

Annexe :

Extrait dernier draft FAR (version 07/07/2023) : Art 22a : conditionnalité liée aux audits énergétiques/systèmes de management énergétique

Article 22a

Conditionality of free allocation on implementation of energy efficiency improvement measures

1. The final annual amount of emission allowances allocated free of charge determined pursuant to Article 16(8) of this Regulation to the installation referred to in the third sub-paragraph of Article 10a(1) of Directive 2003/87/EC, shall be reduced by 20% in accordance with Article 10a(1) of that Directive if the operator cannot demonstrate to the satisfaction of the competent authority that all recommendations of the energy audit report or the certified energy management system under Article 8 of Directive 2012/27/EU have been implemented, unless the operator can demonstrate to the satisfaction of the competent authority that any of the following conditions apply:

- a) the pay-back time for the relevant investments of a recommendation exceeds three years;
- b) the investment costs for the implementation of a recommendation exceed any of the following thresholds:

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- i. 5% of the installation's annual turnover or 25% of the installation's profit, calculated on the basis of the corresponding annual averages over the three calendar years prior to the date on which the application for free allocation shall be submitted in accordance with Article 4 of this Regulation;
 - ii. 50% of the average annual economic equivalent of the amount deducted in accordance with the first sub-paragraph of this paragraph from the final annual amount of emission allowances allocated free of charge pursuant to Article 16(8), calculated based on the average price of allowances on the common auction platform in the relevant calendar preceding the application referred to in Article 4(2) of this Regulation;
- c) other measures have been implemented during or after the relevant baseline period which lead to greenhouse gas emission reductions within the installation equivalent to those recommended by the energy audit report or the certified energy management system under Article 8 of Directive 2012/27/EU;
- d) the recommendations would not lead to energy savings within the system boundaries of the industrial process carried out at the installation;
- e) the installation-specific operating conditions, including planned or unplanned periods of maintenance, based on which the pay-back period referred to under point (a) was determined, did not occur yet; or
- f) the recommendation by the audit report or the certified energy management system were not issued during the relevant baseline period.

2. The verifier shall check as part of the verification of the baseline data report referred to in Article 4(2) whether the recommendations referred to in paragraph 1 are implemented and whether the conditions in point (a) to (f) of paragraph 1 are met where applicable.

Where relevant, the verifier shall check as part of the verification of the annual activity level report in accordance with Regulation (EU) 2018/2067 that the recommendations referred to in paragraph 1 are implemented.

3. The competent authority shall only consider the recommendations referred to in paragraph 1 as implemented where the operator demonstrates the completion of the implementation of the measures that has been verified as satisfactory by a verifier.