



Brussels, XXX  
[...] (2024) XXX draft

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

**supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the requirements for considering that greenhouse gases have become permanently chemically bound in a product**

(Text with EEA relevance)

*This draft has not been adopted or endorsed by the European Commission. Any views expressed are the preliminary views of the Commission services and may not in any circumstances be regarded as stating an official position of the Commission.*

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Regulation (EU) 2021/1119 of the European Parliament and of the Council (the European Climate Law) sets a target of at least 55 % net emission reductions by 2030 compared to 1990. Therefore, Directive 2003/87/EC<sup>1</sup> was amended by Directive (EU) 2023/959 of the European Parliament and of the Council<sup>2</sup> to revise the EU Emission Trading System (EU ETS) and implement the ambition set in the European Climate Law and the Fit for 55 agenda.

Recital 16 of Directive (EU) 2023/959 states that “*greenhouse gases that are not directly released into the atmosphere should be considered emissions under the EU ETS and allowances should be surrendered for those emissions unless they are stored in a storage site in accordance with Directive 2009/31/EC or they are permanently chemically bound in a product so that they do not enter the atmosphere under normal use and do not enter the atmosphere under any normal activity taking place after the end of the life of the product*”. Therefore, a new Article 12(3b) was introduced to Directive 2003/87/EC to remove the obligation to surrender allowances for greenhouse gas (GHG) emissions that are captured and utilized permanently in a product, also known as permanent Carbon Capture and Utilisation (CCU), when emissions are “considered to have been captured and utilised in such a way that they have become permanently chemically bound in a product so that they do not enter the atmosphere under normal use, including any normal activity taking place after the end of the life of the product”. This Article empowers the European Commission to adopt acts establishing the requirements for considering that such GHG emissions of an ETS installation have become permanently chemically bound in a product, and thus the ETS operator is exempted from the obligation to surrender allowances for them. As the name *carbon capture and utilisation*, such technologies are relevant for CO<sub>2</sub> emissions, rather than other GHGs, such as CH<sub>4</sub> or N<sub>2</sub>O. Therefore, the formulation of the requirements in this act is done in relation to CO<sub>2</sub> emissions or the resulting carbon, rather than GHGs in general.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

The Commission consulted the members of the Commission Expert Group on Climate Change Policy (‘CEEG’) on the proposed draft delegated Regulation in November 2023, as well as February and May 2024. The documents relevant to the meetings were transmitted simultaneously to the European Parliament and the Council, as provided for in the Common Understanding on Delegated Acts annexed to the Interinstitutional Agreement on Better Law Making. The observations expressed by the expert group were considered when preparing the draft delegated Regulation.

The draft delegated Regulation was published on the Better Regulation portal for a four-week feedback period from xx until xx 2024. Feedback was received from [xxx] organisations. As a result, [xxx].

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<sup>1</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

<sup>2</sup> Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union (OJ L 130, 16.5.2023, p. 137).

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The main legal elements of the Delegated Regulation are as follows:

- (1) Supplementing the criteria pursuant to Article 12(3b) of Directive 2003/87/EC for determining whether greenhouse gases, most notably CO<sub>2</sub>, have become permanently chemically bound in a product, so that they do not enter the atmosphere under normal use and any normal activity taking place after the end of the life of the product.
- (2) Detailing the requirements necessary for products to be considered as meeting the above-mentioned criteria.
- (3) Listing the CCU products in the Annex to this Regulation that are considered to fulfil the requirements set out in this Regulation, and thus qualify for the derogation from the obligation to surrender allowances.
- (4) Establishing a procedure for reviewing and updating the list of compliant CCU products, based on technological developments, new evidence or practical experience with CCU products.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC<sup>3</sup>, and in particular Article 12(3b), second subparagraph thereof,

Whereas:

- (1) Directive 2003/87/EC was amended by Directive (EU) 2023/959 of the European Parliament and of the Council<sup>4</sup> in order to align it with Regulation (EU) 2021/1119 of the European Parliament and of the Council<sup>5</sup>, which sets a target of at least 55 % net emission reductions by 2030 compared to 1990.
- (2) The criteria and requirements necessary for greenhouse gases to be considered permanently chemically bound in a product should be established.
- (3) Current capture and utilisation processes for permanent storage apply only to CO<sub>2</sub> emissions, as other greenhouse gases, such as CH<sub>4</sub> or N<sub>2</sub>O, do not require permanent storage for the mitigation of such emissions. As the chemical reactions during the utilisation process may lead to the chemical transformation of the CO<sub>2</sub> molecule, carbon atoms that have become chemically bound should also be considered.
- (4) It is necessary to ensure that CO<sub>2</sub> emissions that have become permanently chemically bound in a product provide a similar climate benefit as geological storage, while taking into account the different nature of these different approaches. Therefore, that CO<sub>2</sub> should remain permanently chemically bound in a product for at least a period of several centuries or longer, based on the chemical binding and the normal use and the likely end-of-life treatment of the respective product.

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<sup>3</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32, ELI: <http://data.europa.eu/eli/dir/2003/87/oj>).

<sup>4</sup> 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 trading system (OJ L 130, 16.5.2023, p. 134).

<sup>5</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p.1)

- (5) Different normal use and end-of-life pathways for products made from captured CO<sub>2</sub> will result in different likelihoods that the stored carbon embedded in a product is released. Releases can occur due to combustion, either as an integral part of product use, as is the case for synthetic fuels, or upon disposal, such as through waste incineration. In order to ensure that the carbon stored in a product remains permanently chemically bound and does not enter the atmosphere for a period of at least several centuries, the CO<sub>2</sub> should be bound in products that are long-lived under any normal use and, under any normal end-of-life activity, are disposed of in a manner other than incineration, which would release the stored carbon in the atmosphere.
- (6) The chemical properties of mineral carbonates, such as calcium carbonate or magnesium carbonate, ensure strong chemical bonds that, unless exposed to elevated temperatures or strong acids, provide the possibility for the carbon to be considered permanently chemically bound. Therefore, mineral carbonation would result in the retention of carbon for exceptionally long times in carbonate rock, which would not be released to the atmosphere under normal conditions<sup>6</sup>.
- (7) The conditions present in waste incinerators are sufficient for the decarbonation reaction to start. Therefore, carbon captured and utilised in products that have a significant share of end-of-life treatment through incineration should not be considered as permanently chemically bound.
- (8) Products based on mineral carbonates and used for construction products, such as aggregates, cement, concrete, bricks or tiles, are long-lived and may remain in use for decades to centuries. At the end-of-life stage, such products fall into the category of construction and demolition waste, in accordance with the List of Waste<sup>7</sup>. According to the latest assessment by the Joint Research Centre of the European Commission<sup>8</sup>, the Union average end-of-life treatment for the mineral fraction of construction and demolition waste consists of recycling (79%), backfilling (10%) and landfilling (11%). Therefore, the captured CO<sub>2</sub> that is utilised in the manufacture of mineral carbonates and used in construction products should be considered as permanently chemically bound in a product.
- (9) The list of products considered to meet the criteria laid out in Article 12(3b) of Directive 2003/87/EC should be reviewed and, if necessary, updated as necessary based on any relevant technological developments and innovation in the field of permanent carbon storage in products, improvements in monitoring, reporting and verification practices able to certify the permanence of storage, as well as the experience in implementing this Regulation.

HAS ADOPTED THIS REGULATION:

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<sup>6</sup> IPCC 2005. Special Report on Carbon Dioxide Capture and Storage. [Metz, B, Davidson, O., de Coninck, H. C., Loos, M., and Meyer, L. A. (eds.)]. Prepared by Working Group III of the Intergovernmental Panel on Climate Change Cambridge and New York: Cambridge University Press.

<sup>7</sup> COMMISSION DECISION of 18 December 2014 amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/EC of the European Parliament and of the Council

<sup>8</sup> Cristobal Garcia, J., Caro, D., Foster, G., Pristera, G., Gallo, F. and Tonini, D., Techno-economic and environmental assessment of construction and demolition waste management in the European Union, Publications Office of the European Union, Luxembourg, 2024, doi:10.2760/721895, JRC135470

## *Article 1*

### **Subject matter**

This Regulation lays down the requirements for considering that CO<sub>2</sub> has become permanently chemically bound in a product.

## *Article 2*

### **Definitions**

For the purposes of this Regulation, the following definitions apply:

- (1) ‘capture’ means any technological process or procedure required to capture, and, if necessary, process or purify prior to utilisation, CO<sub>2</sub> resulting from activities within the scope of Directive 2003/87/EC;
- (2) ‘utilisation’ means any technological process or practice that makes use of captured CO<sub>2</sub> as a feedstock for the manufacture of products;
- (3) ‘chemically bound’ means that CO<sub>2</sub> is chemically transformed so that the carbon atom is chemically fixated by strong bonds in a manner that prevents its global warming impact from occurring;
- (4) ‘product’ means goods or materials, including intermediates and derivatives thereof, that utilise by chemical binding CO<sub>2</sub> or carbon atoms derived from CO<sub>2</sub>;
- (5) ‘construction product’ means any formed or formless physical item placed on the market for incorporation in a permanent manner into construction works or parts thereof;
- (6) ‘normal use’ means any manner in which a product is expected to be typically utilised by the end user based on the characteristics of the product;
- (7) ‘normal activity taking place after the end of the life of the product’ means any prevailing treatment of a product after it is discarded by the end user based on the relevant waste management practices and legislation in force.

## *Article 3*

### **Requirements for permanent capture and utilisation in products**

1. CO<sub>2</sub> shall be considered permanently chemically bound in a product where all of the following criteria are met:
  - (a) It has become chemically bound in a product through an active and controlled utilisation process, and which allows for the measurement and determination of the amount of CO<sub>2</sub> equivalent bound in the product during the utilisation process, excluding any carbon present in the material before the utilisation process or naturally absorbed from the atmosphere or other sources after the utilisation process, and;
  - (b) It remains permanently chemically bound in a product so as to not enter the atmosphere under normal use of the product, including any normal activity taking place after the end of the life of the product, for a period of at least several centuries. In case of products with multiple normal use and end of life pathways, all such pathways need to be taken into account

for the purposes of this paragraph. Products that during normal use, including any normal activity taking place after the end of the life of the product, may be exposed to high temperature combustion, such as during waste incineration, shall not qualify as permanently chemically bound.

2. Products considered to meet the requirements of paragraph 1 are listed in the Annex.

#### *Article 4*

##### **Review process**

1. The Commission shall review the products listed in the Annex based on relevant technological developments and innovation in the field of permanent carbon storage in products, improvements in monitoring, reporting and verification practices, as well as the experience in implementing this Regulation and update the Annex, if necessary.
2. For the purposes of paragraph 1, the Commission shall take into account requests submitted by the competent authorities to update the list of products in the Annex , where duly supported by evidence of compliance with the requirements in Article 4(1).
3. The results and relevant documentation of any review of the products listed in the Annex shall be made publically available.

#### *Article 5*

##### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission  
The President*