

## IFIEC Europe contribution to the consultation on the Revision of the FAR

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*IFIEC Europe considers that an adequate carbon leakage framework is crucial to allow industry to reduce GHG emissions while remaining competitive in a global context. Performance-driven free allocation and financial compensation for indirect costs are important elements in an adequate carbon leakage framework. IFIEC Europe therefore welcomes the opportunity to provide feedback on the Commission draft Delegated Regulation amending Delegated Regulation (EU) 2019/331 as regards transitional Union-wide rules for harmonised free allocation of emission allowances.*

As a result of the revision of the EU ETS Directive in 2023, the rules for the allocation of free allowances also need to be updated. The EU Commission plans to adopt a Delegated Act concerning the Union-wide harmonised rules for the allocation of free allowances. In this position paper we will focus on some critical points important for the energy-intensive sector in Europe.

### **Climate neutrality plans**

When it comes to the content of climate neutrality plans, the Commission and national competent authorities should recognise that targets, milestones and investments in the future are highly dependent on a number of factors, some of them are not directly under the control of operators. It is important that the future policy framework provides a business case that attracts investment and enables competitiveness in global markets. Many milestones also depend on the availability of affordable and abundant low-carbon energy or access to specific infrastructure. As operators face uncertainties and may have different scenarios for the achievement of climate neutrality, it is important that there is a possibility to update the plans (Article 22d). In assessing the plans, authorities should also allow for this flexibility and recognise the inherent and unavoidable uncertainty.

The interpretation of the provisions on CNPs as being applied at installation level entails a disproportionate treatment: operators of installations covering multiple product benchmarks

and fallback sub-installations would be subject to the obligation and penalty for their entire installation as soon as one sub-installation is in the worst 20% percentile of a given product benchmark in 2016-2017, regardless of the performance of all other sub-installations. In our view, the obligation and penalty concerning CNPs for the least 20% efficient installations should be interpreted and applied at sub-installation level (Article 10a of the ETS Directive 2023/959). This would lead to a more consistent and proportionate treatment, where the obligation is applied only for the relevant product benchmark sub-installations belonging to the worst 20% percentile.

In the absence of applying this conditionality to sub-installation level, IFIEC welcomes the introduction of a de-minimis rule in the new Article 22b (2). As the draft also introduces a threshold for the exemption from the cross-sectoral correction factor in Article 16 (8), IFIEC asks to implement the same principle for the CNP conditionality. Concretely, the CNP conditionality should apply where the relevant product benchmark sub-installation contributes more than 60% of the entire installation's free allocations.

The draft introduces a new article, Article 22e, referring to the publication of the climate-neutrality plans. Its contents are, however, likely to include company-specific strategies, investments, future emission forecasts, and other commercially sensitive, confidential information. Before this Delegated Act is adopted, this should be better clarified. These climate neutrality plans should also not lead to any legal consequences beyond the conditionality of free allocation in the ETS.

In addition, national authorities have not yet published the national requirements for the preparation of climate neutrality plans, and a specific electronic tool for the preparation of plans is not yet available. We therefore consider the deadline of 30 May 2024 to be too short, especially as companies affected by CBAM will also have to apply for allocations in the same period for the second half of the fourth trading period.

Finally, IFIEC asks to review the evaluation of the efficiency of CHP installations as it seems that CHP's are amongst the worst 20% performing installations although they are most efficient in producing electricity and steam.

### ***Conditionality – energy efficiency***

It must be possible for EU ETS installations to recover free allocations for earlier years in which the energy efficiency measures were not implemented but were implemented later and up to 2030. Such an adjustment of the FAR by the EU would result in an incentive for installations and would be in line with the European climate and energy efficiency objective.

In addition, IFIEC recommends considering already existing national schemes. As such, in those Member States where voluntary arrangements already exist that meet the pay back criterium, compliance with such national schemes should qualify as compliance for this conditionality.

### ***Exchangeability of fuel and electricity***

The draft Delegated Act deletes Article 22 on exchangeability. This gives rise to many questions, especially with regard to its potential implications. First, there will be an impact on the amount of free allocation due to this decision, which could result in an impact on the CSCF. As such, it would be good to have a more thorough analysis of the impacts of this measure and, based on this, the Commission should postpone the deletion of exchangeability until an evaluation is made to whether to increase the cap for free allocations reflecting the shift from compensation of indirect emissions to free allocation.

Second, the legal text remains rather unclear about the consideration of electricity consumption in the benchmarks. In case exchangeability is deleted, IFIEC asks to maintain the current practice of conversion of electricity into CO<sub>2</sub> emissions for the calculation of the benchmark curves in order to keep the benchmarks representative.

Third, recital 9 points out that free allocation granted to indirect emissions of electrified processes should not prejudice the possibility to receive compensation for indirect costs. As no free allocation is given to indirect emissions but rather to production, IFIEC asks how this combination must be interpreted in light of the ETS directive. Important (parts of the) industrial sectors have been excluded from indirect cost compensation according to the State Aid Guidelines of 2021. As the economic pressures and carbon and investment leakage risks have changed drastically during the past years, these sectors industrial sectors should be reassessed in 2025.

### **Fallback benchmarks**

The Commission proposes to change the definition of ‘fuel benchmark sub-installation’ to limit it to heat production only where it is “for the primary purpose of the generation of heat”. This change will discriminate against efficient technologies where a low-carbon path to heat production has been established through process integration (e.g. exclude from free allocation all processes in which the energy included in the raw materials is not wasted but utilised to substitute CO<sub>2</sub>-emitting fuels), for example copper or exothermic heat. We therefore believe that the definition of ‘fuel benchmark sub-installation’ should remain unchanged.

In addition, it would be important that the Commission provides a clarification that free allocation can still be given for emissions from support fuel for safety flaring, needed for ensuring safety and for limiting environmental pollution. The possible change will result in a significant net cost burden that would impact the competitiveness of the relevant industry sectors and its ability to invest in decarbonisation solutions.

The draft Delegated Act also deletes a provision that addresses double counting of heat recovered from fuel benchmark or process emissions sub-installations. To keep a coherent system, and avoid double counting, it would make sense to keep Article 10 (5) (k) in the Free Allocation Rules.

### **De-minimis rule**

The draft Delegated Act removes the de-minimis rule by replacing Article 10 (3), that exempted operators from providing data on the distinction of carbon leakage exposure in case at least 95% of the activity level of the fallback benchmark sub-installation serves sectors or subsectors exposed to carbon leakage risk. To limit administrative burden, the de-minimis rule should be maintained.

## Hydrogen

The draft FAR includes changes to the hydrogen benchmarks. The FAR clearly exclude H<sub>2</sub> used for ammonia production from the hydrogen benchmark. It is not clear how a company should behave in case it operates a hydrogen electrolyser and this hydrogen is partly used in an ammonia plant and partly used in another application. Relating to the FAR-Annex, the ammonia benchmark should be used for hydrogen used for ammonia production. There is a need of clarification in this case.

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