EU emissions trading: challenging the Commission proposal and limiting the damage

The Emissions Trading System (ETS) is flawed by design and has substantially failed to reduce greenhouse gas emissions. Alongside many other groups, we have argued elsewhere that it should be scrapped,[1] challenging several of the myths that are used to justify the scheme,[2] and showing that a number of positive alternatives exist.[3] But the ETS rumbles on regardless: conveniently stifling other climate policies, and even awarding subsidies to some of the worst polluters.

In July 2015, The Commission published "Enhancing cost-effective emission reductions and low carbon investments", its proposal to revise and extend the ETS to 2030 and beyond.[4] The proposal builds on the conclusions of the 23-24 October 2014 European Council.[5]

The purpose of this document is twofold. First, we offer a brief reminder of some key lines of argument against the Emissions Trading System and the evidence to back those up.

Then, we then offer a close reading of the Commission proposal itself, in the spirit of "damage limitation," putting the proposed reforms in context, pointing out dangers and suggesting alternatives where possible, and drawing attention to what is missing.

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1 Time to Scrap the EU Emissions Trading Scheme, http://scrap-the-euets.makenoise.org/KV/declaration-scrap-ets-english/
2 Scrap the ETS Coalition (2013) *EU ETS myth busting: Why it can't be reformed and shouldn't be replicated*, www.redd-monitor.org/wp-content/uploads/2013/04/Myths_internet.pdf
3 Corporate Europe Observatory (2014) *Life Beyond Emissions Trading*, http://corporateeurope.org/climate-and-energy/2014/01/life-beyond-emissions-trading
4 Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:337:REV1
5 European Council Conclusions, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145397.pdf

1. Key arguments against the ETS

The ETS has not substantially reduced emissions

The EU's greenhouse gas emissions have fallen in the decade since the ETS began operating, including in the sectors covered by the scheme, but there is little evidence that emissions trading caused these reductions. Electricity generation accounts for the majority of emissions covered by the ETS, but reductions in this sector are largely the result of other environmental policies, notably feed-in tariffs and green certificates.[6] More generally, analysis of economy-wide drivers of changing levels of greenhouse gas emissions has shown that reductions in ETS sectors can be explained almost entirely by a combination of increases in renewable energy, the economic downturn post-2008, improved energy efficiency, and fuel switching (from coal to gas) in response to other policies and economic variables.[7]

The EU ETS is used to undermine other climate and emissions control policies

"Hey! Commission! Leave those emissions alone.... they're already covered by emissions trading." That's the favourite refrain of business lobbyists in the face of proposed environmental regulations, and time and again it has worked. The EU's Integrated Pollution Prevention and Control (IPPC) Directive was modified to explicitly exclude CO2 emission limits for the "installations" (power stations and industrial plants) which are covered by the EU ETS amid fears that it could lead to energy efficiency improvements, reducing demand for emissions allowances and in so doing weaken carbon prices.[8] Similarly, the revision of the Energy Taxation Directive was weakened (and ultimately abandoned) for fear of affecting carbon prices, and loopholes that exempt aviation and shipping fuels from minimum tax rates were maintained on account of the ETS.[9] Leaked UK government showed that it sought to weaken energy efficiency measures and renewable

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6 Berghmans, N., Chèze, B. et al. (2014) The CO2 emissions of the European power sector: economic drivers and the climate energy policies' contribution (Working Paper No. 17). Paris: CDC Climat Research., http://www.cdcclimat.com/IMG/pdf/14-10_cdc_climat_r_wp_14-17_power_sector_in_the_eu_ets-2.pdf
7 Gloaguen, O and Alberola, E. (2013) Assessing the factors behind CO2 emissions changes over the phases 1 and 2 of the EU ETS: an econometric analysis (No. Working Paper No, 2013-15). CDC Climat, http://www.cdcclimat.com/IMG/pdf/13-10_cdc_climat_r_wp_13-15_assessing_the_factors_behing_co2_emissions_changes.pdf
8 Gilbertson, T and Reyes, O. (2009) *Carbon Trading: how it works and why it fails* Uppsala: Dag Hammarskjöld Foundation, p 21; European Environment Agency (2008) "Application of the Emissions Trading Directive by EU Member States – reporting year 2007", *EEA Technical Report no. 3/2008*, p.27
9 Prieß, H-J., and Stein, R. (2012) "Developments in the amendment to the Energy Taxation Directive", London: Freshfields, Bruckhaus, Deringer LLP, http://www.freshfields.com/uploadedFiles/SiteWide/Knowledge/Developments%20in%20the%20amendment%20to%20the%20Energy%20Taxation%20Directive.pdf.

energy targets on the grounds that these could collapse the carbon price.[10] In another notorious case, the Commission's Directorate-General (DG) on Climate Action warned against tougher energy efficiency measures for fear that these could collapse the carbon price.[11]

The ETS sets a ceiling on climate ambition

The ETS ensures that greenhouse gas emissions targets are treated as a ceiling on climate ambition rather than a floor. There is no incentive for countries to put in place policies that would encourage companies to over-achieve the target because that opens space for companies in other countries to emit more. The flood of allowances in the system makes it relatively painless to avoid domestic action by cheaply purchasing emissions allowances from elsewhere. To date, the net result has been "cancelling out the abatement that is being delivered by other policies such as the Renewable Energy Supply Directive and the Energy Efficiency Directive."[12]

The failure of the ETS has been compounded by the fact that the EU's current emissions target of 20 per cent emissions reductions by 2020 is widely acknowledged to be too low, generating a massive surplus of emissions allowances that will undermine the system well past 2020.[13] A new Market Stability Reserve temporarily removes some of these emissions allowances, but does not cancel them. After these removals are accounted for, an estimated 2.3 billion surplus allowances could remain in use in the ETS by 2020.[14]

The EU ETS has not been cost-effective and has subsidized polluters at tax payers' expense

The EU ETS has consistently seen businesses pass on carbon "costs" to consumers that in reality were never incurred in the first place. A handful of large companies have gained (tens of) billions of euros in unearned profits this way, various academic studies have shown.[15] The

10 Seager, A. and Milner, M. (2007) "Revealed: cover-up plan on energy target", *The Guardian*, 13 August, http://www.theguardian.com/environment/2007/aug/13/renewableenergy.energy

11 Van Renssen, S. (2011) Climate-action department warns that energy-efficiency plans could deflate carbon prices, *European Voice*, 16 June; European Commission DG Energy (2011) "Impact Assessment Accompanying the document Directive of the European Parliament and of the Council on energy efficiency", SEC(2011)779 final, 22 June, p.30, https://ec.europa.eu/energy/sites/ener/files/documents/sec_2011_0779_impact_assessment.pdf

12 Morris, D. (2013) "Drifting Towards Disaster? The ETS adrift in Europe's climate efforts", London: Sandbag, p.10, https://sandbag.org.uk/site_media/pdfs/reports/Drifting_Towards_Disaster_25.6.2013_Final_1.pdf

13Morris, D. (2013), Op.Cit., p.11

14 Sandbag (2014), "Harder, better, faster, stronger : The easy route to increased EU climate ambition" p.4, https://sandbag.org.uk/site_media/pdfs/reports/Harder_better_faster_stronger_-_The_easy_route_to_increased_EU_climate_ambition_2.pdf

15 Studies have been contducted using both modelling and econometrics - for a recent overview, see: Laing, T.,Sato, M, Grubb, M. and C. Comberti (2014) "The effects

power sector has benefitted the most, although there is increasing evidence that industrial sectors (especially oil refineries) have engaged in similar pricing tricks.

Heavy industry has also gained considerably from a surplus of emissions allowances, with ten of the largest firms in the steel and cement sector holding onto excess permits worth over €4 billion in the second phase of the scheme.[16]

A further source of inefficiency – and unearned profit – relates to changes state aid rules, which mean public money can be used to pay back industry for the increased electricity costs that result from the profiteering described above. The aluminium, steel, paper and chemicals sectors can all claim up to 85 per cent of these cost increases in the form of state aid (a figure that falls to 75 per cent from 2019).[17]

The free allocation of emissions allowances is set to continue. It should be recalled that this is a major reversal. In January 2008, the Commission announced that these free allocations would end by 2020.[18] Yet the current "reform" proposal keeps to the current formula of 43 per cent of emissions allowances being handed out for free until at least 2030. The Impact Assessment of this proposal suggests that free permits handed out this way could be worth an estimated €160 billion.[19] That is nothing short of scandalous.

The ETS remains susceptible to fraud and gaming

All commodity markets contain some illegal activity, but carbon markets have been particularly susceptible to fraud. One key reason is the nature of the commodity being traded. Carbon, unlike corn or oil, is not a tangible product. Carbon permits are a "permission to pollute in the future", which tends to be estimated by proxy rather than actually measured. Even after a €5 billion VAT fraud, and further scandals involving stolen and re-used allowances, the financial side of the ETS remains under-regulated according to the EU Court of Auditors.[20] The legal definition of emission allowances is not sufficiently clear, the Registry of allowances lacks adequate fiduciary controls, and there is poor cooperation between the Commission and national financial regulators.

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and side-effects of the EU emissions trading scheme", *WIREs Clim Change 2014, 5:509–519. doi: 10.1002/wcc.283*

16 Laing, T. et al., Op. Cit

17 Coehlo, R. (2015), The high cost of cost-efficiency: A critique of carbon trading, PhD Thesis, University of Coimbra, p.97

18 Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008PC0016&from=EN

19 COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT Accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, p.27, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1437661474276&uri=CELEX:52015SC0135

20 The integrity and implementation of the EU ETS, http://www.eca.europa.eu/Lists/ECADocuments/SR15_06/SR15_06_EN.pdf

Further reading

Corporate Europe Observatory (2014) Life beyond emissions trading, http://corporateeurope.org/climate-and-energy/2014/01/life-beyond-emissions-trading

Pearce, R. and Boehm, S (2014) "Ten reasons why carbon markets will not bring about radical emissions reduction", Carbon Management, http://www.academia.edu/11081055/Ten_reasons_why_carbon_markets_will_not_bring_about_radical_emissions_reduction

Scrap the ETS coalition (2014), "EU ETS myth busting: Why it can't be reformed and shouldn't be replicated", www.redd-monitor.org/wp-content/uploads/2013/04/Myths_internet.pdf

2. Analysis and recommendations on July 2015 Commission proposal for a revised ETS

Page/ article[21]	**What it says**	**What it means (in context)**	**Recommendation**
Art 1, (3), p.17	In Article 9, the second and third paragraphs are replaced by the following: "Starting in 2021, the linear factor shall be 2.2%."	This section defines ambition. The 2.2% "linear factor" is a year-on-year translation of the target for 43% emissions reductions within industry sectors covered by the ETS, which corresponds to the aim of a 40% cut in overall EU emissions by 2030 (compared to 1990 levels). The 2.2% and 43% figures were agreed as part of the October 2014 Council conclusions.[22] By way of comparison, the current "linear factor" is 1.74%. The Explanatory Memo states that this amounts to "an additional reduction of around 556 million tonnes of carbon dioxide in the period 2021-2030." However, this target is significantly undermined by the ability to carry forward allowances issued pre-2020, even after parking some of these in the Market Stability Reserve (MSR) there could be a surplus in excess of 2 billion tonnes.[23] The Council conclusions actually refer to "a binding EU target of an *at least* 40% domestic reduction in	There should be clear options to increase the linear factor (such as an automatic "ratcheting up" of this factor) and to review this figure, to reflect the possibility that the 40% domestic reduction goal might be exceeded ("at least 40% implies that a higher target might be attained). Rather than the 10 year period, the targets should be revisited after 5 years in light of climate science. The MSR surplus should be cancelled immediately (or after a given time has elapsed). There should be a review looking at the overall carbon budget (including effort sharing) in light of the EU's fair share[26] of climate action, the objectives of the UNFCCC and the

21 The Article and page numbers here refer to those used in the English language version of the Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, (SWD/2015/0136 final - 2015/0148 (COD)) http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:337:REV1 . Article and paragraph numbers, as related to the existing ETS Directive, are given in the "what it says" column.

22 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145397.pdf

23 See, for example, https://sandbag.org.uk/site_media/pdfs/reports/The_Eternal_Surplus.pdf ; https://sandbag.org.uk/site_media/pdfs/reports/Briefing-2020surplusprojection.pdf ;

		greenhouse gas emissions by 2030." The scope for a higher figure reflects the fact that the 40% target does not represent the EU's equitable share of what's needed to meet a 2°C global target (let alone a 1.5°C global target).[24] The "linear factor" should be raised to be consistent with a goal of achieving 95 per cent emissions reductions in 2050 (the upper end projection of the EU's Low-Carbon Roadmap).[25]	2050 target. This could be done in further definition of article 1 of the ETS Directive, which discusses (but does not define) caps as being in line with what is "scientifically necessary to avoid dangerous climate change."
Art 1 (4), p.17	New subparagraphs are added to paragraph 1 [of Article 10]: "From 2021 onwards, the share of allowances to be auctioned by Member States shall be 57%."	This is consistent with the October 2014 Council conclusions (2.9) that there should be no "reducing the share of allowances to be auctioned." There is no stipulation in the Council conclusions that here that the proportion of auctioned allowances could not increase beyond 57%.	Amend the text to read "the share of allowances to be auctioned by Member States shall be *at least* 57%"
Art 1 (4) (a), p.17	New subparagraphs are added to paragraph 1 [of Article 10]: "2% of the total quantity of allowances between 2021 and 2030 shall be auctioned to establish a fund to improve energy efficiency and modernise the energy systems of certain Member States as set out in Article 10d of this Directive ("the Modernisation Fund")."	The 2% allocation for a Modernisation Fund was agreed as part of the October 2014 Council conclusions. 10 Member States are eligible: Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia. 43% of this funding will go to Poland. The equivalent provision in the existing ETS Directive has mainly contributed to increasing the lifespan of existing coal and gas-fired power plants. Notably, 82% of the support with free ETS allowances in Poland has gone to modernising coal and gas plants.[27] There is no	Clear rules should be established on the governance of the Modernisation Fund, including full transparency on what projects are supported and prioritisation of renewable energy. The Fund should not support energy generation from coal or gas.

24 See, for example, http://kevinanderson.info/blog/letter-to-the-pm-outlining-how-2c-demands-an-80-cut-in-eu-emissions-by-2030/
26 http://www.climatefairshares.org/
25 A Roadmap for moving to a competitive low carbon economy in 2050, http://eur-lex.europa.eu/resource.html?uri=cellar:5db26ecc-ba4e-4de2-ae08-dba649109d18.0002.03/DOC_1&format=PDF

		targetting of wind and solar power. The Impact Assessment suggests the Fund will receive revenues from the auction of 310 million allowances (although, as a net transfer, the figures are lower: 223 million allowances, worth up to €5.5 billion at a carbon price of €24.6/ton).[28]	
Art 1 (4) (c) p.18	in paragraph 3 [of article 10], the following points.. are added: "(j) to fund financial measures in favour of sectors or subsectors that are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, provided that these measures meet the conditions set out in Article 10a(6);	The existing directive allows Member States to determine the use of revenues generated from auctioning allowances, but article 10(c) states that at least 50% of revenues generated should go to finance activities related to the reduction of greenhouse gas emissions. The addition of this paragraph weakens this, allowing auction revenues to compensate polluters.	Delete this.
Art 1 (5) (d) p.19	(d) the first subparagraph of paragraph 6 [of Article 10a] is replaced by the following: “Member States should adopt financial measures in favour of sectors or sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas	This is a replacement for a similar subparagraph in the existing directive: “Member States may also adopt financial measures in favour of sectors or subsectors determined to be exposed to a significant risk of carbon leakage due to costs relating to greenhouse gas emissions passed on in electricity prices, in order to compensate for those costs and where such financial measures are in accordance with state aid rules applicable and to be adopted in this area”	Replace “should” with “may” (see below for a further analysis on how to deal with the arguments on carbon leakage).

27 http://carbon-pulse.com/briefing-eu-ets-modernisation-fund-keeps-west-to-east-cash-transfer-aims-to-step-up-scrutiny/
28 Impact Assessment, p.70, http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1437661474276&uri=CELEX:52015SC0135

	emission costs passed on in electricity prices, taking into account any effects on the internal market. Such financial measures to compensate part of these costs shall be in accordance with state aid rules”	The main study conducted at the request of the Commission found that some industry sectors do experience indirect cost increases in the form of increased electricity prices.[29] But that is actually an issue of distribution and price manipulations: electricity generators learnt early on in the history fo the ETS that they can generate significant profits by “passing through” the cost of ETS permits to consumers at a higher rate than the actual compliance costs that they incur. It should also be noted that the theory behind the ETS is that increased costs encourage a change to cleaner production.	
Art 1 (5) (e) p.19	Paragraph 7 [of Article 10a] “is amended as follows (i) The first and second sentences of the first subparagraph are replaced by the following: "Allowances from the maximum amount referred to Article 10a(5) of this Directive which were not allocated for free up to 2020 shall be set aside for new entrants and significant production increases, together with 250 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/… of the European Parliament and of the Council(*). From 2021, allowances not	The inclusion of 250 million allowances from the Market Stability Reserve further inflates the number of allowances available in the scheme, weakening ambition, and could “increase pollution subsidies to industry to at least €160 billion after 2020.”[30] The second part of this provision adds unallocated allowances to the reserve. While this ensures that they are not simply dumped onto the market, it makes no provision for cancelling this excess.	Delete the sentences related to MSR to ensure that an additional 250 million allowances are not included in the scheme. Amend the second part, to read: “From 2021, allowances not allocated to installations because of the application of paragraphs 19 and 20 shall be cancelled.”

29 Carbon Leakage Evidence Project, http://ec.europa.eu/clima/policies/ets/cap/leakage/docs/cl_evidence_factsheets_en.pdf
30 http://carbonmarketwatch.org/media-statement-eu-ets-review-proposal-earmarks-e160-billion-for-europes-largest-polluters/

	allocated to installations because of the application of paragraphs 19 and 20 shall be added to the reserve."		
Art 1 (5) (f) p.19	in paragraph 8 [of Article 10a], the first, second and third subparagraphs of paragraph 8 are replaced by the following: "400 million allowances shall be available to support innovation in low-carbon technologies and processes in industrial sectors listed in Annex I, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe capture and geological storage (CCS) of CO2 as well as demonstration projects of innovative renewable energy technologies, in the territory of the Union. … In order to promote innovative projects, up to 60% of the relevant costs of projects may be supported, out of which up to 40% may not be dependent on verified avoidance of greenhouse gas emissions provided that pre-determined milestones are attained taking into	The extension of the NER300 scheme, with "the initial endowment increased to 400 million allowances (NER400) was agreed at the October 2014 Council. The existing scheme was expected to focus on CCS. In the end, only one CCS project was supported with €300m (15% of the NER fund, the cap for any single project), and the whole scheme was worth €2.1 billion, less than half initial estimates.[31] Other funding went to "advanced bioenergy" (13 projects, €900m), as well as wind, CSP and ocean power schemes.[32]. According to the Impact Assessment, the funding cap of 15% of the total per project was a disincentive to CCS.[33] That is specified in 10 (a)(8) subparagraph 4, and remains in place. The NER300 says that the award of funds "shall be dependent upon the verified avoidance of CO 2 emissions" but that is weakened to 60 per cent.	The NER400 should be focussed on innovative renewable energy projects, not CCS. Ensuring that the cap of funds per project remains at 15% (or is made lower) will help this, in practice, given the likely difficulties of removing CCS language. The "out of which up to 40% may not be dependent on verified avoidance of greenhouse gas emissions" should be restored to "shall be dependent upon the verified avoidance of CO 2 emissions" as in the NER300. The exclusion of "advanced bioenergy" and/or a percentage limit (ringfencing) per project type and/or tough environmental and social impact criteria should be applied to bioenergy projects, to help steer financing to renewables (wind/solar), smart grids, etc.

31 Impact Assessment, p.123; see also http://europa.eu/rapid/press-release_MEMO-10-549_en.htm?locale=en
32 Impact Assessment, pp.124-5
33 Impact Assessment, p.126

	account the technology deployed."		
Art 1 (5) (f) p.19	In addition, 50 million unallocated allowances from the market stability reserve established by Decision (EU) 2015/… shall supplement any existing resources remaining under this paragraph for projects referred to above	The allowances for the NER400 should not come from the market stability reserve, in order to avoid inflating the overall cap with "hot air" from previous phases of the ETS.	Delete this.
Art 1 (6) p.20	Articles 10b and 10c are replaced by the following: "Measures to support certain energy-intensive industries in the event of carbon leakage	In January 2008, the European Commission announced that the free allocation of ETS allowances would end by 2020.[34] The promise that free allowances will now continue until at least 2030 represents a major reversal. The fact that it would hand out permits worth around €160 billion (according to the Commission's impact assessment) is a scandal.[35] The technical formulas for determining how this works are complex and dependent on industry data, but the underlying point is simple: carbon leakage is a myth. The most thorough study of the issue, funded by the Commission, is unequivocal: "We found no evidence for any carbon leakage."[36] Unfortunately, the October Council decision indulges this myth: "free allocation will not expire; existing measures will continue after 2020 to prevent the risk of carbon leakage due to climate policy, as long as no comparable efforts are undertaken in other major economies." At the press conference to launch the ETS	The political point is clear: there should be no free allocations based on claimed "carbon leakage." There could also be a formal mechanism to assess "comparable efforts.. in other major economies", which could trigger a review of free allocations. Free allocations should not happen, although the position of the Council could make it difficult to get rid of them. One tactic to minimize these would be to make free allocation conditional upon the carbon price rising above a certain figure (say, €25 or €30/ton). The Commission has consistently over-stated carbon price projections, and these high prices are then used by industry to justify the

34 http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52008PC0016&from=EN
35 Impact Assessment, p.27
36 http://ec.europa.eu/clima/policies/ets/cap/leakage/docs/cl_evidence_factsheets_en.pdf p.11

		proposal (and “summer package”), Commissioner Cañete suggested that 50 industry sectors and sub-sectors would get carbon leakage exemptions under the new rules, suggesting that the handout culture will continue. The same decision notes that the share of allowances to be auctioned “should not be reduced” but does not explicitly state that this should not be increased.	need for free allocation in response to potential leakage. Another means of damage limitation could be to limit the number of sectors and sub-sectors that are eligible. Another would be to make a technical assessment of the actual impacts of the scheme the basis for allocations, rather than the proposed formula based on trade and emissions intensity (and “market characteristics”), which would hand out free allowances irrespective of actual “leakage.”
Art 1 (6) p.20	“*Article 10c* Option for transitional free allocation for the modernisation of the energy sector.. The Member State concerned shall organise a competitive bidding process for projects with a total amount of investment exceeding €10 million... ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the infrastructure, clean technologies and modernisation of the energy production, transmission and	The provisions detailed here are intended to avoid the existing situation (referred to above) whereby free allocations were used to support existing coal and gas power generation. It was agreed as part of the October 2014 Council conclusions	It is likely that the language on “environmental upgrading and retrofitting of the infrastructure” would be used as an excuse to continue subsidising existing fossil-fuel power generation, locking-in outdated infrastructure rather than transitioning to renewables. That clause should be deleted. Language on the need for “avoiding distortions of the internal energy market” is ambiguous and could be used to undermine support for renewable energy (eg. through feed-in tariffs or other subsidies)

	distribution sectors are eligible to bid"		
Art 1 (7) p.22	"*Article 10d* **Modernisation Fund** "The fund shall be governed by an investment board and a management committee, … The investment board shall elect a representative from the Commission as chairman. … If the EIB recommends not financing an investment and provides reasons for this recommendation, a decision shall only be adopted if a majority of two-thirds of all members vote in favour.	See above. The suggestion that the Commission act as Chair of the Fund's investment Board, and the role of the EIB, are generally perceived as an attempt to counter-act the ability of the recipient countries to use funds for extending the lifespan of existing fossil-fuel power generation. If investment board decisions come to a vote by simple majority, representatives of the 10 beneficiary states could out-vote the other members. It is worth noting, too, that the Annex to the proposal allocates proportions by country: Poland would be by far the largest single recipient, with 43.41% of Modernisation Fund funds.[37]	Rebalance the composition of the investment board to ensure a more even distribution between beneficiary countries and the other members.
(11), p.23	Article 13 is replaced by the following: *"Article 13* Validity of allowances Allowances issued from 1 January 2013 onwards shall be valid indefinitely. Allowances issued from 1 January 2021 onwards shall include an indication showing in which ten-year period beginning from 1 January 2021 they were issued, and be valid for	The existing article 13 states that "Allowances issued from 1 January 2013 onwards shall be valid for emissions during periods of eight years beginning on 1 January 2013" after which they are cancelled or reissued for a new trading period. The proposed change reinforces the idea that the ETS could carry on in perpetuity, and weakens the ability to cancel surpluses.	Revise article 13 to suggest that allowances are cancelled after the end of each trading period, zeroing out the surplus. (If that is not agreed, the status quo is preferable to the amendment).

37 http://eur-lex.europa.eu/resource.html?uri=cellar:a556e9fb-5153-11e5-9f5a-01aa75ed71a1.0014.02/DOC_2&format=PDF

	emissions from the first year of that period onwards.”		
(15), p.23	In Article 19(3), the third sentence is replaced by the following: “It shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems. The Commission shall be empowered to adopt a delegated act in accordance with Article 23.".	The suggested wording delegates responsibility to the Commission for arranging the linking of emissions trading schemes – sidelining the Parliament from debate. There is a risk that the linking of emission trading schemes introduces new loopholes (eg. allowances could be exchanged for those generated by activities, such as avoided deforestation, which are excluded from the ETS on the grounds that their impact is not adequately quantifiable; or provide indirect support for activities such as the building of large hydroelectric dams that may have significant social impacts). The amendment leaves in place the second sentence of the existing article 19, referring to offset credits, which would appear to be redundant: “That Regulation shall also include provisions concerning the use and identification of CERs and ERUs in the Community scheme and the monitoring of the level of such use”	Delete this. The Commission should not be delegated responsibility to decide upon linking (if this is pursued, it should be through a new directive, as with the past Linking Directive). The existing 19(3) sentence 2 should also be deleted.

3. What's missing?

Every time the EU Emissions Trading System fails to reduce emissions, the politicians and businesses who promote the scheme reach for their Samuel Beckett: "Try again, fail again, fail better."

The first two phases of the ETS were a flop, and its third phase is widely expected to end with a massive surplus of permits and precious little sign that emissions reductions have been caused by the scheme. Despite these failures, the ETS proposal offers an extension of the scheme to 2030 and beyond. That is the wrong course. Instead of planning for its continuation, the Commission should be exploring a "sunset clause" that stipulates the winding down of the scheme if it fails, once again, to reduce emissions. The political climate seems unfavourable, insofar as a zombie carbon market is a politically useful defense for energy-intensive industries that wish to avoid changing their practice. But shortening the length of the fourth phase of the scheme (to 5 years) and mandating that an independent review consider whether or not to continue it would be steps in the right direction.

Another means of limiting the damage posed by the ETS would be to reduce the number of sectors it covers. In previous revisions to the Directive, there were increases in the scheme's sectoral scope. The restriction of the scheme to fewer sectors, now or in the future, should be raised – for example, paring the ETS back to a power sector scheme and using emissions limits or a modified Industrial Emissions Directive for other sectors currently covered by the ETS.

Measures to restrict or limit the damage caused by the ETS include:

- Ratcheting up climate ambition by enhancing the "linear factor" on emissions governed by the scheme to make these consistent with the EU's fair share of a 1.5-2°C global target
- A review of the impact of the EU ETS on other climate and energy policies (including efficiency targets)
- Limits on permit banking between one phase of the scheme and another
- Shorter trading periods (a return to 5 years)
- Mandating a review of how emissions covered by the scheme are measured, reported and verified
- Establishing a carbon floor price (which, in effect, would convert the scheme to something more like a tax)
- A clear legal definition of what constitutes an emissions allowance, and implementation of other recommendations from the EU Court of Auditors' report.