



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from: General Secretariat
to: Delegations

Subject: Notification of national implementation measures for free allocation of allowances to industrial installations covered by the EU ETS
– Information from the Commission

Delegations will find annexed an information note from the Commission on the above topic, which will be dealt with under "other business" at the Environment Council meeting on 10 October 2011.

Notification of national implementation measures for free allocation of allowances to industrial installations covered by the EU ETS

- Information Note from the Commission -

As part of the implementation of the third phase of the EU ETS, Member States are calculating the number of free allowances to each industrial ETS installation in their territory, based on the Commission's so called "Benchmarking" decision (2011/278/EU) approved by Member States in December 2010. This note provides information and an update on the state of play of this process:

- **The deadline in the Directive for Member States' submission of the so called National Implementation Measures (NIMs) to the Commission was 30 September 2011.** Only very few Member States complied with this deadline, and a few more are expected to notify soon. A number of Member States have indicated that they are to be significantly late.
- **Late submissions will delay the process of allocating free allowances to industry.** After submission, the Commission has the obligation to check each notification to ensure compliance with the legal rules. This is a considerable task. Late submission will obviously delay the assessment process. This creates a significant risk that the final allocation of free allowances to European industries may not be finalised before the start of the third trading period in January 2013, causing uncertainty for European industries and their investment decisions.
- **No Member State can allocate free allowances to industries before all Member States have complied with their duties.** The reason is that the Directive defines a maximum amount of free allowances, and this amount has to be compared to the sum of the calculated allocation for all 27 Member States. This check can only be made once data is available from all Member States. If the sum of preliminary allocations would overshoot the maximum amount of free allowances available, the Directive mandates the application of a cross-sectoral correction factor. Therefore, even if only one Member State is significantly late, the entire process is delayed.

- **Member States are called upon to take all possible action to shorten any delay.** The Commission understands that the technical work is ongoing in all Member States, but underlines the importance of swift progress and urges Member States to give due priority to this task.
- **Submission of the NIMs by 30 September 2011 was a legal obligation** and since the approval of the Benchmarking Decision by Member States in December 2010, ample time has been available for the necessary data collection. The Commission will therefore regularly monitor progress in Member States without notified NIMs and may launch infringement proceedings.
- **Finally, Member States also have the option to propose exclusion of small emitters from the EU ETS, if equivalent measures to reduce emissions are put in place.** The deadline for such notifications was also 30 September 2011. The Commission urges Member States that plan to make use of this option and have not yet finalized their application, to inform the Commission as soon as possible in writing about such plans and indicate the expected submission date of the application as well as explain the reasons for the delay. Swift progress on outstanding notifications is needed, in order to finalise the entire allocation process in time. Submission of a notification is not dependent upon the submission on the National Implementing Measures.
