



EUROPEAN COMMISSION

Brussels, 15.02.2019  
SEC(2019) 86 final

**REGULATORY SCRUTINY BOARD OPINION**

**Commission Delegated Decision supplementing Directive 2003/87/EC of the European Parliament and of the Council concerning the determination of sectors and subsectors deemed at risk of carbon leakage for the period 2021 to 2030**

{C(2019) 930 final}  
{SWD(2019) 21 final}  
{SWD(2019) 22 final}



EUROPEAN COMMISSION  
Regulatory Scrutiny Board

Brussels,  
Ares(2018)

## **Opinion**

### **Title: Impact Assessment / Second-level assessments for Carbon Leakage List**

(Version of 25 April 2018)\*

### **Overall 2<sup>nd</sup> opinion: POSITIVE**

#### **(A) Context**

Carbon leakage is the increase in greenhouse gases emitted outside of the EU as businesses shift their activities in response to the EU's policy to tackle climate change. The legislation governing the operation of the EU's Emissions Trading System (ETS) envisages the free allocation of emissions allowances to certain industries to mitigate the risk of carbon leakage. The practical details of how this is done are established in implementing legislation that also includes a List of sectors at risk.

The Carbon Leakage List is drawn up in two steps. Most sectors qualify for the List based on a first-level assessment using the trade and energy intensity as criteria. The remaining sectors (responsible for approximately 5% of total CO<sub>2</sub> emissions) may be eligible for a second-level assessment for possible inclusion in the List. This is checked either by a qualitative assessment or a quantitative assessment at subsector, disaggregated level.

Applicants criticised the second-level assessments as not transparent and prone to delays. Hence, this initiative aims to establish a clear methodology and data quality criteria to ensure a transparent and equal treatment of sectors.

#### **(B) Main considerations**

**The Board acknowledges the extensive revisions of the impact assessment in line with the requested adjustments.**

**The Board gives a positive opinion, with a recommendation to further improve the report with respect to the following key aspects:**

- (1) The report could explain better why it considers only the polar options of all elements either being flexible or being prescriptive.**
- (2) The report does not make sufficiently clear whether and how the requests by stakeholders were accommodated.**
- (3) The monitoring and evaluation scheme does not provide indicators to measure improvement regarding the second-level application and assessment process from Phase 3 (2013-2020) to Phase 4 (2021-2030) of the European Trading Scheme.**

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

**(C) Further considerations and recommendations for improvement**

(1) The report could describe the advantages and disadvantages of the proposed options in a more balanced fashion. At a minimum, for each of the framework elements, the report would look at the impact of each option on both flexibility and harmonization. Especially the description of the disadvantages of and potential problems with the preferred option is insufficient.

(2) The report does not always set out clearly whether and how the requests of the stakeholders were accommodated (for example, regarding verification). For instance, and as a minimum, the report could elaborate on the content of the discussion of the workshop held on 2 March 2018, where the stakeholders possibly agreed on the preferred approach.

(3) In the current report, the described monitoring and evaluation scheme assesses the success of the European Emissions Trading Scheme and its efforts to prevent carbon leakage, which corresponds to the general objectives. However, the report should consider how the evaluation of Phase 4 would document the improvement of the application and assessment process as compared to Phase 3 in terms of fairness, time and resources needed and data quality, i.e., the operational objectives.

The Board takes note of the quantification of the various costs and benefits associated to the preferred option of this initiative, as assessed in the report considered by the Board and summarised in the attached quantification tables.

*Some more technical comments have been transmitted directly to the author DG.*

**(D) RSB scrutiny process**

**The lead DG shall ensure that the recommendations of the Board are taken into account in the report prior to launching the interservice consultation.**

**The attached quantification tables may need to be adjusted to reflect any changes in the choice or the design of the preferred option in the final version of the report.**

|                     |   |
|---------------------|---|
| Full title          | Commission Decision determining the list of sectors and sub-sectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2021 to 2030 |
| Reference number    | PLAN/2017/1528  |
| Date of RSB meeting | Written procedure   |

**ANNEX: Quantification tables extracted from the draft impact assessment report submitted to the Board on 25 April 2018**

(N.B. The following tables present information on the costs and benefits of the initiative in question. These tables have been extracted from the draft impact assessment report submitted to the Regulatory Scrutiny Board on which the Board has given the opinion presented above. It is possible, therefore, that the content of the tables presented below are different from those in the final version of the impact assessment report published by the Commission as the draft report may have been revised in line with the Board's recommendations.)

**Qualitative assessments (QL) – Benefits**

| <b><i>I. Overview of Benefits – Preferred Option: flexible qualitative framework<sup>1</sup></i></b> |   |  |
|--|---|--|
| <b>Description</b>   | <b>Amount</b>   | <b>Comments</b>  |
| <b><i>Direct benefits</i></b>  |   |  |
| Compliance cost reductions for the CLL “second level assessment” application                         | Cost is comparable to the baseline option; Application process is similar in both options | Eligible industry sectors for qualitative assessment may submit an application for “second level assessment”   |
| Administrative costs   | Estimated 20-40% benefit  | Benefit to eligible sectors by defining upfront what the application should contain; Benefit to the assessing authority (Commission);<br>Avoid misuse and interpretation issues of the qualitative criteria (limiting the number of iterations and increasing the application quality)   |
| <b><i>Indirect benefits</i></b>  |   |  |
| Carbon Leakage List focus  | Estimated additional CSCF of 6,5% could apply <sup>2</sup> (avg per year)                 | Benefit to industry sector with Carbon Leakage exposure, by efficient assignment of limited available free allocation allowances which would otherwise increase the risk of applying a cross sectoral correction factor (CSCF);<br>Harmonised framework increases the assessment fairness and limits the political and criteria uncertainty in the process |
| Implementation time  | Estimated 40-60% benefit  | Benefit to overall EU ETS system implementation; available time for sector assessment is about 50% less than what was available in phase 3 where no framework (baseline) was used; limiting the number of iterations ; preferred option will support the assessment efficiency   |
| Data quality   | Estimated 30-50% benefit  | Benefit to eligible sectors who apply and assessing authority (Commission); revised Directive qualitative criteria are   |

<sup>1</sup> Estimates are relative to the baseline for the preferred option as a whole (i.e. the impact of individual actions/obligations of the preferred option are aggregated together); the benefit compared to the baseline is measured as the percentage (%) increase/decrease benefit of the preferred option

<sup>2</sup> In the case the industry free allocation “demand” equals the available free allocation share (supply) and that the buffer is fully used to compensate for the “additional” free allocation demand resulting from all the sectors eligible for the second-level assessment making it into the carbon leakage list

|                          |  |  |
|--------------------------|--|--|
|                          |  | operationalised with additional details (e.g. coverage of installations) and data source references  |
| Assessment harmonisation |  | Benefit to overall EU ETS system implementation; assessment process fairness, transparency and equal treatment is supported; Upfront clarity in the framework avoids iterations (verified in phase 3 where no framework was used, i.e. baseline case) to harmonise the assessments |

### Disaggregated assessments (QT\*) - Benefits

| <b>II. Overview of Benefits – Preferred Option: flexible disaggregated framework <sup>1</sup></b> |   |   |
|---|---|---|
| <b>Description</b>  | <b>Amount</b>   | <b>Comments</b>   |
| <b>Direct benefits</b>  |   |   |
| Compliance cost reductions for the CLL “second level assessment” application                      | Cost is comparable to the baseline option; Application process is similar in both options | Eligible industry sectors for qualitative assessment at disaggregated level may submit an application for “second level assessment”   |
| Administrative costs  | Estimated 40-60% benefit  | Benefit to eligible sectors by defining upfront what the quantitative methodology is and providing a default approach to be used; Clarity and quantification of the quality requirements, set in the Directive (e.g. completeness and verification), that the application should fulfil is provided; Benefit to the assessing authority (Member States and Commission) by providing assessment detail and supporting the harmonisation of assessments |
| <b>Indirect benefits</b>  |   |   |
| Carbon Leakage List focus   | Estimated additional CSCF of 6,5% could apply <sup>2</sup> (avg per year)                 | Benefit to industry sector with Carbon Leakage exposure, by efficient assignment of limited available free allocation allowances which would otherwise increase the risk of applying a cross sectoral correction factor (CSCF); Harmonised framework increases the assessment fairness and limits the political and criteria uncertainty in the process   |
| Implementation time   | Estimated 40-60% benefit  | Benefit to overall EU ETS system implementation; available time for sector assessment is about 50% less than what was available in phase 3 where no framework (baseline) was used; for Member States, where a limited number of sectors may submit an application to them, there is a bigger time stringency (approx..3 months application and assessment) only feasible with a supporting framework.   |
| Data quality  | Estimated 30-50% benefit  | Benefit to eligible sectors who apply and assessing authority (Member State and Commission); revised Directive quality requirements (e.g. completeness and verification), are operationalised with default approach, data source references and quantification of data representativeness   |

|                          |  |   |
|--------------------------|--|---|
| Assessment harmonisation |  | Benefit to overall EU ETS system implementation; assessment process fairness, transparency and equal treatment is supported; Upfront clarity in the framework avoids iterations (verified in phase 3 where no framework was used, i.e. baseline case) to harmonise the assessments; particularly relevant where multiple assessing authorities can be involved (Member States and Commission) |
|--------------------------|--|---|

## Costs

| <b>III. Overview of costs – Preferred option</b>                  |  |  |                                       |
|---|--|--|---------------------------------------|
|   | Industry Sectors <sup>3</sup>  | Member State (where relevant) <sup>4</sup> | Commission                            |
|   | One-off  | One-off                                    | One-off                               |
| Qualitative assessments (QL): harmonised qualitative framework    |  |  |                                       |
| Prepare application   | 20K-40K EUR per application; estimated maximum 16 QL applications (see 3) 320-640K EUR | NA   | NA                                    |
| Review application  |  | NA   | 2 FTE for 3 months + Support contract |
| Final assessment  |  | NA   | 2 FTE for 3 months + Support contract |
| Disaggregated assessments (QT*): flexible disaggregated framework |  |  |                                       |
| Prepare application   | 20K-40K EUR per application estimated maximum 22 QT* applications (see 3) 440-880K EUR | NA   | NA                                    |
| Review application  |  | 11 FTE for 1 month <sup>5</sup>            | 2 FTE for 3 months + Support contract |
| Final assessment  |  | NA   | 2 FTE for 3 months + Support contract |

<sup>3</sup> Limited number of eligible sectors after application of the eligibility criteria as set in the revised Directive; One-off costs range accounts for the estimated cost of an external consultancy project

<sup>4</sup> Art 10(b) (3) sets that (sub)sectors listed in the EU ETS phase 3 CLL at a 6-digit or 8-digit level may submit an application via a Member State

<sup>5</sup> Estimated at 2 weeks per application, which for the estimated 22 applications leads to 44 weeks or 11 FTE for 1 month



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## **Opinion**

### **Title: Impact Assessment / Second-level assessments for Carbon Leakage List**

(version of 7 March 2018)\*

### **Overall opinion: NEGATIVE**

#### **(A) Context**

Carbon leakage is the increase in greenhouse gases emitted outside of the EU as businesses shift their activities in response to the EU's policy to tackle climate change. The legislation governing the operation of the EU's Emissions Trading System (ETS) envisages the free allocation of emissions allowances to certain industries to mitigate the risk of carbon leakage. The practical details of how this is done are established in implementing legislation that also includes a List of sectors at risk.

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Applicants criticised the second-level assessments as not transparent and prone to delays. Hence, this initiative aims to establish a clear methodology and data quality criteria to ensure a transparent and equal treatment of sectors.

#### **(B) Main considerations**

**The Board acknowledges the limited scope of the impact assessment.**

**However, the Board gives a negative opinion, because the report contains important shortcomings that need to be addressed particularly with respect to the following key aspects:**

- (1) The report does not sufficiently explain how it reduces the room for interpretation left by the revised ETS Directive for the second-level assessment. It does not establish clearly the link with previous Carbon Leakage List exercises and the**

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**2014 Carbon Leakage Impact Assessment that has also envisaged the use of a harmonised methodology.**

- (2) The options lack alternative choices for the main features of the harmonised framework.**
- (3) The problem description, the objectives and impact analysis do not consistently address the definition of a harmonised framework for the selection of sectors.**
- (4) The stakeholder views are missing from the report.**

**(C) Further considerations and adjustment requirements**

(1) The report should clarify which parts of the proposed framework were already defined by the revised ETS Directive. It needs to explicitly spell out which choices are still possible in the development of the framework. The report also does not explain how the room for interpretation has changed from the previous to the revised ETS Directive. This makes it difficult to understand which features are newly introduced.

(2) It should elaborate on the types and importance of problems experienced in previous stages and which justify the elaboration of a harmonised framework. The report does not document which choices were available for the main features of the proposed framework and what determined the proposed selection. Additionally, it is not clear how the proposed framework reduces the rigidity of the previously proposed framework that prevented its adoption.

(3) The report should clarify or prioritise the objectives of the methodology between reducing the risk of having to apply the cross-sectoral correction factor, ensuring a fair application and admission process and balancing harmonisation with flexibility. The report should document the rationale for the selection of the objectives.

(4) The report should include the stakeholder views throughout the report, especially since the consultations with industry sectors and Member States have been instrumental for developing the proposed framework. The report should document how the stakeholders' views have driven the choices made to arrive at the proposed framework.

*Some more technical comments have been transmitted directly to the author DG.*

**(D) RSB scrutiny process**

**The lead DG shall ensure that the report is revised in accordance with the above-mentioned requirements and resubmitted to the Board for its final opinion.**

|                     |   |
|---------------------|---|
| Full title          | Commission Decision determining the list of sectors and sub-sectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2021 to 2030 |
| Reference number    | PLAN/2017/1528  |
| Date of RSB meeting | 21 March 2018   |