Amendments to the EU ETS reform

Eurelectric amendments to the European Commission's EU ETS proposal based on our reaction paper

December 2021

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

Dépôt légal: D/2021/12.105/60

Generation & Environment Committee
WG Climate Change & Decarbonisation

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Introduction

- **Increase the ambition in the EU ETS**. We welcome several of the Commission's proposals to strengthen the EU ETS in line with the increased 2030 climate target, including the increased linear reduction factor (LRF) to 4.2% in combination with a one-off reduction of 117 million allowances as of 1 January 2024. We also welcome keeping the Market Stability Reserve (MSR) intake rate at 24% and increasing the Modernisation Fund with an additional 2.5% of the cap to further support the energy transition in lower-income Member States. The additional 2.5% cap should be calculated on the entire 2021-2030 period (just like the increased LRF).

- **Lower the Market Stability Reserve (MSR) thresholds**. The introduction of a buffer zone between the total number of allowances in circulation (TNAC) and the MSR's upper threshold (833 million) is welcome, but its upper level of 1,096 million would weaken the effectiveness of the MSR (ceteris paribus). To address this, both the MSR's buffer zone upper level (1,096 million) and the upper threshold for hedging (833 million) should be lowered to properly reflect an increasingly decarbonised economy and gradually declining hedging requirements. The exact levels should be determined through analysis to ensure a smooth market functioning.

- **Reform the EU ETS product benchmarks as soon as possible**. We welcome the Commission's intention to revise the scope of the benchmarks for hydrogen and heat to avoid installations with decarbonised processes falling out of the ETS and to remove references to specific feedstocks and production processes. In the case of district heating and cooling, the revision should reflect different starting points and prevent a disproportionate increase of heating prices. The benchmark reform will speed up the adoption of newer, cleaner technologies. Such reform should happen as soon as possible and not wait until the start of the second half of Phase IV.

- **Make the Modernisation Fund future-proof.** Gas-based projects could be financed, provided that i) they are carried out as part of a credible decarbonisation plan in accordance with the 2030 climate target and the EU's 2050 net-zero GHG emission target, ii) they are able to be upgraded for new decarbonisation technologies in the future and iii) electrification is not technologically nor commercially feasible at reasonable cost.

- **Support the development of a European carbon market.** The introduction of a Carbon Border Adjustment Mechanism (CBAM) for electricity is welcome, but ultimately its end goal should be to encourage neighbouring markets to develop their own carbon markets and link them to the EU ETS. Building on the successful link with the Swiss ETS, further linkages would support a larger, more stable carbon market and enable a level playing field with electricity generated at the other end of interconnectors.

Amendment Proposals

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 1

Replacement of paragraph 5 and 5a in Article 1(5) - Market Stability Reserve

Original text	Original text + **amendments**
5. In any given year, if the total number of allowances in circulation is between ***833*** million and ***1 096*** million, a number of allowances equal to the difference between the total number of allowances in circulation, as set out in the most recent publication as referred to in paragraph 4 of this Article, and ***833*** million, shall be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC and shall be placed in the reserve over a period of 12 months beginning on 1 September of that year. If the total number of allowances in circulation is above ***1 096*** million allowances, the number of allowances to be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC and to be placed in the reserve over a period of 12 months beginning on 1 September of that year shall be equal to 12 % of the total number of allowances in circulation. By way of derogation from the last sentence, until 31 December 2030, the percentage shall be doubled.	5. In any given year, if the total number of allowances in circulation is between ***[lower than 833]*** million and ***[lower than 1 096]*** million, a number of allowances equal to the difference between the total number of allowances in circulation, as set out in the most recent publication as referred to in paragraph 4 of this Article, and ***[lower than 833]*** million, shall be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC and shall be placed in the reserve over a period of 12 months beginning on 1 September of that year. If the total number of allowances in circulation is above ***[lower than 1 096]*** million allowances, the number of allowances to be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC and to be placed in the reserve over a period of 12 months beginning on 1 September of that year shall be equal to 12 % of the total number of allowances in circulation. By way of derogation from the last sentence, until 31 December 2030, the percentage shall be doubled.

Justification

Eurelectric believes that this buffer zone will actually weaken the effectiveness of the MSR (ceteris paribus) and therefore proposes to lower both the MSR buffer zone's upper level (1,096 million) and the upper threshold for hedging (833 million). The European Commission suggests it is maintaining the existing upper threshold for hedging at 833 million as lowering it would lead to market uncertainty. Eurelectric does not share this assessment and actually thinks that lowering it would improve the effectiveness of the MSR. Furthermore, decreasing the upper threshold for hedging is necessary because it would properly reflect an increasingly decarbonised economy and gradually declining hedging requirements in the power, industrial and aviation sectors. The level to which the MSR buffer and the upper hedging threshold should be reduced to should be determined by robust analysis.

Text proposed by Commission	*Amendment proposal by Eurelectric*
Amendment 2	
Article 10a, para 1 : EU ETS product benchmarks	
Original text	Original text + **amendments**
In order to provide further incentives for reducing greenhouse gas emissions and improving energy efficiency, the determined Union-wide ex-ante benchmarks shall be reviewed ***before the period from 2026 to 2030*** in view of ***potentially*** modifying the definitions and system boundaries of existing product benchmarks***.***	In order to provide further incentives for reducing greenhouse gas emissions and improving energy efficiency, the determined Union-wide ex-ante benchmarks shall be reviewed ***within 6 months after the entry into force of this Directive*** in view of modifying the definitions***, scope*** and system boundaries of existing product benchmarks***, ensuring that, depending on the benchmark, free allocation for the production of a product is independent of the feedstock or the type of production process, accounts for the circular use potential of materials, or avoids that installations with partially or fully decarbonized processes are excluded from or cannot participate in the benchmarks***. ***Certain derogations may need to be made to reflect different starting points of Member States (i.e. on heating).***

Justification

The current scope of the EU ETS product benchmarks (covered in Commission Delegated Regulation 2019/331 and Commission Implementing Regulation 2021/447) is centered around very specifically-defined technologies or production processes. This is an issue for many sectors because it disfavors innovation in breakthrough technologies.

For ***hydrogen****, the product benchmark refers to steam reforming of hydrocarbon feedstock, but the production of hydrogen through electrolysis is not described. Once an installation for example switches to hydrogen based on electrolysis using renewable or low-carbon electricity, it would fall out of the scope of the EU ETS Directive and therefore no longer be eligible for free allowances, whereas its competitors that continue to focus on conventional emitting hydrogen processes would continue to receive free allowances. This creates a competitive distortion that disfavors the adoption of new, cleaner technologies.*

In addition to the hydrogen benchmark:

- *The 'one product, one benchmark' option for the* ***heat*** *benchmark could also be considered, because doing so would include heat produced from electricity. Eurelectric does however note* *that in the context of the district heating and cooling sector, the benchmark revision should reflect different starting points. Higher district heating prices may lead users going off-grid and deploy individual fossil-based heat sources, which would hamper the switch of large-scale district heating systems from fossil-based to low-carbon energy sources.*

Fortunately, the European Commission in section 30 of its EU ETS impact assessment acknowledges this potential barrier and as two of the options, has proposed to revise the scope of the benchmarks. Time is of the essence, and therefore Eurelectric urges the European Commission to propose the necessary changes to the relevant Delegated and Implementing Regulations as soon as possible, and not wait until the next allocation period starts in the second half of Phase IV (1 January 2026). It could provide a significant boost to the uptake of breakthrough technologies as a substitute for conventional production technologies in general.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 3

Article 10, para 1, 3rd subparagraph: Modernisation Fund

Original text	Original text + **amendments**
In addition, 2,5 % of the total quantity of allowances between ***[year following the entry into force of the Directive]*** and 2030 shall be auctioned for the Modernisation Fund. The beneficiary Member States for this amount of allowances shall be the Member States with a GDP per capita at market prices below 65 % of the Union average during the period 2016 to 2018. The funds corresponding to this quantity of allowances shall be distributed in accordance with Part B of Annex IIb***.***	In addition, 2,5 % of the total quantity of allowances between ***2021*** and 2030 shall be auctioned for the Modernisation Fund. The beneficiary Member States for this amount of allowances shall be the Member States with a GDP per capita at market prices below 65 % of the Union average during the period 2016 to 2018. The funds corresponding to this quantity of allowances shall be distributed in accordance with Part B of Annex Iib.

Justification

To address the distributional and social effects of the transition, we welcome the proposal for auctioning an additional 2.5 % of the cap to financially support the energy transition of the Member States with GDP per capita below 65 % of the EU average in 2016-2018, through the Modernisation Fund. Eurelectric does believe that the additional 2.5% should be calculated for the entire period of 2021-2030 (just like the increased LRF) instead of 2024-2030.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 4

Article 10, para 3 and 4: Modernisation Fund

Original text	Original text + **amendments**
3. Member States shall determine the use of revenues generated from the auctioning of allowances, ***except for the revenues established as own resources in accordance with Article 311(3) TFEU and entered in the Union budget***. Member States shall use their revenues generated from the auctioning of allowances referred to in paragraph 2, with the exception of the revenues used for the compensation of indirect carbon costs referred to in Article 10a(6), for one or more of the following.	3. Member States shall determine the use of revenues generated from the auctioning of allowances. Member States shall use their revenues generated from the auctioning of allowances referred to in paragraph 2, with the exception of the revenues used for the compensation of indirect carbon costs referred to in Article 10a(6), for one or more of the following.
4. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the timing, administration and other aspects of auctioning***, including the modalities for the transfer of a share of revenues to the Union budget***, in order to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner.	4. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the timing, administration and other aspects of auctioning, in order to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner.

Justification

We welcome the proposal to direct all auctioning revenues to climate-related activities to empower member states to finance the energy transition. Because auction revenues should be available for financing the energy transition, priority should be given to this instead of the integral EU budget as own resources. We therefore propose that any text referring to EU ETS revenues going to the general Union budget to be removed.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 5

Article 10a, para 8: Innovation Fund and Carbon Contracts for Difference

Original text	Original text + **amendments**
Projects in the territory of all Member States, including small-scale projects, shall be eligible. Technologies receiving support shall ***be*** innovative and not yet commercially viable at a similar scale without support ***but shall represent breakthrough solutions or be sufficiently mature for application at precommercial scale.***	Projects in the territory of all Member States, including small-scale projects, shall be eligible. Technologies receiving support shall ***represent breakthrough potential for net-zero decarbonisation needed by 2050 and should include*** innovative and not yet commercially viable ***projects*** at a similar scale without support, ***breakthrough technologies not yet cost competitive (such as renewable and low-carbon hydrogen projects), and sufficiently mature solutions for application at precommercial scale, provided that they are compatible with the EU ETS.***

Justification

Eurelectric welcomes the increased Innovation Fund and introduction of Carbon Contracts for Difference in its scope. Both are highly needed for reaching the new 2030 climate targets for industries and the power sector. For both to be successful, Eurelectric proposes specific competitive tendering mechanisms for breakthrough technologies that are currently not yet cost competitive (e.g. renewable hydrogen projects), provided that they are compatible with the EU ETS.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 6

Article 10d, para 1, 1st and 2nd subpara: Modernisation Fund

Original text	Original text + **amendments**
A fund to support investments proposed by the beneficiary Member States, including the financing of small-scale investment projects, to modernise energy systems and improve energy efficiency shall be established for the period from 2021 to 2030 (the 'Modernisation Fund'). The Modernisation Fund shall be financed through the auctioning of allowances as set out in Article 10, for the beneficiary Member States set out therein. The investments supported shall be consistent with the aims of this Directive, as well as the objectives of the Communication from the Commission of 11 December 2019 on The European Green Deal (*) and Regulation (EU) 2021/1119 of the European Parliament and of the Council (**) and the longterm objectives as expressed in the Paris Agreement. No support from the Modernisation Fund shall be provided to energy generation facilities that use fossil fuels.	A fund to support investments proposed by the beneficiary Member States, including the financing of small-scale investment projects, to modernise energy systems and improve energy efficiency shall be established for the period from 2021 to 2030 (the 'Modernisation Fund'). The Modernisation Fund shall be financed through the auctioning of allowances as set out in Article 10, for the beneficiary Member States set out therein. The investments supported shall be consistent with the aims of this Directive, as well as the objectives of the Communication from the Commission of 11 December 2019 on The European Green Deal (*) and Regulation (EU) 2021/1119 of the European Parliament and of the Council (**) and the long term objectives as expressed in the Paris Agreement. No support from the Modernisation Fund shall be provided to energy generation facilities that use fossil fuels. ***An exception can be made for gas-based projects, provided that i) They are carried out as part of a credible decarbonization plan in accordance with the new 2030 climate targets as well as the EU's net-zero GHG emission target of 2050, ii) They are able to be upgraded for new decarbonization technologies (e.g. hydrogen) in the future, and iii) Electrification is technically or commercially not available at a reasonable cost.***

Justification

Eurelectric agrees that no support from the Modernisation Fund shall be granted to energy generation facilities that use fossil fuels expect for gas-based projects that respect the conditions mentioned above.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 7

Chapter IVa: ETS for buildings and road transport, after Article 30

Original text	Original text + **amendments**
Scope	Scope
The provisions of this Chapter shall apply to emissions, greenhouse gas emission permits, issue and surrender of allowances, monitoring, reporting and verification in respect of the activity referred to in Annex III. This Chapter shall not apply to any emissions covered by Chapters II, IIa and III.	The provisions of this Chapter shall apply to emissions, greenhouse gas emission permits, issue and surrender of allowances, monitoring, reporting and verification in respect of the activity referred to in Annex III. This Chapter shall not apply to any emissions covered by Chapters II, IIa and III.
	The separate self-standing system for buildings and road transport should not lead to an automatic merging with the existing EU ETS, until the former has proven to work well, and it does not negatively impact the integrity and functioning of the existing EU ETS. When introducing the self-standing system, double CO_2 pricing of EU ETS installations should be avoided.

Justification

It is paramount to preserve the functioning of the existing ETS when introducing the self-standing system for buildings and road transport. Furthermore, policy coherence is important between different instruments in the fit-for-55 package to ensure a straightforward implementation whilst the "polluter pays" principle remains respected. Double CO2 pricing of installations already covered by the EU ETS should also be avoided.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 8

Article 10, paragraph 3, new point – Use of auction revenues

Original text	Original text + **amendments**
3. Member States shall determine the use of revenues generated from the auctioning of allowances, except for the revenues established as own resources in accordance with Article 311(3) TFEU and entered in the Union budget. Member States shall use their revenues generated from the auctioning of allowances referred to in paragraph 2, with the exception of the revenues used for the compensation of indirect carbon costs referred to in Article 10a(6), for one or more of the following:	3. Member States shall determine the use of revenues generated from the auctioning of allowances, except for the revenues established as own resources in accordance with Article 311(3) TFEU and entered in the Union budget. Member States shall use their revenues generated from the auctioning of allowances referred to in paragraph 2, with the exception of the revenues used for the compensation of indirect carbon costs referred to in Article 10a(6), for one or more of the following:
..	***(l) Rebates for the export of breakthrough decarbonization technologies and products that clearly demonstrate their impact on reducing global greenhouse gas emissions, and are in accordance with the WTO's GATT Article XX on General Exceptions.***

Justification

As explained in Eurelectric's response paper to the proposal on the carbon border adjustment mechanism (CBAM), we welcome the Commission proposal to phase out free allowances for CBAM sectors to avoid double protection. We do however also note that the CBAM currently does not provide coverage of the EU's exporting sectors and would therefore propose to include provisions for this in the CBAM or EU ETS in some shape or form. Such coverage of exports could for example be considered in the form of a WTO-compatible "export rebate". An export rebate for certain exports of breakthrough decarbonisation technologies and products could become WTO-compatible if it is seen, just like the CBAM, as a way to "protect human, animal or plant life or health" (which is a justification under GATT Article XX on General Exceptions) by reducing global greenhouse gas emissions. If the export rebate leads to a larger part of global demand for electricity, steel and other products being met with CO2-free rather than CO2-intensive solutions, then one could argue that the export rebate has helped reduce global greenhouse gas emissions. EU ETS auction revenues could then partially be used to fund the export rebates as they would constitute a climate-related purpose.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 9

Annex I, Point 1

Original text	Original text + **amendments**
1. Installations or parts of installations used for research, development and testing of new products and processes, ***and installations where emissions from the combustion of biomass that complies with the criteria set out pursuant to Article 14 contribute to more than 95 % of the total greenhouse gas emissions*** are not covered by this Directive.	-1. Installations or parts of installations used for research, development and testing of new products and processes, ~~***and installations where emissions from the combustion of biomass that complies with the criteria set out pursuant to Article 14 contribute to more than 95 % of the total greenhouse gas emissions***~~ are not covered by this Directive.

Justification

Eurelectric disagrees with the European Commission's proposal to exclude combustion installations that more than 95% of biomass from the scope of the EU ETS. Excluding them will risk creating perverse incentives where combustion installations are incentivised to blend fossil fuels with their biomass just to stay in the EU ETS.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 10

Annex I, Twenty-fourth row of the table

Original text	Original text + **amendments**
Production of hydrogen (H2) and synthesis gas with a production capacity exceeding ***25*** tones per day	Production of hydrogen (H2) and synthesis gas with a production capacity exceeding ***15*** tons per day

Justification

The appropriateness of the production capacity thresholds for hydrogen under Annex I of the EU ETS Directive should also be assessed considering the size of current electrolyser projects. In particular, the effects of the current proposal are expected to be rather limited because the production threshold of 25 tonnes per day (corresponding to an electrolyser of 60-100MW depending on the efficiency) will exclude many electrolyser units. This threshold should be lowered to 10-15 tonnes per day (30-40MW).

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability

eurelectric

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