

Changes to the EU-ETS scheme: Analysis of Decree-law no. 101/2024 of 4 December

Decree-law no. 101/2024 redefines the EU-ETS, laying down new GHG reduction targets and driving the adoption of low- or zero-carbon technologies, it brings Portugal into line with the European Union's climate objectives.

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Decree-law no. 101/2024 of 4 December marks a significant change to the greenhouse gas ('GHG') Emissions Trading System ('ETS') regime approved by Decree-law no. 12/2020 of 6 April, aligning it with Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 and reaffirming Portugal's and the European Union's commitment to climate action.

This law aims not only to bring Portugal into line with European targets, but also to strengthen the response to climate change, pushing for a 55% reduction in emissions by 2030 and climate neutrality by 2050.

In order to achieve these goals, structural changes have been made to the EU-ETS regime with a significant impact on various sectors of the economy, from industry to waste manage-

ment, energy production and new low or zero carbon technologies, among which the following stand out:

- **New emissions reduction target**

Firstly, the decree-law sets a new target of 62% reduction in GHG emissions by 2030 in the sectors covered by the EU-ETS, compared to 2005 levels. This goal alone is ambitious and will require structural changes in sectors such as industry and energy.

The introduction of two absolute reductions in the cap (total amount of emission allowances) in 2024 and 2026, combined with an increase in the linear reduction factor to 4.3% between 2024 and 2027 and 4.4% from 2028 onwards, is a clear sign of the pressing need to speed up the energy transition. However, the effectiveness of these measures will depend on Portugal's ability to ensure that these reductions do not undermine the competitiveness of national companies.

- **Wider range of activities within the scope of the EU-ETS**

The inclusion of new activities within the scope of the EU-ETS is another notable change, henceforth covering activities that, although they do not directly emit GHGs, fulfil certain capacity thresholds. This broader coverage could stimulate the adoption of innovative solutions and promote low or zero carbon technologies, such as the production of 'green hydrogen', although, in conjunction with this inclusion, clear criteria must be defined when it comes to implementation, in order to avoid ambiguities that could be exploited to circumvent climate obligations.

- **Adoption of low or zero carbon technologies**

In the field of innovative technologies, encompassing the production of green hydrogen and synthesis gas highlights the commitment to low or zero carbon solutions, in line with European energy transition objectives.

With regard to biomass, the decree-law introduces a limit of 95% for its combustion with a zero emission factor, above which installations are not covered by the EU-ETS so as to ensure the sustainable use of this material, despite raising doubts in relation to monitoring and the capacity for effective implementation, especially in small-scale installations.

In addition, the decree-law introduces the possibility for installations that reduce their GHG emissions below the 20 MW threshold to continue to be covered by the EU-ETS, at the option of the operator, until the end of the current or following five-year allocation period.

- **Monitoring, verification and reporting**

Another key aspect is the inclusion of monitoring, verification and reporting of emissions from municipal waste incinerators from 2024 onwards, with possible integration into the EU-ETS in 2028, depending on feasibility based on the impact assessment to be presented by the European Commission by July 2026.

There is also a reporting obligation for regulated entities in the buildings and road transport sectors, which carry out activities listed in Schedule V to the decree-law and

Emissions reductions, new climate targets and incentives for clean technologies

which fall into one of the categories set out in the new Article 33b(2)(b). These entities will have to report their 2024 emissions by 30 April 2025, contributing to transparency and the monitoring of emissions in these sectors.

While acknowledging the merits of both measures, their implementation may require a considerable effort in terms of adaptation, especially for operators who are less technically prepared.

- **Free allocation of allowances**

The free allocation of emission allowances will continue, but with new conditions. On the one hand, the obligation to implement energy efficiency measures and submit climate neutrality plans is a positive development, encouraging more sustainable practices; and on the other, the progressive replacement of this free allocation by the Carbon Border Adjustment Mechanism ('CBAM') by 2033.

The CBAM factor will be applied progressively in the six sectors initially covered (aluminium, cement, electricity, fertilisers,

hydrogen, iron and steel), starting at 100% by the end of 2025 and reducing to 14% in 2033, with no CBAM factor being applied from 2034 onwards.

However, this is a change that deserves attention, since CBAM, by levying taxes on imports with a high carbon footprint, aims to mitigate carbon leakage, but could generate trade tensions and difficulties for sectors dependent on imports.

Finally, the repeal of Decree-laws 38/2013 and 10/2019 brings an end to a regulatory cycle and strengthens the commitment to modernising the regulatory framework. This step is undoubtedly important, but the implementation of the new regime will require constant vigilance to ensure that climate goals do not become hostage to economic interests or unnecessary bureaucracy.

All in all, there is no denying the important progress that has been made with the passage of Decree-law no. 101/2024, of 4 December, in Portugal's adaptation to European climate requirements, even if it is only the beginning. The success of these measures will depend on their practical implementation, the ability to monitor the commitments made and the support for companies and citizens in this transition.