

Ms Mette Koefoed Quinn
Head of Unit – ETS implementation and IT
Directorate General for Climate Action
Avenue de Beaulieu 24
BE-1160 Brussel

5 July 2018

Dear Ms Quinn,

I am writing to you concerning the ongoing work of the Climate Change Expert Group for the development of the Commission Delegated Regulation on post 2020 free allocation rules (FAR).

This regulation is determining rules on free allocation that represent an essential element of the overall carbon leakage provisions that are meant to preserve the competitiveness of European industry. This is the first step in a two-stage process leading to the update of benchmarks values in a subsequent Commission Implementing Decision. Also the benchmarks values are crucial to provide for an accurate and realistic protection level of the competitiveness of European business. Therefore, it is essential that they are based on robust data and that transparency is ensured throughout the entire process and that the expertise of the relevant sectors is taken into due consideration.

While representatives of relevant sectors in the expert group are better positioned to raise more specific and technical comments, we would like to draw your attention to the following horizontal elements that concern the whole business community:

- **Consistency with pre-2020 rules:** as prescribed in the revised ETS Directive, it should be clear that the objective and result of the new FAR is to update the historical activity level to 2014-2018 and the existing pre 2020 benchmark values in order to reflect the technological development within a sector in the years 2016-2017. If definitions or key rules are modified, the new values will not be comparable to the pre-2020 ones and the benchmark reduction rates will not reflect the technological development in the sector. We note several substantial methodology shifts like in the calculation of the historical activity level, the scope of the activity data (heat for combustion vs other heat) and definitions of eligible activities (waste gases).
- **Data requirements and administrative burden:** as foreseen in the ETS Directive, the implementation process merges and centralises the collection of data for the update of benchmarks for 2016-2017 and 2021-2022 and the historical activity levels for 2014-2018 and 2019-2023. By definition, this increases the complexity of the exercise. Yet, the first draft text prescribes disproportionate data requirements going beyond the requirements of article 11, and not directly needed for the update of the benchmarks or the activity data. In order to reduce the administrative burden, we

recommend a thorough analysis to identify separately the information that is strictly needed either for the objectives of the exercise of the benchmark or for the activity level.

- **Representativeness of the baseline data and historical activity levels (HALs):** the HALs should reflect the normal operation of installations, so that the free allocation is calculated accordingly. The first draft text proposes to use the arithmetic mean of the baseline years as a reference for the HAL. In installations with extraordinary maintenance in the baseline years, this methodology change results in a decreased HAL that is not representative of normal operations.
- **Accuracy requirements:** the accuracy requirements in the current period are handled in the Monitoring Regulation. The accuracy requirements for both the activity data of the first period of historical activity level (2014-2018) as for the next ones, are inserted in the FAR. A distinction must be made on the level of accuracy required for existing data (2014-2018) that cannot be changed retro-actively and for future data where the appropriate legal act is the Monitoring Regulation. Meanwhile, the level of accuracy cannot lead to unreasonable costs or administrative burden and cannot just be copied from the requirements for emission monitoring.

Considering the complex technical nature of this delegated act, we want to conclude with our concern on the proposed tight timeline (inter-service consultation in August-September and adoption by November). For the first time harmonised rules across all sectors need to be defined also for the update of benchmarks in the delegated regulation. We believe it is important to plan sufficient interaction with relevant experts of industry and the Member States since they will be charged with the execution of the data exercise.

We thank you in advance for your kind consideration.

Kind regards,



Alexandre Affre