

Case No: 93403
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Annex to Decision No: 052/26/COL

Amendments to the Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021:

The Guidelines on certain State aid measures in the context of the system for greenhouse gas emission allowance trading post-2021 ⁽¹⁾ are amended as follows:

1. point (15) (10) is replaced by the following:

“CO₂ emission factor’, in tCO₂/MWh, means the weighted average of the CO₂ intensity of electricity produced from fossil fuels in different geographic areas. The weight reflects the production mix of the fossil fuels in the given geographic area. The CO₂ factor is the result of the division of the CO₂ equivalent emission data of the energy industry divided by the gross electricity generation based on fossil fuels in TWh. For the purposes of these Guidelines*, the areas are defined as geographic zones (a) which consist of submarkets coupled through power exchanges; or (b) within which no declared congestion exists and, in both cases, hourly day-ahead power exchange prices within the zones showing price divergence in euro (using daily ECB exchange rates) of maximum 1 % in a significant number of all hours in a year. Such regional differentiation reflects the significance of fossil fuel plants for the final price set on the wholesale market and their role as marginal plants in the merit order. The mere fact that electricity is traded between two EEA States does not automatically mean that they constitute a supranational region. Given the lack of relevant data at sub-national level, the geographic areas comprise the entire territory of one or more EEA States. On this basis, the following geographic areas can be identified: Spain and Portugal; Lithuania, Latvia and Estonia; Germany and Luxembourg; Bulgaria and Romania; and all other EEA States separately, including Iceland and Norway**. The corresponding maximum regional CO₂ factors, which apply as maximal values when the notifying EEA EFTA State has not established an assessment of the market-based CO₂ factor pursuant to point (11), are listed in Annex III. An EEA EFTA State may ask ESA to calculate the CO₂ emission factor based on data available in 2026 and may notify the resulting CO₂ emission factor as an amendment to its scheme. This updated CO₂ emission factor can apply to costs incurred as from 2026. This updated CO₂ emission factor has no effect on the CO₂ emission factor of other EEA States as listed in Annex III. In order to ensure equal treatment of sources of electricity and avoid possible abuses, the same CO₂ emission factor applies to all sources of electricity supply (auto generation, electricity supply contracts or grid supply) and to all aid beneficiaries in the EEA State concerned. If the maximum regional CO₂ emission factor listed in Annex III is at least 15 % lower than the maximum regional CO₂ emission factor previously listed in that Annex or the approved market-based factor before 1 January 2026, EEA EFTA States concerned may notify a transitional period to move from the previously applicable maximum regional CO₂ emission factor to the updated maximum regional CO₂ emission factor under these Guidelines for year t, starting in 2026, in equal annual steps of reduction. The updated maximum regional CO₂ emission factor listed in Annex III shall apply for year t = 2030 at the latest;’

* These Guidelines do not qualify as legislative instruments and therefore do not have to be incorporated into the EEA Agreement by the EEA Joint Committee. ESA is responsible for setting the relevant rules applicable for the EEA EFTA States, including the methodology for setting the CO₂ factors. See

(1) OJ L 130, 15.4.2021, p. 3, EEA Supplement No 27, 15.4.2021, p. 3, as supplemented by OJ L 204, 4.8.2022, p. 3, EEA Supplement No 51, 4. 8.2022, p. 1.

further paragraph 69 of these Guidelines.

** The geographic area for Liechtenstein and the applicable CO₂ emissions factor will be established at a later stage.

2. point (21) is replaced by the following:

‘To limit the risk of competition distortion within the internal market, the aid must be limited to sectors that are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred as a consequence of greenhouse gas emission costs being passed on in electricity prices. For the purpose of these Guidelines, a genuine risk of carbon leakage is considered to exist if the beneficiary is active in a sector listed in Annex I. A sector or subsector that is not listed in Annex I but meets the criteria to be included in that Annex *, may also be considered eligible provided that EEA EFTA States demonstrate this with data that is representative of the sector or subsector at EEA level, verified by an independent expert and based on a time period of at least the three most recent years for which data is available. If EEA EFTA States intend to extend their respective schemes to include any new sector or subsector, they must notify any such amendment to ESA. EEA EFTA States may provide in their schemes a commitment to include in the future all additional sectors or subsectors whose eligibility has been demonstrated by another EEA State and approved by either ESA or the Commission, and to inform ESA of any such inclusions.’

* These criteria are a trade intensity above 20 % and an indirect emission intensity above 0.32 kg CO₂/EUR, resulting in an indirect carbon leakage indicator above 0.064. The methodology is described in further detail in Commission staff working document SWD(2020) 190 final.

3. Point (27) is replaced by the following:

‘The aid is proportionate and has a sufficiently limited negative effect on competition and trade if it does not exceed 80 % of the indirect emission costs incurred for the sectors listed in Table 1 of Annex I and 75 % for the sectors listed in Table 2 of Annex I or any further sectors considered eligible pursuant to the procedure set out in point (21). The electricity consumption efficiency benchmark ensures that support to inefficient production processes remains limited and maintains the incentive for dissemination of most energy-efficient technologies.’

4. Point (31) is replaced by the following:

‘Given that for some sectors the aid intensity of 80 % for the sectors listed in Table 1 of Annex I and 75 % for the sectors listed in Table 2 of Annex I or any further sectors considered eligible pursuant to the procedure set out in point (21) might not be sufficient to ensure that there is adequate protection against the risk of carbon leakage, when needed, EEA EFTA States may limit the amount of the indirect costs to be paid at undertaking level to 1.5 % of the gross value added of the undertaking concerned in year t. The gross value added of the undertaking must be calculated as turnover, plus capitalised production, plus other operating income, plus or minus changes in stocks, minus purchases of goods and services (which shall not include personnel costs), minus other taxes on products that are linked to turnover but not deductible, minus duties and taxes linked to production. Alternatively, it can be calculated from gross operating surplus by adding personnel costs. Income and expenditure classified as financial or extraordinary in company accounts is excluded from value added. Value added at factor costs is calculated at gross level, as value adjustments (such as depreciation) are not subtracted (*).

* Code 12 15 0 within the legal framework set out by Regulation (EC) No 295/2008 of the European Parliament and of the Council of 11 March 2008 concerning structural business statistics (OJ L 97, 9.4.2008, p. 13).'

5. Point (55)(a) is replaced by the following:

‘(a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed 3 years or the pay-back time referred to in Article 10a(1), 3rd subparagraph of Directive 2003/87/EC, whichever is longer, and that the costs of their investments is proportionate; or alternatively’.

6. Point (55)(c) is replaced by the following:

‘(c) invest a significant share of at least 50 % of the aid amount in projects that lead to substantial reductions of the installation’s greenhouse gas emissions and well below the applicable benchmark used for free allocation in the EU Emissions Trading System; or alternatively’.

7. In point (55) a new sub-point (d) is added after sub-point (c):

‘(d) invest at least 50 % of the aid amount in new or modernised assets that can be measurably shown to make an additional contribution to reducing the costs of the electricity system, reflecting market and system needs in that EEA EFTA State, without resulting in an increase of fossil fuel consumption. Eligible investment activities can include, for example, the development of renewable energy generation capacities, energy storage solutions, measures to increase demand-side flexibility, energy efficiency improvements that impact electricity demand, and the development of electrolyzers for the production of renewable or low-carbon hydrogen. Investments aimed at electrification are also eligible. EEA EFTA States may establish a more limited list of eligible investments, but investments to increase demand-side flexibility must be eligible.’

8. Point (67) is replaced by the following:

‘From 1 January 2026 to 31 December 2030, updated CO₂ emission factors and geographic areas will be applied. In 2026, ESA will supplement these Guidelines with electricity consumption efficiency benchmarks covering the sectors added to the amended sector eligibility list in Annex I and in 2026 or 2027, ESA may supplement these Guidelines with an adjustment to address any overlaps for the manufacturing of fertilisers and nitrogen compounds (NACE 20.15) and the mining of iron ores (NACE 07.10) sectors between aid under these Guidelines and the obligation to surrender certificates under Regulation (EU) 2023/956 of the European Parliament and of the Council (*) for indirect emissions (**), in line with expected corresponding amendments to the Commission’s ETS Guidelines. Consequently, EEA EFTA States are required to amend, where necessary, their respective schemes in order to bring them in line with these Guidelines as amended.

(*) 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, p. 52, ELI: <http://data.europa.eu/eli/reg/2023/956/oj>). Such overlaps do currently not exist for EEA EFTA States in the absence of incorporation of this Regulation into the EEA Agreement, but they may arise once incorporation has taken place.

(**) This is the case when such products are listed in Annex I to that Regulation, but

not in Annex II to that same Regulation.’

9. A new point (70) is added:

‘ESA proposes the following appropriate measures to EEA EFTA States under Article 1(1) of Part I of Protocol 3:

(a) EEA EFTA States amend, where necessary, existing aid schemes in order to bring them in line with these Guidelines as amended no later than 30 September 2026;

(b) EEA EFTA States give their explicit, unconditional agreement to the appropriate measures proposed in point (a) above within two months from the date of publication of the amendment to these Guidelines in the EEA Section of and EEA Supplement to the Official Journal of the European Union. In the absence of any reply, ESA will assume that the EEA EFTA State in question does not agree with the proposed measures.’

10. Annex I is replaced by the following:

‘ANNEX I

Sectors deemed to be exposed to a genuine risk of carbon leakage due to indirect emission costs

Table 1

	NACE code (*)	Description
1.	14.11	Manufacture of leather clothes
2.	24.42	Aluminium production
3.	20.13	Manufacture of other inorganic basic chemicals
4.	24.43	Lead, zinc and tin production
5.	17.11	Manufacture of pulp
6.	17.12	Manufacture of paper and paperboard
7.	24.10	Manufacture of basic iron and steel and of ferro-alloys
8.	19.20	Manufacture of refined petroleum products
9.	24.44	Copper production
10.	24.45	Other non-ferrous metal production
11.		The following subsectors within the plastics sector (20.16):
	20.16.40.15	Polyethylene glycols and other polyether alcohols, in primary forms
12.		All product categories in the casting of iron sector (24.51)

13.		The following subsectors within the glass fibre sector (23.14):
	23.14.12.10	Glass fibre
	23.14.12.30	mats Glass fibre voiles
14.		The following subsectors within the industrial gases sector (20.11):
	20.11.11.50	Hydrogen
	20.11.12.90	Inorganic oxygen compounds of non-metals

(*) Insofar as the statistical classification of a specific economic activity into a NACE code has been affected by the most recent NACE update (Commission Delegated Regulation (EU) 2023/137 of 10 October 2022 amending Regulation (EC) No 1893/2006 of the European Parliament and of the Council establishing the statistical classification of economic activities NACE Revision 2 (OJ L 19, 20.1.2023, p. 5, ELI: http://data.europa.eu/eli/reg_del/2023/137/oj)), EEA EFTA States may choose to either use the amended classification or rely on the classification in force at the time of adoption of the Guidelines.

Table 2

	NACE code (*)	Description
1.	07.29	Mining of other non-ferrous metal ores
2.	07.10	Mining of iron ores
3.	20.17	Manufacture of synthetic rubber in primary forms
4.	20.60	Manufacture of man-made fibres
5.	20.16	Manufacture of plastics in primary forms (**)
6.	13.10	Preparation and spinning of textile fibres
7.	23.31	Manufacture of ceramic tiles and flags
8.	20.12	Manufacture of dyes and pigments
9.	13.95	Manufacture of non-wovens and articles made from non-wovens, except apparel
10.	23.14	Manufacture of glass fibres (**)
11.	27.20	Manufacture of batteries and accumulators
12.	20.14	Manufacture of other organic basic chemicals
13.	20.15	Manufacture of fertilisers and nitrogen compounds
14.	10.41	Manufacture of oils and fats
15.	11.06	Manufacture of malt
16.	16.21	Manufacture of veneer sheets and wood-based panels
17.	23.11	Manufacture of flat glass
18.	23.13	Manufacture of hollow glass
19.	24.31	Cold drawing of bars
20.	24.34	Cold drawing of wire
21.		The following subsector within the other chemical products n.e.c. sector (20.59):

	20.59.56.70	Mixed alkylbenzenes, mixed alkylnaphthalenes other than HS 2707 or 2902
22.		The following subsector within the other non-metallic mineral products n.e.c. sector (23.99):
	23.99.19.10	Slag wool, rock wool and similar mineral wools (excluding glass wool) and mixtures thereof, in bulk, sheets or rolls

(*) Insofar as the statistical classification of a specific economic activity into a NACE code has been affected by the most recent NACE update (Commission Delegated Regulation (EU) 2023/137 of 10 October 2022 amending Regulation (EC) No 1893/2006 of the European Parliament and of the Council establishing the statistical classification of economic activities NACE Revision 2 (OJ L 19, 20.1.2023, p. 5, ELI: http://data.europa.eu/eli/reg_del/2023/137/oj)), EEA EFTA States may choose to either use the amended classification or rely on the classification in force at the time of adoption of the Guidelines.

(**) This applies to the sector except for any sub-sectors already listed in Table 1.'

11. Annex III is replaced by the following:

'Annex III

Maximum regional CO₂ emissions factors in different geographic areas (tCO₂/MWh)*

Geographic area	Applicable CO₂ emission factor
Spain, Portugal	0.47
Lithuania, Latvia, Estonia	0.76
Germany, Luxembourg	0.73
Bulgaria, Romania	0.91
Belgium	0.37
Czechia	0.89
Denmark	0.54
Ireland	0.44
Greece	0.58
France	0.43
Croatia	0.51
Italy	0.44
Cyprus	0.72
Hungary	0.50
Malta	0.40
Netherlands	0.44
Austria	0.33
Poland	0.78
Slovenia	0.75
Slovakia	0.58
Finland	0.62
Sweden	0.60
Iceland* ¹	[...]
Norway* ²	[...]

*The geographic area for Liechtenstein and the applicable CO₂ emission factor will be established at a later stage.

*¹ The CO₂ emission factor applicable for Iceland will be established at a later stage

*² The CO₂ emission factor applicable for Norway will be established at a later stage.'