EUROPEAN
COMMISSION

Brussels, 14.1.2016
SWD(2015) 297 final

COMMISSION STAFF WORKING DOCUMENT

STAKEHOLDER FEEDBACK

on the

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments

{COM(2015)337 final}

I. THE EU ETS DIRECTIVE REVISION

The European Commission presented in July 2015 a legislative proposal to revise the EU emissions trading system (EU ETS) for the period beyond 2020. This proposal is the first step in delivering on the EU's target to reduce greenhouse gas emissions by at least 40% domestically by 2030 in line with the 2030 climate and energy policy framework[1].

The proposal is focused on three key areas:

- **Increasing the pace of emission reduction**: the cap (overall number of emission allowances) will decline at an annual rate of 2.2% from 2021 onwards, compared to the current 1.74%.

- **Making carbon leakage rules more targeted**: revising the system to focus on the approximately 50 sectors at highest risk of relocating their production outside the EU due to climate policies (carbon leakage), setting aside a considerable number of free allowances for new and growing installations, ensuring better alignment between free allocation and production figures, updating benchmarks to reflect technological advances since 2008.

- **Funding for low-carbon innovation and energy sector modernisation**: support mechanisms will be established to help the industry and power sectors meet the innovation and investment challenges of the transition to a low-carbon economy. The Innovation Fund will extend existing support for the demonstration of innovative technologies in renewable energies and carbon capture and storage (CCS) to innovation in industry. The Modernisation Fund will facilitate investments in modernising the power sector and wider energy systems and boosting energy efficiency in 10 lower-income Member States. The derogation from full auctioning allowing the optional handing out of free allowances to modernise the power sector in these lower-income Member States will also continue to be available.

II. THE FEEDBACK MECHANISM

In the context of the Better Regulation Package of May 2015[2], stakeholders have the possibility to provide feedback on legislative proposals within 8 weeks after their adoption by the Commission. This feedback is meant to feed into the legislative debate and as such is presented by the Commission to the European Parliament and the Council.

This document offers a brief overview of the feedback received[3] on the Commission's proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments (hereinafter "the ETS Directive revision").

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1 http://ec.europa.eu/clima/policies/strategies/2030/index_en.htm
2 http://ec.europa.eu/smart-regulation/better_regulation/key_docs_en.htm
3 http://ec.europa.eu/clima/policies/ets/revision/index_en.htm

Stakeholders were involved at various stages in the development of this proposal. Extensive consultations were carried out in 2014 on various technical aspects[4] of the future system and in 2015 on the ETS revision itself[5]. The Commission took the feedback into due consideration when preparing the proposal.

Similarly to the previous consultations, stakeholders used the opportunity provided by the new feedback mechanism[6] to express their comments on different aspects of the system. Comments were in general similar to those expressed in earlier stakeholder consultations but to some extent more specific on concrete elements in the Commission proposal.

III. SUMMARY OF VIEWS EXPRESSED IN THE CONTEXT OF THE FEEDBACK MECHANISM

The mechanism gathered feedback from 85 stakeholders representing industry (companies and trade associations) and NGOs, with the former representing the prevailing majority (79 out of 85, of which 12 from the energy sector). It should thus be noted that a very large majority of the stakeholders are companies and trade associations from sectors that directly benefit from free allocation in the EU ETS.

a. The ETS revision and the increasing pace of emission reduction

Support was expressed for the ETS in general, with the power sector particularly indicating support for the Market Stability Reserve (MSR) and the increase of the annual emission reduction rate (the so-called linear reduction factor) from 1.74% to 2.2%. At the same time, many industry stakeholders expressed concerns regarding the impact of the ETS on their competitiveness and, in this context, some of them welcome the continuation of free allocation and carbon leakage measures beyond 2020.

b. Competitiveness and targeted carbon leakage rules

The competitiveness concerns range from issues of a more general nature (e.g. need for predictability, industrial sectors are approaching limits to reduce emissions with existing technologies, overlapping or interlinked national/EU policies, lack of comparable measures/systems in third countries), to more sector-specific ones (e.g. high share of electricity costs in total production costs in the case of the non-ferrous metals sector, need to ensure sufficient allowances are auctioned in the case of the power sector).

Many industry stakeholders took the view that the best performers should receive full free allocation as a central feature of the future ETS. This is linked with views expressed on the auctioning share, the benchmark update, the cross-sectoral correction factor, the carbon leakage list criteria and measures and the allocation modalities.

Regarding the auctioning share, some industry stakeholders advocate that it should be removed or adjusted to ensure more allowances for free allocation, arguing that a cap on total allowances

[4] http://ec.europa.eu/clima/consultations/articles/0023_en.htm
[5] http://ec.europa.eu/clima/consultations/articles/0024_en.htm
[6] https://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteId=1&year=2015&number=337&CFID=2171435&CFTOKEN=78599d0f6dae626a-2E121895-BABD-CA93-DE14A0EE73572477

is sufficient to achieve the environmental goal. By contrast, some power sector stakeholders do not share this view, but rather welcome the clear division between free allocation and auctioning and support a transition to full auctioning.

When it comes to the benchmarks values that are used to calculate the amount of free allocation industry receives, many industry stakeholders argue that this update should be based on real data and that the flat rate revision proposed could lead to benchmarks values lower than emission levels that can be achieved with known technology, especially given that process emissions are deemed unavoidable. A few industry stakeholders do not consider it sufficiently clear that free allocation based on fall-back approaches will continue for sectors not having product benchmarks.

Concerning the cross-sectoral correction factor, some industry stakeholders ask for its removal in order to avoid costs for best performers. Some further argue that unallocated allowances or other allowances that will be placed in the MSR should be used to prevent the application of the factor. Some stakeholders from the power sector and NGOs however hold the view that the integrity of the MSR must not be undermined by bringing back allowances to the market outside the agreed rules of the MSR.

On the carbon leakage list, views are mixed and touch upon many aspects. Some stakeholders ask for clarifications regarding the basis for the proposed thresholds for inclusion in the carbon leakage list. Some industry stakeholders indicate that the possibility of assessment at the level of Prodcom is not explicitly mentioned in the proposal and express their support for this possibility. Many welcome the possibility for including sectors on the carbon leakage list based on qualitative assessments, but some argue for removing the threshold for eligibility of such applications. Some stakeholders welcome the removal of the connection to the carbon price for determining the carbon leakage list. Some stakeholders favour a more differentiated carbon leakage list (several exposure levels with differentiated allocation levels), while a few argue for keeping the current approach with sectors either on or off the carbon leakage list.

With regard to better alignment between production and allocation, many industry stakeholders ask for more recent years to be used as basis for determining free allocation. A smaller number but representing all respondent profiles – industry, power sector, NGOs express support for the proposal as it stands on this aspect.

Many stakeholders, including those industrial sectors that are electricity intensive, argue for a more harmonised approach to indirect cost compensation compared to the proposed use of the state aid mechanism. On the other hand, some power sector stakeholders support the proposed state aid approach.

c. Funding low-carbon innovation and energy sector modernisation

Concerning the Innovation Fund, several industry stakeholders welcome the broadening of the scope to include industry and some also welcome that part of the funds might be provided before 2020, and support the higher funding rates proposed. Moreover, several industry stakeholders call for carbon capture and use (CCU) to also be eligible.

With regard to the Modernisation Fund, there is some support for it in general terms, while a few stakeholders express concerns that it might create distortions of competition.

d. Other issues

Stakeholders also presented their views on other issues such as the upcoming COP21 in Paris (the importance of a binding international agreement; the possibility of using international credits), the so-called "Lisbonisation" process (i.e. the proposed use of delegated acts linked with concerns that some important aspects will be determined only later in subsequent legislation), small emitters opt-out (i.e. requesting an increase in the threshold for excluding small emitters from the ETS) and arguments, mainly from stakeholders from the cement sector, in favour of including importers in the ETS.