

AFEP Proposals for amendment on the proposed revision of the EU Emissions Trading Scheme Directive (EU ETS)

AFEP proposes 13 amendments on the Revision of the EU ETS, revolving around 5 topics:

1. Enable industries at risk of carbon leakage to get enough free allowances while enhancing their low carbon investments within the EU (5 proposals – Amendments 1 to 5)
2. Set up reasonable benchmark values taking into account early actions, and maintain a level playing field between insourced and outsourced productions (2 proposals – Amendments 6 and 7)
3. Set up pricing visibility for allowances in order to secure economic activity within the EU (1 proposal – Amendment 8)
4. Ensure that the Innovation Fund include relevant and efficient projects and enlarge the scope of ETS for hydrogen electrolyzers (2 proposals – Amendments 9 and 10)
5. Adopt a ten-year standstill in the phasing out of free allowances for EU sectors goods of which are covered by the CBAM - *coordinated with amendment proposals on the CBAM Regulation* (3 proposals – Amendments 11, 12 and 13)

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1. Enable industries at risk of carbon leakage to get enough free allowances while enhancing their low carbon investments within the EU

Amendment 1: Increase of the 3 % buffer of allowances transferred from the auctioning compartment to the free allowance compartment in order to avoid triggering the Cross-Sectoral Correction Factor (CSCF).

This issue is not included in the current proposal for a revision of the EU ETS

Modification of Article 10a paragraphs 5a and 5b:

To be inserted in the new proposal in Article 1 paragraph (12) (da new). Paragraphs 5a and 5b are replaced by the following:

| Applicable EU ETS Directive | Amendment |
|---|---|
| 5a. By way of derogation from paragraph 5, an additional amount of up to 3 % of the total quantity of allowances shall, to the extent necessary, be used to increase the maximum amount available under paragraph 5. | 5a. By way of derogation from paragraph 5, an additional amount of up to [X % ; X > 3%] of the total quantity of allowances shall, to the extent necessary, be used to increase the maximum amount available under paragraph 5. |
| 5b. Where less than 3 % of the total quantity of allowances is needed to increase the maximum amount available under paragraph 5: — a maximum of 50 million allowances shall be used to increase the amount of allowances available to support innovation in accordance with Article 10a(8); and | 5b. Where less than [X % ; X > 3%] of the total quantity of allowances is needed to increase the maximum amount available under paragraph 5: — a maximum of [to be modified accordingly] million allowances shall be used to increase the amount of allowances available to support innovation in accordance with Article 10a(8); and |

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| — a maximum of 0,5 % of the total quantity of allowances shall be used to increase the amount of allowances available to modernise the energy systems of certain Member States in accordance with Article 10d. | — a maximum of [% to be modified accordingly] of the total quantity of allowances shall be used to increase the amount of allowances available to modernise the energy systems of certain Member States in accordance with Article 10d. |
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Proposal for a Directive**Article 1 (12) da) (new)**

Directive 2003/87/EC

Article 10a paragraphs 5a and 5b

| <i>Text proposed by the Commission</i> | <i>Amendment (the above modifications are in yellow)</i> |
|---|---|
| (12) Article 10a is amended as follows: | <p>(12) Article 10a is amended as follows:</p> <p>(...)</p> <p>(da new) paragraphs 5 a and 5b are replaced by the following:</p> <p>5a. By way of derogation from paragraph 5, an additional amount of up to [X % ; X > 3%] of the total quantity of allowances shall, to the extent necessary, be used to increase the maximum amount available under paragraph 5.</p> <p>5b. Where less than [X % ; X > 3%] of the total quantity of allowances is needed to increase the maximum amount available under paragraph 5:</p> <p>— a maximum of [to be modified accordingly] million allowances shall be used to increase the amount of allowances available to support innovation in accordance with Article 10a(8); and</p> <p>— a maximum of [% to be modified accordingly] of the total quantity of allowances shall be used to increase the amount of allowances available to modernise the energy systems of certain Member States in accordance with Article 10d.</p> |

Justification

The new proposal will be likely to trigger the cross-sectoral correction factor (CSCF) as early as 2025 following some simulations, which will result in a shortage of free allowances even for installations at risk of carbon leakage which have already reached benchmark CO₂ intensity values. It is not in the interest of the EU to create a competitive disadvantage for these installations and for those which have already planned low carbon investments within the EU during the 2021-2030 period. Therefore, it is essential to set up a new value above 3 % in paragraph 5a of article 10a (and accordingly in paragraph 5b). This new value should be based on new simulations to be set up by the European Commission at the request of the European Parliament, in order to avoid the triggering of the CSCF during the 2021-2030 period.

Amendment 2: setting up a reference for the calculus of free allowances, excluding 2020 as an exceptional year because of the Covid pandemic

| <i>Applicable Commission Delegated Regulation (EU) 2019 / 331</i> | <i>Amendment</i> |
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| <p>Article 1</p> <p>(...)</p> <p>(14) “baseline period” means the five calendar years preceding the time-limit for submission of data to the Commission pursuant to Article 11(1) of Directive 2003/87/EC;</p> | <p>Article 1</p> <p>(...)</p> <p>(14) “baseline period” means the five calendar years preceding the time-limit for submission of data to the Commission pursuant to Article 11(1) of Directive 2003/87/EC; <i>by way of derogation, year 2020 is excluded from the baseline period used in the calculus for the free allowances of the 2026-2030 allocation period.</i></p> |

Proposal for a Directive

Article 1 (12) a) ii) a (new)

Directive 2003/87/EC

Article 10a paragraph 1

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| <p>(12) Article 10a is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> | <p>(12) Article 10a is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> <p>(...)</p> <p><i>(iia) (new) the following sentence is added:</i> <i>“The Commission is empowered to review the delegated acts to update the definition of the baseline period. By way of derogation, the year 2020 shall be excluded from the baseline period used in the calculus for the free allowances of the 2026-2030 allocation period.”</i></p> |

Justification

Free allowances for the period 2026 to 2030 are calculated on the basis of the installation’s average emissions over the period 2019 to 2023. Due to the impact of COVID over this period, free allowances risk being underestimated. This underestimation may not be compensated by dynamic allocations given the 15% threshold of activity variation, which represents a very large gap for large installations. The calculation for this reference period should not take into account the year 2020.

Amendment 3: preventing further free allowances cuts in relation to energy efficiency audits**Proposal for a Directive****Article 1 (12) a)**

Directive 2003/87/EC

Article 10a – paragraph 1 (i)

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| <p>Article 10a is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> <p>(i) the following two subparagraphs are inserted after the second subparagraph:</p> <p><i>“In the case of installations covered by the obligation to conduct an energy audit under Article 8(4) of Directive 2012/27/EU of the European Parliament and of the Council(*) [Article reference to be updated with the revised Directive], free allocation shall only be granted fully if the recommendations of the audit report are implemented, to the extent that the pay-back time for the relevant investments does not exceed five years and that the costs of those investments are proportionate. Otherwise, the amount of free allocation shall be reduced by 25 %. The amount of free allocation shall not be reduced if an operator demonstrates that it has implemented other measures which lead to greenhouse gas emission reductions equivalent to those recommended by the audit report. The measures referred to in the first subparagraph shall be adjusted accordingly.</i></p> <p>No free allocation shall be given to installations in sectors or subsectors to the extent they are covered by other measures to address the risk of carbon leakage as established by Regulation (EU)/. [reference to CBAM](**). The measures referred to in the first subparagraph shall be adjusted accordingly.</p> <p>(ii) the following sentence is added at the end of the third subparagraph:</p> <p><i>“In order to provide further incentives for reducing greenhouse gas emissions and improving energy efficiency, the determined Union-wide ex-ante benchmarks shall be reviewed before the period from 2026 to 2030 in view of potentially modifying the definitions and system boundaries of existing product benchmarks.”;</i></p> | <p>Article 10a is amended as follows:</p> <p>(a) paragraph 1 is amended as follows:</p> <p>(i) the following two subparagraphs are inserted after the second subparagraph:</p> <p>deleted</p> <p>No free allocation shall be given to installations in sectors or subsectors to the extent they are covered by other measures to address the risk of carbon leakage as established by Regulation (EU)/. [reference to CBAM](**). The measures referred to in the first subparagraph shall be adjusted accordingly.</p> <p>(ii) the following sentence is added at the end of the third subparagraph:</p> <p><i>“In order to provide further incentives for reducing greenhouse gas emissions [...], the determined Union-wide ex-ante benchmarks shall be reviewed before the period from 2026 to 2030 in view of potentially modifying the definitions and system boundaries of existing product benchmarks.”;</i></p> |

Justification

Member companies consider the proposal to condition up to 25% of free allowances to the implementation of some of the energy efficiency audit's recommendations (if the return on investment is less than 5 years and if the investment costs are proportionate) is not consistent with the ETS Directive's objective to direct investments to where the abated tonne of CO₂ is the most cost-efficient (no emission value limit per site). Indeed, company practice shows that the implementation of such energy efficiency projects is conditioned by many factors not foreseen in the audits. Furthermore, the administrative costs of monitoring and controlling appear significant compared to the expected benefits for companies as well as for the competent authorities. Companies therefore consider that this conditionality should be deleted.

Amendment 4: exclude from EU ETS only installations using already 100% biomass

Proposal for a Directive

Annex (a)

Directive 2003/87/EC

Annex I (1)

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| (a) Points 1 and 2 are replaced by the following: "1. Installations or parts of installations used for research, development and testing of new products and processes, and installations where emissions from the combustion of biomass that complies with the criteria set out pursuant to Article 14 contribute to more than 95 % of the total greenhouse gas emissions are not covered by this Directive. | (a) Points 1 and 2 are replaced by the following: 1. Installations or parts of installations used for research, development and testing of new products and processes, and installations exclusively using biomass that complies with the criteria set out pursuant to Article 14 are not covered by this Directive. |

Justification

Free allocations received by installations using high shares of biomass have been in the past an important driver to reduce greenhouse gas emissions and should remain in place as to not encourage the use of higher shares of fossil fuels. Excluding these installations will risk creating a perverse effect where combustion installations are incentivised to blend larger volumes of fossil fuels with their sustainable biomass just to remain in the EU ETS.

Amendment 5a: ensure that sustainable biomass continues to be zero-rated under the EU ETS

Proposal for a Directive

Article 1 (16)

Directive 2003/87/EC

Article 14 (1)

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| (16) in Article 14(1), first subparagraph, the following sentence is added: "Those implementing acts shall apply the sustainability and greenhouse gas emission saving criteria for the use of biomass established by Directive (EU) 2018/2001 of the European Parliament and of the Council(*), with any necessary adjustments for application under this Directive , for this biomass to be zero-rated. They shall specify how | (16) in Article 14(1), first subparagraph, the following sentence is added: "Those implementing acts shall apply the sustainability and greenhouse gas emission saving criteria for the use of biomass, including biofuels, bioliquids and biomass fuels , established by Directive (EU) 2018/2001 of the European Parliament and of the Council(*) for this biomass to be zero-rated. They shall specify how to account for |

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| to account for storage of emissions from a mix of zero-rated sources and sources that are not zero-rated. They shall also specify how to account for emissions from renewable fuels of non-biological origin and recycled carbon fuels, ensuring that these emissions are accounted for and that double counting is avoided.”; | storage of emissions from a mix of zero-rated sources and sources that are not zero-rated. They shall also specify how to account for emissions from renewable fuels of non-biological origin and recycled carbon fuels, ensuring that these emissions are accounted for and that double counting is avoided.”; |
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Justification

*When revising the Monitoring and Reporting Regulation (MRR) to apply the sustainability criteria for biomass, including biofuels, bioliquids and biomass fuels in the EU ETS, it is paramount that **sustainable biomass continues to be zero-rated under the EU ETS** since direct CO₂ emissions are neutral, as well as for reasons of regulatory certainty and predictability for investors.*

Amendment 5b: ensure that sustainable biomass continues to be zero-rated under the EU ETS

Proposal for a Directive

Annex (3) (i)

Directive 2003/87/EC

ANNEX IV Part A (section Calculation)

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| in Part A, the section “Calculation” is amended as follows: (i) in the fourth subparagraph, the last sentence “The emission factor for biomass shall be zero.” is replaced by the following: “The emission factor for biomass that complies with the sustainability criteria and greenhouse gas emission saving criteria for the use of biomass established by Directive (EU) 2018/2001, with any necessary adjustments for application under this Directive , as set out in the implementing acts referred to in Article 14, shall be zero.” | in Part A, the section “Calculation” is amended as follows: (i) in the fourth subparagraph, the last sentence “The emission factor for biomass shall be zero.” is replaced by the following: “The emission factor for biomass, including biomass fuels, bioliquids and biofuels, renewable fuels of non-biological origin and recycled carbon fuels that comply with the sustainability criteria and greenhouse gas emission saving criteria for the use of biomass established by Directive (EU) 2018/2001 as set out in the implementing acts referred to in Article 14, shall be zero.”; |

Justification

*When revising the Monitoring and Reporting Regulation (MRR) to apply the sustainability criteria for biomass, including biofuels, bioliquids and biomass fuels in the EU ETS, it is paramount that **sustainable biomass continues to be zero-rated under the EU ETS** since direct CO₂ emissions are neutral, as well as for reasons of regulatory certainty and predictability for investors. Additionally, for applying the zero-rating, it should be sufficient to demonstrate that the biomass complies with the sustainability criteria of the Renewable Energy Directive (RED) without additional conditions or restrictions.*

Amendment 5c: ensure that sustainable biomass continues to be zero-rated under the EU ETS**Proposal for a Directive****Annex (3) (a)**

Directive 2003/87/EC

ANNEX IV new Part C (section Calculation)

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
|---|--|
| <p>(a) the following Part C is added: “PART C — Monitoring and reporting of emissions corresponding to the activity referred to in Annex III</p> <p>Monitoring of emissions Emissions shall be monitored by calculation.</p> <p><u>Calculation</u> Emissions shall be calculated using the following formula: <i>Fuel released for consumption × emission factor</i> Fuel released for consumption shall include the quantity of fuel released for consumption by the regulated entity. Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of these Guidelines, shall be used unless fuel-specific emission factors identified by independent accredited laboratories using accepted analytical methods are more accurate. A separate calculation shall be made for each regulated entity, and for each fuel.</p> | <p>(a) the following Part C is added: “PART C — Monitoring and reporting of emissions corresponding to the activity referred to in Annex III</p> <p>Monitoring of emissions Emissions shall be monitored by calculation.</p> <p><u>Calculation</u> Emissions shall be calculated using the following formula: <i>Fuel released for consumption × emission factor</i> Fuel released for consumption shall include the quantity of fuel released for consumption by the regulated entity. Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of these Guidelines, shall be used unless fuel-specific emission factors identified by independent accredited laboratories using accepted analytical methods are more accurate. A separate calculation shall be made for each regulated entity, and for each fuel.</p> <p><i>The emission factor for biomass, including biomass fuels, bioliquids and biofuels, renewable fuels of non-biological origin and recycled carbon fuels including biofuels, bioliquids and biomass fuels that comply with the sustainability criteria and greenhouse gas emission saving criteria established by Directive (EU) 2018/2001 as set out in the implementing acts referred to in its Article 14, shall be zero.</i></p> |

Justification

*When revising the Monitoring and Reporting Regulation (MRR) to apply the sustainability criteria for biomass, including biofuels, bioliquids and biomass fuels in the EU ETS, it is paramount that **sustainable biomass continues to be zero-rated under the EU ETS** since direct CO₂ emissions are neutral, as well as for reasons of regulatory certainty and predictability for investors. In this respect, the rules under development in the respective RED delegated and implementing acts on sustainability and GHG reduction certification and tracking should be designed in such a manner that they also allow a simple and effective application for EU ETS purposes.*

2. Set up reasonable benchmark values taking into account early actions, and maintain a level playing field between insourced and outsourced productions

Amendment 6: set up new benchmark values for 2026-2030 period on the basis of achievable progress for years 2025-2028

Proposal for a Directive

Article 1 (12), (c)

Directive 2003/87/EC

Article 10a, paragraph 2, sub-paragraphs c) and d)

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
|--|--|
| <p>(c) paragraph 2 is amended as follows:</p> <p>(i) in the third subparagraph, point (c) is replaced by the following:</p> <p>“(c) For the period from 2026 to 2030, the benchmark values shall be determined in the same manner as set out in points (a) and (d) on the basis of information submitted pursuant to Article 11 for the years 2021 and 2022 and on the basis of applying the annual reduction rate in respect of each year between 2008 and 2028.”;</p> <p>(iii) in the third subparagraph, the following point (d) is added:</p> <p>“(d) Where the annual reduction rate exceeds 2.5 % or is below 0.2 %, the benchmark values for the period from 2026 to 2030 shall be the benchmark values applicable in the period from 2013 to 2020 reduced by whichever of those two percentage rates is relevant, in respect of each year between 2008 and 2028.”;</p> | <p>(c) paragraph 2 is amended as follows:</p> <p>(i) in the third subparagraph, point (c) is replaced by the following:</p> <p>“(c) For the period from 2026 to 2030, the benchmark values shall be determined in the same manner as set out in points (a) and (d) on the basis of information submitted pursuant to Article 11 for the years 2021 and 2022 and on the basis of applying the annual reduction rate in respect of each year between 2023 and 2028.”;</p> <p>(iii) in the third subparagraph, the following point (d) is added:</p> <p>“(d) Where the annual reduction rate exceeds 2.5 % or is below 0.2 %, the benchmark values for the period from 2026 to 2030 shall be the benchmark values applicable in the period from 2013 to 2020 reduced by whichever of those two percentage rates is relevant, in respect of each year between 2023 and 2028.”;</p> |

Justification

The revision of the Directive provides for increased requirements for product benchmarks of between 1.6% per year and 2.5% per year for the period 2026-2030, compared to a current progress of 1.6% per year. AFEP remarks that this new percentage range would not apply from 2026 onwards but would be applied retroactively from 2008 onwards. This will lead to a performance improvement of around -50% compared to 2008 which is extremely ambitious. Furthermore, the Commission bases its performance improvement forecasts not only on the average of the last two known years but on an extrapolated value for five years, which is out of reach for companies. The reasoning by extrapolation should be excluded and the progress requirement of 1.6% to 2.5% per year must be applied as of 2023, instead of being retroactively applied from 2008.

Amendment 7: set up a level-playing field for the hydrogen benchmark between insourced and outsourced production

Proposal for a Directive

Recital 8

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
|--|-----------------------|
| The EU ETS should incentivise production from installations that partly or fully reduce greenhouse gas emissions. Therefore, the description of some categories of activities in Annex I to Directive 2003/87/EC should be amended to ensure an equal treatment of installations in the sectors concerned. In addition, free allocation for the production of a product should be independent of the nature of the production process. It is therefore necessary to modify the definition of the products and of the processes and emissions covered for some benchmarks to ensure a level playing field for new and existing technologies. It is also necessary to decouple the update of the benchmark values for refineries and for hydrogen to reflect the increasing importance of production of hydrogen outside the refineries sector. <i>It is also necessary to decouple the update of the benchmark values for refineries and for hydrogen to reflect the increasing importance of production of hydrogen outside the refineries sector</i> | <i>deleted</i> |

Proposal for a Directive

Article 1 - section 12 c) iv)

Directive 2003/87/EC

Article 10a (2), fourth subparagraph

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
|---|---|
| (iv) the fourth subparagraph is replaced by the following: By way of derogation regarding the benchmark values for aromatics, and syngas, those benchmark values shall be adjusted by the same percentage as the refineries benchmarks in order to preserve a level playing field for producers of those products. | (iv) the fourth subparagraph is replaced by the following: By way of derogation regarding the benchmark values for aromatics, hydrogen and syngas, those benchmark values shall be adjusted by the same percentage as the refineries benchmarks in order to preserve a level playing field for producers of those products. |

Justification

Hydrogen is being used already today on a large scale in refineries with the purpose of desulphurising. This application of hydrogen will remain one of the biggest usages until 2030. Indeed, new applications for hydrogen will emerge massively and progressively over the coming years.

The current method for calculating the hydrogen benchmark ensures equal treatment for refineries insourced and industrial gases outsourced production of hydrogen without any distortion. However, the proposal to decouple the update of the benchmark values for refineries and for hydrogen will distort the level playing field between those two types of production. Moreover, developing a technical and scientific benchmark would be

difficult in case such a benchmark would be based on the comparison between outliers and mainstream installations. Moreover, this approach would negatively impact the ability of the industry to decarbonise in light of growing global competitive pressure.

Therefore, such benchmark decoupling must be avoided.

3. Set up pricing visibility for allowances in order to secure economic activity within the EU

Amendment 8: introduce an allowance price corridor in the range of possible actions in case of excessive price fluctuations

| <i>Applicable Directive</i> | <i>Amendment</i> |
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| <p><i>Article 29</i></p> <p>Report to ensure the better functioning of the carbon market</p> <p>If, on the basis of the regular reports on the carbon market referred to in Article 10(5), the Commission has evidence that the carbon market is not functioning properly, it shall submit a report to the European Parliament and to the Council. The report may be accompanied, if appropriate, by proposals aiming at increasing transparency of the carbon market and addressing measures to improve its functioning.</p> <p><i>Article 29a</i></p> <p>Measures in the event of excessive price fluctuations</p> <p>1. If, for more than six consecutive months, the allowance price is more than three times the average price of allowances during the two preceding years on the European carbon market, the Commission shall immediately convene a meeting of the Committee established by Article 9 of Decision No 280/2004/EC.</p> <p>2. If the price evolution referred to in paragraph 1 does not correspond to changing market fundamentals, one of the following measures may be adopted, taking into account the degree of price evolution:</p> <p>(a) a measure which allows Member States to bring forward the auctioning of a part of the quantity to be auctioned;</p> <p>(b) a measure which allows Member States to auction up to 25 % of the remaining allowances in the new entrants reserve.</p> | <p><i>Article 29</i></p> <p>Report to ensure the better functioning of the carbon market</p> <p>If, on the basis of the regular reports on the carbon market referred to in Article 10(5), the Commission has evidence that the carbon market is not functioning properly, it shall submit a report to the European Parliament and to the Council. The report may be accompanied, if appropriate, by proposals aiming at increasing transparency of the carbon market and addressing measures to improve its functioning.</p> <p><i>Article 29a</i></p> <p>Measures in the event of excessive price fluctuations</p> <p>1. If, for more than six consecutive months, the allowance price is more than three times the average price of allowances during the two preceding years on the European carbon market, the Commission shall immediately convene a meeting of the Committee established by Article 9 of Decision No 280/2004/EC.</p> <p>2. If the price evolution referred to in paragraph 1 does not correspond to changing market fundamentals <i>or may cause significant risks for the sustainability of installations under the scope of this Directive</i>, one of the following measures may be adopted, taking into account the degree of price evolution:</p> <p>(a) a measure which allows Member States to bring forward the auctioning of a part of the quantity to be auctioned;</p> <p>(b) a measure which allows Member States to auction up to 25 % of the remaining allowances in the new entrants reserve.</p> <p><i>(c) a measure by the European Commission introducing allowances' floor and ceiling prices.</i></p> |

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| <p>Those measures shall be adopted in accordance with the management procedure referred to in Article 23(4).</p> <p>3. Any measure shall take utmost account of the reports submitted by the Commission to the European Parliament and to the Council pursuant to Article 29, as well as any other relevant information provided by Member States.</p> <p>4. The arrangements for the application of these provisions shall be laid down in the ►M9 acts ◀ referred to in Article 10(4).</p> | <p>Those measures shall be adopted in accordance with the management procedure referred to in Article 23(4).</p> <p>3. Any measure shall take utmost account of the reports submitted by the Commission to the European Parliament and to the Council pursuant to Article 29, as well as any other relevant information provided by Member States.</p> |
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Proposal for a Directive

Article 1 (19a)

Directive 2003/87/EC

Article 29a (2)

| <i>Proposed Directive</i> | <i>Amendment (modifications in yellow)</i> |
|---------------------------|---|
| | <p>(19a) Article 29a paragraph 2 is replaced by the following:</p> <p>“2. If the price evolution referred to in paragraph 1 does not correspond to changing market fundamentals or may cause significant risks for the sustainability of installations under the scope of this Directive, one of the following measures may be adopted, taking into account the degree of price evolution:</p> <p>(a) a measure which allows Member States to bring forward the auctioning of a part of the quantity to be auctioned;</p> <p>(b) a measure which allows Member States to auction up to 25 % of the remaining allowances in the new entrants reserve.</p> <p>(c) a measure by the European Commission introducing allowances’ floor and ceiling prices.</p> <p>Those measures shall be adopted in accordance with the management procedure referred to in Article 23(4). “</p> |

Justification

In the absence of a price steering mechanism, there is a high risk of a sudden rise or drop in the price of the allowances. Indeed, the market stability reserve sets up provisions that are strictly limited to the number of allocations, without a direct objective dedicated to the allowance price management. Therefore, a price ceiling and a price floor should be a possible solution in the case of excessive price fluctuations, to provide for better predictability for the industry.

4. Ensure that the Innovation Fund include relevant and efficient projects and enlarge the scope of ETS for hydrogen electrolyzers

Amendment 9: extension to all CCS technologies

Proposal for a Directive

Article 1 (12) g)

Directive 2003/87/EC

Article 10a 8) subparagraph 3

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| (g) paragraph 8 is replaced by the following: The Innovation Fund shall cover the sectors listed in Annex I and Annex III, including environmentally safe carbon capture and utilisation ("CCU") that contributes substantially to mitigating climate change , as well as products substituting carbon intensive ones produced in sectors listed in Annex I, and to help stimulate the construction and operation of projects aimed at the environmentally safe capture and geological storage ("CCS") of CO ₂ , as well as of innovative renewable energy and energy storage technologies; in geographically balanced locations. The Innovation Fund may also support break-through innovative technologies and infrastructure to decarbonise the maritime sector and for the production of low- and zero-carbon fuels in aviation, rail and road transport. | (g) paragraph 8 is replaced by the following: The Innovation Fund shall cover the sectors listed in Annex I and Annex III, including environmentally safe carbon capture and utilisation ("CCU") as well as products substituting carbon intensive ones produced in sectors listed in Annex I, and to help stimulate the construction and operation of projects aimed at the environmentally safe capture and geological storage ("CCS", including "BECCS", "DACCS") of CO ₂ , as well as of innovative renewable energy and energy storage technologies; in geographically balanced locations. The Innovation Fund may also support break-through innovative technologies and infrastructure to decarbonise the maritime sector and for the production of low- and zero-carbon fuels in aviation, rail and road transport. |

Justification

The special restriction for CCU ("that contributes substantially to mitigating climate change") contained in subparagraph 3 presumably refers to the technical screening criteria of the Taxonomy Climate Delegated Act. Since, according to the Commission Communication of 21 April 2021, the Taxonomy Regulation aims to be a voluntary transparency tool only, it should not become a precondition for accessing the support mechanisms under the Innovation Fund.

In addition to CCU and CCS from industrial processes, projects and technologies for the further development of the capture and storage of CO₂ from biomass ("BECCS") and for the direct capture of CO₂ from the atmosphere ("DACCS") should also be explicitly allowed to be funded.

Amendment 10: enlarge the scope of ETS for hydrogen electrolyzers**Proposal for a Directive****ANNEX c) v)**

Directive 2003/87/EC

Annexe I (table 24th row)

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| (v) The twenty-fourth row is replaced by the following: Production of hydrogen (H ₂) and synthesis gas with a production capacity exceeding 25 tonnes per day. | (v) The twenty-fourth row is replaced by the following: Production of hydrogen (H ₂) and synthesis gas with a production capacity exceeding 15 tonnes per day. |

Justification

The proposed revision to make the activity “production of hydrogen” technology-neutral is much needed to kick-start the hydrogen economy and to contribute to the price-competitiveness of various hydrogen production technologies. Since independent analysis from [Sandbag](#) demonstrates however that a requirement of 25t of daily production would rule out electrolyzers under 100MW, and that many state-of-the-art implemented or planned green H₂ projects have lower capacities, this threshold of daily production capacity should be lowered to at least 15t/day in average (corresponding to an around 40MW electrolyser) in order to effectively contribute to the deployment of innovative technologies.

5. Adopt a ten-year standstill in the phasing out of free allowances for EU sectors goods of which are covered by the CBAM *(coordinated with amendment proposals on the CBAM Regulation)*

Amendment 11: in EU ETS Proposal recital dedicated to CBAM**Proposal for a Directive****Recital 30**

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| The Carbon Border Adjustment Mechanism (CBAM), established under Regulation (EU) [.../..] of the European Parliament and of the Council ¹⁸ , is an alternative to free allocation to address the risk of carbon leakage. To the extent that sectors and subsectors are covered by that measure, they should not receive free allocation. However, a transitional phasing-out of free allowances is needed to allow producers, importers and traders to adjust to the new regime. The reduction of free allocation should be implemented by applying a factor to free allocation for CBAM sectors, while the CBAM is phased in. This percentage (CBAM factor) should be equal to 100 % during the transitional period between the entry into force of [CBAM Regulation] and 2025 , 90 % in 2026 and should be reduced by 10 percentage points each year to reach 0 % and thereby eliminate free | The Carbon Border Adjustment Mechanism (CBAM), established under Regulation (EU) [.../..] of the European Parliament and of the Council ¹⁸ , is an alternative to free allocation to address the risk of carbon leakage. To the extent that sectors and subsectors are covered by that measure, they should not receive free allocation. However, a transitional period is needed to allow producers, importers and traders to adjust to the new regime. Given the uncertainty on whether the CBAM could provide an equivalent protection against carbon leakage for covered sectors as free allowances do under the provisions of Article 10 b of the current EU ETS Directive 2003/87/EC, the progressive phasing out of free allowance should not start before an initial period of ten years following the end of the transitional period. The reduction of free allocation |

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| <p>allocation by the tenth year. The relevant delegated acts on free allocation should be adjusted accordingly for the sectors and subsectors covered by the CBAM. The free allocation no longer provided to the CBAM sectors based on this calculation (CBAM demand) must be auctioned and the revenues will accrue to the Innovation Fund, so as to support innovation in low carbon technologies, carbon capture and utilisation ('CCU'), carbon capture and geological storage ('CCS'), renewable energy and energy storage, in a way that contributes to mitigating climate change. Special attention should be given to projects in CBAM sectors. To respect the proportion of the free allocation available for the non-CBAM sectors, the final amount to deduct from the free allocation and to be auctioned should be calculated based on the proportion that the CBAM demand represents in respect of the free allocation needs of all sectors receiving free allocation.</p> | <p>should be implemented by applying a factor to free allocation for CBAM sectors, while the CBAM is phased in starting the 11th year. This percentage (CBAM factor) should be equal to 100 % in 2035, 90 % in 2036 and should be reduced by 10 percentage points each year to reach 0 % and thereby eliminate free allocation by the tenth year after the entry into force of the CBAM. The relevant delegated acts on free allocation should be adjusted accordingly for the sectors and subsectors covered by the CBAM. The free allocation no longer provided to the CBAM sectors based on this calculation (CBAM demand) must be auctioned and the revenues will accrue to the Innovation Fund, so as to support innovation in low carbon technologies, carbon capture and utilisation ('CCU'), carbon capture and geological storage ('CCS'), renewable energy and energy storage, in a way that contributes to mitigating climate change. Special attention should be given to projects in CBAM sectors. To respect the proportion of the free allocation available for the non-CBAM sectors, the final amount to deduct from the free allocation and to be auctioned should be calculated based on the proportion that the CBAM demand represents in respect of the free allocation needs of all sectors receiving free allocation.</p> |
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Amendment 12: adopt a ten-year standstill in the phasing out of free allowances for EU sectors' goods covered by CBAM

Proposal for a Directive (mirroring amendment with amendment proposals on CBAM Regulation)

Article 1 (12) b)

Directive 2003/87/EC

Article 10a 1a)

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| <p>(b) the following paragraph 1a is inserted:</p> <p>"1a. No free allocation shall be given in relation to the production of products listed in Annex I of Regulation [CBAM] as from the date of application of the Carbon Border Adjustment Mechanism. By way of derogation from the previous subparagraph, for the first years of operation of Regulation [CBAM], the production of these products shall benefit from free allocation in reduced amounts. A factor reducing the free allocation for the production of these products shall be applied (CBAM factor). The CBAM factor shall be equal to 100 % for the period during the entry into force of [CBAM regulation] and the end of 2025, 90 % in 2026 and shall be reduced by 10 percentage points each year to reach 0 % by the tenth year. The reduction of free allocation shall be calculated annually as the average share of the demand for free allocation for the production of products listed in</p> | <p>(b) the following paragraph 1a is inserted:</p> <p>"1a. No free allocation shall be given in relation to the production of products listed in Annex I of Regulation [CBAM] as from the date of application of the Carbon Border Adjustment Mechanism. By way of derogation from the previous subparagraph, for the first ten years of operation of Regulation [CBAM], the production of these products shall still benefit from free allocation at maintained amount and, then from the 11th year on, in reduced amounts. A factor reducing the free allocation for the production of these products shall be applied (CBAM factor). The CBAM factor shall be equal to 100 % for the period from the entry into force of [CBAM regulation] until the end of 2035, 90 % in 2036 and shall be reduced by 10 percentage points each year to reach 0 % by the tenth year. The reduction of free allocation shall be calculated annually as the average share of the</p> |

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| Annex I of Regulation [CBAM] compared to the calculated total free allocation demand for all installations, for the relevant period referred to in Article 11, paragraph 1. The CBAM factor shall be applied. Allowances resulting from the reduction of free allocation shall be made available to support innovation in accordance with Article 10a(8)." | demand for free allocation for the production of products listed in Annex I of Regulation [CBAM] compared to the calculated total free allocation demand for all installations, for the relevant period referred to in Article 11, paragraph 1. The CBAM factor shall be applied. Allowances resulting from the reduction of free allocation shall be made available to support innovation in accordance with Article 10a(8)."; |
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Justification

While the CBAM is explicitly designed as a substitutive mechanism to free allowances to combat carbon leakage and incentivise third countries' companies to shift to low emission production processes, there is no clarity yet whether CBAM could succeed in such protection against carbon leakage and whether EU exporting industries in covered sectors could overcome the possible weakening of their competitiveness on third countries' markets due to ETS-driven additional costs. A 10-year standstill in the phasing out of free allowances for sectors exposed to carbon leakage under the ETS Directive update should allow for verifying whether the CBAM has proven effective for the covered sectors. During this period, CBAM certificates will be surrendered taking into account the remaining free allowances allocated to the sectors in the scope, according to Articles 22 and 31 of the proposal for a Regulation on CBAM.

Amendment 13: establish an allowance adjustment mechanism at the benefit of EU exports to address the remaining risk of carbon leakage

Proposal for a Directive (mirroring amendment with amendment proposals on CBAM Regulation)

Article 1 (15) ca) (new)

Directive 2003/87/EC

Article 12 3b) (New)

| <i>Text proposed by the Commission</i> | <i>Amendment</i> |
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| | <p><i>(ca new) the following paragraph 3b is inserted:</i></p> <p><i>"For the relevant period referred to in paragraph 3, Member States shall ensure that, when the national competent authority in the sense of Regulation XXX [establishing a carbon border adjustment mechanism] has issued a CBAM export certificate establishing the number of allowances subject to adjustment with respect to exported goods, the operator of each installation mentioned in subparagraph (a) of paragraph 3 is entitled to deduct this number of allowances from the total of allowances to be surrendered in accordance with paragraph 3."</i></p> |

Justification

Notwithstanding the standstill period proposed above for the temporary cumulation of free allowances and CBAM, the CBAM as proposed by the European Commission is not likely to bring a permanent solution to carbon leakage faced in third countries markets and the lack of level-playing field for EU exported goods for CBAM-covered sectors. To make up for these persistent distortions, operators of installations subject to the EU

ETS should be compensated for GHG emissions embedded in goods exported to third countries markets to the extent that these countries have not put into place a carbon pricing mechanism equivalent and at the level of the EU ETS. Such compensation is not likely to be assimilated to an export subsidy prohibited by the WTO Agreement on subsidies and countervailing measures (ASCM) at the condition that the level of the granted compensation does not exceed the number of allowances equaling to emissions embedded in the same goods produced by the same installations but sold on the internal market (based on standard interpretation of Annex I of ASCM, paragraphs (h) and (i) by WTO secretariat transposed in the ETS context).

To this end, it is proposed to issue CBAM export certificates establishing the number of allowances to be adjusted to reflect emissions embedded in exported goods and to entitle operators to deduct this number from the number of ETS allowances to be surrendered on annual basis, the rules for such deduction being adopted under the revision of the ETS directive. The European Commission would be tasked to elaborate a methodology to calculate this number of allowances that would meet the requirements for ensuring a full WTO compatibility mentioned above.

This export-specific compensation mechanism should enter into force simultaneously with the start of the phasing-out of free allowances, given that Article 31 of the European Commission proposal guarantees that the number of free allowances is deducted from the number of CBAM certificates to be purchased by importers.
