

National v European CO₂- pricing instruments

(How) Can Germany maintain a strong national CO₂-
pricing instrument under the new EU ETS II?

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- ▶ The multilayered governance for GHG emission reductions in the EU
- ▶ National CO₂-pricing instruments alongside the ETS II are not prohibited
- ▶ Member States may have reasons for introducing or maintaining (comparatively) higher national CO₂-prices
- ▶ Member States have discretion when designing national CO₂-pricing instruments

The multilayered governance for GHG emission reductions in the EU

EU Climate and Energy targets
(incl. GHG emission reduction of 55% until 2030)

EU emission trading system I (ETS I)

EU-wide cap-and-trade system for industry and energy production

EU Effort Sharing Regulation (ESR)
National GHG emission reduction targets for the MS

Emission trading system II (ETS II)
EU-wide cap and trade system for buildings and road transport

National measures

EU-initiatives

National measures

The multilayered governance for GHG emission reductions in the EU – Example Germany

EU Climate and Energy targets
(incl. GHG emission reduction of 55% until 2030)

EU emission trading system I (ETS I)

EU-wide cap-and-trade system for industry

EU Effort Sharing Regulation (ESR)

National GHG emission reduction target of -50% until 2030 for Germany

Klimaschutzgesetz

(GHG emission reductions of -65% to 2030, -88% to 2040; net-zero by 2050)

Emission trading system II (ETS II)

EU-wide cap and trade system for buildings and road transport

Brennstoffemissions-handelsgesetz (BEHG)

National emission trading system with regulated prices

National CO₂-pricing instruments alongside the ETS II are not prohibited

- ▶ **Member States remain responsible** for achievement of the national GHG emission reduction targets **under the ESR**
 - ESR obliges MS to achieve **national GHG emission reduction targets**;
 - If targets are not met through „local“ decarbonization, MS have to purchase EUA to comply with obligation;
 - Sanctions available.
- ▶ **Nothing in the ETS Directive generally prohibits national measures** alongside the ETS I/II and neither do other provisions of EU secondary law
- ▶ **Art. 30e(3) ETS Directive even expressly allows national carbon taxes** in addition to the ETS II

Member States may have reasons for introducing or maintaining (comparatively) higher national CO₂-prices

- ▶ **EU ETS II likely to lead to decarbonization (first) in MS that do not (yet) have high CO₂-prices** („low hanging fruits“)
- ▶ While MS could purchase EUA to meet obligations under ESR, **„local“ decarbonization may have benefits**
 - Local industry needs **(continued) investment security**;
 - Creation/maintenance **of jobs, skills, knowledge**;
 - **Status/Political „selling points“...**



Member States have discretion when designing national CO₂-pricing instruments

- ▶ The **ETS Directive does not constitute exhaustive regulation**
 - While MS may not issue additional (free) allowances, the ETS (I/II) is not an overall fully harmonized system (yet);
 - See e.g. discretion with regard to administration or enforcement.
- ▶ The **„target price“ for the ETS II in Art. 30h(2) ETS Directive does not prohibit higher national CO₂-prices**
 - Not a „price cap“, but an adjustment mechanism for the number of allowances;
 - Automatic response to price developments, irrespective of their cause.
- ▶ Also: **Possibility for MS to adopt „more stringent protective measures“ under Art. 193 TFEU?**
- ▶ And: **Example of UK Carbon Price Floor under ETS I!**

Conclusions

- ▶ **EU law does not prohibit national CO₂-pricing instruments.**
- ▶ Once the **ETS II** becomes operational, it can theoretically **coexist with such national instruments.**
- ▶ The target price does not mean that MS cannot have (comparatively) higher national CO₂-prices.
- ▶ **UK Carbon Price Floor**, i.e. a tax on allowances, provides an example of higher national CO₂-prices without the administrative effort of two separate emission trading systems (like under BEHG).
- ▶ However, MS have **discretion on whether and how to implement such prices**, and other options could be thought of.