

CAN Europe Response to

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

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2. 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 AEA 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 AEA, such as project-based mechanisms or auctioning of a number of AEA.

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 AEA 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 AEA could ensure that an annual supply of AEA 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?

In general, flexibility instruments should under no circumstance lead to a reduction of the overall ambition level for the non-ETS sectors or to an increased risk of non-compliance.

Banking: The possibility to bank unused annual emission allocations (AEA) within the 2021-2030 period should remain unchanged, since it encourages early action.

Borrowing: We recommend that the borrowing rules are reduced from 5% to 2% of 2005 emissions levels to limit borrowing to approximately one year's worth of reduction efforts. (The annual reduction path "with existing measures" (WEM) is about 2.2% and for "with additional measures" (WAM) 1.9%.) Borrowing capabilities beyond 2% would enable countries to delay mitigation and increase the risk of compliance problems at the end of the ESD period. Borrowing should not enable countries to postpone significant mitigation action to later years. The earlier mitigation actions are implemented the better.

Transfer of AEs: The transfer of surplus AEs is already unlimited and cannot be further enhanced. We are against increasing the current 5% limit for AE transfers from the following year as it can lead to compliance problems later in the commitment period.

Banking to new commitment period: Carry over from 2020 to 2021 is not possible and not foreseen: 1) The Directive states clearly that this mechanism is only valid until 2020 and therefore does not apply to a carry-over between ESD periods. 2) The idea of a carry-over between ESD periods was discussed prior to the October 2015 Council but discarded and is not included in the Conclusions. 3) The banking of unused allowances between ESD I and ESD II would lead to a significant reduction of ambition and overall integrity of the EU commitment. According to EEA estimates Member States will have a total surplus 700 – 2000 Mt CO₂e. **Therefore, the AE surplus that will accumulate until the end of 2020 should be cancelled. Any surplus that may accumulate by the end of 2030 should also be cancelled.**

With respect to the latter, is there need for more transparency in how Member States engage in AE 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?

Yes, there is a need for more transparency in how Member States engage in AE transfers as to date there has been no information on the details and prices of AE transactions. More transparent reporting on AE transfers is hence needed after 2020. All auctioning should be public and be announced in advance. Sales and purchases should be reported together with prices and other information as required under Annex XV of the Implementing Regulation.

Project-based mechanism: A project-based mechanism should be established that would function similarly to the current Joint Implementation (JI) Track 2. Such a mechanism would involve the private sector (project developers) and may therefore lead to more mitigation actions, e.g. in the building sector. Such a mechanism would enable buyer countries to purchase offsets from specific projects which may be more attractive to buyer countries than purchasing AEs. If a country is in non-compliance with its ESD requirements it should not be able to issue offsets.

The project mechanism should be separated from Art. 24a of the ETS Directive to ensure a clear separation of the two instruments and avoid methodological and other problems linked to project mechanisms under the ETS.

For each offset issued the host country would need to cancel an AE. Offset projects in sectors covered by the ETS should be prohibited (as is currently the case with JI). These measures would avoid double claiming. Offset projects would need to be additional and not over-credited.

In order to ensure such environmental integrity, projects must be validated and verified by an accredited, independent third-party auditor. This is especially important in the case of an AE oversupply (e.g. due to an economic crisis); if not, the project based mechanism could be used to launder hot air. Projects should be implemented based on EU-wide agreed methodologies.

Offsets should be discounted:

- Host countries should be able to apply a discount factor (e.g. 10%): to issue fewer offsets than emissions reductions that were achieved by the offset project. The not credited emissions reductions would then be counted towards the ESD target of the host country and therefore make it easier for the host country to meet its target.
- Host or buyer countries should be able to cancel a certain percentage of offsets after they have been issued. This would lead to a net atmospheric benefit: additional emissions reductions that go beyond the 30% ESD target.

LULUCF: Emissions sinks and reductions from the LULUCF sector should not be eligible for compliance in the ESD sectors. Therefore the LULUCF sector should remain outside the ESD. Furthermore, offsets from projects in the LULUCF sector should not be eligible for compliance under the ESD.

Auctioning: Putting a clear price on carbon introduces the polluter-pays concept in the ESD and increases the visibility of the costs of climate emissions in national budgets. This could allow richer MSs to offset part of their emissions and provide revenues to lower-income Member States to reduce more emissions domestically. A centralized auctioning platform would help reduce transaction costs and introduce more transparency. All auctioning revenues should be earmarked for climate measures. A mechanism similar to the ETS solidarity fund could be introduced to support lower-income MSs in their transition to a climate friendly society. Assuming that 30 million AEAs would be auctioned every year for such a fund (approx. 1% of 2005 emissions under the ESD and half of the annual reduction effort), the total revenues during the 2021-2030 period could surpass €9 billion (assuming an AEA price rising from €20/AEA in 2021 to €40/AEA by 2030).

An auction reserve price must be introduced to avoid a price that is too low to incentivize mitigation action in the non-ETS sectors. In years when the auction reserve price is not met and the auction is cancelled, the respective AEAs must be cancelled.

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:

Option A: Annual reporting and compliance is very important to ensure that countries are on track with meeting their target. Annual reporting and international review of the GHG inventories is also necessary under the UNFCCC.

The reports determining the initial AEAs as well as the final report should undergo a full compliance cycle to ensure overall environmental integrity.

In addition, there should be annual reporting of greenhouse gas emission projections and policies and measures in the 2021-2030 period. This is essential to check if Member States are on track to meeting their ESD targets in the 2021-2030 commitment period, or if additional policies and measures at EU or national level are required. Annual reporting on projections and policies and measures is also necessary to estimate the expected supply and demand for AEA transfers.

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?

ESD targets should be based on GDP per capita. Cost-effective mitigation can and should be identified through flexible mechanisms. Ex ante cost-effectiveness calculation cannot be relied on, as they are simply forecasts.

If cost-effectiveness is to be taken into account for the 2030 ESD targets for MSs with higher than average GDP/capita they should be based on the additional costs necessary for reaching the target based on the EC's Impact assessment (SWD (2014) 15 final), as follows:

- Determination of the overall GHG reduction in 2030 compared to 2005 (850 Mt CO₂eq lower emissions)
- Calculation of the contributions by Member States with GDP/capita below average (approx. 235 Mt CO₂eq reduction)
- Calculation of the additional cost-effective potential for Member States with GDP/capita above average (approx. 160 Mt CO₂eq reduction)
- Distribution of the remaining effort (approx. 455 Mt CO₂eq) amongst the richer Member States based on GDP/capita

This approach would be fairer, more cost-effective and more realistic than an approach based exclusively on cost-effectiveness. The reference scenario includes all existing and assumed policies and assumes that these policies are cost effective and have zero additional costs. But in reality these measures have very real costs; for some already implemented policies these costs may have already been paid for but some existing policies and all assumed policies will still incur costs. In contrast, the cost-effective approach favours Member States that have not done much in the past and penalizes Member States that have done much already. That contradicts the objective of rewarding early action and sets a very bad incentive for future ESD.

In addition, the 2021 starting point is also relevant for overall EU emissions. To set the right incentives the starting point should be **the lowest** of 1) the 2020 target, 2) the average 2016-18 emissions or 3) the projected 2020 emissions for each MS. A starting point based exclusively on the average 2016-18 ESD emissions would favour MSs whose emissions are above their 2020 target and penalizes early movers.

We oppose the use of ETS allowances in the ESD because it will lead to higher overall EU emissions until 2030. This is because it would: 1) **Increase emissions in non-ETS sectors.** 2)

Not lead to additional abatement in ETS sectors: as the ETS suffers from a large surplus and these EUAs will otherwise be (partly) transferred into the Market Stability Reserve. 3)
Reduce demand for EU projects: that could spur the low-carbon transformation of lower-income MS that have post-2020 ESD targets below their cost-effective potential.

If this flexibility was to be introduced, which CAN-Europe does not recommend, it should be only used as a last resort through strict design of any rules facilitating such a transfer thereby greatly discouraging the use of ETS allowances in achieving the ESD targets. Such rules could include restrictions on the scope, volume and timing of transfers, and must lead to additional emission reductions (ie. deliver net mitigation benefits through permanent removal of surplus ETS allowances).

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, ...)?

Please upload your file

NGOs can answer this question individually depending on if they have studies they want to upload

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

X b) The current scope should be enhanced.

It is of utmost importance to complement the future ESD with EU-wide policies and measures to reduce GHG emissions in the ESD sectors:

Energy Savings: Increase the 2030 energy savings target to 40% and strengthen policies, such as the Energy Efficiency Directive (EED), the Energy Performance of Buildings Directive and the Energy Labelling Directive (ELD):

- **Extend the Article 7 of the EED beyond 2020**, removing the exemptions that reduce its ambition.
- Make the **national long-term renovation strategies a key planning tool** to ensure energy retrofits in all building stock in each member state.
- **Apply the 3% renovation rate requirement in the EED to all public buildings and increase the level of ambition for renovations.**
- **Improve and harmonize the standards and the quality of the energy performance certificates.** Expand the specific definitions for deep renovation and near-zero energy buildings.
- **Improve the energy performance standards for heating and cooling appliances** on a regular basis through the Ecodesign Directive implementing measures.
- **Rescale the energy labels** to better guide consumers in making their choices. The upcoming review of the ELD presents a great opportunity for this.

Transport: The EC should propose an ambitious package of EU transport measures to accompany the ESD. Such a comprehensive package would help MS meet the 2030 targets and yield significant economic, employment and energy security benefits:

- **Ambitious CO₂ standards for new passenger cars and light-duty vehicles**, for the year 2025 and a clear timeline for truck fuel efficiency standards.
- A **reviewed EU transport White Paper** and a **strategy on the decarbonization of transport** would provide a long term policy framework and ensure the proposed measures put the EU on a path towards the 2050 transport target of 60% compared to 1990.
- A road package that includes a review of the EU **road charging rules for heavy and light duty vehicles**. The proposals should aim to mandate infrastructure charging, the full internalization of external costs and enable CO₂ differentiated charging for light and heavy vehicles.
- A **comprehensive strategy on the electrification of surface transport** which ensures the necessary infrastructure and harmonized EU standards for charging services.
- Focus **TEN-T** resources on low-carbon transport modes to facilitate cross-border operation of the most energy-efficient and lowest-emissions modes.
- Robust post-2020 rules to **reduce the carbon intensity of Europe's transport fuels** that take into account all the GHG emissions of biofuels, including ILUC, and the higher carbon intensity of certain fossil fuels, such as tar sands.
- **Ensure aviation and shipping reduce emissions**. All domestic and international aviation must reduce their absolute emissions and, respectively, be included in the EU ETS and under an ambitious ICAO global market based mechanism. Develop an EU instrument to limit emission from international maritime transport.

Waste: Incentivize waste prevention, reuse and recycling; further restricting landfilling. The Impact Assessment of the withdrawn Circular Economy Package shows that an increase the expansion of landfill restrictions to all wastes delivered currently to Category B landfills would deliver reductions of 443 Mt CO₂eq between 2014-2030.

Agriculture

- The receipt of all direct payments under the Common agricultural policy should be linked to ecological requirements and climate protection measures (e.g. no payment for cropland farming on organic soils).
- Strict interpretation of the nitrate directive including monitoring of implementation to eliminate nitrogen surpluses.
- Cut direct and indirect subsidies for intensive livestock farming and meat production.
- Further promote ecological farming, including financial support for research.

All fossil fuel subsidies should be phased out.

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?

Yes, there is a need for more capacity building and support to increase awareness about the benefits of national policies and measures to reduce emissions in the transport, buildings, agriculture and waste sector after 2020. In addition, the annual guidance to Member States in the European Semester must also give recommendations for policies to phase out environmentally harmful subsidies, such as subsidies for unsustainable agriculture practices or subsidies to company cars that not only negatively impact public budgets but also aggravate environmental problems caused by the agriculture or transport sector.