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EDA views on Commission proposal for a

DIRECTIVE to enhance cost-effective emission reductions and low-carbon investments

The European Dairy Association (EDA) represented the diary processing industry throughout the EU. With more than 12,000 milk processing and production sites across Europe, the dairy sector contributes significantly to the industrial and economic basis of many rural and mountainous areas in Europe. In some countries the number of dairy production sites located in rural areas levels up to a 100%. Partnering with more than 700.000 dairy farms across Europe, together with 300.000 direct employees, the dairy processing industry assures the production of premium quality EU dairy products.

The EDA welcomes the opportunity to provide initial comments on the EC legislative proposals to revise the EU ETS Directive for the period post-2020. The European dairy processing sector takes his role as a producer of safe, quality and sustainably produced dairy products very seriously. We are conscious of the dual aims of ensuring nutrition and ensuring food security while mitigating against climate change.

Many of our processing facilities have operated within the EU ETS scheme during its various phases and given the energy intensive nature of a number of our processes and the sector's exposure to intense global competition, several areas of dairy processing have been considered eligible under the carbon leakage rules to-date. Therefore, the EDA agrees that while the ETS should remain the main tool to reduce industrial emissions at the lowest cost and to promote investments in low carbon technologies, we strongly believe that as long as there is no global level playing field, the EU ETS must also address the loss of competitiveness of energy-intensive and trade-exposed industries through evidence-based effective measures for carbon leakage protection.

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We are also very conscious that the goal should remain that of overall reduction of global emissions. We are concerned that under the new proposals, the treatment of the dairy industry as a whole (NACE-4) would see the energy intensive dairy ingredients produced for the infant, sports, clinical and affordable nutrition markets, excluded from carbon leakage eligibility, yet, it has been clearly shown that a number of important sub-sectors of the dairy processing industry are very much exposed to intense international competition which makes the role of assignment of carbon leakage very important. Displacing dairy production and certain dairy processing activity outside the EU should therefore be avoided.

Carbon Leakage List:

A number of sub-sectors of the dairy processing sector already qualify under the existing carbon leakage provisions. The initial assessment of the dairy industry on behalf of the European Commission, performed at NACE-4 sector level indicated that the dairy industry as a whole is viewed as not being at risk of carbon leakage. However, it has been recognised that the NACE-4 code for dairy represents a very diverse group of products and industries to the extent that assessment of this NACE group as a single industry group is not appropriate. The following sub-sectors, at Prodcom level, have been deemed eligible under carbon leakage provisions:

15.51.20 Milk and cream in solid forms
15.51.53 Casein
15.51.54 Lactose and lactose syrup[1]
15.51.55.33 Whey and modified whey in powder, granules or other solid forms, whether or not concentrated or containing added sweetening matter[2]

We understand that the current legislative proposals anticipate determining carbon leakage eligibility at NACE-4 sector level. This will not be feasible for several vulnerable sub-sectors of the dairy processing industry and therefore we call for a continuation of the exception to the rule of assessment and the ability to determine eligibility at the Prodcom level.

[1] *See Commission Decision of 24 December 2009 (2010/2/EU) determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage (for ProdCom 15.51.20, 15.51.53 and 15.51.54)*

[2] *See Commission Decision of 18 December 2013 (2014/9/EU) amending Decisions 2010/2/EU and 2011/278/EU as regards the sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage*

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Allocation based on recent Production Data:

The existing allocation system based on historical production has proven to be too rigid and distortive. Recent production levels should be considered as an option for the allocation of free allowances in order to provide better protection against carbon leakage and to avoid problems deriving from over or under allocation.

According to **Article 11(1)**, the Commission proposes that the list of installations covered by the directive for the period 2021-2025 shall be submitted by 30 September 2018, and lists for the subsequent five years every five years thereafter. This five years period is shorter than the current 8 years in phase III. Each list shall include information on production activity, transfers of heat and gases, electricity production and emissions at sub-installation level over the five years preceding its submissions. For the period 2021-2025, allocation will be determined based on updated activity levels from the years 2013-2017.

The EU milk quota regime only ended in April 2015 so for the dairy industry, the 2013-2017 will not paint the true picture of a new era. Therefore, it may be more appropriate to consider a shorter and more recent production period, for example 2016-2019, which would give a more realistic assessment of production and market developments.

The development of the dairy industry has also seen many amalgamations and rationalisation of facilities, with the consequence that those sites producing Prodcom codes liable to carbon leakage are increasing in size and complexity. The current level of entry into the ETS framework (20MW thermal input) may now be considered too low, and it would be helpful to raise the threshold ceiling to above 30-40 MW, for example, allowing smaller sites to continue to be captured instead by Member State Energy Efficiency Directive implementation while highlighting those sites producing dairy powders.

Furthermore, we suggest that the Commission consider developing appropriate templates for sectors for the collection of relevant data, as has been done with the BREF review Questionnaire.

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Benchmarks:

We are concerned that the provision for sectors that have not been able to set benchmarks to apply the 'fall-back' option does not appear to be provided for in the current proposals.

Also, we would question the scientific basis of applying a 1% annual linear (continuous) reduction as a one-size-fits-all approach. Technological efficiency improvements do not and have not developed at the same rate for all industries. The reductions should be aggregated over a period of time (e.g. 3 or 5 years) to allow for continual step improvements in energy efficiency to be accurately captured and accounted. It should also be linked to the BREF notes to establish whether or not processing facilities having already been operating with the best available technologies are not being further penalised for being early adopters.

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