EUROPEAN
COMMISSION

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COMMISSION IMPLEMENTING REGULATION (EU) …/...

of XXX

on financial compensation for final consumers of fuels and on allowances surrendered for emissions not covered by Chapter IVa of Directive 2003/87/EC

(Text with EEA relevance)

This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.

COMMISSION IMPLEMENTING REGULATION (EU) …/...

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on financial compensation for final consumers of fuels and on allowances surrendered for emissions not covered by Chapter IVa of Directive 2003/87/EC

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 91/61/EC[1], and in particular Article 30f(5) thereof,

Whereas:

(1) Commission Implementing Regulation (EU) 2018/2066[2] provides detailed rules on determining ex ante the share of the released fuel amounts in an activity covered by Chapter IVa of Directive 2003/87/EC and therefore to avoid allowances being surrendered for emissions not covered by that Chapter. However, it might not always be possible to correctly identify the category of final consumers in all cases, especially if there is no direct supply connection between the regulated entity and the final consumer. Consequently, it can occur that allowances are surrendered for emissions not covered by Chapter IVa of that Directive and that carbon costs are passed on to final consumers for emissions from an activity not covered by that Chapter.

(2) To address situations where double counting or surrender of allowances for emissions not covered by Chapter IVa of Directive 2003/87/EC cannot be avoided, rules on the provision of financial compensation of final consumers of fuels by Member States are to be laid down in accordance with that Directive. Rules should also be adopted on the reporting of data to adjust the Union-wide quantity of allowances issued under Chapter IVa of that Directive for allowances surrendered for emissions not covered by that Chapter.

(3) The quantity of allowances financially compensated for by Member States at a level above zero is likely to be lower than the total number of allowances surrendered for emissions not covered by Chapter IVa of Directive 2003/87/EC for several reasons. Firstly, Member States may not give a positive level of compensation to all final consumers for emissions from an activity falling outside of the scope of Chapter IVa of that Directive. Secondly, when providing financial compensation, Member States may establish thresholds below which they do not give a positive level of

[1] OJ L 275, 25.10.2003, p. 32, ELI: http://data.europa.eu/eli/dir/2003/87/2024-03-01.

[2] Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 (Text with EEA relevance), OJ L 334 31.12.2018, p. 1. ELI: http://data.europa.eu/eli/reg_impl/2018/2066/2024-07-01

compensation to limit the administrative burden. Thirdly, some final consumers may not request compensation that they could receive. Fourthly, Member States may lack information on cases where regulated entities have surrendered allowances for emissions of final uses not covered by Chapter IVa of that Directive.

(4) Where a Member State has extended the scope of application of emissions trading to an activity not referred to in Annex III to Directive 2003/87/EC, in accordance with Article 30j of that Directive, this may significantly reduce the quantity of allowances surrendered for emissions not covered by Chapter IVa of that Directive. In that case, the quantity of allowances financially compensated for by that Member State at a level above zero is likely the most reliable estimate of the quantity of allowances that have been surrendered for emissions not covered by Chapter IVa of that Directive.

(5) Where a Member State has not extended the scope of application of emissions trading to an activity not referred to in Annex III to Directive 2003/87/EC, the total number of allowances surrendered for emissions not covered by Chapter IVa of that Directive, corresponding to the total quantity of allowances compensated for by Member States at any level including zero, can be best estimated as the difference between the verified emissions reported under Chapter IVa of that Directive and the CO_2 emissions corresponding to an activity covered by Chapter IVa of that Directive and reported in Member States national greenhouse gas inventories pursuant to Regulation (EU) 2018/1999 of the European Parliament and of the Council[3].

(6) Under Article 30c(3) of Directive 2003/87/EC, the Union-wide quantity of allowances issued under Chapter IVa of that Directive is to be annually adjusted from 2029 for allowances surrendered for emissions not covered by that Chapter.

(7) It follows that Member States should report information annually to the Commission to determine the Union-wide quantity of allowances surrendered for emissions not covered by Chapter IVa.

(8) In accordance with Article 30(f) of Directive 2003/87/EC, Member States may compensate financially final consumers of fuels in cases where it was not possible to avoid surrender of allowances for emissions not covered by Chapter IVa of that Directive. To ensure the environmental integrity of the emissions trading system covered by Chapter IVa of that Directive, such compensation should be proportionate, non-discriminatory, and closely linked to the carbon costs incurred. Methods used by Member States to ensure that final consumers eligible for financial compensation have incurred carbon costs from double counting or unintended coverage should include checking that the relevant regulated entities use a default scope factor of 1 in their approved monitoring plans, requiring a default scope factor of 1 for the relevant fuel streams as set out in Article 75l(6) of Implementing Regulation 2018/2066, or requesting evidence from final consumers.

(9) Member States should have flexibility in the method they use to determine the amount of CO_2 emissions to be compensated so that they can adapt it to the activity in question and the type of eligible final consumers and limit the administrative burden, insofar as the method yields a reliable estimate of CO_2 emissions.

(10) Member States should determine the eligible period for financial compensation to adapt it to the activity in question and the type of final consumers. The eligible period could be monthly, quarterly or biannual, but should not exceed one calendar year to

[3] OJ L 328 21.12.2018, p. 1.

remain consistent with the annual cycle of the EU emission trading system and to limit the burden on final consumers in an activity not covered by Chapter IVa of Directive 2003/87/EC.

(11) In accordance with Article 30f(5) of Directive 2003/87/EC, the calculation of the financial compensation for the final consumers of fuels is to be based on the average price of allowances in the auctions in the relevant reporting year. The carbon price used to determine the compensation should be the average price in the period when the fuel has been purchased by the final consumers in the eligible period determined by the Member State in question. This means that Member States should use the average carbon price over the period during which they allow final consumers to apply for compensation, for example on a monthly, a quarterly or an annual basis.

(12) To limit the burden for final consumers in an activity not covered by Chapter IVa of Directive 2003/87/EC, the financial compensation should be provided within the calendar year following the year of the eligible period.

(13) For the Commission to monitor the application of Article 30f(5) of Directive 2003/87/EC and this Implementing Regulation, Member States should report annually on the financial compensation they have provided,

HAS ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) ‘final consumer’ for the purposes of financial compensation, means any natural or legal person that is the end user of fuel as defined in Article 3(af) of Directive 2003/87/EC for an activity not covered by Chapter IVa of that Directive;

(2) ‘double counting’ means the surrender of allowances by regulated entities for the release for consumption of fuels for use in an activity referred to in Annex I to that Directive;

(3) ‘unintended coverage’ means the surrender of allowances by regulated entities for the release for consumption of fuels used in an activity referred to neither in Annex I nor in Annex III to Directive 2003/87/EC, nor subject to unilateral extension pursuant to Article 30j of that Directive;

(4) ‘financial compensation’ means compensation, at any level including zero, of a final consumer for carbon costs incurred in relation to allowances issued under Chapter IVa of Directive 2003/87/EC and surrendered in cases of double counting or unintended coverage;

(5) ‘eligible period’ means the period when fuel as defined in Article 3(af) of Directive 2003/87/EC was purchased and for which a final consumer can request a compensation, based on the frequency of application defined by the Member State, or, for an activity referred to in Annex I to Directive 2003/87/EC, the period when the fuel was used.

Article 2

Rules for financial compensation at a level above zero

(1) Final consumers eligible to receive financial compensation shall have incurred carbon costs from double counting or unintended coverage.

(2) The method used to determine financial compensation shall be based on a reliable estimate of the CO_2 emissions generated by the final consumers that have been charged.

(3) The price per tonne of CO_2 to be used for financial compensation shall be the average in the eligible period of the price of auctions conducted in accordance with the delegated acts adopted pursuant to Article 10(4) of Directive 2003/87/EC for allowances issued under Chapter IVa of that Directive.

(4) Member States shall ensure that financial compensation is provided based on objective, non-discriminatory and transparent criteria, and that final consumers operating in the same sector and in the same factual situation are financially compensated under the same conditions.

(5) The eligible period for providing financial compensation shall not exceed one calendar year.

(6) When eligible for financial compensation, final consumers shall receive that compensation within the calendar year following the year of the eligible period.

Article 3

Reporting on financial compensation

Member States shall report annually to the Commission information on financial compensation in accordance with the format set out in Annex I. They shall submit the annual reports to the Commission by 30 June of the year following the year when the financial compensation was provided.

Article 4

Quantity of allowances surrendered for emissions not covered by Chapter IVa of Directive 2003/87/EC

(1) Where a Member State has not extended the scope of application of emissions trading to an activity not referred to in Annex III to Directive 2003/87/EC, the annual quantity of allowances surrendered in that Member State for emissions not covered by Chapter IVa of Directive 2003/87/EC, corresponding to the total quantity of allowances compensated at any level including zero, shall be determined as the difference between the verified emissions reported under Article 30f(2) of that Directive and the CO_2 emissions corresponding to an activity referred to in Annex III to Directive 2003/87/EC calculated on the basis of emissions reported pursuant to Article 26 of Regulation (EU) 2018/1999.

(2) From 2030, Member States shall report to the Commission by 30 June each year the emission data needed to calculate the CO_2 emissions corresponding to an activity covered by Chapter IVa of Directive 2003/87/EC, in accordance with the template in Annex II, starting with data for 2028.

For the submission of emission data referred to in the first subparagraph, Member States shall use methodological guidance and electronic templates or specific file formats provided by the Commission.

If an annual report is not available or incomplete by the deadline referred to in the first subparagraph, the quantity of allowances for that report shall be determined based on the methodological guidance provided by the Commission.

(3) A Member State that has unilaterally extended an activity referred to in Annex III to Directive 2003/87/EC pursuant to Article 30j of that Directive is exempted from the obligation set out in paragraph 2 of this Article, provided that:

(a) the average emissions for 2016, 2017 and 2018 from additional activity subject to the EU emissions trading system in the Member State in question pursuant to Article 30j of Directive 2003/87/EC represent an amount of emissions at least equivalent to the national CO_2 emissions in source category code 1A4c for the same years;

(b) the Member State in question has in place and it maintains a measure to provide financial compensation at a level above zero for double counting. The exemption referred to in the first subparagraph shall apply to the reporting of data for the years following the approval of the unilateral extension.

In the event of unilateral extension of the activity pursuant to the first subparagraph and the conditions in points (a) and (b) being fulfilled, the annual quantity of allowances surrendered for emissions not covered by Chapter IVa of Directive 2003/87/EC shall be determined based on the total amount of emissions financially compensated at a level above zero by the Member State in question and reported pursuant to Article 3 of this Regulation.

(4) A Member State that has unilaterally extended an activity referred to in Annex III to Directive 2003/87/EC pursuant to Article 30j of that Directive is exempted from the obligation set out in paragraph 2 of this Article. This exemption applies to the reporting of data for the years following the approval of the unilateral extension, and provided that:

(a) the additional activity subject to the EU emissions trading system in the Member State in question pursuant to Article 30j of Directive 2003/87/EC does not include agricultural activities covered by source category code 1A4c;

(b) the Member State in question has required a default scope factor of 1 within the meaning of Article 75l(6) of Regulation 2018/2066 for all fuel streams used in agricultural activities covered by source category code 1A4c;

(c) the Member State in question has in place and maintains a measure to provide financial compensation at a level above zero for double counting.

In the event of unilateral extension of the activity pursuant to the first subparagraph and the conditions in points (a) and (b) and (c) being fulfilled, the annual quantity of allowances surrendered for emissions not covered by Chapter IVa of Directive 2003/87/EC shall be determined based on (i) the total amount of emissions from an activity not covered by source category code 1A4c that has been financially compensated at a level above zero and reported pursuant to Article 3 of this Regulation and (ii) the amount of CO_2 emissions reported in source category code 1A4c for the relevant year under the national greenhouse gas inventory pursuant to Regulation (EU) 2018/1999.

Article 5

Entry into force

This Regulation shall enter into force on the twentieth 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 Commission
The President
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