



Client Alert

European Union Climate and Energy Package Adopted

The Council of Ministers accepted on 6 April 2009 all the amendments on the Climate Change package adopted by the European Parliament in December 2008. This decision of the Council honors a first reading agreement between the European Parliament and the Council reached at the end of last year. When such an agreement is reached under the co-decision procedure, the European Parliament and the Council formally agree on a list of compromise amendments which both institutions commit themselves to adopt. The European Parliament approved this compromise on 17 December 2008 and the Council did so this week.

The decision of the Council marks the final adoption of this major legislative package, which was proposed by the Commission in January 2008 and followed the endorsement of specific targets for emission reductions by the European Council in March 2007. While maintaining the initial objectives of the Commission's proposal and improving the functioning of the ETS by harmonizing the allocation of allowances at EU level, this compromise also took into consideration the important risks of carbon leakage and the impact of the package on EU competitiveness.

This Climate Change package includes several legislative texts: a revision of the existing ETS Directive 2003/87/EC, a Directive on Renewable energies, a Directive on Carbon Capture and Storage and a Decision on shared efforts to reduce greenhouse gas emissions.

The main elements of the legislative package as adopted are the following:

ETS Directive

Cap

Under the new text, the EU has committed itself to an overall reduction of its emissions of at least 20 percent by 2020, based on 1990 levels. Should other industrialised countries undertake comparable reductions following international negotiations, the EU will assess the international agreement and will increase its commitment to 30 percent if the international agreement is considered satisfactory.

To read the text of the new ETS Directive please [click here](#).

To read the Commission and Member States Statements on the adopted text please [click here](#).

Scope

New industries (such as aluminium production) and new gases (such as nitrous oxide) will be included in the ETS.

Carbon leakage

By the end of 2009, the Commission will establish a list of the sectors or sub-sectors exposed to carbon leakage and by the end of 2010, it will adopt harmonized implementing measures for the free allocation of allowances to these sectors.

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As environmental risks and regulations become increasingly global, the White & Case network is a strategic asset for our clients.

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Auctioning in the power sector

The basic principle is 100 percent auctioning of allowances from 2013, but with exceptions.

There will be a transitional period of “free allocation” not exceeding 70 percent of the annual average verified emissions in 2005 – 2007. This “free allocation” will apply only to Member States which meet the following criteria:

- the national electricity network was not, in 2007, directly or indirectly connected to the network interconnected system operated by the Union for the Coordination of the transmission of electricity (UCTE); or
- where the national electricity network was, in 2007, only directly or indirectly connected to the network operated by the Union for the Coordination of the transmission of electricity (UCTE) through a single line with a capacity of less than 400 MW; or
- where, in 2006, more than 30 percent of electricity was produced from a single fossil fuel, and, where in 2006 the gross domestic product per capita at market prices did not exceed 50 percent of the average gross domestic product per capita of the EU.

Allocation of allowances

Under the revised Directive, auctioning will progressively become the new principle but with several exceptions for particular sectors (see also above situation for the power sector). The allowance will no longer be allocated through NAPs (National Allocation Plans) but directly by the Commission.

In 2013 and in each subsequent year up to 2020, installations in sectors or sub-sectors which are exposed to a significant risk of carbon leakage will be allocated allowances free of charge at 100 percent of the relevant benchmark. In 2013, the amount of allowances allocated for free will be 80 percent of the relevant benchmark. It will then decrease each year by equal amounts resulting in 30 percent free allocation in 2020, with a view to reaching no free allocation in 2027.

Use of auction revenues

The idea of a dedicated international fund was abandoned during the negotiations. Member States will determine the use of revenues for themselves, but at least 50 percent will have to be for climate-related initiatives (renewable energies, energy efficiency, measures against deforestation, further reduction of emissions, etc).

Carbon Capture and Storage

Up to 300 million allowances in the new entrants reserve will be available until 31 December 2015 to help stimulate the construction and operation of up to 12 commercial demonstration projects.

Small installations

Member States will be able to exclude installations with a rated thermal input below 35 Megawatts and reported emissions of less than 25,000 tonnes of CO₂ equivalent.

JI (Joint Implementation)/CDM (Clean Development Mechanism)

Under both the 20 percent commitment scenario (no international agreement) and the 30 percent scenario (satisfactory international agreement), 50 percent of the EU industry's emission reduction between 2008 and 2020 may be covered by international carbon credits. There will be no binding quality criteria for CDM credits but buyers will have to report on their quality.

CCS Directive (Carbon Capture and Storage)

The aim of this Directive is to enable environmentally-safe capture and geological storage of carbon dioxide in the EU in such a way that carbon dioxide cannot contribute to global warming by being permanently and safely stored underground. 300 million ETS allowances will be awarded to large scale CCS projects in the EU.

To read the text of the Carbon Capture and Storage Directive please [click here](#).

To read about the Commission and Member States Statements on the adopted text please [click here](#).

Renewable Energies Directive

The objective of this Directive is by 2020, to have renewable energies representing at least 20 percent of the EU's total energy consumption and to reach a target of 10 percent from renewables in the transport sector by 2020. Mandatory national targets will have to be achieved by the Member States.

It establishes rules relating to administrative procedures, electric grid connections, guarantees of origin and support schemes for the use of renewable energy sources.

New binding criteria will ensure that biofuels production is environmentally sustainable. From 2017 onwards, the greenhouse gas emission savings of biofuels produced in existing production plants must be at least 50 percent compared to fossil fuels. The greenhouse gas emissions of biofuels produced in new installations will have to be at least 60 percent lower than those from fossil fuels.

This new Directive will also require Member States to develop measures aimed at facilitating the access to the grid for renewable energies.

The Commission will present a Renewable Energy Roadmap in 2018 for the post 2020 period.

To read the text of the Renewable Energies Directive please [click here](#).

Effort Sharing Decision

This text sets binding national targets for each EU Member State to reduce greenhouse gas emissions from non-ETS sources (such as transport by road or sea, buildings, services, agriculture and smaller industrial installations), between 2013 and 2020. The objective is to reduce these emissions by 10 percent overall during this period.

A Regulation setting binding emission limits for new passenger cars, to be phased in from 2012 to 2015 and a Directive revising existing fuel quality rules and introducing a binding target for emissions cuts from road fuels by 2020 have also been approved by the European Parliament.

To read the text of the Effort Sharing Decision please [click here](#).

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