the energy efficiency and renewable energy objectives of the Member States set out in current and future legislation and enable the transition to an efficient 100% renewable based energy system by 2050. Member States should only be allowed to access the fund after the full and correct transposition of the revised energy efficiency and renewable energy directives that will constitute the 2030 climate and energy framework.

Member States eligible for the Fund's support for modernisation projects should be required to adopt ambitious and binding low-carbon strategies for 2050, outlining their contribution to reach the EU's objective of 80-95% emission reductions by the middle of this century. The strategies would have to be approved by the Commission before the first funding could be granted to selected projects.

The EIB should scrutinise the investment plans of Member States and ensure optimal use of the available funds, on the basis of the above principles.

The EU Member States benefiting from the support mechanism(s) would have to provide effective monitoring of funds, robust reporting and transparent verification.

3.6 Should the level of funding be contingent on concrete performance criteria?

The level of funding should be contingent on concrete performance criteria. These criteria should themselves be transparent and developed through a separate, dedicated open consultation with stakeholders - the level of funding should follow an open and objective process.

4. Free allocation to promote investments for modernising the energy sector

4.1 How can it be ensured that investments have an added value in terms of modernising the energy sector? Should there be common criteria for the selection of projects?

The continuation of transitional free allocation for power generators can distort competition, hinder the completion of the EU Internal Energy Market and endanger the EU's long-term decarbonisation objective. From 2020 onwards, the preferred approach should be to ensure power producers in all EU Member States buy 100% of their allowances at auction. The implementation of Article 10c of the ETS Directive requires a stronger degree of EU institutional oversight, to ensure that it is used in the right way to promote the decarbonisation of our society.

The fund to date has not been used to transition away from fossil fuels. By the end of 2012, the EC had approved almost 680 million allowances to be handed out for free to power producers in eight MSs from 2013 to 2019 with an aggregate value of over €12 billion.

According to EC recommendations, MS' modernisation investments should aim at eliminating any need to make use of the article 10c derogation in the future. However, the requirements for power sector diversification were hindered by unclear language in the Directive and weak enforcement by the EC.

In Poland, the largest beneficiary, none of the 378 investments listed in the NIP relate to solar or wind power generation. The overwhelming majority of Poland's investments are modernisations of existing fossil fuel generation capacity. The same holds true for Romania, the 3rd largest beneficiary of Article 10c, where 98% of projects in the NIP are for new fossil fuel capacity.

Continued coal dependency will most likely lead some countries demand further exemptions and continuously jeopardising EU's climate policies and targets for years to come. Unless the modernisation fund is much more tightly managed, the continuation of Article 10c free allocation will put at risk the EU's progress towards power sector decarbonisation.

To guarantee that investments are new and additional and have an added value in terms of modernising the energy sector the following criteria should be applied for the selection of projects:

- Projects contributing not only to cost-efficient emission reductions, but also improved air quality and a more participatory energy system should be prioritized;
- Investments that have been included in the 1st National Investment Plans (under the Art. 10c for 2013-2020 period), whether proposed or selected, should not be eligible;
- Projects for coal power plants should not be eligible;
- CCS and nuclear power generation should not be eligible;
- Projects related to grid development should focus on power connections for renewable installations and enable their optimal integration into the electricity system, for example through smart grid development;
- Projects must be additional to currently planned investments and need to be built in the country where installations are being granted with free allocations. Investments identified in the national plan should be additional to investments Member States must undertake in order to comply with other objectives or legal requirements accruing from Union law (for instance post-2020 LCP BREF standards);
- Principle 2 of Guidance document on the optional application of Article 10c of Directive (2003/87/EC (2011/C 99/03)), requiring that investments in the National Plans should aim at eliminating any need to make use of such derogations in the future (high dependency on a single fuel for electricity production, combined with low GDP per capita or poor connectivity with the European grid network) should remain valid and become biding after 2020. It should be applicable not only to the National Plan as a whole but also to each investment individually.

- Projects should be subject to an independent and full energy audit. Such audits should be performed at least every three years. Lack of compliance should result in preventing further supply of free allowances to the operators and applying appropriate penalties;
- Annual independent third party reporting on investments in the context of the national plan should be required. The report should examine amount invested, date of completion and include a post investment review to see if the investments are delivering the emission reductions originally stated. Investments envisaged in the national plan have to be realized on an annual basis, consistent with the value of annual free allocation, while their climate benefits have to be delivered within the derogation period.

4.2 How do you see the interaction of the free allocation to energy sector with other sources of funding available for the same type of projects, e.g. EU co-financing that should be made available for the projects of common interest under the 2030 climate and energy framework? Would accumulation rules be appropriate?

As long as projects deliver on the EU's mid- and long-term climate objectives and are compatible with binding eligibility criteria, EU state aid rules and other relevant legislation, accumulation rules should be appropriate.

In case of two separate sources of funding for the same project (e.g. the modernisation fund and funding under the optional free allocation for modernisation of electricity generation), it would be necessary to very precisely indicate and report which part of the investment is carried out with funding acquired from free allocation of allowances under art. 10c and which part is funded with financial means from the Modernisation Fund.

All projects receiving funding from both the Modernisation Fund and under the optional free allocation for modernisation of electricity generation, must comply with each of the eligibility criteria for the projects benefitting from the Modernisation Fund (see points 3.2 and 3.3).

4.3 Do you have any views how the assessment of the projects should be reflected in the forthcoming 2030 governance process (e.g. as regards improving transparency)?

Member States willing to continue application of the mechanism of free allocation to promote investments for modernising the energy sector after 2020, should be obliged to adopt ambitious and binding low-carbon strategies by 2050, outlining how investments identified in their National Plans would contribute to reach the EU's objective of 80-95% emission reduction by mid-century. The strategies would have to be approved by the European Commission before the first tranche of free allowances would be handed to power producers in 2021.

Adequate public participation is crucial for transparency, for electricity consumers, electricity producers and the general public. Moreover, public access to information regarding the compliance and performance of individual operators should improve transparency on the distribution of public assets and compliance with the environmental goals of the European Union. Furthermore, Member States must submit to the Commission "information showing that the allocations do not create undue distortions of competition" (Article 10c 5(e)). The European Commission has to pro-actively investigate whether the national plan will not create or enhance undue distortions of competition and act accordingly if such distortions are found.

The open consultation on National Investments Plans must be ensured. This consultation should be done in two steps: on the Member State level, before the national investment plan is approved by governments, and on the EU level, before the plan is approved by the European Commission. Each public consultation should last at least for 30 days and comments raised by stakeholders must be fully taken into account when deciding about the investment plan.

4.4 The maximum amount of allowances handed out for free under this option is limited. Do you think eligible Member States should use the allowances for a period of time specified in advance (e.g. per year), or freely distribute them over the 2021-2030 period? (Please explain your motivation.)

Eligible Member States should only be allowed to allocate free allowances to power plants in line with an increasingly strict CO2 emissions limits. The share of allowances that eligible Member States can freely allocate needs to decline annually in a linear manner down to 0% in 2030. From 2030 onwards, Member States should not be allowed to hand out free allowances to their power sector anymore.

To improve to transparency and accuracy, enable verification on progress of projects' implementation, deliver climate benefits as soon as possible and guarantee the same rules for all Member States making use of free allocation mechanism (allowing comparability), use of free allowances should be timely, i.e. in an annual basis, investments envisaged in the national plan have to be realized on an annual basis, consistent with the value of annual free allocation, while their climate benefits have to be delivered within the derogation period.

4.5 Should there be priorities guiding the Member States in the selection of areas to be supported?

YES

If so, which of the following areas, if any, currently supported through investments for modernisation of electricity generation up to 2020 should be prioritised for support up to 2030 and why?

Interconnectors YES
Smart Grids YES
Super-critical coal NO
Gas NO
Renewable energy YES
Energy storage YES
Energy efficiency YES

Please explain in detail:

To ensure that the mechanism allowing free allocation to promote investments for modernising the energy sector will deliver on its main goal "to promote real investments modernising the energy sector" a very precise, strict and binding eligibility criteria defining areas to be supported must be developed and rigorously followed (in contrary to 2011 non-binding guideline).

- Continuation of Art. 10c mechanism must be applied in a way that does not undermine the main goal of the EU ETS Directive;
- All modernisation investments must contribute to reach the EU's objective of 80-95% emission reduction by mid-century and aim for diversification of countries' energy mixes away from fossil fuels (applicable not only to the National Plan as a whole, but also to each investment individually);
- Evaluation of Art. 10c implementation (from 2008 onwards) should be carried out and lessons learned taken into account when setting up rules governing free allocation mechanism post-2020.

Projects in the national plan should refer only to electricity generation from renewable energy sources, upgrade of grid for renewable, projects related to grid development enable optimal integration of renewable energy into the electricity system, for example through smart grid development, and improving energy efficiency in non-ETS sectors. Innovative, high-tech projects should be prioritised.

Investments in coal-fired generation (refurbishment, modernization, life extension, biomass-cofiring) should be strictly forbidden as incompatible with the EIB lending criteria and the EU's 2050 decarbonisation target as well

as threatening cost-efficient achievement of the Europe's climate objectives through "carbon lock in" in the high emitting infrastructure.

While all investments should effectively contribute to achieving the EU's 2030 and 2050 climate objectives, those with the following characteristic should be promoted:

- Investments contributing not only to cost-efficient emission reductions, but also improved air quality and a more participatory energy system;
- Investments deepening cooperation between Member States and promoting regional integration;
- Medium and small-scale investments in energy efficiency and renewable energy solutions;
- High-tech, innovative investments in grid connections and storage infrastructure enabling the further uptake and integration of renewables;
- Investments facilitating development of decentralised power and heat production.

4.6 How can improved transparency be ensured with regard to the selection and implementation of investments related to free allocation for modernisation of energy? In particular regarding the implementation of investments, should allowances be added to auctioning volumes after a certain time period has lapsed in case the investment is not carried out within the agreed timeframe?

All information about implementation of the mechanism of free allocation to promote investments for modernising the energy sector should be publicly available (with an official English translation) and published on a dedicated website (Member State's applications, decisions, result of monitoring, incl. pictures and projects' technical documentation).

In the process of investments' selection the Commission should be obliged to consider information and views from other sources to inform its assessment.

Before submitting application (including the National Plan) to the Commission Member States must subject it to the public consultation. All investments submitted to the Commission for assessment and selection must be accompanied by environmental assessment (for each of the projects). The application and each of the projects (submitted by Member States) should be considered environmental information and would be subject to the relevant legal requirements.

To improve transparency and enable better monitoring of investments' implementation the value of National Plans must be equal to the market value of free allowances (cannot be higher as it's the case for all NIPs approved for the period 2013-2020).

To assess progress of projects' implementation and compatibility of investments with eligibility criteria independent and full audit should be performed on an annual basis. Lack of compliance should result in preventing further supply of free allowances to the operators and applying appropriate penalties.

Progress on implementation of the National Plan must be closely monitored, with scrutiny by the European Commission (quantitative and qualitative assessment, field supervision, special focus on investments to be delivered by state-controlled companies). All reports and documents related to monitoring and enforcement process should be publically available (in English). Contrary to the current rules (that prove to be ineffective) from 2021 onwards monitoring and enforcement of the investments identified in the National Plans should be primary the European Commission and not Member States' responsibility.

For each of investments year of completion must be indicated in the National Plan. In case of delay in implementation free allowances should be added to auctioning volumes.

5. SMEs / regulatory fees / other

Questions: 5.1 – 5.4 no answers

5.5 Under the current EU ETS Directive, at least 50% of the revenues generated from the auctioning of allowances should be used by Member States for climate-related purposes. For the calendar year 2013 Member States have reported to have used or to plan to use 87 % on average to support domestic investments in climate and energy. Do you consider the current provisions regarding the use of the revenues adequate for financing climate action? If not, please explain why?

The current reporting is a step in the right direction to ensure Member States deliver on their political commitment of using at least 50% of ETS auctioning revenues for climate-related purposes. However, Member States' reports lack consistency in accounting rules and often fail to provide detail on the nature of domestic and international investments. Some member states have not provided enough information on how they spent their auctioning revenues.

All ETS auctioning revenues must be earmarked for supporting climate policies, inside the EU and internationally. The reporting obligations under the Monitoring Mechanism Regulation can serve as a good basis to make this earmarking mandatory for all. Reinvestments of auctioning revenues into renewable and energy saving technologies, as well as adaptation action can create a virtuous cycle where application of the 'polluter pays' principle can support investments in the tools needed for further decarbonisation and climate resilience, in the EU and internationally.

There are numerous EU obligations under the UNFCCC to deliver climate finance to developing countries, including the COP19 decision that public finance should be increased and the commitment made in Copenhagen to mobilise 100bn USD by 2020.

Nevertheless the use of auctioning revenue for international climate action has been deplorably low. Only 5 Member States report having used ETS revenues to support developing countries with their multiple challenges of climate change, adding up to around 13% of auctioning revenues.

For the post-2020 period, the EU needs to provide better solutions to help meet the financial needs of developing countries to deal with climate change. A recent UNEP report found that – under the best case scenario where global warming is kept below 2°C - the African countries alone will need an extra $50 bn/year by 2050 to deal with the cost of adaptation. Poor countries in particular, who have contributed little to climate change, need predictable and reliable future financing, over and above existing funds they are receiving.

Auctioning revenues should provide a significant, reliable and additional revenue stream to achieve the EU's international climate finance commitments. An International Climate Fund should be established at EU level, replenished by a percentage of total auctionable permits to be withheld at European level before permits are distributed to Member States. The European Investment Bank should channel the revenues resulting from the auctioning of these permits, directly to the Green Climate Fund for mitigation and adaptation actions in developing countries. Member States would be able to report these additional flows of climate finance as supplementary to their own budgetary climate finance contributions, applying the ETS distribution key.

6. General evaluation

6.1 How well do the objectives of the EU ETS Directive correspond to the EU climate policy objectives? How well is the EU ETS Directive adapted to subsequent technological or scientific changes?

To date the EU ETS has failed to deliver on its objectives and has not been adapted to respond to the significant macro economic and technological changes we have seen over the last few years. It has failed to address the

urgency and the scale of the impending climate crisis and has been out of sync with the reality that has been established by the scientific community for many years.

Only if the EU ETS is reformed immediately and significantly can it be in line with the EU's long-term objective of 80 to 95% emission reductions by 2050.

This requires permanently addressing the current surplus in emission allowances. Although important, the Market Stability Reserve will not provide a permanent solution to the surplus of EU ETS allowances, which may grow to over 4 billion by 2020. It only temporarily removes allowances and returns them to the market over time. Instead, surplus allowances need to be permanently removed as they weaken future climate targets and undermine an adequate pollution price signal. Legislation that ensures the cancellation of surplus allowances is absolutely vital.

The increase of the linear reduction factor to 2.2% from 2021 onwards, as endorsed by the European Council in October 2014 will achieve emission reductions in the ETS sectors of only about 82% by 2050 below 1990 levels. Fixing the LRF to 2.2% until 2030 will not lead to a cost-effective reduction path and also contradicts the council agreed target of "at least" 40% emission reductions by 2030.

In its impact assessment for the post-2020 review of the ETS Directive, the Commission must reflect the "at least 40% target" and include options for linear reduction factors higher than 2.2%. Furthermore the Commission should perform a sensitivity analysis of ETS and MSR functioning under different electricity consumption scenarios in its post 2020 impact assessment. This will be crucial to broaden understanding of resilience of the EU ETS to future demand fluctuations in the power sector.

We believe that in order to have a reasonable chance to keep global average temperature rise well below 2°C as compared to pre-industrial levels, the EU will need to reduce its emission by at least 95% by 2050. To achieve this upper end of the 2050 target agreed by the European Council in 2009, a linear reduction factor above 2.6% should be adopted.

6.2 What are the strengths and weaknesses of the EU ETS Directive? To what extent has the EU ETS Directive been successful in achieving its objectives to promote emission reductions in a cost-effective manner compared to alternatives, e.g. regulatory standards, taxation?

The EU ETS has failed to deliver on its objectives. This has been due to a combination of factors, such as static policy design without built-in adjustments if significant demand changes occur, a weak reduction target and the massive use of international offsets. As a result an enormous oversupply of emission allowances has built up and the price for allowances has dropped so significantly that the EU ETS cannot facilitate the transition towards a renewable and energy efficient economy. Companies can delay or cancel investments in cleaner and more efficient production, risking a costly lock-in in carbon intensive infrastructure for years to come.

Despite these significant failures, the EU and its Member States have been unwilling to implement the necessary reforms to turn the EU ETS into a functioning policy tool. The EU ETS must be reformed boldly if it is to be turned into an effective policy instrument. Otherwise it will remain a toothless paper tiger that fails to adequately drive the decarbonisation of European industry.

However, the EU ETS alone will not be able to deliver the necessary incentives to decarbonize the EU. The myopic carbon market orthodoxy that views the EU ETS as the "flag ship" of European climate policy has proved to be dangerously misguided. Member States need a bouquet of national and European policy tools including national binding renewable energy and energy efficiency targets and support measures in order to be able to tackle the significant challenge of decarbonisation. Other complementary measures could include the adoption of an Emission Performance Standard for power plants, a carbon tax, a carbon floor price and/or the unilateral cancellation of surplus allowances.

Policy tools have to be designed to complement each other and work synergistically. Given the numerous market failures different sectors face it would be naïve to believe that a single carbon price could drive the

necessary mitigation measures. Nevertheless the EU ETS could play an important part in EU climate mitigation policy but only if it is reformed swiftly and substantially.

6.3 To what extent are the costs resulting from the implementation of the EU ETS Directive proportionate to the results/benefits that have been achieved, including secondary impacts on financing/support mechanisms for low carbon technologies, administrative cost, employment impacts etc.? If there are significant differences in costs (or benefits) between Member States, what is causing them?

Some industry stakeholders have claimed repeatedly that higher carbon prices would hamper their international competitiveness. Their claims stand in stark contrast with empirical evidence. Studies, reports, and analyses have repeatedly shown that there is no evidence of carbon leakage as defined by the ETS Directive. Even in energy-intensive sectors, EU carbon pricing has not led to measurable carbon leakage. This empirical evidence is even confirmed by shareholders in some energy intensive companies who concede that the ETS has not been a significant factor in the context of competitiveness concerns, even while prices were as high as 25€/ton CO2. The EU ETS is, overall, not stringent enough to help drive the decarbonisation of Europe, and steps must urgently be taken to correct these failings.

6.4 How well does the EU ETS Directive fit with other relevant EU legislation?

The ETS directive sits well with the EU legislation with which it was developed, namely the laws that enacted the national binding targets to reduce greenhouse gas emissions and increase the share of renewables in the energy mix. The joint development of these pieces of legislation meant that the relative role of each element could be calibrated against the others.

Any reform of the EU ETS must take into account other EU laws and regulations, especially those that will make up the 2030 climate and energy framework. It must also take into account possible future legislation, such as a potential EU Emissions Performance Standard for fossil fuel power generation.

6.5 What is the EU value-added of the EU ETS Directive? To what extent could the changes brought by the EU ETS Directive have been achieved by national measures only?

Because industry works across Europe in a free and open market, it is important to have a system which internalises the negative externalities of carbon pollution at a common minimal level in all Member States. However, if Member States want to go further, for example through the use of a carbon floor price or the unilateral cancellation of allowances, this should be encouraged as it will drive the transformation to a modern low-carbon economy all the more quickly in those countries.

In general terms, the EU ETS has not responded well to the urgency of the problem it is supposed to solve - if the EU needs 20 years to create and then fix its main climate policy instrument, solutions at Member State level will be needed to make up for the lack of progress. Unfortunately, this is likely to happen in an uncoordinated way, leaving business and investors in a far more difficult position to operate in an EU with an uneven playing field.

6.6 Do you have any other comment on the revision of the EU ETS Directive that you would like to share?

Emissions from aviation and shipping pose a great challenge for EU climate policy as international emissions from both sectors are expected to grow by up to 250% by 2050. Shipping is the only sector of the EU economy without a reduction target set in law despite concrete commitments in the EU climate legislation in 2009, the Commission's 2011 White Paper on Transport and the Commission's 2013 Communication setting out a strategy for maritime emissions. The EU's climate and energy policy set a deadline of 2011 for all sectors of the economy to contribute to achieving emission reductions, including international maritime shipping. The 2011 Transport White Paper calls for 2005 level emissions from maritime transport to be cut by at least 40% by 2050, and if feasible by 50%. Since European maritime transport activities are expected to increase by 8% in 2020, by 15% in 2030 and by 39% in 2050, the EU should now make clear how it intends to deliver shipping reductions within its 2030 commitment by establishing an EU reduction target and measures and evaluate if shipping should be included into the ETS.

International aviation is currently exempt from fuel taxation and VAT and, unlike in other modes, there are no fuel efficiency standards. Intra EU and domestic aviation are included in the ETS but international flights are not. ICAO's goal of carbon neutral growths post-2020 is insufficient and far below the EU's at least 40% target for 2030. It will therefore be essential that aviation's role included in the EU ETS be strengthened.

Road transport on the other hand should remain outside of the ETS as an inclusion would undermine much more effective specific climate policies for transport such as standards for vehicle efficiency and clean fuels for 2025 and 2030, which stimulate investment in low-carbon technology in the transport sector.

In European legislation the use of biomass is rated as having zero emissions. Most of the biomass used in ETS installations (solid or gaseous) does not need to comply with any sustainability criteria and there are concerns that in many cases they might actually increase GHG emissions due to carbon debt and indirect impacts that are not accounted for. The zero rating of bioenergy and the lack of sustainability requirements have been questioned by scientists (see EEA scientific opinion on the matter http://goo.gl/ht5Mgz) and needs to be addressed.

We recommend that the Commission reassesses the universal zero rating of bioenergy and evaluates specifically what the emissions are for different feedstocks. The ETS already has sustainability criteria for bio-liquids such an approach should be expanded to include all bioenergy.