

IFIEC Europe Feedback on the Draft Implementing Regulation “Climate neutrality plans for the installations under ETS”

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IFIEC Europe welcomes the opportunity to provide feedback on the Draft Implementing Regulation laying down rules for the application of Directive 2003/87/EC as regards the content of climate-neutrality plans needed for granting free allocation of emission allowances.

According to the Directive 2023/959 climate-neutrality plans (CNP) are to be drafted to receive the conditional free allocation by operators of installations whose greenhouse gas emission levels are higher than the 80th percentile of emission levels for the relevant product benchmarks and in certain Member States also by operators of district heating applying for optional additional free allocation for district heating installations. CNPs should be drafted at installation level and should contain the elements specified in Article 10b (4) of the Directive 2003/87/EC. Optionally, it should be possible to provide additional measures at the sub-installation level that contribute to climate neutrality.

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.

Additionally, for installations that are already in the scope of the EU ETS, it is easy to find out, if they belong to CNP-installations, as the values can be derived from the applications for free allocation for 2021-2025 that were submitted in 2019 (at Member State level).

A certain circle of companies that have received the relevant information from the Climate Expert Group will be able to prepare incumbent installations. However, in our opinion, all industry sectors should be informed by the EU Commission. The relevant values should be published in time and the national authorities should contact installations' operators beforehand. Additionally, the adoption of the CNP-Regulation is planned for November 2023 and at the same time the CNPs should be submitted by 30 May 2024: for many companies, this time frame will be too short for the preparation of CNPs.

Further Aspects

- It is important to inform companies operating hydrogen installations (steam reformers) that will enter the EU ETS for the first time in 2024 about to the reduction of the threshold from 25 t H₂/day to 5 t H₂/day. These installations do not have a database like the existing ones. And the new application for 2026-2030 is based on data from 2019-2023. In order to be prepared in time, it is important to provide a short-term information on how H₂-installations (as a new-comer) can find out, if they belong to CNP-installations. Otherwise, there is a risk that free allocations for 2026-2030 will be reduced to 20% for those companies that cannot provide data for 2016-2017.
- For installations covered by the EU ETS with a legal phase-out date before 1 January 2036, the future-oriented information requirements set out in points 4 to 6 of the Annex should not apply, as the closure of the installation will contribute to the climate neutrality objective well before 2050. The financial, technical and bureaucratic requirements set out in points 4 to 6 of the Annex would place a disproportionate burden on the operators of these installations given their limited operating period.
- The interpretation at installation level would lead to undue distortions of competition between installations, as those that also have product benchmark sub-installations above the 80th percentile within the ETS permit would be subject to the CNP-obligation and penalty for their entire installation (including product benchmark sub-installations below the 80th percentile and fallback benchmark sub-installations), while those installations that do not have product benchmark sub-installations above the 80th percentile would be automatically exempted. Such an undue impact on competition would be inconsistent with the new wording of recital 20 of the ETS Directive, which states that "the Commission should ensure that the application of conditionality does not jeopardise a level playing field and equal treatment between installations across the Union".
- It is not clear which specific energy efficiency measures are relevant for CNP-plans. If there is a potential to implement efficiency measures within a non-ETS installation,

but these measures are not implemented, this should not have any impact on any sub-installation/allocation element within the ETS.

- If the energy audit is completed too close to the deadline for the allocation application deadline for the next phase in the 4th trading period, then the implementation of the possible energy efficiency measures will be very ambitious task. It is important that the EU Commission finds an appropriate solution to this problem.
- No adjustment of the limits for the benchmarks (e.g., biomass is already included in the heat benchmark, which has a negative impact on non-biomass users / presumably maximum tightening).
- Point 6 (c) of the Annex to the Implementing Regulation should provide more detailed information on "enabling conditions and infrastructure need". In our view, there should be an exemption or at least a certain degree of flexibility if the objectives, milestones and measures described in Point 4 of the Annex are not achieved or/and can only be achieved at a later stage due to the lack of "enabling conditions and infrastructure needs". In most cases, these "enabling conditions and infrastructure needs" are not within the company's sphere of influence or control (e.g., infrastructure, funding processing, approval procedures).

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