

# DECISIONS

## COMMISSION DECISION

of 11 November 2011

**amending Decisions 2010/2/EU and 2011/278/EU as regards the sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage**

(notified under document C(2011) 8017)

(Text with EEA relevance)

(2011/745/EU)

THE EUROPEAN COMMISSION,

paragraphs 14 to 17 of Article 10a of that Directive, following a change that has a substantial impact on the sector's or subsector's activities.

Having regard to the Treaty of 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 scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC<sup>(1)</sup>, and in particular Article 10a(1) and (13) thereof,

Whereas:

- (1) Commission Decision 2010/2/EU<sup>(2)</sup> determines, pursuant to Directive 2003/87/EC, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage.
- (2) Commission Decision 2011/278/EU<sup>(3)</sup> determines transitional Union-wide rules for the harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC.
- (3) In accordance with the second subparagraph of Article 10a(13) of Directive 2003/87/EC, the Commission may, every year add a sector or subsector to the list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage. It has to be demonstrated, in an analytical report, that the sector or subsector satisfies the criteria set out in

- (4) In order to determine the sectors or subsectors deemed to be exposed to a significant risk of carbon leakage, the Commission has to assess, at Union level, the extent to which it is possible for the sector or subsector concerned, at the relevant level of disaggregation, to pass on the direct cost of the required allowances and the indirect costs from higher electricity prices resulting from the implementation of Directive 2003/87/EC into product prices without significant loss of market share to less carbon efficient installations outside the Union. Those assessments are to be based on an average carbon price according to the Commission's impact assessment accompanying the package of implementation measures for the Union's objectives on climate change and renewable energy for 2020 and, if available, trade, production and value added data from the three most recent years for each sector or subsector.
- (5) Some sectors and subsectors, such as the manufacture of bricks and roof tiles that had not been completely analysed due to time constraints and limited data quality and availability, were not added to the list published in the Annex to Decision 2010/2/EU.
- (6) The sector of 'Manufacture of bricks, tiles and constructions products, in baked clay' (NACE code 2640) has been reassessed in 2010. That qualitative assessment demonstrated challenging market characteristics, such as growing trade, in particular increasing trend in imports from low cost manufacturing countries, increased international competitive pressure, a significant share of production in the Union served by small and medium sized enterprises, and only modest profit margins for the years evaluated compared to the additional CO<sub>2</sub> cost, which limit the capacity of installations to invest and reduce emissions. Based on the combined impact of those factors, the sector should be deemed to be exposed to a significant risk of carbon leakage.

<sup>(1)</sup> OJ L 275, 25.10.2003, p. 32.

<sup>(2)</sup> OJ L 1, 5.1.2010, p. 10.

<sup>(3)</sup> OJ L 130, 17.5.2011, p. 1.

- (7) Furthermore, it has been demonstrated that the sector of 'Production of salt' (NACE code 1440) satisfies the quantitative criteria set out in Article 10a(14) to (17) of Directive 2003/87/EC following an identification of additional installations from the sector in the Community Independent Transaction Log (CITL) which was used as the main source to calculate the direct cost of the allowances. That sector should therefore be added to the list of sector or subsectors deemed to be exposed to a significant risk of carbon leakage. The identification of installations in the CITL as belonging to that sector has no impact on the status in terms of a significant risk of carbon leakage of other sectors and subsectors.
- (8) Some sectors not found to be exposed to a significant risk of carbon leakage at the NACE 4-level in Decision 2010/2/EU were disaggregated and a number of corresponding subsectors, for which certain specific distinguishing characteristics led to a significantly different impact from the rest of the sector, were assessed. Where this assessment leads to the conclusion that sectors or subsectors could be clearly distinguished from other sectors and subsectors on the basis of specific characteristics and satisfy the quantitative criteria set out in Article 10a(15) or (16) of Directive 2003/87/EC, they can be added to the list of products deemed to be exposed to a significant risk of carbon leakage. The sectors 'Cocoa paste (excluding containing added sugar or other sweetening matter)', 'Cocoa butter, fat and oil' and 'Cocoa powder, not containing added sugar or other sweetening matter' should therefore be added to the list.
- (9) The further analysis called for by the second paragraph of Article 1 of Decision 2010/2/EU having been conducted, that paragraph should be deleted. The Commission found no evidence of the necessary intensity of trade that would justify inclusion of the concerned sectors to the list of sectors and subsectors deemed to be exposed to a significant risk of carbon leakage.
- (10) Decisions 2010/2/EU and 2011/278/EU should therefore be amended accordingly.
- (11) The measures provided for in this Decision are in accordance with the opinion of the Climate Change Committee,

HAS ADOPTED THIS DECISION:

*Article 1*

**Amendments to Decision 2010/2/EU**

Decision 2010/2/EU is amended as follows:

- (1) in Article 1, the second paragraph is deleted;
- (2) the Annex to Decision 2010/2/EU is amended in accordance with Annex I to this Decision.

*Article 2*

**Amendments to Annex I to Decision 2011/278/EU**

Annex I to Decision 2011/278/EU is amended in accordance with Annex II to this Decision.

*Article 3*

**Addressees**

This Decision is addressed to the Member States.

Done at Brussels, 11 November 2011.

*For the Commission*  
Connie HEDEGAARD  
*Member of the Commission*

## ANNEX I

The Annex to Decision 2010/2/EU is amended as follows:

(1) in Section 1.2, the following entry is inserted in the table:

NACE code	Description
'1440	Production of salt'

(2) paragraph Section 2 is amended as follows:

(a) the heading is replaced by the following:

'BEYOND NACE-4 LEVEL BASED ON THE QUANTITATIVE CRITERIA SET OUT IN PARAGRAPH 15 OR 16 OF ARTICLE 10a OF DIRECTIVE 2003/87/EC';

(b) the following entries are inserted after the entry 155154:

Prodcom code	Description
'15841100	Cocoa paste (excluding containing added sugar or other sweetening matter)
15841200	Cocoa butter, fat and oil
15841300	Cocoa powder, not containing added sugar or other sweetening matter'

(3) in Section 3, the following entry is inserted after the entry 2416:

NACE code	Description
'2640	Manufacture of bricks, tiles and constructions products, in baked clay'

## ANNEX II

In Annex I to Decision 2011/278/EU, the entries corresponding to product benchmarks 'Facing bricks', 'Pavers' and 'Roof tiles' are replaced by the following:

Product benchmark	Definition of products covered	Definition of processes and emissions covered (system boundaries)	Carbon leakage exposure as determined by Decision 2010/2/EU for the years 2013 and 2014	Benchmark value (allowances/t)
'Facing bricks	Facing bricks with a density > 1 000 kg/m <sup>3</sup> used for masonry based on EN 771-1, excluding pavers, clinker bricks and blue braised facing bricks.	All processes directly or indirectly linked to the production processes raw material preparation, component mixing, forming and shaping of ware, drying of ware, firing of ware, product finishing and flue gas cleaning are included.	yes	0,139
Pavers	Clay bricks used for flooring according to EN 1344.	All processes directly or indirectly linked to the production processes raw material preparation, component mixing, forming and shaping of ware, drying of ware, firing of ware, product finishing and flue gas cleaning are included.	yes	0,192
Roof tiles	Clay roofing tiles as defined in EN 1304:2005 excluding blue braised roof tiles and accessories.	All processes directly or indirectly linked to the production processes raw material preparation, component mixing, forming and shaping of ware, drying of ware, firing of ware, product finishing and flue gas cleaning are included.	yes	0,144'