

1. In certain circumstances, where undertakings engage in different economic activities, they are registered in the Register of Companies kept by the Chambers of Commerce (hereinafter: Business register) with different NACE/ATECO codes. For the purposes of the admissibility of the application, it is considered sufficient that the NACE code in Annex II to Communication 2012/C 158/04 (hereinafter: LLGG ETS) is indicated among the different NACE/ATECO codes registered in the Register of Companies?

According to point 25 of the 2012 ETS Guidelines, *“for the purposes of these Guidelines, a significant risk of carbon leakage is considered to exist only if the beneficiary is active in a sector or subsector listed in Annex II.”*

According to point 29, *“if an installation manufactures products that are eligible for aid (i.e. they fall within the eligible sectors or subsectors listed in Annex II) and products that are not eligible for aid, the maximum aid payable shall be calculated only for the products that are eligible for aid.”*

To identify the activities carried out in a given installation, Member States can apply the method applicable for free allocation *mutatis mutandis* (see in particular the Guidance Document n°3 on the harmonised free allocation methodology for the EU-ETS post 2012 – Data collection guidance¹). In particular, Member States may rely on data originating from the installation and verified by a third independent party.

2. In certain circumstances, it may be that a NACE code other than that indicated for the purposes of the VAT return is indicated in the Companies Register. What should be the code to be taken into account for the granting of the aid?

See reply to question 1. In particular, according to Annex I of the Guidance Document n°3, data produced for commercial or legal purposes is considered to be of high quality data; for example, where the financial interests of a secondary party, or legal requirements ensures a certain data quality (data used for invoicing, taxation and customs declarations).

3. In certain circumstances, a different NACE code from those provided for in Annex I may be indicated in the Companies Register. II of the LLGG, but the activity carried out by the company, as shown by the official Chamber of Commerce, is consistent with the eligible sectors/sub-sectors. Can an application from an undertaking falling within the situation described be considered admissible?

See reply to question 1. In particular, according to Annex I of the Guidance Document n°3, data which has already been subject to independent (financial) audits is also considered to be of the highest quality.

4. In the case of an installation producing (main) products falling within the NACE codes listed in Annex II to the ETS LLGG and also by-products not having the same NACE codes, confirmation is requested that the electricity consumption of the installation can be attributed to the production process of the main product.

If an installation produces products falling within the NACE code of an eligible sector under the ETS guidelines and also by-products with different NACE codes outside the list of eligible sectors, relevant data shall be split and, according to point 29 of the ETS Guidelines, the maximum aid payable shall be calculated only for the products that are eligible for aid.

¹ https://ec.europa.eu/clima/document/download/2708bb5b-9241-44f3-83fd-6cd23e54072a_en

Member States can apply the method applicable for free allocation to split installation into sub-installations *mutatis mutandis* (see in particular the Guidance Document n°2 on the harmonized free allocation methodology for the EU-ETS post 2012 - Guidance on allocation methodologies²)

5. An undertaking, which is active in a sector and sub-sector of activity listed in Annex II to the ETS LLGG, produces the electricity that feeds its installation (s) and has not entered into an electricity supply contract stating that it has incurred CO₂ costs (see Section 11 of the ETS LLGG) or the undertaking self-produces part of the electricity and supplies its own installation (s) using self-generated energy and purchasing the rest required through the conclusion of an electricity supply contract.

Given that the undertaking must fulfil the other requirements, is it possible to grant the aid to an undertaking which is in each of the two conditions described?

Autoproducers ask to be able to attach to the application for aid the contract for the supply of the fuel purchased, highlighting the application of CO₂ costs, which is not provided for in the LLGG. Do you consider this proposal to be admissible?

According to point 11 of the 2012 ETS Guidelines, in case of electricity supply contracts that do not include any CO₂ costs, no State aid will be granted. This only applies for costs incurred in 2020 since this provision has been removed in the 2021 ETS Guidelines.

By analogy and to ensure equal treatment, for costs incurred in 2020, no aid can be granted for self-generated electricity that do not include any CO₂ costs.

However, Member States may grant aid to auto-producers who demonstrate that the self-generated electricity includes CO₂ costs, for instance by attaching the contract for the supply of the fuel purchased to their application.

6. Among the requirements for calculating the aid, the company is required to indicate the energy consumed by the installation to produce each individual product eligible for aid (see § 27.a and 27.b of the ETS LLGG): This may be the case if a company produces (in whole or in part) the energy that feeds its own installations.

a. should such self-generated energy be included, or not, for the purposes of calculating the energy consumption used by the installation?

Point 27(b) of the 2012 ETS Guidelines refers to the “baseline electricity consumption”, defined as the average electricity consumption at the installation over the reference period 2005-2011 (baseline electricity consumption) for installations operating every year from 2005 to 2011. The 2012 ETS Guidelines do not distinguish between electricity sources, except under point 11.

Member States may therefore allow beneficiaries to include self-generated electricity, except if it does not include any CO₂ costs (see questions 5).

b. the question is whether, and how, the discrepancy between the baseline consumption and the figure recorded in the reporting year (2020) is to be reported if, as a result of the installation of a co-generator, there is a significant reduction in electricity consumption.

Member States may compensate indirect emission costs of eligible installations based on the electricity consumed, including electricity from cogeneration units. Therefore, such electricity can be

² https://ec.europa.eu/clima/document/download/95d15f67-1be0-4479-a7c2-82a91aacb533_en

taken into account for the calculation of the baseline electricity consumption and the yearly consumption.

7. If an installation manufactures both products that are eligible for aid and products that are not eligible for aid, the maximum aid amount will only be calculated for eligible products (see § 29 LLGG ETS). With regard to installations manufacturing products covered by paragraph 27.b of the ETS LLGG, if the undertaking has only one POD code that feeds all installations, what are the criteria according to which energy consumption is to be attributed to each of the two (or more) productions?

Member States can apply the method applicable for free allocation to split installation into sub-installations *mutatis mutandis* (see in particular the Guidance Documents n°2 and 3 referred to above). In particular, where data has to be attributed to sub-installations, the installation's total figures may need to be split. In this circumstance it is preferable to subtract data for the sub-installation with the best available data from the total for the installation, instead of applying estimation methods of lower quality to each sub-installation. If there is no sufficient historical data available, data gaps should be filled through conservative estimations, meaning estimations that would not lead to overestimate the allocation, providing then for the highest achievable accuracy.

8. An enterprise, active in a sector and sub-sector of activity referred to in Annex II of the ETS LLGG is a member of a consortium which has concluded a single electricity supply contract for all the member undertakings. Must each member of the consortium attach this single contract to submit the aid application?

Beneficiaries must provide evidence with the highest achievable accuracy of their individual consumption at installation level related to the production of eligible products. A single contract for several members of a consortium might not be sufficient in this regard. Undertakings may for instance provide independently verified reports.

9. The contracts concluded by the companies with the electricity suppliers (ENEL, A2A, EDISON, etc.) do not explicitly show CO₂ costs. What is done in these cases? Should the proposing entity request any other documentation from the supplier to prove the application of these costs?

Proof of electricity supply from the grid (i.e. invoice issued by electricity suppliers connected to the national grid) is sufficient.

10. For the purposes of the correct calculation of the amount of aid for offsetting the costs of indirect emissions, on the basis of the formulae set out in paragraphs 27.a and 27.b of the LLGG ETS, the definitions of basic production and basic consumption are not clearly applicable where there has been no continuous operation of the installation or the installation has started to produce at a later stage than in 2011. In order to remove all reasonable doubt, we kindly ask you to provide an analytical explanation of the procedure for determining the basic production/consumption in the following cases:

A. the plant started production since 2007, there is no production in 2005 and production in 2006;

The baseline output/electricity consumption should be calculated as the average over 2007, 2008, 2009, 2010 and 2011.

B. the plant started production from 2011 onwards, no production from 2005 to 2010;

The baseline output/electricity consumption should be calculated as the average over 2011, 2012 and 2013 (the preceding three years for which operation has been recorded).

C. the installation did not operate in 2009;

The baseline output/electricity consumption should be calculated as the average over 2005, 2006, 2007, 2008, 2010 and 2011.

D. the plant started production in 2009, production is lacking from 2005 to 2008;

The baseline output/electricity consumption should be calculated as the average over 2009, 2010 and 2011.

E. the plant started producing post 2012 and has no production data in the 2005-2011 time window.

Can the aid be granted? If so, how is the basic production/consumption to be calculated?

According to the 2012 ETS Guidelines, if the installation did not operate for at least one year from 2005 to 2011, the baseline output/electricity consumption will be defined as yearly production/electricity consumption until there are four years of operation on record, and afterwards it will be defined as the average of the preceding three years for which operation has been recorded.

For instance, if the plant started operations in 2013, aid can be granted for costs incurred in 2020 and the baseline output/electricity consumption should be calculated as the average over 2013, 2014 and 2015.

11. If, despite having basic production and/or basic consumption for the period 2005-2011, the applicant company does not provide data for the year for which the aid is requested (2020), and given that the quantification of the aid, on the basis of the provisions of Sections 27.a and 27.b of the ETS LLGG, is based on basic production/consumption, it may be that some applicants will not send data for the year for which the aid is requested (2020). Can aid be granted in these specific situations?

According to the 2012 ETS Guidelines, if, over the aid granting period, an installation significantly extends its production capacity, the baseline output/electricity consumption can be increased in proportion to this capacity extension. If an installation reduces its production level in a given calendar year by 50 % to 75 % compared to the baseline output, the installation will only receive half of the aid amount corresponding to the baseline output/electricity consumption. If an installation reduces its production level in a given calendar year by 75 % to 90 % compared to the baseline output, the installation will only receive 25 % of the aid amount corresponding to the baseline output/electricity consumption. If an installation reduces its production level in a given calendar year by 90 % or more compared to the baseline output, the installation will receive no aid.

It follows that applicants must submit their actual yearly production/consumption data for the year for which the aid is granted in order to allow Member States to monitor potential significant capacity reductions and prevent overcompensation. Moreover, it should be noted that Member States must include in their annual report, among other information, the yearly production (as well as the yearly electricity consumption if aid is granted using the fall back electricity consumption efficiency benchmark) for each aided installation for the year for which aid is being paid (see point 49 of the 2012 ETS Guidelines).

12. The basic production/basic consumption definitions provide that: 'If, during the period in which the aid is granted, the production capacity of an installation is significantly increased, the basic production may be increased in proportion to that increase'.

a. is it questionable, proportionally? Can the proportionality factor be chosen autonomously in a given range of values (e.g. between 0 and 1) or is it fixed?

For the assessment of significant capacity extensions in the context of indirect costs compensations, Member States can apply the methodology applicable to free allocation *mutatis mutandis* (see the Guidance Document n°2 referred to above and the Guidance Document n°7 on new entrants and closures³).

Based on this methodology, the proportionality factor, i.e. the ratio between the new baseline output and the initial baseline output, is not fixed but depends on the initial installed capacity, the new installed capacity and the capacity utilisation factor.

b. on the basis of the definitions set out in the ETS LLGG concerning basic production/consumption and substantial capacity increase, is it correct that, in order to render applicable the effects of the substantial increase in capacity on the value of eligible costs for the year for which the aid is requested (2020), must the conditions laid down in the definition of substantial capacity increase be met and, in addition, there must be an actual increase in production of the product of 10 % or more in the year for which aid is requested (2020)?

By analogy with the rules applicable for free allocation, significant capacity increases can be taken into account for the aid granted for 2020 if the start of change operation took place before 1 January 2020 (see the Guidance Document n°7, p.26).

Please note that, according to the rules for free allocation, significant capacity changes which have been identified or for which the new capacity has only been determined after 30 September 2011 should be treated based on the rules for new entrants where appropriate (see Guidance document n°7).

c. in the event that production in the year for which aid is requested (2020) is lower than the basic output, even if a substantial increase in capacity has been carried out, is it correct to apply the definition of a reduction in the level of production as set out in the ETS LLGG?

This is correct. If the production of an installation in 2020 is lower than the baseline output by more than 50%, the rules on the reduction of the aid amount in the 2012 ETS Guidelines shall apply.

d. what should be done if the undertaking does not provide evidence to the national granting authority that genuinely demonstrates a substantial increase in the initial installed capacity resulting in all of the following consequences:

I. there are one or more identifiable physical changes related to its technical configuration and operation, other than the mere replacement of an existing production line, and

II. The installation can be operated at a capacity that is at least 10 % higher compared to the installation's initial installed capacity before the change and it results from a physical capital investment (or a series of incremental physical capital investments).

Should the national authority only and exclusively consider basic production without increase?

Yes, if the beneficiaries do not provide sufficient evidence of significant capacity increase, the aid should be calculated based on the baseline output.

³ https://ec.europa.eu/clima/system/files/2016-11/gd7_new_entrants_and_closures_en.pdf

13. The question is whether an application from an undertaking operating in a sector or subsector of activity referred to in Annex I is admissible. II of the ETS LGG, which produces products eligible for aid, which has incurred CO2 costs but does not own an installation because it operates it on another valid basis.

Aid should be granted to the “operator” of the relevant installation, i.e. the person who operates or controls the installation or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the installation has been delegated, in line with the definition provided for by the ETS Directive.

14. Other Member States that have applied the same post-2012 ETS aid scheme, what approach have they applied to the above questions?

Given that the reporting obligations of the Member States are limited to more general information, the Commission services are not in a position to answer to this question.