



Brussels, **XXX**  
[...] (2014) **XXX** draft

## **COMMISSION DECISION**

**of XXX**

**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**

(Text with EEA relevance)

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**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**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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<sup>1</sup>, and in particular Article 10a(13) thereof,

Whereas:

- (1) Directive 2003/87/EC provides that auctioning should be the basic principle for allocation of greenhouse gas emission allowances to operators of installations within the scope of the Emission Trading System of the Union ('EU ETS') from 2013 onwards. However, eligible operators continue to receive free allowances between 2013 and 2020 in accordance with the rules set out in Directive 2003/87/EC and Commission Decision 2011/278/EU<sup>2</sup>.
- (2) The absence of an ambitious international agreement on climate change aiming to limit the global temperature increase to 2°C could undermine the benefit of actions carried out by the Union. The absence of binding action at the international level could lead to an increase in greenhouse gas emissions in third countries where industry is not subject to comparable carbon constraints ('carbon leakage'). To address this risk of carbon leakage, Directive 2003/87/EC provides that, subject to the outcome of the international negotiations, the Commission is to determine a list of sectors and subsectors deemed to be exposed to a significant risk of carbon leakage ('list of sectors and subsectors'). Those sectors and subsectors should receive free allowances at 100 % of the quantity determined on the basis of Directive 2003/87/EC and Commission Decision 2011/278/EU, subject to the cross-sectoral correction factor referred to in Article 10a(5) of Directive 2003/87/EC and set out in Annex II to Commission Decision 2013/448/EU<sup>3</sup>.

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<sup>1</sup> OJ L 275, 25.10.2013, p. 32.

<sup>2</sup> Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p.1).

<sup>3</sup> Commission Decision 2013/448/EU of 5 September 2013 concerning national implementation measures for the transitional free allocation of greenhouse gas emission allowances in accordance with Article 11(3) of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 240, 7.9.2013, p. 27).

- (3) In this respect, the Commission analysed the extent to which third countries representing a decisive share of global production of products in sectors and subsectors on the carbon leakage list firmly commit to reducing greenhouse gas emissions in those relevant sectors, and whether those commitments are comparable with those of the Union and are carried out within the same time-frame. In addition, the extent to which the efficiency of the installations located in those countries is comparable to the installations located in the Union was also examined. The Commission concluded that no sufficient comparability can be established on the commitment to reduce greenhouse gas emissions, and therefore the comparability of carbon efficiency is not relevant.
- (4) The first list of sectors and subsectors deemed to be exposed to a significant risk of carbon leakage was established for 2013 and 2014 by Commission Decision 2010/2/EU<sup>4</sup> in 2009.
- (5) The assessment should be based on a number of quantitative and qualitative criteria, and based on data from the three most recent years. In this regard, the Commission used data from the years 2009, 2010 and 2011, since data from 2012 were available for only some of the parameters.
- (6) In order to establish the list of sectors and subsectors, the Commission assessed the risk of carbon leakage of sectors and subsectors at NACE-4 level of the Statistical classification of economic activities in the Union in accordance with Regulation (EC) No 1893/2006 of the European Parliament and of the Council<sup>5</sup>. NACE-4 is the level with optimal data availability defining sectors precisely. A sector is denoted at a 4-digit level of the NACE classification, and a subsector is denoted at CPA (6-digit) or Prodcom (8-digit) level, that is, the classification of goods used for statistics on industrial production in the Union, following directly from the NACE classification.
- (7) The sectors were first assessed on the basis of the quantitative criteria set out in Article 10a(15) and (16) of Directive 2003/87/EC. To apply those quantitative criteria, the Commission had to determine the sum of direct and indirect additional costs induced by the implementation of Directive 2003/87/EC.
- (8) The direct additional costs, induced by the quantity of allowances that a sector would need to purchase if not deemed to be exposed to a significant risk of carbon leakage, were calculated on the basis of the data on direct CO<sub>2</sub> emissions at sectoral level. The data in the European Union Transaction Log ('EUTL') are considered to be the most accurate and transparent source of CO<sub>2</sub> emissions data at installation level and have therefore been used to calculate the direct cost for sectors. For sectors and greenhouse gases only covered by the EU ETS from 1 January 2013, there are no emissions data in the EUTL available. Therefore, the Commission used the data on direct CO<sub>2</sub> emissions provided by Member States in the National Implementation Measures (NIMs) pursuant to Decision 2011/278/EU in those cases.

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<sup>4</sup> Commission Decision 2010/2/EU of 24 December 2009 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 (OJ L 1, 5.1.2010, p.10).

<sup>5</sup> Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1).

- (9) In order to determine the indirect additional costs, the Commission collected data on electricity consumption at sectoral level from Member States, ensuring that no double counting of electricity consumed occurred between different NACE codes. To determine the emissions related to the production of electricity consumed by the different sectors for the list of sectors and subsectors in Decision 2010/2/EU, the Commission used the average emission factor derived from the total fuel mix for electricity production as it was considered to be based on the most accurate data. The same average emission factor has been used for the assessments underlying this Decision.
- (10) Furthermore, to determine the direct and indirect additional costs, the Commission had to estimate the average carbon price. In order to establish the first list of sectors and subsectors an assumed carbon price of EUR 30 per tonne of CO<sub>2</sub> equivalent was used for the assessments. In the period of application of Decision 2010/2/EU, there has been a substantial difference between the carbon price assumed for the assessments and the actual carbon price, the latter one being considerably lower. However, the Commission has in its Communication entitled 'A policy framework for the climate and energy in the period from 2020 to 2030'<sup>6</sup> proposed a 40 % unconditional greenhouse gas emission reduction target by 2030 as compared to 1990 and a corresponding renewable energy sources target. The Commission has also proposed to establish a market stability reserve in the EU ETS. Under those circumstances, it is expected that the carbon price will in the future be more strongly driven by mid- and long-term emission reductions. It is therefore considered justified to continue using an assumed carbon price of EUR 30 per tonne of CO<sub>2</sub> equivalent for the assessments underlying this Decision.
- (11) The direct and indirect additional costs should be calculated as a share of gross value added. Regarding the estimation of gross value added at sectoral level, data from the Eurostat Structural Business Statistics have been used.
- (12) Furthermore, the Commission assessed the trade intensity for each sector and subsector on the basis of data obtained from the Eurostat Comext database.
- (13) In total, the Commission assessed 245 industrial sectors and 24 subsectors classified under the 'Mining and quarrying' and 'Manufacturing' divisions of the NACE classification. The sectors and subsectors listed in point 1 of the Annex to this Decision meet the criteria set out in Article 10a(15) and (16) of Directive 2003/87/EC and should be deemed as exposed to a significant risk of carbon leakage.
- (14) Assessments based on the qualitative criteria set out in Article 10a(17) of Directive 2003/87/EC have been carried out on a number of sectors that were not deemed to be exposed to the risk of carbon leakage based on the quantitative criteria set out in Article 10a(15) and (16). The qualitative assessment was carried out in cases which met the qualitative criteria in the context of the determination of the previous list, in cases of sectors considered to be borderline, and on request by industry representatives.
- (15) In the case of the sectors 'Finishing of textiles' (NACE code 1330), 'Manufacture of bricks, tiles and construction products, in baked clay' (NACE code 2332), 'Manufacture of plaster products for construction purposes' (NACE code 2362), 'Casting of iron' (NACE code 2451) and 'Casting of light metals' (2453), the

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<sup>6</sup> COM(2014)15 final/2 of 28 January 2014.

qualitative assessments carried out in the context of the determination of the previous list of sectors and subsectors, valid for 2013 and 2014, have been updated. It was concluded that the circumstances justifying the addition of those sectors to the list of sectors and subsectors still prevail. Therefore, those sectors should be deemed as exposed to a significant risk of carbon leakage also for the period 2015 to 2019.

- (16) A qualitative assessment was carried out for the sector 'Manufacture of malt' (NACE code 1106), as this sector represented a borderline case with regard to Article 10a(16b) of Directive 2003/87/EC. Taking into account the increased cost resulting from the implementation of Directive 2003/87/EC, the assessment demonstrated high trade intensity and a significant drop in the profitability of the sector in the Union. The low profit margins limit the capacity of installations to invest and reduce emissions. Based on the combined impact of those factors, the sector should be deemed as exposed to a significant risk of carbon leakage.
- (17) The sectors listed in point 2 of the Annex should be deemed as exposed to a significant risk of carbon leakage on the basis of the qualitative criteria.
- (18) As the list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage to be laid down in the Annex is to be valid for the period from 2015 to 2019, this Decision should apply from 1 January 2015.
- (19) For reasons of legal certainty and clarity, Decision 2010/2/EU should be repealed with effect from 1 January 2015.
- (20) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS DECISION:

*Article 1*

The sectors and subsectors listed in the Annex shall be deemed to be exposed to a significant risk of carbon leakage.

*Article 2*

Decision 2010/2/EU is repealed with effect from 1 January 2015.

*Article 3*

This Decision shall apply from 1 January 2015.

*Article 4*

This Decision is addressed to the Member States.

Done at Brussels,

*For the Commission*

*Member of the Commission*