Flexibilities and Regulation in EU Climate Protection

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3 GHG Acts

- 3 Acts addressing 3 different categories of emission sources
  - sources from power generation, heavy industry and aviation; these are subjected to the directive concerning the emissions trading system (‘ETS’ Directive);
  - sources outside the ETS , such as from buildings, transportation, agriculture, etc.; they are subjected to the effort sharing regulation (‘ESR’);
  - sources and sinks from land use, land use change and forestry(‘LULUCF’); these are subjected to the ‘LULUCF Regulation’.
- Overall target: -40%/1990 by 2030
  - ETS: 43%
  - ESR: 30%
  - LULUCF: net zero counting up emissions and removals
- Context:
  - 20% steps starting 2005 and referencing to 1990
  - 20% by 2020, 40% by 2030, 60 % by 2040, 80% by 2050
- Problem:
- exceeding „Paris budget“, violating FR, (‚top down‘)
- no capability analysis (bottom up‘)

ETS flexibilities

- Cap and allocation regulatory:
  - yearly reduction by 1.74%/1990 until 2020, 2,2% until 2030
  - Qualified allocation (benchmarks, deductions, gradual auctioning) .
- Flexibilities
  - non-used allowances not to be cancelled => budgeting as costs, sales
  - Carbon leakage
  - CDM-CERs inflate the allowances
  - Transfer between MS (ERUs)
  - carrying over of CERs and ERUs from previous period (2008-2012) leads to oversupply and price decrease
  - indefinite validity of emission allowances => unlimited transfer of emission allowances from previous periods to the decade 2021-2030
  - market stability reserve since 2015 not designed to cancel allowances; with new amendment partial cancellation

ESR

- Cap:
  - different percentages of MS of how much to reduce by 2050, reference year 2005. Overall: 30 %/1990
  - To be determined by Commission
- Flexibilities
  - The use of credits from CDM and JI up to 3% of a MS's emissions (Art 5 Dir; removed in new regulation)
  - the use of credits from the LULUCF sector to offset emissions in the ESR sector, esp agriculture (Art. 7). This alone will reduce the -30% target for the ESR sector by 2 % to 28 %.
  - While allowances from the current commitment period are cancelled with its expiry they can still be used by 9 MS (Art. 6)
  - A reserve of up to 115 mio tonnes from which some countries can carry over surplus allowances from the current period to comply with their 2030 target should they be at risk of missing it (Art. 11 (3)).
  - The possibility to borrow emission quantities from a Member State's annual emission allocation for the following year (Art. 5 (1));
  - The unlimited ability to bank excess parts of an annual emission allocation to subsequent years (Art. 5 (3)); and
  - The transfer of excess parts of annual emission allocations to other MS (Art. 5 (4)).

LULUCF

- Cap: ‚no debit‘
- Flexibilities
  - the acquisition of credits from a MS whose total removals exceed its emissions (Art. 12 II).
  - The banking of excess removals from the period 2021-2025 to the period 2026-2030 (Art. 11 (3))
  - The transfer of excess removals of one MS to another MS which may book them as credits in its own account (Art. 11)
  - The deletion of surplus credits under ESR sector to offset emissions that exceed removals in the LULUCF sector (Art. 12 I)
  - The use of net credits from managed forest land to offset excess emissions in other land categories (Art. 13)

Assessment

- Difficult to assess limit between necessary flexibility and distortion of the regulatory frame
  - Inflating the cap (eg CDM, transfer from previous periods)
  - Supporting the cap by excluding breaches due to impossibilities => should be at the cost of the others
  - Discouraging to go further = trade-off of efficiency criterion