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COVER NOTE

From: Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

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Subject: COMMISSION DELEGATED DECISION (EU) .../... of 24.9.2024 on the unilateral inclusion of sectors by the Netherlands in the emissions trading system within the Union for buildings, road transport and additional sectors pursuant to Article 30j of Directive 2003/87/EC of the European Parliament and of the Council

Delegations will find attached document C(2024) 6559 final.

Encl.: C(2024) 6559 final



Brussels, 24.9.2024
C(2024) 6559 final

COMMISSION DELEGATED DECISION (EU) .../...

of 24.9.2024

on the unilateral inclusion of sectors by the Netherlands in the emissions trading system within the Union for buildings, road transport and additional sectors pursuant to Article 30j of Directive 2003/87/EC of the European Parliament and of the Council

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The EU Emissions Trading System (EU ETS) is the cornerstone of European Union's climate policy and the key tool for achieving the EU's objective of reducing greenhouse gas (GHG) emissions cost-effectively. As a result of the amendment of Directive 2003/87/EC of the European Parliament and of the Council (the ETS Directive) in 2023, a new emissions trading system (ETS 2) was established under Chapter IVa of that Directive. Its scope covers fuels used for combustion in buildings and in the road transport sector as well as in additional sectors which correspond to industrial activities not covered by Annex I of the ETS Directive. The activities covered by the new ETS 2 are defined under Annex III of the ETS Directive.

Article 30j of the ETS Directive allows Member States to unilaterally extend the scope of application of ETS 2 in their jurisdiction to sectors that are not listed under Annex I and Annex III of the ETS Directive and to apply emissions trading in those sectors. Article 30j further provides that the Commission is empowered to adopt a delegated act to approve the individual requests for extension, authorise the issue of additional allowances and authorise other Member States to extend the activity referred to in Annex III.

This empowerment provides the basis for the current delegated decision approving the request of the Netherlands, submitted by letter of 6 June 2024, to unilaterally extend the new ETS 2 to the sectors listed in Annex to this act.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Commission has informed the Member State representatives of the Commission Expert Group on Climate Change Policy ('CCEG') on ETS2 Implementation on the procedure and timeline of the approval of unilateral scope extension requests in September 2023, December 2023 and February 2024.

The Netherlands notified a formal opt-in request by letter of 6 June 2024, which was received by the Commission services on 10 June 2024.

On 18 June 2024, the Commission services shared the draft delegated decision for consultation with the Member States representatives of the CCEG on ETS2 implementation and presented the document in a meeting held on 19 June 2024.

On 18 June 2024, the proposed draft delegated decision was transmitted simultaneously to the European Parliament and the Council, for consultation, as provided for in the Common Understanding on Delegated Acts annexed to the Interinstitutional Agreement on Better Law Making.

The observations expressed by the expert group were taken into account when preparing the draft delegated decision approving the unilateral extension to additional sectors of the system by the Netherlands and the additional issue of allowances.

The draft delegated decision was published on the Better Regulation portal for a four-week feedback period from 19 July until 16 August 2024. During this period, 10 contributions were received, out of which 6 were from EU citizens, 2 were from non-governmental organisations, 1 was from a business association, and 1 was from a trade union. The feedback relevant to the topic of the consultation contained similar information already put forward during discussions that have taken place within the Expert Group on Climate Change Policy. As a result, the Commission maintained the text of the delegated decision.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Commission delegated decision is adopted pursuant to Article 30j of the EU ETS Directive.

The legal effect of this act is threefold:

- (a) it approves the list of additional sectors to which the Netherlands has decided to expand the application of the ETS 2;
- (b) it sets the start date of application of monitoring and reporting obligations for regulated entities supplying fuels in the sectors covered by the unilateral extension of scope; and
- (c) it authorises, as of 2027, the issue of the additional ETS 2 allowances corresponding to the greenhouse gas emissions generated by the sectors covered by this unilateral extension of scope.

COMMISSION DELEGATED DECISION (EU) .../...

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on the unilateral inclusion of sectors by the Netherlands in the emissions trading system within the Union for buildings, road transport and additional sectors pursuant to Article 30j of Directive 2003/87/EC of the European Parliament and of the Council

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 96/61/EC¹, and in particular Article 30j thereof,

Whereas:

- (1) Article 30j(1) of Directive 2003/87/EC of the European Parliament and of the Council provides Member States with the possibility, from 2027, to unilaterally extend the application of the emissions trading system within the Union ('EU ETS') for buildings, road transport and additional sectors to sectors that are not listed in Annex III to Directive 2003/87/EC.
- (2) When availing themselves of this possibility, Member States are to take into account in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the emissions trading system and the reliability of the planned monitoring and reporting system.
- (3) On 10 June 2024, the Netherlands notified a request to expand the application of the emission trading system for buildings, road transport and additional sectors to a list of sectors not yet covered by Annex III to, or by Chapters II and III of, Directive 2003/87/EC.
- (4) The Dutch authorities explained that this unilateral extension would reduce the administrative costs and ease the reporting and monitoring processes for the regulated entities and the national competent authority.
- (5) In the Commission's opinion, expanding the scope of the EU ETS beyond the list of activities listed under Annex III to Directive 2003/87/EC, as the Netherlands has requested, would indeed have environmental benefits, and would bring about an administrative simplification for fuel suppliers acting as regulated entities in the Netherlands.
- (6) On the basis of the reviewed greenhouse gas emissions data for the years 2016, 2017 and 2018 carried out in 2020, in accordance with Article 4(3) of Regulation (EU) 2018/842 of the European Parliament and of the Council², the average total amount of

¹ OJ L 275, 25/10/2003, p. 32, ELI: <http://data.europa.eu/eli/dir/2003/87/2024-03-01>.

² Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19/06/2018, p. 26, ELI: <http://data.europa.eu/eli/reg/2018/842/2023-05-16>).

emissions corresponding to the sectors notified by the Netherlands in the context of this unilateral extension request amounts to 5 908 224 tCO₂. This amount will be used as a basis for calculating the future amount of additional allowances to be issued as of 2027.

- (7) The Commission has assessed the reporting and monitoring methodologies planned by the Netherlands and has concluded that these are reliable and in line with the requirements of Article 30j of Directive 2003/87/EC.
- (8) The excise duty system in place in the Netherlands, particularly the distribution infrastructures, does not effectively allow regulated entities to differentiate the end use of fuels between, on the one hand, sectors already covered by Annex III to Directive 2003/87/EC and, on the other hand, the sectors concerned by this extension of scope. To facilitate cost-effective monitoring, reporting and verification of emissions and reduce the administrative burden linked with reporting associated with the scope factor in the annual emissions reports and the monitoring plans, regulated entities should not be required to distinguish the reporting of emissions in sectors concerned by the extension of scope from emissions in sectors already covered by Annex III to Directive 2003/87/EC.
- (9) In order to comply with the regular annual cycle for monitoring, reporting and verification of emissions in the new emissions trading system for buildings, road transport and additional sectors, it is appropriate for regulated entities to report verified emissions for the extended scope starting on 1 January 2025, in accordance with Article 30f(2) of Directive 2003/87/EC,

HAS ADOPTED THIS DECISION:

Article 1

Scope of the unilateral extension approval

The extension, in the Netherlands, of the activity referred to in Annex III to Directive 2003/87/EC to the sectors listed in the Annex to this Decision is approved subject to the conditions listed in Article 3.

Article 2

Authorisation of the issue of additional allowances

Additional allowances shall be issued in 2027 on the basis of the average amount of total emissions of 5 908 224 tCO₂ reported by the Netherlands for the sectors listed in the Annex to this Decision for the years 2016, 2017 and 2018 in accordance with the rules set in Article 30c(1) of Directive 2003/87/EC.

Article 3

Monitoring and reporting obligations

The Netherlands shall ensure that each regulated entity monitors and reports, in accordance with Article 30f(2) of Directive 2003/87/EC, to the competent authority, for each calendar year, the emissions corresponding to the quantities of fuels released for consumption in the sectors listed in the Annex to this Decision that have taken place from 1 January 2025.

Article 4

Entry into force and application

This Decision shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 24.9.2024

For the Commission
The President
Ursula VON DER LEYEN