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CONTRIBUTION

From: To:	General Secretariat of the Council Working Party on the Environment
N° prev. doc.:	WK 5269/2022 + COR 1
Subject:	Fit for 55 package - ETS revision: Follow-up to the WPE meeting on 8 April 2022 - Comments from a delegation

Following the call for comments set out in WK 5269/2022 + COR 1, delegations will find attached comments from the SE delegation.

Memorandum



28 April 2022 M2022/

Ministry of the Environment Climate Division

Swedish comments ahead of WPE ETS on the 29 April 2022

Cluster 8: miscellaneous

1. Installations with zero or low emissions

Zero and low emission techniques are developing rapidly in the European industry sector. Such developments are key to reach the EU's climate targets and to preserve and strengthen global competitiveness. However, the costs for investing in demonstration and upscaling of these techniques and technologies are still high and associated with an elevated level of risk for investors. It is therefore crucial that the EU ETS – the cornerstone of EU climate policy – does not become an obstacle for the green transition by distorting the competitiveness for early movers.

Article 10a(1) of the EU ETS Directive states that the benchmarks should be determined "so as to ensure that allocation takes place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques". Furthermore, recital 23 of Directive 2009/29/EC (amending the EU ETS Directive) holds that "[t]ransitional free allocation to installations should be provided for through harmonised Community-wide rules (ex-ante benchmarks) in order to minimise distortions of competition with the Community". If for example reduction of iron ore with CO2 emissions receives free allocation, whereas iron ore reduction without CO2 emissions does not receive any free allocation, then the benchmark system would lead to a distortion of competition, contrary to its purpose. Such a distortion would also counteract the purpose of the EU ETS Directive, by delaying and hindering the green transition. Therefore, Sweden proposal to ensure that industrial frontrunners can compete on a level playing field.

Article 2		
CION proposal	PCY amendments (bold)	SE amendments (underscored)
1. This Directive shall apply to the activities listed in Annexes I and III, and to the greenhouse gases listed in Annex II. Where an installation that is included in the scope of the EU ETS due to the operation of combustion units with a total rated thermal input exceeding 20 MW changes its production processes to reduce its greenhouse gas emissions and no longer meets that threshold, it shall remain in the scope of the EU ETS until the end of the relevant five year period referred to in Article 11(1),	1. This Directive shall apply to the activities listed in Annexes I and III, and to the greenhouse gases listed in Annex II. Where an installation that is included in the scope of the EU ETS due to the operation of combustion units with a total rated thermal input exceeding 20 MW changes its production processes to reduce its greenhouse gas emissions and no longer meets that threshold, the Member State shall provide the operator with the option to-it shall	1. This Directive shall apply to <u>emissions from</u> the activities listed in Annexes I and III, and to the greenhouse gases listed in Annex II. <u>1a. If an installation performs an</u> <u>activity listed in Annex I and</u> <u>meets the capacity threshold</u> <u>related to the same activity but</u> <u>does not emit any greenhouse</u> <u>gases and is therefore not</u> <u>included in the scope of the EU</u> <u>ETS according to paragraph 1,</u> <u>the Member State shall provide</u> <u>the operator with the option to be</u> <u>included in the scope of the EU</u> <u>ETS.</u> Where an installation that is
second subparagraph, following the change to its production process.	EU ETS until the end of the relevant five year period referred to in Article 11(1), second subparagraph, following the change to its production process. The Member State concerned shall notify to the Commission if the operator opts to remain under the EU ETS in such circumstances	included in the scope of the EU ETS due to the operation of combustion units with a total rated thermal input exceeding 20 MW changes its production processes to reduce its greenhouse gas emissions and no longer meets that threshold, the Member State shall provide the operator with the option to it shall remain in the scope of the EU ETS. until the end of the relevant five year period referred to in Article 11(1), second subparagraph,

following the change to its production process.
The Member State concerned shall notify to the Commission if
the operator opts to <u>be included</u>
<u>or</u> remain under the EU ETS
according to the first or second
subparagraph of this paragraph.

Justification: The inclusion of "emissions from" in the first paragraph clarifies what kind of installations that are to be mandatory included in the EU ETS. Paragraph 1a ensures that new installations performing activities in Annex I but not resulting in any CO2 emissions may still be included in the system in order to meet the same market conditions as competitors with CO2 emissions.

Article 10a	
CION proposal	SE amendments
1.	1.
()	()
For each sector and subsector,	For each sector and subsector, in
in principle, the benchmark	principle, the benchmark shall be
shall be calculated for	calculated for products rather than
products rather than for	for inputs, in order to maximise
inputs, in order to maximise	greenhouse gas emissions
greenhouse gas emissions	reductions and energy efficiency
reductions and energy	savings throughout each production
efficiency savings throughout	process of the sector or the
each production process of	subsector concerned. In order to
the sector or the subsector	provide further incentives for
concerned. In order to provide	reducing greenhouse gas emissions

further incentives for reducing greenhouse gas emissions and improving energy efficiency, the determined Union-wide exante benchmarks shall be reviewed **before the period** potentially modifying the definitions and system boundaries of existing product benchmarks.

and improving energy efficiency and promote innovative decarbonised products, the determined Union-wide ex-ante benchmarks shall be reviewed before the period from 2026 to 2030 within 6 months of the entry into from 2026 to 2030 in view of force of this Directive in view of potentially modifying the definitions, scope and system boundaries of existing product benchmarks<u>, so that new</u> installations with partially or fully decarbonised production processes receive free allocation on the basis of such product <u>benchmarks. The review shall</u> ensure that free allocation for the production of a product from a specific raw material is independent of the production process.

In order to provide further incentives for reducing greenhouse gas emissions in the steel industry, the annual reduction rate of the product benchmark hot metal calculated pursuant to the previous subparagraph shall not be affected by the modification of benchmark definitions and system boundaries pursuant to the fifth subparagraph of article 10a1 when the calculation of such rate is influenced by installations that were operational in the period

re	eferred to the first sub-
pa	aragraph of article 10a2.
T	he benchmark values shall be
թլ	ublished as soon as the necessar
in	formation becomes available, in
)r	der for the updates to apply as
0	oon as possible but no later than
-	January 2026

Justification: It should be stated that one of the purposes of the benchmark review is to promote innovative solutions that could reduce or eliminate emissions from EU industry. Such a review should take place within 6 months after the entry into force of the Directive, to provide the best possible preconditions for installations to prepare for the new period.

To incentivise new breakthrough technologies in iron and steel production from iron ore and to allow different technologies and processes to compete based on their CO2 reduction potential, the calculation of the hot metal benchmark should not include installations included in the benchmark due to the review of its definition and that were operational during the reference period.

Annex 1	
CION proposal	SE amendments
Fifth row	
Production of iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour.	Production of iron (including sponge iron, HBI and pig iron) or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour.

Twenty-fourth row

Production of hydrogen (H2) and synthesis gas with a production capacity exceeding 25 tonnes per day.

Production of hydrogen (H2) and/or synthesis gas with a production capacity exceeding 25 tonnes per day.

Justification: It should be clarified that the definition for iron or steel production (fifth row) covers sponge iron, hot briquetted iron and pig iron in order to avoid contradictory interpretations of the definition at a later stage.

The definition of H2 production (twenty-fourth row) could be interpreted as a requirement that both renewable energy and natural gas (resulting in synthesis gas) *must* be used. It should therefore be clarified that the use of either source is enough to fulfil the criterion.

2. <u>Incentives for Bio-Energy Carbon Capture and Storage</u> (BECCS)

Sweden has presented a non-paper (WK 5318/2022) with an idea on how to create economic incentives for the use of BECCS in the EU ETS (while accounting for BECCS under the LULUCF Regulation). In the Swedish idea, an operator in EU ETS using BECCS would be granted one allowance per tonne of biogenic CO2 permanently removed and stored. The operator could then either sell this allowance on the market or use it for compliance purposes (to cover emissions from other installations). Industrial carbon removal techniques are developing rapidly, but investors and Member States still lack a proper clarity of the incentives and regulatory environment. The implementation and up-scaling of BECCS is already underway, and regulatory provisions in the EU climate framework can therefore not wait until 2030. Sweden is working on a written proposal on the matter.

3. Inclusion of municipal waste incineration in the EU ETS

The inclusion of municipal waste incineration has the potential to decrease GHG emissions substantially and increase circularity and incentives for reuse

and recycling. Yet the issue has received little attention from delegations in the WPE discussions as well as from the Commission in its impact assessment following the legislative proposal. Sweden calls for an inclusion of municipal waste incineration in the scope of the EU ETS, or at least a proper impact assessment on including municipal waste incineration in the ETS, to assess the effects of such an inclusion.

Cluster 5: Free Allocation and Carbon Leakage

1. Free allocation decrease for CBAM sectors

The CBAM proposal addresses the risk of carbon leakage for products sold on the internal EU market, but it does not protect EU exports from carbon leakage. This is a problem that has been raised in the Working Parties as well as by several stakeholders. At the same time, it has been deemed challenging from a WTO perspective to design a mechanism that also provides protection for production that is exported outside the Union.

Therefore, Sweden advocates that if the mechanism is not combined with effective, WTO compatible, measures to protect EU exports from the risk of carbon leakage, a slower phasing out of the free allocation for the CBAM sectors is necessary. The Innovation Fund, regardless of a potential special attention to CBAM sectors, is not a sufficient measure to prevent carbon leakage. If the risk of leakage decreases (if for example EU trading partners introduce carbon pricing) the phasing out rate should be accelerated at a later stage.

The Commission's impact assessment indicates that a phase out period of 10 years leads to larger emission reductions globally compared to the options where free allocation is immediately abolished.

The impact assessment does not however include any other timelines for the phase-out of free allocation. Even in the absence of accurate modelling results, we believe some qualitative analyses could be done. We would therefore like the Commission to clarify, and other MS to discuss, the following issue:

-What would be the likely effect on global emissions from a slower phase-out?