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Revision of Benchmarks for Free Allocation under the EU ETS for 2026–2030

Business & Science Poland position paper

Business & Science Poland (BSP) is analysing the European Commission's proposals concerning the revised benchmark values for free allocation of emission allowances for the period 2026–2030, as they will have a direct impact on the level of protection against the risk of carbon leakage in energy-intensive sectors covered by the EU ETS. While the revision of benchmarks stems from the applicable rules and is intended to reflect technological progress, the Commission's proposals in their current form raise serious concerns as to their adequacy and proportionality in light of the technological realities of individual sectors, especially with regard to fallback benchmarks based on heat and fuel.

BSP welcomes the fact that, in the draft regulation, the Commission has recognised the need for further reflection on the functioning of *fallback benchmarks* and has announced the possibility of introducing sector-specific *fallback benchmarks* as part of the upcoming revision of the EU ETS. This direction confirms the validity of the concerns raised by industry, namely that a single heat benchmark and a single fuel benchmark cannot adequately reflect the technological diversity of industrial processes.

In BSP's view, benchmarks should support emission efficiency and industrial modernisation, rather than lead to a disproportionate reduction in free allocation for sectors already facing high energy, CO₂ and transformation costs. This applies to industry as a whole, including strategic sectors such as fertilisers, whose importance for food security, supply chain resilience and the EU's open strategic autonomy has also been recognised in the Fertiliser Action Plan, as well as non-ferrous metals, including copper production, where high cost pressure and limited ability to pass costs on to customers further increase the risk of losing competitiveness. In these sectors, an inadequate tightening of benchmarks could weaken production in the EU and increase dependence on imports from third countries

Therefore, the Commission's proposals concerning benchmarks for the period 2026–2030 should be assessed not only from the perspective of the formal EU ETS methodology, but also in terms of their impact on industrial competitiveness, the feasibility of technological transformation and the preservation of strategic production capacities in the European Union. BSP's detailed comments on the key risks and recommendations in this respect are set out below.

1. Values of heat and fuel benchmarks (*fallback benchmarks*) and the protection of industrial competitiveness

BSP points out that the Commission's proposed revision of benchmarks for the period 2026–2030 may have a disproportionate impact on sectors using *fallback benchmarks*, in particular the chemical, refining, petrochemical, heating and combined heat and power sectors, as well as non-ferrous metals, including copper production, which is considered a raw material of strategic importance for Europe's economic security and strategic autonomy.

Most benchmarks under the EU ETS are *product benchmarks*, which apply to installations producing similar products and operating under more comparable technological conditions. However, where a given production process cannot be assigned to a specific product benchmark, fallback benchmarks based on heat and fuel are applied. The problem is that these benchmarks cover a very broad and diverse range of production processes, with different technological parameters, temperature requirements and possibilities for emission reductions.

In practice, this means that installations with very different emissions profiles are assessed against a single reference point, set on the basis of the 10% best-performing installations. This group of best-performing installations often includes operators using biomass or carrying out processes requiring lower temperatures and generating lower emissions. As a result, they achieve emission levels that are not attainable for many energy-intensive industrial processes. Consequently, *fallback benchmarks* are set on the basis of conditions that do not reflect the realities of sectors such as non-ferrous metals, including copper production.

This risk is further reinforced by the need for greater transparency regarding the rules for selecting the installations taken into account when calculating benchmarks, including the criteria for excluding installations that were not operating during the relevant period. The number of installations and the quality of the data used to identify the 10% most efficient installations may have a significant impact on the final benchmark values. This process should therefore be as transparent, verifiable and robust as possible, and should not be distorted by an unrepresentative dataset.

The importance of this issue has been indirectly confirmed in the published draft regulation, in which the Commission announced the possibility of introducing sector-specific *fallback benchmarks* as part of the upcoming revision of the EU ETS. BSP welcomes this direction, as it recognises that a single heat benchmark and a single fuel benchmark are not sufficient to properly reflect the technological diversity of industrial processes. At the same time, the announcement of future changes does not eliminate the risk for the 2026–2030 period, as the currently proposed benchmark values will affect

the level of free allocation before a new sector-specific methodology is developed and implemented.

This problem is particularly evident in the production and refining of copper, where the use of biomass in a manner comparable to certain other installations covered by *fallback benchmarks* is, in practice, not feasible. This is due, on the one hand, to the very high temperatures required by the production process and, on the other hand, to the risk of product contamination, as copper used in the electronics and energy sectors must maintain the highest possible level of purity.

This issue is not limited to individual industrial processes. When setting benchmarks, it is also necessary to take into account the lack of possibility to use biomass widely across many technological processes, as well as the limited availability of sustainable biomass in different regions of the EU. Assuming that the use of biomass can serve as a universal reference point for emission reductions would lead to an inadequate assessment of installations which, for technological, quality-related or regional reasons, have no real possibility of applying such a solution.

The tightening of parameters that have a direct impact on the level of free allocation may lead to higher operating costs and further weaken the competitiveness of EU copper producers, which operate as *price-takers* and cannot freely offset rising ETS costs by increasing the prices of their products.

In light of the above, BSP calls for:

- considering **maintaining the current *fallback benchmarks* on a temporary basis until a methodology is developed** that better reflects the technological diversity of industrial processes covered by the heat benchmark and the fuel benchmark;
- **applying a significantly more gradual reduction of *fallback benchmarks* for activities related to the production of critical raw materials**, in order to limit the risk of a sudden loss of free allowances before a more adequate methodological approach is developed;
- **conducting an in-depth review of the rules for setting *fallback benchmarks* after 2030**, taking into account the actual technological constraints of individual sectors and the need to preserve the competitiveness of production in the EU.

2. Product benchmarks for ammonia and nitric acid - risks for the fertiliser sector

The planned changes to the *product benchmarks* for ammonia and nitric acid, which are of key importance for the fertiliser sector, also require particular attention. The available draft regulation indicates a risk of further increasing cost pressure on EU fertiliser production and, consequently, of weakening protection against carbon leakage in one of the most sensitive links in the EU agri-food chain. This is therefore not merely a technical adjustment of EU ETS parameters, but a change that may have a real impact on industrial competitiveness, security of supply and the resilience of the EU economy.

In this context, the *Fertiliser Action Plan* is of particular relevance, as it links the availability and affordability of fertilisers with food security, the resilience of the agricultural sector and the need to strengthen the EU's strategic autonomy. The update of benchmarks for ammonia and nitric acid should therefore be assessed not only through the lens of the EU ETS methodology, but also with due regard to the need to maintain production capacities in the fertiliser sector.

The annex to the draft indicates that the benchmark for nitric acid remains at 0.151 allowances/t, while the benchmark for ammonia is set at 1.522 allowances/t for the period 2026–2030. In practice, this means that these parameters will be highly relevant for the level of free allocation in the fertiliser sector, which is already facing high energy costs and increasing regulatory pressure.

In the case of nitric acid, particular regulatory caution is needed. Nitric acid is an important product for EU value chains, used not only in fertiliser production, but also in specialty chemicals and other industrial applications. At the same time, this is a relatively narrow sector, but one that is highly differentiated in terms of technology, installation operating profiles and the degree of integration with other fertiliser and chemical processes. This means that the impact of benchmark changes will not be uniform, and an overly restrictive update could lead to disproportionate cost effects for some installations.

Maintaining a restrictive approach to the *product benchmark* for nitric acid would in practice mean assessing this product primarily through the lens of its emissions intensity, while overlooking its importance for the EU economy and key supply chains. Such an approach is difficult to reconcile with the Commission's stated objective of maintaining a competitive industrial base in Europe.

Similarly, the *product benchmark* for ammonia should be assessed not only in terms of emissions parameters, but also in light of the importance of nitrogen fertiliser production for agriculture and the stability of the food market. In this context, further increasing cost pressure on EU producers would be particularly difficult to justify,

especially in parallel with proposals to liberalise fertiliser trade, including by reducing MFN tariff rates, as well as emerging calls to suspend or weaken the CBAM.

Such an approach would lead to double pressure on EU producers: on the one hand, through an increase in regulatory costs within the EU, and on the other, through a weakening of protection against imports from outside the Union. For this reason, BSP calls, in relation to sectors particularly exposed to the risk of carbon leakage, including the fertiliser sector, for considering maintaining the benchmarks for the period 2026–2030 at the level applied in 2021–2025, or at least applying the lowest possible adjustment provided for in the EU ETS Directive. Such an approach would be consistent with the need to strengthen protection against carbon leakage and to maintain production capacities in the European Union.

Summary

In the face of growing geopolitical instability, the European Union should pay particular attention to protecting its own industrial base, production capacities and access to strategic resources.

The experience of recent years - first the COVID-19 pandemic, then the war in Ukraine, and now also disruptions in the Strait of Hormuz - has clearly shown that **excessive dependence on imports of raw materials, energy, fertilisers and intermediate products from third countries poses a serious risk to the European economy and supply chains**. Recent disruptions to shipping have demonstrated how quickly geopolitical tensions can translate into higher prices for energy, transport and agricultural inputs.

In such circumstances, **production within the Union becomes not only a matter of competitiveness, but also a condition for economic resilience**. For this reason, EU regulations, including the rules of the EU ETS, should support decarbonisation while at the same time avoiding the weakening of sectors of fundamental importance for food security, the energy transition and the preservation of strategic production capacities in Europe. Such an approach is consistent with the logic of the *Fertiliser Action Plan*, which treats the availability and affordability of fertilisers as an element of food security, supply chain resilience and the EU's strategic autonomy.

In this context, it should be positively noted that the published draft regulation points to the need for further work on sector-specific *fallback benchmarks*. The current heat and fuel benchmarks cover highly diverse industrial processes, which are difficult to assess properly against one single reference point.

In light of the above, *Business & Science Poland* calls for a revision of the proposed approach to benchmarks for the period 2026–2030, in order to avoid a disproportionate increase in costs in strategic sectors and a further weakening of protection against carbon

leakage. It is necessary both to soften the approach to *fallback benchmarks* and to maintain the benchmarks for ammonia and nitric acid at a level that does not force production reductions in the EU. At the same time, the benchmark methodology should take greater account of the technological realities of industry, import pressure and the need to maintain competitive production in the European Union.

At the same time, BSP draws attention to the need to proceed as efficiently as possible with the regulation setting benchmarks for the period 2026–2030. The timing of its adoption will have a direct impact on the process of transferring free allowances to operators' accounts in 2026. Any delays could further increase regulatory uncertainty for installations covered by the EU ETS.

About BSP

Business & Science Poland (BSP) combines the experience of leading Polish enterprises with the European Union's agenda. We represent the knowledge and interests of Polish companies employing over 280,000 people in Poland, the EU, and worldwide. Our goal is to support the EU Single Market, taking into account the need for its responsible and effective transformation.