

## ROADMAP

Roadmaps aim to inform citizens and stakeholders about the Commission's work to allow them to provide feedback and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to share any relevant information that they may have.

<b>TITLE OF THE INITIATIVE</b>	Revising the rules for free allocation in the EU Emissions Trading System
<b>LEAD DG – RESPONSIBLE UNIT</b>	Directorate-General for Climate Action – B.2
<b>LIKELY TYPE OF INITIATIVE</b>	Delegated act (Free allocation rules) Implementing act (Free allocation adjustments due to production changes)
<b>INDICATIVE PLANNING</b>	Q4 2018 (Free allocation rules) Q3 2019 (Free allocation adjustments due to production changes)
<b>ADDITIONAL INFORMATION</b>	<a href="https://ec.europa.eu/clima/policies/ets/allowances_en">https://ec.europa.eu/clima/policies/ets/allowances_en</a>

**This Roadmap is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Roadmap, including its timing, are subject to change.**

### A. Context, problem definition and subsidiarity check

#### Context

The EU Emissions Trading System (EU ETS)<sup>1</sup> is the cornerstone of European Union's climate policy and the key tool for achieving the EU's objective of reducing greenhouse gas (GHG) emissions cost-effectively. Under the EU ETS, installations active in industry sectors or sub-sectors exposed to a significant risk of carbon leakage can receive free allocations. Carbon leakage refers to the possible increase in global greenhouse gas emissions if, because of costs related to climate policies, businesses were to transfer production to other countries where industry is not subject to comparable carbon constraints, with associated risk of increasing global emissions and negative impacts on economic growth and employment. The EU ETS Directive has been revised and brought in line with the 2030 climate and energy targets<sup>2,3</sup>.

Free allocation will continue for the period 2021-2030 to safeguard the competitiveness of industrial installations deemed to be exposed to a significant risk of carbon leakage as a result of other countries having laxer emissions constraints which can in turn increase global carbon emissions. The carbon leakage provisions strike the right balance at this point in time, but should be kept under review in the coming decade, in light of the Paris Agreement<sup>4</sup>. If other major economies would adopt climate policies comparable in level of ambition to the EU ETS as part of their implementation of the Paris Agreement, the risk of carbon leakage could be mitigated, in consequence the measures established to support energy-intensive industries at risk of carbon leakage are to be kept under review in the light of the climate policy measures adopted in other jurisdictions.

In the last trading period<sup>5</sup> it was determined that more than 150 sectors, representing more than 95% of the total European industrial emissions were at risk of carbon leakage. The number of allowances given for free will significantly decrease in the future, it is expected that 6.3 billion allowances will be given for free during the 10 years period from 2021 to 2030, compared with the around 750 million free allowances received by more than 10,000 installations during in 2017. During the 3<sup>rd</sup> ETS phase (2013-2020), around 1,000 changes were made per year regarding the number of free allowances received by specific installations; the new rules on free allocation adjustments due to production level changes are expected to trigger more modifications.

While the revised EU ETS Directive determines the main criteria for establishing the free CO<sub>2</sub> allowances allocation rules and rules for adjusting free allocation to production changes, more detailed implementation requirements need to be determined. These elements include the addition or deletion of definitions, possible modifications to the monitoring rules regarding the data collected by Member States and the production level data and the determination of historical activity levels.

<sup>1</sup> [https://ec.europa.eu/clima/policies/ets\\_en](https://ec.europa.eu/clima/policies/ets_en)

<sup>2</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52014DC0015>

<sup>3</sup> [https://ec.europa.eu/clima/policies/ets/revision\\_en](https://ec.europa.eu/clima/policies/ets/revision_en)

<sup>4</sup> <https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-110-EN-F1-1.PDF>

<sup>5</sup> Phase 3 of the EU ETS covers the years 2013 to 2020.

The revised EU ETS Directive establishes that the Commission is empowered to adopt a delegated act concerning the Union-wide and fully harmonised rules for the allocation of free allowances. This possibility will be used for updating the current set of free allocation rules<sup>6</sup>.

In addition, the revised EU ETS Directive establishes that free allocation will be changed, as appropriate, if production levels change by more than 15% evaluated on a rolling average of two years<sup>7</sup>. In order to implement this provision, the Commission may adopt implementing acts defining further provisions for the adjustments of the level of free allocations given to installations whose operations have increased or decreased<sup>8</sup>.

These possibilities given by the revised EU ETS will be used to develop two acts defining the rules to be applied to free allocation and to adjustments due to production level changes between 2021 and 2030<sup>9</sup>.

#### **Problem the initiative aims to tackle**

The two acts to be developed aim to specify more detailed implementation requirements for the free allocation and adjustments of emission allowances to prevent carbon leakage.

##### *Implementation requirements for the free allocation*

The scope of the revision of the free allocation rules is to a large extent determined by the revised EU ETS Directive. The provisions remain similar to what was in place under the EU ETS before its revision; although with some modifications (e.g. concepts linked to the capacity changes in the installations are no longer relevant). While the scope of the 54 benchmarks will remain unchanged, for new entrants and capacity extensions, new rules are required, as the methodologies for granting free allocations in these situations have been modified. Solutions for issues that have been identified during the implementation of the current EU ETS phase will also be covered by the act, e.g. the possibility to renounce to the free allocation (while keeping reporting and surrender obligations) and provisions for mergers and splits of installations.

##### *Adjustments of emission allowances*

The revised EU ETS Directive sets out to better align the level of free allocation with the actual production levels. To this end, allocation will be adjusted, as appropriate, if production levels change by more than 15% evaluated on a rolling average of two years. Specific provisions regarding monitoring and verification or the use of minimum thresholds to trigger modifications shall be developed. In addition, detailed provisions for annual monitoring and accredited verification of production data are also needed to support the expected more frequent alignments of allocation due to changes in production levels.

#### **Basis for EU intervention (legal basis and subsidiarity check)**

The legal basis for both measures includes Articles 191 to 193 of the Treaty on the functioning of the European Union and in particular the revised EU ETS Directive (Article 10a, paragraphs 20 and 21). The subsidiarity check has already been performed in the Impact Assessment accompanying the Commission ETS Revision proposal<sup>10</sup>.

The EU ETS is an EU-wide measure, setting the EU emissions reduction targets as well as the modalities and means of achieving them. Uniform, effective and non-discriminatory rules are best determined at EU level to ensure a harmonised approach whereby there is equal treatment of all industrial installations across all Member States and EEA/EFTA countries so as to avoid distortion of the internal market.

## **B. What does the initiative aim to achieve and how**

The review of the free allocation rules will result in a delegated act on Free Allocation Rules which will detail changes of free allocation rules due to the revision of the EU ETS Directive and changes regarding certain issues identified during the implementation of the 3<sup>rd</sup> phase of the EU ETS. It will include detailed provisions for how to collect data from around 11.000 industrial installations via Member States and EEA/EFTA countries for

<sup>6</sup> Article 10a paragraph 1 and Article 23 of the revised EU ETS Directive

<sup>7</sup> If the average production of two years is 15% above or below the production used for determining the number of free allowances granted to the installation, the number of free allowances shall be adapted.

<sup>8</sup> Article 10a paragraph 21 and Article 22a of the revised EU ETS Directive.

<sup>9</sup> Phase 4, the next trading period of the EU ETS, will cover the years 2021 to 2030.

<sup>10</sup> [https://ec.europa.eu/clima/sites/clima/files/ets/revision/docs/impact\\_assessment\\_en.pdf](https://ec.europa.eu/clima/sites/clima/files/ets/revision/docs/impact_assessment_en.pdf)

determining future allocation and updating the benchmarks, monitoring provisions for data collection and for (variation in) production level, cover the possibility to renounce to free allocation (i.e. not receiving free allowances but keeping reporting and surrender obligations) and provisions for mergers and splits of installations, as well as revised rules for new entrants and capacity extensions. In addition, detailed provisions for annual monitoring and accredited verification of production data are also needed to support the expected more frequent alignments of allocation.

The implementing act on Free Allocation Adjustments due to Production Changes will reflect how free allocation adjustments due to production level changes shall be implemented. The act will cover aspects such as the use of absolute thresholds regarding changes to allocation or the deadline applying to notifications for changes in production levels. It will ensure the effective, non-discriminatory and uniform interpretation of the allocation adjustments due to production changes.

## C. Better regulation

### Consultation of citizens and stakeholders

The various consultation activities serve the purpose of providing further evidence when considering the possible policy options for updating the rules on free allocation and for adjustments to free allocation due to production level changes. To this end, the following consultations, applicable to both acts, will be included in the process:

- a 12 week online public consultation for the rules on adjustments to free allocation
- technical level consultation of Member State and other experts throughout the process
- publication of draft acts for feedback prior to adoption

The stakeholder categories relevant for the process are industry and industry associations, NGOs, Member States and EEA/EFTA countries, academia/researchers and the EU citizens.

### Evidence base and data collection

A number of information and data sources are already available:

- Decision 2011/278/EU determining transitional Union-wide rules for harmonised free allocation of emission allowances<sup>11</sup>
- Impact assessment accompanying the ETS revision proposal<sup>12</sup>;
- evaluation accompanying the ETS Directive revision proposal<sup>13</sup>;
- open consultation carried out regarding carbon leakage and free allocation post-2020<sup>14</sup>;
- stakeholder events regarding carbon leakage post-2020<sup>15</sup>.

In the coming months the Commission intends to consult Member States and other stakeholders on the methodology and choices to be made in order to establish the free allocation rules and the rules for adjustments to free allocation due to production level changes to be applied in the next phase of the EU ETS Directive.

<sup>11</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32011D0278>

<sup>12</sup> [https://ec.europa.eu/clima/sites/clima/files/ets/revision/docs/impact\\_assessment\\_en.pdf](https://ec.europa.eu/clima/sites/clima/files/ets/revision/docs/impact_assessment_en.pdf)

<sup>13</sup> [https://ec.europa.eu/clima/sites/clima/files/ets/revision/docs/review\\_of\\_eu\\_ets\\_en.pdf](https://ec.europa.eu/clima/sites/clima/files/ets/revision/docs/review_of_eu_ets_en.pdf)

<sup>14</sup> [https://ec.europa.eu/clima/consultations/articles/0023\\_en](https://ec.europa.eu/clima/consultations/articles/0023_en)

<sup>15</sup> [https://ec.europa.eu/clima/events/articles/0090\\_en](https://ec.europa.eu/clima/events/articles/0090_en)