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PRESS Statement

Steel industry goes to European Court on EU Emissions Trading Scheme

Unachievable steel benchmark infringes ETS directive

Today EUROFER initiated action at the European Court of Justice (ECJ) for the annulment of the European Commission Decision of 27th April 2011 on the rules for free allocation of emission allowances for industries covered by the EU Emissions Trading Directive (ETS).¹

Article 10a of the ETS Directive aims to protect Europe from relocation of emissions, production and jobs to non-EU countries with lower levels of environmental performance ("carbon leakage"). It obliges the Commission to set benchmarks "at the average performance of 10% most efficient installations in a sector" (best performers). Sectors such as the steel industry determined to be at risk of carbon leakage are eligible for CO₂ allowances free of charge at the level of the benchmarks. The best performers should get 100% of their allowances for free.

But the Commission's Decision sets the benchmark for hot metal at a technically unachievable level, despite all the required data for setting the correct benchmark having been delivered by the steel industry to the Commission. "This is a clear infringement of the ETS Directive, as the best performers will be short of free allowances. Nowhere in the world is a steelworks that could operate its plants at the level of this benchmark," says Gordon Moffat, EUROFER's director general.

When setting the benchmark for hot metal, the Commission refused to assign the full carbon content in the waste gases (process gases) stemming from the steel production process and which are recovered for the production of electricity. The Commission wrongly argued the Directive does not allow for free allowances for electricity production and artificially subtracted a part of the carbon in these gases, lowering the benchmark by about 10%. However, the ETS Directive makes explicit provision for free allowances for electricity generated using recovered waste gases: "No free allocation shall be made in respect on any electricity production, except for [...] electricity produced from waste gases" (Article 10a). Therefore there are no legal grounds for any artificial subtraction of CO₂ from the steel benchmark for hot metal.

	Commission benchmark (contested by EUROFER)	Benchmark in accordance with Art.10a ETS Directive	Average emissions of installations 2005-2008
Hot Metal	1.328 t CO₂	1.475 t CO ₂	1.593 t CO ₂

¹ Commission Decision on determining transitional Union-wide rules for harmonised free allocation pursuant to Article 10a of Directive 2003/87/EC; Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.

Resulting additional costs

The EU steel industry as a whole will from 2013 to 2020 receive 20 million fewer allowances per year than it would be eligible for if the Directive were implemented correctly. At a carbon price of EUR 30 (which is the level forecasters predict carbon prices will reach by then) this corresponds to additional costs of EUR 600 million per year if purchased on the market, or almost EUR 5 billion for the third trading period 2013/2020 alone. This is on top of the EUR 6.5 billion of additional costs the EU steel industry already faces under a correct implementation of the Directive based on best performance and the application of achievable benchmarks. Beyond 2020, these unlawful additional costs will further increase significantly.

Legal procedure and timing

The whole procedure until a final decision by the Court may take up to two and a half years, unless the Court decides to go for a fast-track decision within one year.

EUROFER has applied for

- the annulment of the Commission Decision,
- a fast-track decision within one year as the provisions of the third trading phase of the ETS Directive and the Commission Decision will come in to effect from 1st January 2013,
- suspension of the Commission Decision for the duration of the Court procedure.

Waste gases (or process gases) are unavoidable in the steel production process because carbon (C) is needed to remove the oxygen (O) from the iron ore (FeO) to receive hot metal (iron): $\text{FeO} + \text{C} = \text{Fe} + \text{CO} \ \& \ \text{CO}_2$. Waste gases (a mix of CO, CO₂ and hydrogen) account for about 80% of the emissions from steelmaking. They would have to be flared if not recovered for the production of heat, steam and electricity, thereby substituting primary fuels and reducing overall emissions. The EU steel industry cannot cover all its electricity needs by generating electricity from its waste gases – it is still 10 million MWh short of electricity each year. This amount has to be bought on the market, leading to huge additional costs in the period starting from 2013 when the ETS will result in a further significant increase in power prices.

Since the 1970s the **European steel industry has reduced its CO₂ emissions by 50%** and in the period from 1990 to 2005 by over 20% without reducing production volumes. However, current technologies are now at their limits for further significant improvement. The steel industry is therefore investing in ambitious programmes for the development of breakthrough technologies.

Represented by EUROFER, the European steel industry is a world leader in its sector with a turnover of EUR 190 billion and direct employment of 360 thousand highly skilled people, producing on average 200 million tonnes of steel per year. More than 500 steel production and processing sites in 23 EU member states provide direct and indirect employment and a living for millions of European citizens.

The European steel industry is the backbone of Europe's prosperity and an indispensable part of the European supply chain, developing and manufacturing in Europe thousands of different, innovative steel solutions. The European steel industry provides the foundation for innovation, durability, CO₂ reductions and energy savings in applications as varied and vital as automotive, construction, machinery, household goods, medical devices, and wind mills.

Steel is 100% recyclable, it can be recycled over and over again without loss of properties. All the steel in collected end-of-life products is recycled, irrespective of the percentage of steel in the products. Steel therefore contributes significantly to the long-term conservation of the fundamental resources for future generations. About 45% of the total EU steel production is recycled steel scrap.

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