



Confederation of Industry of the Czech Republic's comments on the proposal for the content and format of climate-neutrality plans needed for granting free allocation of emission allowances

The Commission presented on 4 August 2023 „ COMMISSION IMPLEMENTING REGULATION (EU) .../... of XXX laying down rules for the application of Directive 2003/87/EC of the European Parliament and of the Council as regards the content and format of climate-neutrality plans needed for granting free allocation of emission allowances” (“CNP regulation”).

We welcome the opportunity to comment on this proposal.

1. General comment on the binding character of the climate neutrality plans

We would like to point out numerous uncertainties and concerns related to the proposal.

Especially in case of energy intensive economic sectors like steel sector, big uncertainties persist as regards available technologies for reaching climate neutrality in 2050. At the same time, generally, successful implementation of projects is highly dependent on many external factors which are not in hands of companies (physical and economic availability of sufficient amount of clean electricity, hydrogen, overall energy and economic situation, infrastructure needed, national policies, geographical circumstances, availability of financial support, development of technologies etc.). Thus, many EU companies are neither able to set concrete plan or describe specific investments, neither they can guarantee 100 % compliance with such transformation pathways, by 2050 but also for 2030 etc., as required by the draft.

To add, no one can, in case of each installation/company, expect continuous (5-year) CO₂ mitigation or new targets/milestones every five years. This is always dependent on completed projects, their character and investment cycles. Moreover, **e.g. targets or CO₂ mitigation for 2025 will hardly be set if the company plans or already started a big investment to be finished in 2030.**

Thus, **the CNPs should not be binding and provide sufficient flexibility to deviate from their content** if the right conditions and needs for their realisation (mentioned under point 6(c) of the Annex) are not met. For the reasons mentioned above, **companies/installations should not be forced to concretely describe all of their future measures and investments, intermediate milestones or targets**, as required in the draft. The rules should allow **companies/installations to set such pathways gradually in time, based on the current situation at any given time.**

No such flexibilities are proposed within the COM draft which can have serious consequences on companies but also for successful reaching of climate neutrality in EU.

2. General comment on the content of the plans

The draft links targets and milestones of climate neutrality plans to (absolute or relative) emission reductions. However, as explained below, the revised ETS Directive clearly relates such targets and milestones only to measures and investments described in the plans.

Article 10b(4) provides a clear sequence of elements, notably:

- Point (a): measures and investments to reach climate-neutrality by 2050 at installation or company-level, excluding the use of carbon offset credits;
- Point (b): intermediate targets and milestones to measure, by 31 December 2025 and by 31 December of each fifth year thereafter, progress made towards reaching climate -neutrality as set out in point (a);
- Point (c): an estimate of the impact of each of the measures and investments referred to in point (a) as regards the reduction of greenhouse gas emissions.

The subsequent subparagraph then clarifies that the scope of the verification shall be “*the attainment of the targets and milestones referred to the third subparagraph of point (b)*”.

Therefore, the format and design of **climate neutrality plans should focus on** the attainment of intermediate targets and milestones of point (b) against **measures and investments** of point (a) instead of emissions reductions of point (c).

3. General comment on application of penalties on installation / sub-installation level

The interpretation of the provisions on climate neutrality plans as being purely applied at “installation level” entails a disproportionate and inconsistent treatment. Operators of installations covering several product benchmarks and fallback sub-installations would be subject to the obligation and penalty for their entire installations as soon as one sub-installation belonged to the worst 20% percentile of a given product benchmark in the years 2016-2017, regardless of the performance in all other sub-installations. The wording and spirit of article 10a paragraph 1 as well as the previous jurisprudence indicate that the **obligation and penalty concerning climate neutrality plans for the least 20% efficient installations should be interpreted and applied at sub-installation level**. This would lead to a more consistent and proportionate treatment, where the obligation and penalty are applied only for the relevant product benchmark sub-installations belonging to the worst 20% percentile.

Moreover, parts of the Annex refer to obligation to provide information on sub-installation level, hence we understand this was the original aim of the legislator, which should be followed through in the whole text of the regulation.

4. General comment on aggregation of climate neutrality plans and the need for flexibility of operators

CNP regulation should allow for development of aggregated CNP for the several EU ETS sub-installations owned by one economic entity.

Some companies consist of several sub-installations in the EU ETS. Thus one CNP (investment plan) should be allowed to be developed, which would cover the entire group of sub-installations owned by one economic entity, as was the case in the case of using the mechanism according to 10c Directive 2003/87/EC in the period 2013-2020.

5. General comment on verification process

CNP regulation should describe the process of verification of CNP not just from the point of view of emissions but also from the point of view of economic indicators.

According to Art. 10b(4) of Directive 2003/87/EC district heating companies have to invest the amount equivalent to the value of that additional free allocation to significantly reduce emissions before 2030. Amount of investments and allocation volumes have to be assessed and confirmed by economic auditors (in form of economic assessment) as was the case under the mechanism according to 10c Directive 2003/87/EC in the period 2013-2020.

6. Comment on Article 4, paragraph 1

In the Article 4 paragraph 1 should read:

„The Commission shall make available an electronic template or specific file format for providing the information **exactly** as specified in the Annex. “

Justification:

The available an electronic template or specific file format for providing the information should follow as much as possible the Annex of CNP regulation in order to ensure consistency and predictable legislative environment for the operators.

7. Comment on Article 4, paragraph 4

In the Article 4 new paragraph 4 should read:

„The Commission shall make available an electronic template or specific file format referred to in paragraph 1 by the end of 2023. If the deadline in first sentence was not met, notwithstanding the paragraph 3, Member States may use their own electronic template or specific file format for the climate-neutrality plans.“

Justification:

The electronic template or specific file format for providing the information should be made available to operators as soon as possible but at the latest by the end of 2023. Otherwise it will be very problematic to meet the deadline for submitting the Climate-neutrality plan according to the Article 10b(4) of Directive 2003/87/EC. In that case Member States should choose their own formats for providing the information in order to meet the deadline given by the Directive.

8. Comment on Annex, Point 4 (c)

In the Annex, point 4 (c) should read:

„optionally **to point (b)**, absolute emission targets for 2025 and for each five year period thereafter, ensuring consistency with the historical emissions referred to in point 2 and the milestones referred to in point (a) of this point.“

Justification:

Point 4 (c) should be understood as optional to point 4 (b). This is editorial amendment clarifying the text and interpretation of provision not changing the substance.

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