



PUBLIC LAW

EU ETS: changes to legislation on the European Emissions Trading System

On 9 December 2024, Decree-Law 101/2024 of 4 December 2024 came into force, partially transposing Directive (EU) 2023/959, the latest amendment to the European Emissions Trading Directive (Directive 2003/87/EC). The European Emissions Trading System (EU ETS) is the European Union's (EU) main instrument for meeting international commitments to reduce greenhouse gas (GHG) emissions. Its main objective is to discourage the use of carbon-intensive technologies, particularly in the activities covered by the scheme, and to encourage their transition to cleaner technologies. This will be achieved, essentially, by setting a cap on GHG emissions at EU level and this cap will be progressively reduced until carbon neutrality is achieved. At that point, the potential for carbon emissions in the EU as a whole will be significantly lower, taking into account the maintenance of the net-zero situation.

The amendments now introduced are intended to achieve a more pronounced reduction of GHG emissions by 2030 by **(i)** setting a new emission reduction target for 2030 (updating the cap for 2030), **(ii)** extending the scope of the EU ETS and **(iii)** modifying the system of free allocation of allowances.

Operators of installations carrying out one of the new activities covered by the EU ETS must submit an application for a European Union Allowances (EUA) within 30 days of the publication of Decree-Law 101/2024. Operators in this situation can use a simplified monitoring methodology to submit their emissions for the period between 1 January 2024 and 9 December 2024.

Below are the main changes introduced by Decree-Law 101/2024.

Main changes

New GHG emission reduction target for 2030 (cap update)

The cap on annual CO₂eq emissions at EU level until 2030 is updated, with the aim of ensuring a 62% reduction in GHG emissions by 2030 compared to 2005 levels. This update of the reduction targets represents an increase of 19% compared to the previous targets. The new Linear Reduction Factor (LRF) values are as follows:

Year	LRF
2024	4,3%
2025	4,3%
2026	4,3%
2027	4,3%
2028	4,4%
2029	4,4%
2030	4,4%

Changes to the scope of some activities covered by the EU ETS

The description of some activities covered by the EU ETS has been modified. Below is the new version, following the numbering in Annex II of Decree-Law 12/2020:

1. Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste). From 1 January 2024, the combustion of fuels in installations for the incineration of municipal waste with a total rated thermal input exceeding 20 MW, for the purposes of Articles 10a, 10b, 32 and 33(1) and (2).
2. Refining of oil, where combustion units with a total rated thermal input exceeding 20 MW are operated.
5. Production of iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour.
7. Production of primary aluminium or alumina.
15. Drying or calcination of gypsum or production of plaster boards and other gypsum products, with a production capacity of calcined gypsum or dried secondary gypsum exceeding a total of 20 tonnes per day.
18. Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues with a production capacity exceeding 50 tonnes per day.
24. Production of hydrogen (H₂) and synthesis gas with a production capacity exceeding 5 tonnes per day.
27. Transport of greenhouse gases for geological storage in a storage site permitted under Directive 2009/31/EC, with the exclusion of emissions covered by another activity under Directive 2003/87/EC.

Main changes

Municipal waste incineration

Municipal waste incinerators are now included in the EU ETS, but only for the purposes of monitoring, verifying and reporting their emissions. However, it is expected that from 2028 these installations will have to comply with all legal obligations, including the surrender of allowances equivalent to verified emissions. The implementation of this extension is subject to an impact assessment to be published by the European Commission by July 2026.

Definition of activities covered by the EU ETS

The EU ETS will now apply directly to activities regardless of their actual GHG emissions, as is the case for green hydrogen (see below). This measure aims to ensure equal treatment of installations in the sectors covered by the EU ETS.

Carbon Border Adjustment Mechanism (CBAM)

From 2026 onwards, the free allocation of allowances to sectors at risk of carbon leakage will be progressively reduced until 2034, when it will cease due to the full implementation of the CBAM system. This gradual reduction will be achieved through the creation of a new reduction factor - the CBAM factor - to be included in the formula for determining the number of free allowances to which each installation is entitled:

Year	CBAM Factor
2026	97,5 %
2027	95 %
2028	90 %
2029	77,5 %
2030	51,5 %
2031	39 %
2032	26,5 %
2033	14 %
2034	0 %

Green hydrogen included in EU ETS

Previously, only the production of hydrogen (H₂) or syngas by reforming or partial oxidation was subject to the EU ETS. Under the new legal framework, the production process specification has been removed, so that all H₂ or syngas is covered, regardless of the production process, which means that green H₂ is included in the EU ETS, even though this process does not have any greenhouse gas emissions by nature. This is a legislative option that allows for easier coordination with the CBAM scheme - which is based on the principle of technological neutrality - and at the same time can be used as a means of financing this green technology, as it opens access to free allocation of emission allowances for green H₂ producers.

Main changes

Emissions

The definition of emissions has been amended to include emissions that do not enter the atmosphere directly. However, emissions that are subject to the geological storage regime ([DL 60/2012](#)), are excluded, as are emissions that are permanently chemically bound to a product in such a way that they do not escape into the atmosphere under normal conditions of use or as part of a normal activity that takes place after the end of the product's life.

The European Commission is empowered to adopt delegated acts to define emissions that are permanently chemically linked to a product.

Biomass combustion installations

From 1 January 2026, installations whose GHG emissions from the combustion of sustainable biomass exceed 95% of their average GHG emissions in 2021-2025 will be excluded from the EU ETS. Sustainable biomass is defined as biomass that meets the applicable sustainability and greenhouse gas reduction criteria set out in the [DL 84/2022](#), transposing RED II into national law.

Voluntary exclusion from the EU ETS: new emission reduction targets

Eligible installations that have requested to be excluded from the EU ETS are subject to new GHG emission reduction factors to maintain their exclusion, as shown below:

Year	Reduction factor
2025	2,2%
2026	12,5 %
2027	4,3%
A partir de 2028, inclusive	4,4%

Remaining in the EU ETS on a voluntary basis

EU ETS installations in the combustion activity with a total rated thermal input of more than 20 MW that have changed their production processes to reduce emissions to become below this threshold may apply to remain in the EU ETS on a voluntary basis. At the choice of the operator, the voluntary permanence scheme may continue only until the end of the current five-year allocation period or until the end of the next allocation period.

Main changes

Implementation of energy efficiency measures

For installations subject to the obligation to carry out an energy audit or implement a certified energy management system ([DL 68-A/2015](#)), the quantity of allowances to be allocated free of charge from 2026 onwards will be reduced by 20% if the recommendations contained in the audit report or certified energy management system are not implemented.

This reduction will not be applied if the operator demonstrates that *(i)* the payback period for the necessary investments exceeds three years; or *(ii)* the cost of these investments is disproportionate; or *(iii)* other measures have been implemented that lead to GHG emission reductions equivalent to those recommended in the audit report or certified energy management system for the installation in question.

Climate Neutrality Plan

Installations with sub-installations with emission levels above the 80th percentile of the emission levels for the applicable product benchmark value will have their free allocation reduced by 20% unless a Carbon Neutrality Plan (CNP) is implemented and complied with.

The CNP is submitted to the Portuguese Environmental Agency (APA) with the application for free allocation and must be consistent with the objective of achieving climate neutrality at European level by 2050 and negative emissions thereafter. Compliance with the targets and milestones set out in the CNP must be verified by an accredited verifier.

This measure applies to the allocation of allowances for the period 2026-2030 and subsequent five-year periods.

Main changes

Relevant deadlines

The deadline for the free allocation of allowances by the APA is changed from 28 February to 30 June.

The deadline for operators to surrender allowances has been moved from 30 April to 30 September.

The obligation to submit a monitoring report on verified emissions to the APA by 31 March of the year following the year to which the emissions relate is maintained. If the report is not submitted on time, the APA will calculate the emissions by estimation. It should be noted that under the previous regime, the APA only estimated emissions after 30 April.

New EU ETS sectors (Buildings, Road Transport and Other Sectors)

Natural or legal persons, with the exception of the final consumer of the fuel, engaged in an activity listed in Annex V of DL 12/2020 and falling into one of the categories listed in Article 33b, known as “regulated entities”, must report their GHG emissions for 2024 by 30 April 2025.

The national legislator did not transpose the obligation for “regulated entities” to hold a GHG emissions permit on 1 January 2025, an obligation that logically and chronologically precedes the transposed emissions reporting obligation according to Article 30f(4) of the EU ETS Directive as amended by Directive (EU) 2023/959.
