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National v European CO_2-pricing instruments

(How) Can Germany maintain a strong national CO_2-pricing instrument under the new EU ETS II?

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- The multilayered governance for GHG emission reductions in the EU
- National CO_2-pricing instruments alongside the ETS II are not prohibited
- Member States may have reasons for introducing or maintaining (comparatively) higher national CO_2-prices
- Member States have discretion when designing national CO_2-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

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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 and energy production

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 r buildings and road transport

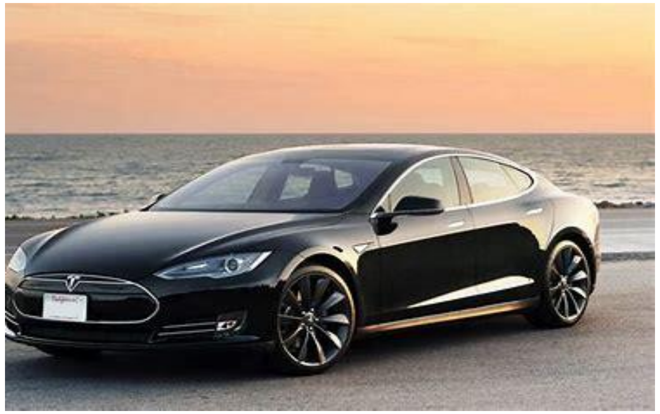
Brennstoffemissions-handelsgesetz (BEHG)
National emission trading system with regulated prices

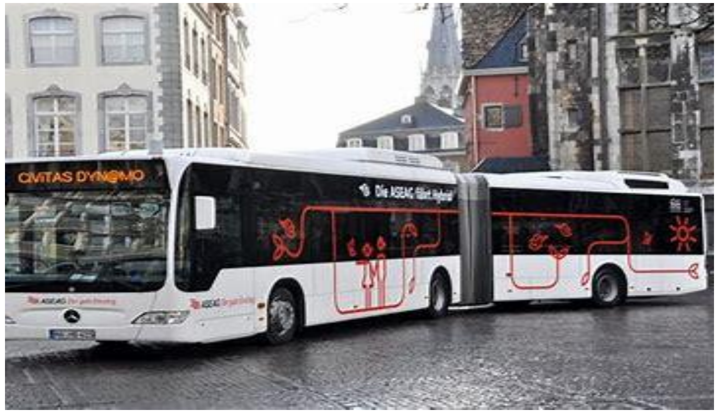
National CO_2-pricing instruments alongside the ETS II are not prohibited

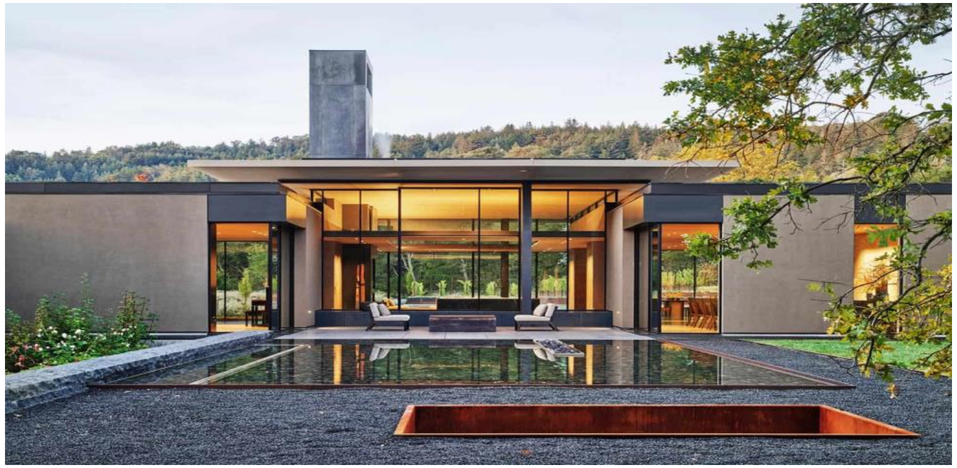
- **Member States remain responsible** for achievement of the national GHG emission reduction targets **under the ESR**
  - ESR obliges MS to achieve **national GHG emission reduction targets**;
  - If targets are not met through „local“ decarbonization, MS have to purchase EUA to comply with obligation;
  - 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 CO_2-prices

- **EU ETS II likely to lead to decarbonization (first) in MS that do not (yet) have high CO_2-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 CO_2-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 CO_2-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**!

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Conclusions

- **EU law does not prohibit national CO_2-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 CO_2-prices.
- **UK Carbon Price Floor**, i.e. a tax on allowances, provides an example of higher national CO_2-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.