
Amendment to the EU ETS legal regime

Decree-Law 101/2024 of December 4 amends the Legal Regime on European Greenhouse Gas Emission Allowance Trading for stationary installations

Portugal - Legal Update

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Key aspects

- > Amendment to Decree-Law 12/2020 of April 6, which approves the **Legal Regime on European Greenhouse Gas Emission Allowance Trading** for stationary installations.
- > Partial transposition of Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission allowance trading system.
- > Creation of provisions applicable to regulated entities in the context of **European greenhouse gas emission allowance trading** for buildings, road transport, and other sectors.

Context

Considering the alignment of the European Union's climate and energy policy with the new 2030 climate target, the European Commission prepared several legislative proposals to reform the European Union's emission trading system (EU ETS). This initiative resulted in the approval of [Directive \(EU\) 2023/959](#) of the European Parliament and of the Council of 10 May (the “**Directive**”).

Following the European commitment in the Directive to cut emissions in sectors covered by the EU ETS by 62% by 2030, compared to 2005 levels, the quantity of emission allowances at EU level is more sharply reduced.

In this context, [Decree-Law 101/2024 of December 4](#) introduces several amendments to Decree-Law 12/2020 of April 6—which established the legal regime on European greenhouse gas emission allowance trading applicable to stationary installations—in partial transposition of the Directive, including the following:

- **Applicability of EU ETS:** The EU ETS now applies to activities directly and not to the emissions associated with those activities.
- **Definition of emission:** The definition of “emission” has been changed to include greenhouse gases (GHG) that are not directly released “into the atmosphere.”
- **Continuity of installations in the EU ETS:** Installations that were initially covered by the EU ETS, due to the operation of combustion units with a total nominal thermal power of more than 20 MW, but have reduced their GHG emissions can continue to be covered by the regime.
- **Exclusion of biomass installations:** To prevent installations that burn a high percentage of biomass from making exceptional profits by receiving free allowances that are much higher than their actual emissions, the installations in which the emissions from biomass combustion contributed, on average, during the previous allocation period, to more than 95% of the total average GHG emissions are no longer covered by the EU ETS.
- **Hydrogen and synthesis gas production:** Amendment to the scope of the activities carried out by stationary installations, in particular the introduction of hydrogen and synthesis gas production by any type of manufacturing process (thus including the production of “green hydrogen”).
- **Municipal waste incineration:** From 2024, municipal waste incineration plants will be included within the scope of this legislation only for the purposes of monitoring, verifying and reporting their emissions. These plants are expected to be fully covered by the EU ETS regime from 2028.

- > **Free allocation of allowances:** The free allocation of emission allowances for implementing energy efficiency improvement measures by the installation operator is now contingent on (i) conducting an energy audit or implementing a certified energy management system; (ii) drawing up a climate neutrality plan for installations that have at least one sub-installation with a product benchmark, specific emissions above the 80th percentile of the emission levels for that benchmark, and compliance with the targets and intermediate objectives established in that plan, verified for the period up to December 31, 2025 and, after that, for every five-year period.
- > **Deadlines for allocating and surrendering allowances:** The deadline for the free allocation of emission allowances moves from February 28 to June 30 and the deadline for operators to surrender emission allowances moves from April 30 to September 30.
- > **Exemption from the cross-sectoral correction factor:** Installations whose GHG emission levels are lower than the average of 10% of the most efficient installations for a given benchmark are now exempt from the cross-sectoral correction factor.
- > **Regulated entities:** Regulated entities, namely in the buildings and road transport sectors, that (i) carry out the activity listed in annex V to Decree-Law 101/2024 of December 4, except for the final fuel consumer, and (ii) fall into one of the categories established in the new article 33-B.2(b) of Decree-Law 12/2020 of April 6 now have a duty to report the historical emissions for the year 2024 by April 30, 2025.

Entry into force

The amendments made by Decree-Law 101/2024 of December 4 entered into force on December 5, 2024, but several transitional regimes and specific dates have been established for certain rules to take effect.

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