

they needed. The new bill allows the government to claim back unused allowances and sell part of them under a newly created auctioning system. Any company that reduces its CO2 emissions by more than 30% compared to the previous year will have its allocation cut by the same amount during the following year.

The bill stipulates this will not apply to companies that reduce their emissions through modernization, installing environmental technologies or by using different fuel.

Ludek Horn, head of front office at Czech utility CEZ, has seen the draft law and says Poland is trying to limit emission trading within the second national allocation plan. His interpretation is that power plants which do not use 70% of their CO2 allowances for electricity production this year will have the number of their allowances for NAP II reduced.

Quoting from the draft, Horn said: "In case of a substantial decrease in emissions in the installation covered by the System, which was not caused by emission reduction' – I understand this to mean by the improvement of technology – 'the National Administrator of the System will change the allocation of emissions for the following year in the allocation period, proportionally to the decrease in emissions'."

"A substantial decrease in emissions takes place when based on the verified report submitted by the owner of the installation [and] emissions from the previous year of the allocation period were lower than 70% of the average allocation given under the System. Allowances which were not credited to the account of the owner of the installation ... will be moved to the auction pool."

Horn told Platts: "This government's intention is clearly not consistent with the spirit of EU ETS and looks even odder in the light of the interest of the same government to participate in the CSS [carbon capture and storage] pilot projects funded at least partly by the EU."

Horn said: "The law will block market forces ... And Polish power plants will be indirectly forced to generate even at times when it would be more efficient not to."

"Power plant operators would be strongly recommended under the law not to arbitrage power/CO2 and instead generate even if it is more economical not to in order to sell their EUA allowances," he added.

### But is it legal?

Traders want to know whether Poland's plan is in line with EU law on emissions trading.

Zbigniew Olszewski, managing director of EGL Polska, told Platts: "I thought those ministerial ideas died some time ago, but it seems that they are still alive. In my opinion the ministry, as in the past, wants to get everything under its control. But is it possible to make such a law under the EU ETS?"

According to the EC, the Polish plan would go against the principles of 'banking' unused EU emissions allowances.

EC environment spokeswoman Barbara Helfferich said: "We can't comment on individual member states' proposals without seeing them, but any legislation would have to comply with the directive on emissions. Member states have to specify how much they are going to auction and normally they reserve that to auction allowances not used because an installation is no longer trading. For installations that are still trading, they are allowed to bank any surplus allowances from year to year. Taking back the surplus, to auction it, would defeat the whole idea of giving them incentives to cut their emissions."

A lawyer, who did not wish to be named as his firm is advising

### Platts Spanish Assessments (Eur/MWh)

August 20, 2008	Baseload
D/A	68.50 - 69.00
Week Ahead	66.00 - 67.00
BOM	69.50 - 70.50
Sep 08	70.25 - 71.25
Oct 08	70.25 - 71.25
Q4 2008	70.75 - 71.25
Q1 2009	73.25 - 74.25
Q2 2009	64.50 - 66.50
Balance 2008	70.40 - 71.40
Cal 2009	69.20 - 69.70

### Spain Pool Average Spot Prices (Euro cents/kWh)

	21-Aug-08	20-Aug-08	21Aug07
Systemwide	7.158	7.009	3.387
Volume Matched (MWh)	600,491.0	588,471.0	555,907.0

Source: OMEL, Daily Turnover in MWh, prices Eur cts/kWh

one of the Polish utilities currently challenging the NAP, said EC rules were "silent" on whether member states could do this.

"The way that allowances are auctioned is entirely up to member states."

"The main issue is whether the EC would approve the total cap proposed by Poland as the first draft NAP for state 2 was sent back for being too high. Poland might be trying to hedge its bets in case it loses a court case in the European Court of Justice and gets told to revise its NAP downward. Being able to claw back unused allowances from installations would help it to do this," he said.

### Unreasonable at many levels

According to Jan Pravda, managing partner of Pravda Capital, the draft law may have a "noble cause at its core" in encouraging technological improvement, but in reality it is unreasonable at several levels.

Pravda Capital is a Prague-based investment banking firm active in emissions trading and corporate finance.

Firstly, the draft law creates uncertainty and may be open to abuse. "For example, a company might cut emissions by 29.9% and not more, meaning the law would not change a company's behaviour towards emissions reduction beyond the 30%," Pravda said.

Secondly, it would be unreasonable to take the excess EUAs of companies that have shut down part of their energy-intensive business.

Thirdly, it is unreasonable to implement something that is subject to bureaucratic interpretation of technological or efficiency improvement.

"For example, a brick maker might reduce its energy consumption, not necessarily by buying a more efficient boiler, but by using a less energy-intensive production line or adapting a more efficient operating schedule. In other words, there are operational methods that can improve energy efficiency but which are not necessarily energy technological improvements," Pravda said.

Fourthly it would encroach on a company's decision making and finally it would indicate that the government is "making changes as it goes along."

At the end of the day, if the government gives allowances to companies that don't use most of them at all, then that's the government's problem, Pravda said.