Questions and Answers on the decision revising the cross-sectoral correction factor (CSCF)

1. Why was this decision taken?

According to the Emissions Trading System (ETS) Directive the total amount of allowances that can be handed out for free to industry (industry share) is limited. If the bottom-up calculation of free allocations on the basis of the relevant rules for all eligible installations exceeds this limited amount, a cross-sectoral correction factor applies (CSCF) and reduces the allocation for all installations that are not electricity generators by the same proportion.

In 2013, the Commission determined this CSCF for the period 2013-2020 (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D0448).

A number of installation operators challenged this Decision in Court (Joined Cases C‑191/14, C‑192/14, C‑295/14, C‑389/14 and C‑391/14 to C‑393/14), arguing that the Commission had wrongly calculated the total amount of allowances that can be handed out for free. This amount should allegedly have been higher.

The Court of Justice, however, found in its judgment of 28 April 2016 (see: http://curia.europa.eu/juris/document/document.jsf?text=&docid=177348&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1012788) that the Commission had indeed made a mistake in calculating the industry share. According to the Court, the amount determined by the Commission was too generous and should have been even lower. Instead of taking into account installations that had already been covered by the EU ETS in previous periods, but carrying out activities that were only included in the system as of 2013, the Commission should have only included in its calculation installations that joined the system as of 2013. A certain share of emissions included in the Commission's calculations of the industry share should thus have been disregarded according to the Court.

In order to implement this judgment, the Commission was required to recalculate the industry share and, on this basis, carry out a new comparison between the bottom-up sum of free allocation and the newly calculated maximum amount that can be handed out for free to revise the CSCF.

The revised CSCF values are set out in the Decision adopted on January 24th (http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2017.019.01.0093.01.ENG&toc=OJ:L:2017:019:TOC).

2. What is its impact on industry and the carbon market?

The Decision on the revised CSCF is not expected to have a material impact on the vast majority of industrial installations subject to the EU ETS and the carbon market at large.

Already adopted allocation decisions for the period from 2013 to 2020 will remain subject to the initial CSCF and thus remain unchanged.

Accordingly, auction volumes for the remaining years 2017 to 2020 will also remain unaffected.

3. Why does the Decision not require changes to allocations throughout phase 3?

In its judgment, the Court ruled that the effect of its judgment should be limited in time. In other words, it ensured that declaring the initial CSCF invalid would not call into question measures adopted in the past. Therefore, it should not apply to decisions relating to allocations adopted until 10 months following the date of delivery of this judgment, i.e. only to decisions adopted after 1 March 2017.

As a consequence, where an installation has already been granted free allocations for the period 2013-2020 through a decision taken before this date, these allocations remain unaffected by the revised CSCF. Only where allocation decisions are taken or changed after 1 March 2017, the revised CSCF will need to be applied.

If the Court had not limited the effects of its judgment in this way, the revised CSCF would have indeed implied reductions of free allocations by roughly 330 million allowances for the period from 2013 to 2020.

4. What impact does the revised CSCF have on phase 4?

The revised CSCF values will not impact allocations in phase 4 (2021-2030).

The architecture of the EU ETS for phase 4 is currently discussed between Member States in the Council and the European Parliament on the basis of a proposal made by the Commission in July 2015 (see http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015PC0337&from=EN).

This proposal foresees a share of allowances available for auctioning fixed ex-ante at 57%. By setting the auction share in this way, the maximum amount of allowances available for free to industry will remain limited, but will be known upfront and not require complex calculations as was the case in the beginning of phase 3 (2013-2020).

Furthermore, the Commission as well as the co-legislators share the aim of minimising the risk of a CSCF having to apply in phase 4. To this end, the Commission proposed a number of technical changes to the carbon leakage regime, including a carbon leakage list stable over 10 years, robust update of benchmarks for free allocation to reflect technological progress in the relevant sectors, well targeted carbon leakage rules and fostering innovation.