

Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (Text with EEA relevance)

[<sup>F1</sup>CHAPTER III

STATIONARY INSTALLATIONS]

[<sup>F1</sup>[<sup>F2</sup>Article 10b

**Transitional measures to support certain energy intensive industries in the event of carbon leakage**

1 Sectors and subsectors in relation to which the product resulting from multiplying their intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the European Economic Area (annual turnover plus total imports from third countries), by their emission intensity, measured in kgCO<sub>2</sub>, divided by their gross value added (in euros), exceeds 0,2, shall be deemed to be at risk of carbon leakage. Such sectors and subsectors shall be allocated allowances free of charge for the period until 2030 at 100 % of the quantity determined pursuant to Article 10a.

2 Sectors and subsectors in relation to which the product resulting from multiplying their intensity of trade with third countries by their emission intensity exceeds 0,15 may be included in the group referred to in paragraph 1, using data for the years from 2014 to 2016, on the basis of a qualitative assessment and of the following criteria:

- a the extent to which it is possible for individual installations in the sector or subsector concerned to reduce emission levels or electricity consumption;
- b current and projected market characteristics, including, where relevant, any common reference price;
- c profit margins as a potential indicator of long-run investment or relocation decisions, taking into account changes in costs of production relating to emission reductions.

3 Sectors and subsectors that do not exceed the threshold referred to in paragraph 1, but have an emission intensity measured in kgCO<sub>2</sub>, divided by their gross value added (in euros), which exceeds 1,5, shall also be assessed at a 4-digit level (NACE-4 code). The Commission shall make the results of that assessment public.

Within three months of the publication referred to in the first subparagraph, the sectors and subsectors referred to in that subparagraph may apply to the Commission for either a qualitative assessment of their carbon leakage exposure at a 4-digit level (NACE-4 code) or an assessment on the basis of the classification of goods used for statistics on industrial production in the Union at an 8-digit level (Prodcom). To that end, sectors and subsectors shall submit duly substantiated, complete and independently verified data to enable the Commission to carry out the assessment together with the application.

Where a sector or subsector chooses to be assessed at a 4-digit level (NACE-4 code), it may be included in the group referred to in paragraph 1 on the basis of the criteria referred to in points (a), (b) and (c) of paragraph 2. Where a sector or subsector chooses to be assessed at an 8-digit level (Prodcom), it shall be included in the group referred to

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in paragraph 1 provided that, at that level, the threshold of 0,2 referred to in paragraph 1 is exceeded.

Sectors and subsectors for which free allocation is calculated on the basis of the benchmark values referred to in the fourth subparagraph of Article 10a(2) may also request to be assessed in accordance with the third subparagraph of this paragraph.

By way of derogation from paragraphs 1 and 2, a Member State may request, by 30 June 2018, that a sector or subsector listed in the Annex to Commission Decision 2014/746/EU<sup>(1)</sup> in respect of classifications at a 6-digit or an 8-digit level (Prodcom) be considered to be included in the group referred to in paragraph 1. Any such request shall only be considered where the requesting Member State establishes that the application of that derogation is justified on the basis of duly substantiated, complete, verified and audited data for the five most recent years provided by the sector or subsector concerned, and includes all relevant information with its request. On the basis of those data, the sector or subsector concerned shall be included in respect of those classifications where, within a heterogeneous 4-digit level (NACE-4 code), it is shown that it has a substantially higher trade and emission intensity at a 6-digit or an 8-digit level (Prodcom), exceeding the threshold set out in paragraph 1.

4 Other sectors and subsectors are considered to be able to pass on more of the costs of allowances in product prices, and shall be allocated allowances free of charge at 30 % of the quantity determined pursuant to Article 10a. Unless otherwise decided in the review pursuant to Article 30, free allocations to other sectors and subsectors, except district heating, shall decrease by equal amounts after 2026 so as to reach a level of no free allocation in 2030.

5 The Commission is empowered to adopt, by 31 December 2019, delegated acts in accordance with Article 23 to supplement this Directive concerning the determination of sectors and subsectors deemed at risk of carbon leakage, as referred to in paragraphs 1, 2 and 3 of this Article, for activities at a 4-digit level (NACE-4 code) as far as paragraph 1 of this Article is concerned, based on data for the three most recent calendar years available.]]

#### Textual Amendments

- F1** Inserted by [Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community \(Text with EEA relevance\)](#).
- F2** Substituted by [Directive \(EU\) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision \(EU\) 2015/1814 \(Text with EEA relevance\)](#).

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- (1) [<sup>F1</sup> [<sup>F2</sup> Commission Decision 2014/746/EU of 27 October 2014 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2015 to 2019 (OJ L 308, 29.10.2014, p. 114).]]

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