

# National v European CO<sub>2</sub>- pricing instruments

(How) Can Germany maintain a strong national CO<sub>2</sub>-  
pricing instrument under the new EU ETS II?

Climate Workshop, Heidelberg  
Jana Nysten  
10.10.2023

- ▶ The multilayered governance for GHG emission reductions in the EU
- ▶ National CO<sub>2</sub>-pricing instruments alongside the ETS II are not prohibited
- ▶ Member States may have reasons for introducing or maintaining (comparatively) higher national CO<sub>2</sub>-prices
- ▶ Member States have discretion when designing national CO<sub>2</sub>-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 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 buildings and road transport

## **Brennstoffemissions-handelsgesetz (BEHG)**

National emission trading system with regulated prices

## National CO<sub>2</sub>-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<sub>2</sub>-prices

- ▶ **EU ETS II likely to lead to decarbonization (first) in MS that do not (yet) have high CO<sub>2</sub>-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<sub>2</sub>-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<sub>2</sub>-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 CO<sub>2</sub>-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<sub>2</sub>-prices.
- ▶ **UK Carbon Price Floor**, i.e. a tax on allowances, provides an example of higher national CO<sub>2</sub>-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.