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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Directive 2003/87/EC as regards revised benchmark values for the heat and fuel benchmarks for the period from 2026 to 2030 - Mandate for negotiations with the European Parliament

On 16 September 2026, the Permanent Representatives Committee agreed on the text set out in the Annex as mandate for negotiations with the European Parliament.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2003/87/EC as regards revised benchmark values for the heat and fuel
benchmarks for the period from 2026 to 2030¹

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

¹ Changes to the Commission proposal are marked in **bold and underlined**.

² OJ C , , p. .

³ OJ C , , p. .

Whereas:

- (1) Free allocation to installations in the system for greenhouse gas emission allowance trading within the Union (EU ETS) is determined based on harmonised Union-wide benchmarks reflecting the performance of the most efficient installations. The ex-ante Union-wide benchmarks are established in Annex I to Commission Delegated Regulation (EU) 2019/331⁴. The Commission updates the benchmark values for each five-year period for free allocation referred to in Article 11 of Directive 2003/87/EC in accordance with the rules laid down in Article 10a of that Directive.
- (2) To address concerns expressed by certain industrial sectors in the context of updating the benchmark values until 2030 and provide additional protection against the risk of carbon leakage, the quantity of allowances to be allocated for free for the period from 2026 to 2030, determined by the heat and fuel benchmarks ('fallback benchmarks'), should be increased. In order to do so, it is appropriate to adjust the maximum annual update rate applied for the fallback benchmarks by using the totality of the allowances available for free allocation in the period from 2026 to 2030 as laid down in Commission Decision XXX⁵ [CSCF Decision], amounting to around 88 million allowances, **as well as the allowances that are not allocated in that period as a result of the reduction of free allocation under the third and fifth subparagraphs of Article 10a(1) of Directive 2003/87/EC, amounting to around 33 million allowances. Article 10a(1), sixth subparagraph, of that Directive should be amended accordingly. The use of these additional allowances corresponds to an indicative 9% reduction of the fallback benchmarks compared to 2021-2025 values, i.e. an indicative average value of 2026-2030 heat and fuel benchmarks of 43.0 and 38.7 allowances/TJ, respectively.** In line with the targeted nature of this adjustment and the rules set out in in Commission Delegated Regulation (EU) 2019/331 on the determination of the annual amount of allowances allocated for free to installations, the additional free allocation resulting from the adjustment should only concern the amounts determined by the fallback benchmarks.

⁴ Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8, ELI: http://data.europa.eu/eli/reg_del/2019/331/oj).

⁵ [please insert the full reference once available – CSCF Decision]

- (3) To avoid unnecessary administrative burden for operators and public authorities related to the adjustments of free allocation decisions and the transfer of allowances to operators' accounts, the benchmark values should be adjusted for the period from 2027 to 2030, while the additional free allocation amounts for the year 2026 should be made available together with the free allocation for the year 2027. To ensure sufficient time is provided for to reflect this adjustment in the context of Regulation (EU) 2023/956 of the European Parliament and of the Council⁶, the resulting adjustment to free allocation levels for the year 2026 should be implemented through the corresponding update of the benchmark values for the year 2027.
- (4) To preserve the level playing field and prevent negative effects on free allocation determined on the basis of the product benchmarks, it is necessary to ensure that the adjusted percentage rate value for the maximum annual update rate used to determine the fallback benchmarks until 2030 does not trigger the application of the cross-sectoral correction factor pursuant to Article 10a(5) of Directive 2003/87/EC.
- (5) To further incentivise decarbonisation, it is appropriate for the existing maximum update rate for fallback benchmarks established under Article 10a(2), third subparagraph, point (d), of Directive 2003/87/EC for the period from 2026 to 2030 to continue to be applicable to installations carrying out oil and gas activities, including as regards the free allocation amounts determined on the basis of the fallback benchmarks. To further operationalise the differentiated treatment between oil and gas activities and other activities the fallback benchmarks are applied to, the Commission should establish the corresponding sector specific sub-benchmarks under the ex-ante heat and fuel benchmarks for activities covered by NACE codes 0610, 0620, 1920 and 4950 set out in Annex I to Regulation (EC) No 1893/2006 of the European Parliament and the Council⁷.

⁶ Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism (OJ L 130, 16.5.2023, pp. 52–104).

⁷ Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1, ELI: <http://data.europa.eu/eli/reg/2006/1893/oj>).

- (5a) **To ensure that the update of the heat and fuel benchmark values does not lead to a successive and circular increase in the amount of free allocation reduced under Article 10a(1) sixth subparagraph, it is appropriate that the 20% reduction of free allocation does not take into account the update of the benchmark values for heat and fuel benchmarks according to paragraph 2a of that Article.**
- (6) Directive 2003/87/EC should therefore be amended accordingly.
- (7) To ensure a swift increase of free allocation levels determined on the basis of the fallback benchmarks that reflect the revised maximum annual update rate value, and to ensure that those additional amounts are made available as of the determination of free allocation for the year 2027, this Regulation should solely address allocations under those benchmarks within the amount of allowances available and enter into force on the third day following that of its publication,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

- (0) **in Article 10a (1), the sixth subparagraph is replaced by the following:**
- ‘Allowances that are not allocated due to a reduction of free allocation in accordance with the third and fifth subparagraphs of this paragraph shall be used for the purposes of paragraph 2a of this Article.’**

- (1) in Article 10a, the following paragraphs 2a, 2b **and 2c** are inserted after paragraph 2:

‘2a. By way of derogation from paragraph 2, third subparagraph, point (d), of this Article, the maximum annual reduction rate to be applied for the update of the benchmark values for heat and fuel benchmarks for the period from 2027 to 2030 shall be reduced to a percentage rate value that makes full use of the additional amount referred to in Article 10a(5a) **and of the allowances referred to in the sixth subparagraph of Article 10a(1),** and ensures that no reduction pursuant to Article 10a(5) applies.

Concerning the update of the benchmark values for heat and fuel benchmarks for the year 2027, the maximum annual reduction rate to be applied shall be reduced to a percentage rate value that makes use of 40 % of the adjustment pursuant to the first subparagraph and ensures that no reduction pursuant to Article 10a(5) applies.

2b. Paragraph 2a shall not apply to free allocations for installations carrying out economic activities covered by NACE codes 0610, 0620, 1920 and 4950 set out in Annex I to Regulation (EC) No 1893/2006 of the European Parliament and the Council*.

2c. By way of derogation from Article 10a(1) third and fifth subparagraph, the 20% reduction of free allocation pursuant to those subparagraphs shall not take into account the update of the benchmark values for heat and fuel benchmarks according to paragraph 2a.’

* Regulation (EC) No 1893/2006 of the European Parliament and of the Council of 20 December 2006 establishing the statistical classification of economic activities NACE Revision 2 and amending Council Regulation (EEC) No 3037/90 as well as certain EC Regulations on specific statistical domains (OJ L 393, 30.12.2006, p. 1, ELI: <http://data.europa.eu/eli/reg/2006/1893/oj>).’

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
