

## AM 1: compensation for the use of industrial gases in eligible sectors

<b>Current text</b> <b>Paragraphs 12 and 13</b>	<b>Proposed amendment</b> <b>Paragraphs 12 and 13</b>
<p>(12) ‘actual electricity consumption’, in MWh, means the actual electricity consumption at the installation (including electricity consumption for the production of out-sourced products eligible for aid) in year t, determined ex post in year t+1;</p> <p>(13) ‘electricity consumption efficiency benchmark’, in MWh/tonne of output and defined at Prodcom 8 level<sup>9</sup>, means the product-specific electricity consumption per tonne of output achieved by the most electricity-efficient methods of production for the product considered. The electricity consumption efficiency benchmark update shall be consistent with Article 10a(2) of the EU ETS Directive. For products within the eligible sectors for which fuel and electricity exchangeability has been established in section 2 of Annex I to Commission Delegated Regulation (EU) 2019/33110, the definition of electricity consumption efficiency benchmarks is made within the same system boundaries, taking into account only the share of electricity for the determination of the aid amount. The corresponding electricity consumption benchmarks for products covered by eligible sectors are listed in Annex II to these Guidelines;</p>	<p>(12) ‘actual electricity consumption’, in MWh, means the actual electricity consumption at the installation (including electricity consumption for the production of out-sourced products eligible for aid <b>and electricity consumption for producing industrial gases consumed for the production of products eligible for aid</b>) in year t, determined ex post in year t+1;</p> <p>(13) ‘electricity consumption efficiency benchmark’, in MWh/tonne of output and defined at Prodcom 8 level<sup>9</sup>, means the product-specific electricity consumption per tonne of output achieved by the most electricity-efficient methods of production for the product considered. <b>It includes electricity consumption for producing industrial gases consumed for the production of products eligible for aid.</b> The electricity consumption efficiency benchmark update shall be consistent with Article 10a(2) of the EU ETS Directive. For products within the eligible sectors for which fuel and electricity exchangeability has been established in section 2 of Annex I to Commission Delegated Regulation (EU) 2019/33110, the definition of electricity consumption efficiency benchmarks is made within the same system boundaries, taking into account only the share of electricity for the determination of the aid amount. The corresponding electricity consumption benchmarks for products covered by eligible sectors are listed in Annex II to these Guidelines;</p>
<p style="text-align: center;"><b>Justification</b></p> <p>Several eligible industrial sectors such as steel, non-ferrous and refineries use for unavoidable purposes significant amounts of industrial gases such as oxygen which have an important electricity consumption embedded. Such industrial gases are also linked to the energy balance, as they often contribute to reducing the consumption of other fuels and/or electricity. The lack of compensation for the indirect costs linked to industrial gases further exposes the eligible sectors to carbon leakage risk. Therefore, similarly to the allocation of free allowances to the heat consumer under the rules on free allocation for the direct emissions, the consumption of industrial gases should also be considered as eligible for financial compensation when it occurs in a sector that is exposed to indirect carbon leakage and state aid should be granted to the exposed sector.</p>	

## AM 2: clarifying that possibility for compensating beyond 75% is open to all eligible sectors

<p><b>Current text</b> <b>Paragraphs 30 and 31</b></p>	<p><b>Proposed amendment</b> <b>Paragraphs 30 and 31</b></p>
<p>30. Given that for some <b>sectors</b> the aid intensity of 75 % might not be sufficient to ensure that there is adequate protection against the risk of carbon leakage, when needed, Member States may limit the amount of the indirect costs to be paid at undertaking level to [...] % 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.</p> <p>31. When Member States decide to limit the amount of the indirect costs to be paid at undertaking level to [...] % of gross value added, that limitation must apply to all eligible undertakings in the relevant sector. <b>If Member States decide to apply the limitation of [...] % of gross value added only to some of the sectors listed in Annex I, the choice of sectors must be made on the basis of objective, non-discriminatory and transparent criteria.</b></p>	<p>30. Given that for some <b>undertakings or sites</b> the aid intensity of 75 % might not be sufficient to ensure that there is adequate protection against the risk of carbon leakage, when needed, Member States may limit the amount of the indirect costs to be paid at undertaking <b>or, where appropriate, site</b> level to <b>0.5</b> % of the gross value added of the undertaking <b>or site</b> concerned in year t. The gross value added of the undertaking <b>or site</b> 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.</p> <p>31. When Member States decide to limit the amount of the indirect costs to be paid at undertaking <b>or site</b> level to <b>0.5</b> % of gross value added, that limitation must apply to all eligible undertakings <b>or sites</b> in the relevant sector. <b><del>If Member States decide to apply the limitation of [...] % of gross value added only to some of the sectors listed in Annex I, the choice of sectors must be made on the basis of objective, non-discriminatory and transparent criteria.</del></b></p>
<p style="text-align: center;"><b>Justification</b></p> <p>The additional compensation should be set so that indirect costs are capped at 0.5% of the GVA. This possibility should be open to all eligible sectors and not restricted only to some of them. The GVA of companies is highly dependent on their structure, including the configuration of the production steps where the higher share of value added is generated. Hence, a site assessment would also be necessary where appropriate.</p>	

**AM 3: deletion of conditionality criteria (since the incentive effect is secured by the benchmarks)**

Current text Paragraph 54	Proposed amendment Paragraph 54
<p><del>54. Member States also commit to monitoring that beneficiaries covered by the obligation to conduct an energy audit under Article 8(4) of the Energy Efficiency Directive will:</del></p> <p><del>(a) implement recommendations of the audit report, to the extent that the pay-back time for the relevant investments does not exceed [5] years and that the costs of their investments is proportionate; or alternatively</del></p> <p><del>(b) reduce the carbon footprint of their electricity consumption, for example, through installing an on-site renewable energy generation facility (covering at least 50% of their electricity needs), through a carbon free power purchase agreement; or alternatively</del></p> <p><del>(c) invest a significant share of at least 80% 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.</del></p>	<p><i>Deleted</i></p>
<p style="text-align: center;"><b>Justification</b></p> <p>Compensation of indirect costs does not distort incentives for energy efficiency investments because it is still based on very strict benchmarks reflecting the best performance in the sector (and actually the state aid intensity does not even cover the full benchmark but only 75% of it). Furthermore, the “incentive effect” is also preserved by the fact that the benchmarks will be updated during the phase 4, so that companies have further interest in improving performance, where technically possible. Furthermore, the proposed conditionality requirements are actually linked to the implementation and enforcement of other pieces of legislation (notably the Energy Efficiency Directive and the Renewable Energy Directive). However, member states retain the possibility of adopting different instruments to promote energy efficiency and renewables in order to achieve the targets set in such legislation. Therefore, the conditionality requirements would overlap and possibly collide with different national measures.</p>	

**AM 4 (option 1): maintaining sectors belonging to the steel value chain (mining of iron ores and seamless pipes) in the list of eligible sectors**

Current text Annex I	Proposed amendment Annex I
<i>NACE 24.10: Manufacture of basic iron and steel and ferro-alloys</i>	<i>NACE 24.10: Manufacture of basic iron and steel and ferro-alloys, <b>including seamless steel pipes</b></i>  <b><i>NACE 07.10 Mining of iron ores</i></b>
<p style="text-align: center;"><b><i>Justification</i></b></p> <p>The NACE code 0710 (Mining of iron ores), which is eligible for financial compensation in the EU ETS phase 3, is very important for the steel sector as it is within the same value chain. Even though it has a different NACE code than steel making (NACE 2410), actually it covers the activity of sintering of iron ores that is performed in the integrated steel sites. Since it contributes to the overall exposure to the indirect carbon leakage risk of the steel industry, it is important that it remains eligible for the post 2020 period.</p> <p>Furthermore, in the EU ETS phase 3 seamless steel pipes were also included in the list of eligible sectors as they are closely linked to the steel sector because they represent a very electro-intensive process similar to other hot/cold rolling processes. Therefore, they should remain eligible.</p>	

**AM 4 (option 2): maintaining sectors belonging to the steel value chain (mining of iron ores and seamless pipes) in the list of eligible sectors**

Current text Annex I	Proposed amendment Annex I
<i>NACE 24.10: Manufacture of basic iron and steel and ferro-alloys</i>	<i>NACE 24.10: Manufacture of basic iron and steel and ferro-alloys, <b>including seamless steel pipes and agglomeration of iron ores</b></i>  <b><i>NACE 07.10 Mining of iron ores</i></b>
<p style="text-align: center;"><b><i>Justification</i></b></p> <p>The NACE code 0710 (Mining of iron ores), which is eligible for financial compensation in the EU ETS phase 3, is very important for the steel sector as it is within the same value chain. Even though it has a different NACE code than steel making (NACE 2410), actually it covers the activity of sintering of iron ores that is performed in the integrated steel sites. Since it contributes to the overall exposure to the indirect carbon leakage risk of the steel industry, it is important that it remains eligible for the post 2020 period.</p> <p>Furthermore, in the EU ETS phase 3 seamless steel pipes were also included in the list of eligible sectors as they are closely linked to the steel sector because they represent a very electro-intensive process similar to other hot/cold rolling processes. Therefore, they should remain eligible.</p>	

## AM 5: maintaining the existing areas for Central Western Europe and Nordic region

Current text Paragraph 14(10)	Proposed amendment Paragraph 14(10)
<p><i>‘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 shall reflect 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 euros (using daily ECB exchange rates) of maximum 1 % in 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 Member 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 Member States. On this basis, the following geographic areas can be identified: Nordic (Sweden and Finland), Baltic (Lithuania, Latvia and Estonia), Iberia (Portugal and Spain), Czechia and Slovakia (Czechia and Slovakia) and all other Member States separately. The corresponding maximum regional CO2 factors are 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 Member State concerned.</i></p>	<p><i>‘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 shall reflect 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, where the hourly day-ahead power exchange prices within the zones showing price divergence in euros (using daily ECB exchange rates) <del>of maximum 1 %</del> in significant number of all hours in a year, <b>or c) regions CWE and Nordic, in both cases, also if larger price differences are experienced but where short term limitations on interconnectors resulting in larger price differences or dominance of one market upon the other exist as indicated by calculations of the covariances between areas or Member States.</b> Such regional differentiation reflects the significance of fossil fuel plants <b>and for CWE and Nordic areas also reflects the impact from abroad</b>, 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 Member 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 Member States. On this basis, the following geographic areas can be identified: Nordic <b>(Norway, Denmark, Sweden and Finland), Central-West Europe (Austria, Belgium, Luxembourg, France, Germany and Netherlands)</b>, Baltic (Lithuania, Latvia and Estonia), Iberia (Portugal and Spain), Czechia and Slovakia (Czechia and Slovakia) and all other Member States separately. The</i></p>

	<p>corresponding maximum regional CO2 factors are listed in Annex III <b>or factors decided by using additional analysis based on electricity markets models on request from Member States and approved by the Commission</b>. 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 Member State concerned;</p>
<p><b><i>Justification</i></b></p> <p>The methodology for defining the marginal emission factor gives inaccurate results not reflecting reality if areas are defined unnecessarily too small, especially where the factor is impacted by neighboring areas. In addition, such a fragmentation would give a wrong signal and counteract the need and goal to comprehensively realize the EU's internal market also for energy. Therefore, electricity market models could be used as additional analysis in cases where the actual pass-through factor comes from price influence from connected markets and not from domestic emission-intensive power generation. This should result in, either, to maintain the geographical regions CEW and Nordic or allow to apply individual emission intensities, if one market is dominated by another.</p>	