



**2015/0148(COD)**

31.5.2016

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## **DRAFT REPORT**

on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments  
(COM(2015)0337 – C8-0190/2015 – 2015/0148(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Ian Duncan

Rapporteur for the opinion (\*):  
Fredrick Federley Committee on Industry Research and Energy

(\* ) Associated committee – Rule 54 of the Rules of Procedure

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments**

**(COM(2015)0337 – C8-0190/2015 – 2015/0148(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0337),
  - having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0190/2015),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 14 December 2015<sup>1</sup>,
  - having regard to the opinion of the Committee of the Regions of 7 April 2016<sup>2</sup>,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinions of the Committee on Industry, Research and Energy and of the Committee on Development (A8-0000/2016),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive**

#### **Recital 3**

*Text proposed by the Commission*

*Amendment*

(3) The European Council confirmed

(3) The European Council confirmed

<sup>1</sup> Not yet published in the Official Journal.

<sup>2</sup> Not yet published in the Official Journal.

that a well-functioning, reformed EU ETS with an instrument to stabilise the market will be the main European instrument to achieve this target, with an annual reduction factor of 2.2% from 2021 onwards, free allocation not expiring but existing measures continuing after 2020 to prevent the risk of carbon leakage due to climate policy, as long as no comparable efforts are undertaken in other major economies, without reducing the share of allowances to be auctioned. The auction share should be expressed as a percentage figure in the legislation, to enhance planning certainty as regards investment decisions, to increase transparency and to render the overall system simpler and more easily understandable.

that a well-functioning, reformed EU ETS with an instrument to stabilise the market will be the main European instrument to achieve this target, with an annual **linear** reduction factor of 2.2% from 2021 onwards, free allocation not expiring but existing measures continuing after 2020 to prevent the risk of carbon leakage due to climate policy, as long as no comparable efforts are undertaken in other major economies, without reducing the share of allowances to be auctioned. The auction share should be expressed as a percentage figure in the legislation, to enhance planning certainty as regards investment decisions, to increase transparency and to render the overall system simpler and more easily understandable.

Or. en

#### *Justification*

*To clarify that the annual reduction factor is more commonly referred to as the linear reduction factor.*

## **Amendment 2**

### **Proposal for a directive Recital 4**

#### *Text proposed by the Commission*

(4) It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens. Achieving this requires continuation of ambitious climate action with the EU ETS as the cornerstone of Europe's climate policy, and progress on the other aspects of Energy Union<sup>17</sup>. Implementing the ambition decided in the 2030 framework contributes to delivering a meaningful carbon price and continuing to stimulate cost-efficient greenhouse gas emission reductions.

#### *Amendment*

(4) It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens **and industries**. Achieving this requires continuation of ambitious climate action with the EU ETS as the cornerstone of Europe's climate policy, and progress on the other aspects of Energy Union<sup>17</sup>. Implementing the ambition decided in the 2030 framework contributes to delivering a meaningful carbon price and continuing to stimulate cost-efficient greenhouse gas emission reductions.

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<sup>17</sup> COM(2015)80, establishing a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy

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<sup>17</sup> COM(2015)80, establishing a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy

Or. en

*Justification*

*Industry is a significant consumer of energy inside the EU and therefore it is crucial for industry to benefit from secure, sustainable and affordable energy, too.*

**Amendment 3**

**Proposal for a directive**

**Recital 6**

*Text proposed by the Commission*

(6) The auctioning of allowances remains the general rule, with free allocation as the exception. **Consequently, and as confirmed by** the European Council, the share of allowances to be auctioned, which was 57% over the period 2013-2020, should not be reduced. The Commission's Impact Assessment<sup>18</sup> provides details on the auction share and specifies that this 57% share is made up of allowances auctioned on behalf of Member States, including allowances set aside for new entrants but not allocated, allowances for modernising electricity generation in some Member States and allowances which are to be auctioned at a later point in time because of their placement in the Market Stability Reserve established by Decision (EU) **2015/...** of the European Parliament and of the Council<sup>19</sup>.

*Amendment*

(6) The auctioning of allowances remains the general rule, with free allocation as the exception. The European Council **agreed that** the share of allowances to be auctioned, which was **estimated by the Commission to be** 57% over the period 2013-2020, should not be reduced. The Commission's Impact Assessment<sup>18</sup> provides details on the auction share and specifies that this 57% share is made up of allowances auctioned on behalf of Member States, including allowances set aside for new entrants but not allocated, allowances for modernising electricity generation in some Member States and allowances which are to be auctioned at a later point in time because of their placement in the Market Stability Reserve established by Decision (EU) **2015/1814** of the European Parliament and of the Council (**the 'MSR'**)<sup>19</sup>. **However, given that future growth rates are unpredictable, that there is a need to encourage industrial growth and in order to mitigate the effect of a cross sectoral correction factor, flexibility should be introduced to the EU ETS with a view to**

*enabling a transfer of a limited number of allowances from the auctioning share to the free allowances share in the event of such a factor being applicable.*

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<sup>18</sup> *SEC(2015)XX*

<sup>19</sup> Decision (EU) **2015/...** of the European Parliament and of the Council of ... concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L [...], [...], p. [...]).

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<sup>18</sup> *SWD(2015)135*

<sup>19</sup> Decision (EU) **2015/1814** of the European Parliament and of the Council of **6 October 2015** concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L **264**, **9.10.2015**, p. 1).

Or. en

#### Amendment 4

##### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

**(6 a) Under the Agreement adopted in Paris at the 21<sup>st</sup> Conference of the Parties of the United Nations Framework Convention on Climate Change of 12 December 2015 (the ‘Paris Agreement’), countries are required to put policies in place to achieve more than 180 Intended Nationally Determined Contributions (INDCs) that cover some 98% of global greenhouse gas emissions. Many of those policies are expected to involve carbon pricing or similar measures, and therefore a revision clause should be laid down to allow the Commission, where appropriate, to propose an adjustment to the linear reduction factor after the first stocktaking exercise under the Paris Agreement in 2023.**

Or. en



## Justification

*The Paris Agreement must be reflected in the EU's key climate change legislation. Should the global stock take in 2023 necessitate more ambition in the EU ETS the Commission should make an appropriate proposal.*

### Amendment 5

#### Proposal for a directive

#### Recital 7

##### *Text proposed by the Commission*

(7) To preserve the environmental benefit of emission reductions in the Union while actions by other countries do not provide comparable incentives to industry to reduce emissions, free allocation should continue to installations in sectors and sub-sectors at genuine risk of carbon leakage. Experience gathered during the operation of the EU ETS confirmed that sectors and sub-sectors are at risk of carbon leakage to varying degrees, and that free allocation has prevented carbon leakage. While some sectors and sub-sectors can be deemed at a higher risk of carbon leakage, others are able to pass on a considerable share of the costs of allowances to cover their emissions in product prices without losing market share and only bear the remaining part of the costs so that they are at a low risk of carbon leakage. The Commission should determine and differentiate the relevant sectors based on their trade intensity and their emissions intensity to better identify sectors at a genuine risk of carbon leakage. Where, based on these criteria, **a threshold** determined by taking into account the respective possibility for sectors and sub-sectors concerned to pass on costs in product prices **is** exceeded, the sector or sub-sector should be deemed at **risk of carbon leakage. Others should be considered at a low risk or at no** risk of carbon leakage. Taking into account the possibilities for sectors and sub-sectors outside of electricity generation to pass on

##### *Amendment*

(7) To preserve the environmental benefit of emission reductions in the Union while actions by other countries do not provide comparable incentives to industry to reduce emissions, free allocation should continue to installations in sectors and sub-sectors at genuine risk of carbon leakage. Experience gathered during the operation of the EU ETS confirmed that sectors and sub-sectors are at risk of carbon leakage to varying degrees, and that free allocation has prevented carbon leakage. While some sectors and sub-sectors can be deemed at a higher risk of carbon leakage, others are able to pass on a considerable share of the costs of allowances to cover their emissions in product prices without losing market share and only bear the remaining part of the costs so that they are at a low risk of carbon leakage. The Commission should determine and differentiate the relevant sectors based on their trade intensity and their emissions intensity to better identify sectors at a genuine risk of carbon leakage. Where, based on these criteria, **thresholds** determined by taking into account the respective possibility for sectors and sub-sectors concerned to pass on costs in product prices **are met or** exceeded, the sector or sub-sector should be deemed at **a very high, high, medium or low** risk of carbon leakage. Taking into account the possibilities for sectors and sub-sectors outside of electricity generation to pass on costs in product prices should

costs in product prices should also reduce windfall profits.

also reduce windfall profits.

Or. en

### *Justification*

*As climate change targets increase free allocation will become more scarce. The system of free allocation should be further tailored to reflect this reality.*

## **Amendment 6**

### **Proposal for a directive**

#### **Recital 8**

##### *Text proposed by the Commission*

(8) In order to reflect technological progress in the sectors concerned and adjust them to the relevant period of allocation, provision should be made for the values of the benchmarks for free allocations to installations, determined on the basis of data from the years **2007-8**, to be updated in line with observed average improvement. For reasons of predictability, this should be done through applying a factor that represents the best assessment of progress across sectors, which should then take into account robust, objective and verified data from installations so that sectors whose rate of improvement differs considerably from this factor have a benchmark value closer to their actual rate of improvement. Where the data shows a difference from factor reduction of more than 0.5% of the **2007-8** value higher or lower per year over the relevant period, the related benchmark value shall be adjusted by that percentage. To ensure a level playing field for the production of aromatics, hydrogen and syngas in refineries and chemical plants, the benchmark values for aromatics, hydrogen and syngas should continue to be aligned to the refineries benchmarks.

##### *Amendment*

(8) In order to reflect technological progress in the sectors concerned and adjust them to the relevant period of allocation, provision should be made for the values of the benchmarks for free allocations to installations, determined on the basis of data from the years **2007-2008**, to be updated in line with observed average improvement. For reasons of predictability, this should be done through applying a factor that represents the best assessment of progress across sectors, which should then take into account robust, objective and verified data from installations so that sectors whose rate of improvement differs considerably from this factor have a benchmark value closer to their actual rate of improvement. Where the data shows a difference from factor reduction of more than 0.5% of the **2007-2008** value higher or lower per year over the relevant period, the related benchmark value shall be adjusted by that percentage. ***Where, however, the rate of improvement does not exceed 0,3%, the related benchmark value should be reduced by that percentage.*** To ensure a level playing field for the production of aromatics, hydrogen and syngas in refineries and chemical plants, the benchmark values for aromatics,

hydrogen and syngas should continue to be aligned to the refineries benchmarks.

Or. en

## Amendment 7

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(9) Member States **should** partially compensate, in accordance with state aid rules, certain installations in sectors or sub-sectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices. ***The Protocol and accompanying decisions adopted by the Conference of the Parties in Paris need to provide for the dynamic mobilisation of climate finance, technology transfer and capacity building for eligible Parties, particularly those with least capabilities.*** Public sector climate finance will continue to play an important role in mobilising resources after 2020. Therefore, auction revenues should also be used for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate. The amount of climate finance to be mobilised will also depend on the ambition and quality of the proposed ***Intended Nationally Determined Contributions (INDCs)***, subsequent investment plans and national adaptation planning processes. Member States should also use auction revenues to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy.

#### *Amendment*

(9) Member States **may** partially compensate, in accordance with state aid rules, certain installations in sectors or sub-sectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices. Public sector climate finance will continue to play an important role in mobilising resources after 2020. Therefore, auction revenues should also be used for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate ***change***. The amount of climate finance to be mobilised will also depend on the ambition and quality of the proposed ***INDCs***, subsequent investment plans and national adaptation planning processes. Member States should also use auction revenues to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy.

Or. en

### *Justification*

*The word 'should' is legally ambiguous, therefore 'may' should be restored.*

## **Amendment 8**

### **Proposal for a directive**

#### **Recital 10**

##### *Text proposed by the Commission*

(10) The main long-term incentive from this Directive for *the* capture and storage of **CO<sub>2</sub>** (CCS), new renewable energy technologies and breakthrough innovation in low-carbon technologies and processes is the carbon price signal it creates and that allowances will not need to be surrendered for CO<sub>2</sub> emissions which are permanently stored or avoided. In addition, to supplement the resources already being used to accelerate demonstration of commercial **CCS** facilities and innovative renewable energy technologies, EU ETS allowances should be used to provide guaranteed rewards for deployment of **CCS** facilities, new renewable energy technologies and industrial innovation in low-carbon technologies and processes in the Union for CO<sub>2</sub> stored or avoided on a sufficient scale, provided an agreement on knowledge sharing is in place. **The majority of** this support should be dependent on verified avoidance of greenhouse gas emissions, **while some support may be given** when pre-determined milestones are reached taking into account the technology deployed. The maximum percentage of project costs to be supported may vary by category of project.

##### *Amendment*

(10) The main long-term incentive from this Directive for **carbon** capture and storage (CCS) **or carbon capture and use (CCU)**, new renewable energy technologies and breakthrough innovation in low-carbon technologies and processes is the carbon price signal it creates and that allowances will not need to be surrendered for CO<sub>2</sub> emissions which are permanently stored, **reused in industrial processes** or avoided. In addition, to supplement the resources already being used to accelerate demonstration of commercial **CCS/CCU** facilities and innovative renewable energy technologies, EU ETS allowances should be used to provide guaranteed rewards for deployment of **CCS/CCU** facilities, new renewable energy technologies and industrial innovation in low-carbon technologies and processes in the Union for CO<sub>2</sub> stored, **reused** or avoided on a sufficient scale, provided an agreement on knowledge sharing is in place. This support should be dependent on verified avoidance of greenhouse gas emissions **or** when pre-determined milestones are reached taking into account the technology deployed. The maximum percentage of project costs to be supported may vary by category of project.

Or. en

### *Justification*

*Carbon capture and use should also be eligible for support through the Directive, including through the innovation fund.*

## Amendment 9

### Proposal for a directive

#### Recital 12

##### *Text proposed by the Commission*

(12) The European Council confirmed that the modalities, including transparency, of the optional free allocation to modernise the energy sector in certain Member States should be improved. Investments with a value of **€10** million or more should be selected by the Member State concerned through a competitive bidding process on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments modernising the energy sector in line with the Energy Union objectives. Investments with a value of less than **€10** million should also be eligible for funding from the free allocation. The Member State concerned should select such investments based on clear and transparent criteria. The **results of this** selection process should be subject to public consultation. The public should be duly kept informed at the stage of the selection of investment projects as well as of their implementation.

##### *Amendment*

(12) The European Council confirmed that the modalities, including transparency, of the optional free allocation to modernise the energy sector in certain Member States should be improved. Investments with a value of **EUR 20** million or more should be selected by the Member State concerned through a competitive bidding process on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments modernising the energy sector in line with the Energy Union objectives. ***The cogeneration of heat and power should also be eligible for the optional free allocation to modernise the energy sector.*** Investments with a value of less than **EUR 20** million should also be eligible for funding from the free allocation. The Member State concerned should select such investments based on clear and transparent criteria. The selection process should be subject to public consultation ***and the results of such selection process should be made publically available.*** The public should be duly kept informed at the stage of the selection of investment projects as well as of their implementation.

Or. en

##### *Justification*

*The EIB determines that small scale projects are between 20 and 25 million euros in some of its programmes.*

## Amendment 10

### Proposal for a directive

#### Recital 14

*Text proposed by the Commission*

(14) The existing provisions which are in place for small installations to be excluded from the EU ETS ***allow the installations which are excluded to remain so, and*** it should be made possible for Member States to update their list of excluded installations and for Member States currently not making use of this option to do so at the beginning of each trading period.

*Amendment*

(14) The existing provisions which are in place for small installations to be excluded from the EU ETS ***should be extended to cover installations emitting less than 50,000 tonnes of CO<sub>2</sub> equivalent in each of the three years preceding the year of application for exclusion.*** It should be made possible for Member States to update their list of excluded installations and for Member States currently not making use of this option to do so at the beginning of each trading period ***and halfway through the period. It should also be possible for installations emitting less than 5,000 tonnes of CO<sub>2</sub> equivalent in each of the three years preceding the beginning of each trading period to be excluded from the EU ETS subject to revision every five years.***

Or. en

#### *Justification*

*The administrative burden of the ETS falls heaviest on small emitters who contribute the least to Europe's overall greenhouse gas emissions. Exclusion should therefore be extended to support more small emitters, and remove the smallest emitters from the system entirely.*

## Amendment 11

### Proposal for a directive

#### Recital 14 a (new)

*Text proposed by the Commission*

*Amendment*

***(14a) Military installations, customs and border protection services' facilities, police and other state owned installations used primarily for civil protection should be excluded from the EU ETS.***

*Justification*

*It is inappropriate to include military installations and those publicly owned installations used primarily for the protection of the public in the ETS. To that end, these installations should be excluded.*

**Amendment 12**

**Proposal for a directive  
Article 1 – point -1 (new)**

*Text proposed by the Commission*

*Amendment*

***(-1) Throughout the Directive, the term 'Community scheme' is replaced by 'EU ETS' and any necessary grammatical changes are made;***

Or. en

*Justification*

*Technical adaptation.*

**Amendment 13**

**Proposal for a directive  
Article 1 – point -1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(-1a) Throughout the Directive, the term 'Community-wide' is replaced by 'Union-wide';***

Or. en

*Justification*

*Technical adaptation.*

**Amendment 14**

**Proposal for a directive**  
**Article 1 – point -1 b (new)**

*Text proposed by the Commission*

*Amendment*

**(-1b) Throughout the Directive, except in the cases referred to in points (-1) and (-1a) and in Article 26(2), the term 'Community' is replaced by 'Union' and any necessary grammatical changes are made;**

Or. en

*Justification*

*Technical adaptation.*

**Amendment 15**

**Proposal for a directive**  
**Article 1 – point -1 c (new)**

*Text proposed by the Commission*

*Amendment*

**(-1c) Throughout the Directive, the words 'regulatory procedure referred to in Article 23(2)' are replaced by the words 'examination procedure referred to in Article 30c(2)';**

Or. en

*Justification*

*Technical adaptation.*

**Amendment 16**

**Proposal for a directive**  
**Article 1 – point -1 d (new)**

*Text proposed by the Commission*

*Amendment*

**(-1d) The word 'regulation' is replaced by the word 'act' in Article 3g, in point (d)**



*of Article 5(1), in point (c) of Article 6(2), in the second subparagraph of Article 10a(2), Article 14(2), (3) and (4), Article 19(1) and (4) and Article 29a(4) and any necessary grammatical changes are made;*

Or. en

*Justification*

*Technical adaptation.*

**Amendment 17**

**Proposal for a directive**  
**Article 1 – point -1 e (new)**  
Directive 2003/87/EC  
Article 3c – paragraph 4

*Present text*

That decision shall be considered within the Committee referred to in Article **23(1)**.

*Amendment*

**(-1e) In Article 3c(4), the last sentence is replaced by the following:**

That decision shall be considered within the Committee referred to in Article **30c(1)**.

Or. en

*Justification*

*Technical adaptation.*

**Amendment 18**

**Proposal for a directive**  
**Article 1 – point 1**  
Directive 2003/87/EC  
Article 3d – paragraph 3

*Text proposed by the Commission*

(1) In Article **3d(3)**, the **second subparagraph** is replaced by the following:

*Amendment*

(1) In Article **3d, paragraph 3** is replaced by the following:

'The Commission *shall* be empowered to adopt *a* delegated *act* in accordance with Article 23.';

'3. The Commission *is* empowered to adopt delegated *acts* in accordance with Article 30b to supplement this directive and concerning the detailed arrangements for the auctioning by Member States of allowances not required to be issued free of charge in accordance with paragraphs 1 and 2 of this Article or Article 3f(8). The number of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For the period referred to in Article 3c(1), the reference year shall be 2010 and for each subsequent period referred to in Article 3c the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates.'

Or. en

#### *Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act with few technical adjustments.*

#### **Amendment 19**

##### **Proposal for a directive**

##### **Article 1 – point 2 a (new)**

Directive 2003/87/EC

Article 3h – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**(2a) In Article 3h, the following subparagraph is added:**

***“The provisions of this Chapter shall not apply to military installations, customs and border protection services' facilities, police and other state owned installations provided that such installations and facilities are used primarily for civil***

*protection.”*

Or. en

*Justification*

*Military installations and publicly owned facilities used for the protection of the public should not be subject to the ETS. Any exclusion of these facilities must be based upon robust evidence of their use.*

**Amendment 20**

**Proposal for a directive**

**Article 1 – point 2 b (new)**

Directive 2003/87/EC

Article 6 – paragraph 1

*Present text*

*Amendment*

"The competent authority shall issue a greenhouse gas emissions permit granting authorisation to emit greenhouse gases from all or part of an installation if it is satisfied that the operator is capable of monitoring and reporting emissions.

A greenhouse gas emissions permit may cover one or more installations on the same site operated by the same operator.

***The competent authority shall, at least every five years, review the greenhouse gas emissions permit and make any amendments as are appropriate.***

***(2b) In Article 6, paragraph 1 is replaced by the following:***

"1. The competent authority shall issue a greenhouse gas emissions permit granting authorisation to emit greenhouse gases from all or part of an installation if it is satisfied that the operator is capable of monitoring and reporting emissions.

A greenhouse gas emissions permit may cover one or more installations on the same site operated by the same operator."

Or. en

*Justification*

*One of the most important elements of the permit –the monitoring plan- is constantly kept up-to-date. The monitoring plan must be changed by the operator whenever this is needed and the monitoring plan is subjected to frequent reviews by verifiers and the competent authority. Therefore, there is no added value in an additional review of the greenhouse gas permit by the competent authority.*

## Amendment 21

### Proposal for a directive

#### Article 1 – point 4 – point a

Directive 2003/87/EC

Article 10 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

From 2021 onwards, the share of allowances to be auctioned by Member States shall be 57%.

#### *Amendment*

From 2021 onwards, the share of allowances to be auctioned by Member States shall be 57%, **and that share shall decrease by up to two percentage points up to 2030 pursuant to Article 10a(5). Such an adjustment shall take place solely in the form of a reduction of allowances auctioned pursuant to point (a) of the first subparagraph of Article 10(2).**

Or. en

#### *Justification*

*The auction share should not be changed unless the Cross Sectoral Correction Factor applies. In such a case up to 2% of allowances to be auctioned by Member States should be used to mitigate the impact of the shortage of free allowances.*

## Amendment 22

### Proposal for a directive

#### Article 1 – point 4 – point a

Directive 2003/87/EC

Article 10 – paragraph 1 – subparagraph 4

#### *Text proposed by the Commission*

The total remaining quantity of allowances to be auctioned by Member States shall be distributed in accordance with paragraph 2.

#### *Amendment*

The total remaining quantity of allowances to be auctioned by Member States, **after deducting half of the quantity of allowances referred to in the first subparagraph of Article 10a(8)** shall be distributed in accordance with paragraph 2.

Or. en

## Justification

*The innovation support mechanism should be shared equally between the auction share and the free allocation share so that Member States contribute to the continued efficiency efforts of their industries.*

### Amendment 23

#### Proposal for a directive

#### Article 1 – point 4 – point d

Directive 2003/87/EC

Article 10 – paragraph 4 – subparagraphs 1, 2 and 3

#### *Text proposed by the Commission*

(d) the third *subparagraph of paragraph 4* is replaced by the following:

'The Commission **shall be** empowered to adopt **a** delegated **act** in accordance with Article 23.';

#### *Amendment*

(d) **in paragraph 4, the first, second and third subparagraphs are** replaced by the following:

'4. The Commission **is** empowered to adopt delegated **acts** in accordance with Article 30b **to supplement this directive and concerning the detailed arrangements for timing, administration and other aspects of auctioning to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner. To this end, the process shall be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available. Where an assessment concludes in relation to the individual industrial sectors that no significant impact on sectors or subsectors exposed to a significant risk of carbon leakage is to be expected, the Commission may, in exceptional circumstances, adapt the timetable for the period referred to in Article 13(1) beginning on 1 January 2013 so as to ensure the orderly functioning of the market. The Commission shall make no more than one such adaptation for a maximum number of 900 million allowances.**

**Auctions shall be designed to ensure that:**

(a) **operators, and in particular any SMEs covered by the EU ETS, have full,**

*fair and equitable access;*

*(b) all participants have access to the same information at the same time and that participants do not undermine the operation of the auction;*

*(c) the organisation and participation in auctions is cost-efficient and undue administrative costs are avoided; and*

*(d) access to allowances is granted for small emitters.';*

Or. en

#### *Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act with few technical adjustments.*

#### **Amendment 24**

##### **Proposal for a directive**

##### **Article 1 – point 4 – point d a (new)**

Directive 2003/87/EC

Article 10 – paragraph 4 – subparagraph 4 a (new)

Text proposed by the Commission

*Amendment*

*(da) in paragraph 4, the following fifth subparagraph is added:*

*“Every two years Member States shall communicate to the Commission the closures of electricity generation capacity due to national measures. The Commission shall calculate the equivalent number of allowances that these closures represent. Member States may surrender a corresponding volume of allowances and place them into the MSR.”*

Or. en

#### *Justification*

*Member State and EU measures for early closure of power plants can have a significant impact on the energy market and EUA prices. The entitlement for Member States to adjust*

*auction volumes related to such closures shall ensure a more dynamic functioning of the market, helping to avoid oversupply*

## **Amendment 25**

### **Proposal for a directive**

#### **Article 1 – point 4 – point d b (new)**

Directive 2003/87/EC

Article 10 – paragraph 5

*Present text*

*Amendment*

"5. The Commission shall monitor the functioning of the European carbon market. Each year, it shall submit a report to the European Parliament and to the Council on the functioning of the carbon market including the implementation of the auctions, liquidity and the volumes traded. ***If necessary***, Member States shall ensure that any relevant information is submitted to the Commission at least two months before the Commission adopts the report."

***(db) paragraph 5 is replaced by the following:***

"5. The Commission shall monitor the functioning of the European carbon market. Each year, it shall submit a report to the European Parliament and to the Council on the functioning of the carbon market including the implementation of the auctions, liquidity and the volumes traded. ***The report shall also address the interaction of the EU ETS with other Union climate and energy policies, including how those policies impact upon the supply-demand balance of the EU ETS.*** Member States shall ensure that any relevant information is submitted to the Commission at least two months before the Commission adopts the report."

Or. en

*20140430&from=EN)*

*Justification*

*The annual report should assess whether or not the EU ETS is impacted by overlapping EU energy and climate policies*

## **Amendment 26**

### **Proposal for a directive**

#### **Article 1 – point 5 – point a**

Directive 2003/87/EC

Article 10a – paragraph 1 – subparagraphs 1 and 2

*Text proposed by the Commission*

(a) the second *paragraph of paragraph 1* is replaced by the following:

'The Commission *shall be* empowered to adopt *a* delegated *act* in accordance with Article 23. *This act* shall also provide for additional allocation from the new entrants reserve for significant production increases by applying the *same* thresholds and allocation adjustments *as* apply *in respect of* partial cessations of operation.';

*Amendment*

(a) *in paragraph 1*, the *first and second subparagraphs are* replaced by the following:

'1. The Commission *is* empowered to adopt delegated *acts* in accordance with Article 30b *to supplement this directive and concerning Union-wide and fully-harmonised measures for the allocation of the allowances referred to in paragraphs 4, 5, 7 and 12, including any necessary provisions for a harmonised application of paragraph 19. These delegated acts* shall also provide for additional allocation from the new entrants reserve for significant production increases by applying the *thresholds defined in paragraph 7. The threshold* and allocation adjustments *that apply to significant production increases shall also apply to* partial cessations of operation.';

Or. en

*Justification*

*The thresholds should be specified in the Directive itself so as to provide for industry certainty and a more dynamic system of allocation.*

**Amendment 27**

**Proposal for a directive**

**Article 1 – point 5 – point a a (new)**

Directive 2003/87/EC

Article 10a – paragraph 1 – subparagraph 3

*Present text*

"The measures referred to in the first subparagraph shall, to the extent feasible, determine *Community*-wide ex-ante benchmarks so as to ensure that allocation

*Amendment*

(aa) *in paragraph 1*, the *third subparagraph is replaced by the following:*

"The measures referred to in the first subparagraph shall, to the extent feasible, determine *Union*-wide ex-ante benchmarks so as to ensure that allocation takes place



takes place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques, by taking account of the most efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass **and capture and storage of CO<sub>2</sub>**, where such facilities are available, and shall not provide incentives to increase emissions. No free allocation shall be made in respect of any electricity production, except for cases falling within Article 10c, **and** electricity produced from waste gases."

in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques, by taking account of the most efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass, **CCS and CCU** where such facilities are available, and shall not provide incentives to increase emissions. No free allocation shall be made in respect of any electricity production, except for cases falling within Article 10c, **electricity produced for their own use by non-grid connected offshore oil and gas platforms as well as** electricity produced from waste gases."

Or. en

#### *Justification*

*The absence of free allowances for electricity generation was motivated by the risk of windfall profits. This risk does not exist for offshore oil and gas platforms as they do not sell electricity to clients. Offshore oil and gas platforms are not connected to the electricity grid and use the power for their own use only.*

#### **Amendment 28**

##### **Proposal for a directive**

##### **Article 1 – point 5 – point b**

Directive 2003/87/EC

Article 10a – paragraph 2 – subparagraph 3 – point ii

##### *Text proposed by the Commission*

**(ii) By way of derogation regarding the benchmark values for aromatics, hydrogen and syngas, these benchmark values shall be adjusted by the same percentage as the refineries benchmarks in order to preserve a level playing field for producers of these products.**

##### *Amendment*

**(ii) an assessment carried out by the Commission on the basis of information submitted pursuant to Article 11 concludes that the rate of improvement does not exceed 0.3%, and the benchmark value is therefore to be reduced by that percentage in respect of each year between 2008 and the middle of the period(s) referred to in the second subparagraph of Article 11(1) for which free allocation is to be made.**

*Justification*

*For some sectors or subsectors even the 0,5% annual improvement rate is unachievable (for example due to high process emissions), therefore a new adjustment rate should be introduced.*

**Amendment 29****Proposal for a directive****Article 1 – point 5 – point b a (new)**

Directive 2003/87/EC

Article 10a – paragraph 2 – subparagraph 3 a (new)

*Text proposed by the Commission*

**(ii)** By way of derogation regarding the benchmark values for aromatics, hydrogen and syngas, these benchmark values shall be adjusted by the same percentage as the refineries benchmarks in order to preserve a level playing field for producers of these products.

*Amendment*

**(ba) the following subparagraph is inserted:**

“By way of derogation regarding the benchmark values for aromatics, hydrogen and syngas, these benchmark values shall be adjusted by the same percentage as the refineries benchmarks in order to preserve a level playing field for producers of these products.”;

Or. en

*Justification*

*The provision is moved to a separate subparagraph to make the text clearer.*

**Amendment 30****Proposal for a directive****Article 1 – point 5 – point b**

Directive 2003/87/EC

Article 10a – paragraph 2 – subparagraph 4

*Text proposed by the Commission*

The Commission shall adopt **an** implementing **act** for **this** purpose **in accordance with Article 22a**.

*Amendment*

The Commission shall adopt implementing **acts** for **the** purpose **of adjusting the benchmark values for free allocation referred to in the third subparagraph**.

***Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 30c(2).***

Or. en

*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act.*

**Amendment 31**

**Proposal for a directive**  
**Article 1 – point 5 – point c**  
Directive 2003/87/EC  
Article 10a – paragraph 5

*Text proposed by the Commission*

***In order to respect the auctioning share set out in Article 10, the sum of free allocations in every year where the sum of free allocations does not reach the maximum level that respects the Member State auctioning share, the remaining allowances up to that level shall be used to prevent or limit reduction of free allocations to respect the Member State auctioning share in later years. Where, nonetheless, the maximum level is reached, free allocations shall be adjusted accordingly. Any such adjustment shall be done in a uniform manner.***

*Amendment*

***Where the sum of free allocations in a given year does not reach the maximum level that respects the Member State auctioning share, the remaining allowances up to that level shall be used to prevent or limit the reduction of free allocations in subsequent years. Where, however, the maximum level is reached, an amount of allowances equivalent to a reduction of up to two percentage points of the share of allowances to be auctioned by Member States, pursuant to Article 10(1), shall be distributed free of charge to sectors and sub-sectors pursuant to Article 10b. Where, nonetheless, this reduction is insufficient to meet the demand of sectors or sub-sectors pursuant to Article 10b, free allocations shall be adjusted accordingly by a uniform cross sectoral correction factor.***

Or. en

*Justification*

*The auction share should not be changed unless the Cross Sectoral Correction Factor*

*applies. In such a case up to 2% of allowances to be auctioned by Member States should be used to mitigate the impact of the shortage of free allowances.*

## **Amendment 32**

### **Proposal for a directive**

#### **Article 1 – point 5 – point d**

Directive 2003/87/EC

Article 10a – paragraph 6 – subparagraph 1

#### *Text proposed by the Commission*

Member States **should** adopt financial measures in favour of sectors or sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, taking into account any effects on the internal market. Such financial measures to compensate part of **these** costs shall be in accordance with state aid rules.

#### *Amendment*

**6.** Member States **may** adopt financial measures in favour of sectors or sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, taking into account any effects on the internal market. Such financial measures to compensate part of **those** costs shall be in accordance with state aid rules.

Or. en

#### *Justification*

*The proposed wording 'should' is legally ambiguous. While a harmonised system may be desirable, forcing Member States to use state aid is legally unsound, therefore the word 'may' has been restored.*

## **Amendment 33**

### **Proposal for a directive**

#### **Article 1 – point 5 – point e – point i a (new)**

Directive 2003/87/EC

Article 10a – paragraph 7 – subparagraph 1a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**(ia)** *The following subparagraph is inserted:*

***“An installation shall be deemed to have a significant production increase where one of its sub-installations, which accounts***

*for at least 30 % of the installation's final annual amount of emission allowances allocated free of charge or which receives more than 50 000 allowances annually, increases its activity level in a given calendar year by at least 10% compared to the activity level used for calculating the sub- installation's allocation of emission allowances.”*

Or. en

#### *Justification*

*Currently, the allocation is only altered when there is a 50% change in an installation's activity which can lead to over or under allocation. Changing this to 10% will allow for a more dynamic allocation, will reduce perverse incentives and counter the risk of sustained over or under allocation.*

#### **Amendment 34**

##### **Proposal for a directive**

##### **Article 1 – point 5 – point f – introductory part**

Directive 2003/87/EC

Article 10a – paragraph 8

##### *Text proposed by the Commission*

(f) *in* paragraph 8, *the first, second and third subparagraphs of paragraph 8 are* replaced by the following:

##### *Amendment*

(f) paragraph 8 *is* replaced by the following:

Or. en

#### **Amendment 35**

##### **Proposal for a directive**

##### **Article 1 – point 5 – point f – subparagraph 1**

Directive 2003/87/EC

Article 10a – paragraph 8 – subparagraph 1

##### *Text proposed by the Commission*

400 million allowances shall be available to support innovation in low-carbon technologies and processes in industrial

##### *Amendment*

8. 400 million allowances shall be available to support innovation in low-carbon technologies and processes in

sectors listed in Annex I, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe **capture and geological storage (CCS) of CO<sub>2</sub>** as well as demonstration projects of innovative renewable energy technologies, in the territory of the Union.

industrial sectors listed in Annex I, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe **CCS and CCU** as well as demonstration projects of innovative renewable energy technologies, in the territory of the Union.

Or. en

#### *Justification*

*CCU should be eligible for support through the innovation fund.*

### **Amendment 36**

#### **Proposal for a directive**

#### **Article 1 – point 5 – point f – subparagraph 1 a (new)**

Directive 2003/87/EC

Article 10a – paragraph 8 – subparagraph 1a (new)

*Text proposed by the Commission*

*Amendment*

***In addition, 150 million unallocated allowances corresponding to the maximum level referred to in paragraph 5 shall be placed in the innovation support mechanism set up pursuant to the first subparagraph for the purpose of innovation in low-carbon industrial technologies and processes (including CCU).***

Or. en

#### *Justification*

*Support for innovation in the EU ETS needs to be scaled up with a greater emphasis on industrial low carbon technologies. The 150 million unallocated allowances referred to should be placed in the innovation fund and be reserved for innovation in low-carbon industrial technologies and processes.*

## Amendment 37

### Proposal for a directive

#### Article 1 – point 5 – point f – subparagraph 2

Directive 2003/87/EC

Article 10a – paragraph 8 – subparagraph 2

#### *Text proposed by the Commission*

The allowances shall be made available for innovation in low-carbon industrial technologies and processes and support for demonstration projects for the development of a wide range of **CCS** and innovative renewable energy technologies that are not yet commercially viable ***in geographically balanced locations***. In order to promote innovative projects, up to **60%** of the relevant costs of projects may be supported, out of which up to **40%** may not be dependent on verified avoidance of greenhouse gas emissions provided that pre-determined milestones are attained taking into account the technology deployed.

#### *Amendment*

The allowances shall be made available for innovation in low-carbon industrial technologies and processes and support for demonstration projects for the development of a wide range of **CCS and CCU** and innovative renewable energy technologies that are not yet commercially viable. ***Projects shall be selected on the basis of their impact on energy systems or industrial processes within a Member State, a group of Member States or the Union.*** In order to promote innovative projects, up to **75%** of the relevant costs of projects may be supported, out of which up to **60%** may not be dependent on verified avoidance of greenhouse gas emissions provided that pre-determined milestones are attained taking into account the technology deployed. ***The allowances shall be allocated to support the relevant costs of individual projects according to the needs of those projects in relation to reaching pre-determined milestones.***

Or. en

#### *Justification*

*Instead of risking dispersing the innovation fund on a number of small scale projects throughout the EU which do not bring a significant added value, the fund should support projects offering real change either for a single Member State, a group of Member States or the EU as a whole. The NER300 was a failure insofar as it was overly restrictive in when and how funds were allocated, the threshold changes here seek to address that problem.*

## Amendment 38

### Proposal for a directive

#### Article 1 – point 5 – point f – subparagraph 4

Directive 2003/87/EC  
Article 10a – paragraph 8 – subparagraph 4

*Text proposed by the Commission*

The Commission **shall be** empowered to adopt **a** delegated **act** in accordance with Article 23.

*Amendment*

The Commission **is** empowered to adopt delegated **acts** in accordance with Article **30b to supplement this directive and concerning the criteria to be used for the selection of projects that are eligible to benefit from the additional allowances referred to in this paragraph.**

Or. en

*Justification*

*Content of the new DA defined.*

**Amendment 39**

**Proposal for a directive**

**Article 1 – point 5 – point f a (new)**

Directive 2003/87/EC

Article 10a – paragraph 8 – subparagraph 5

*Present text*

"Allowances shall be set aside for the projects that meet the criteria referred to in the third subparagraph. Support for these projects shall be given via Member States and shall be complementary to substantial co-financing by the operator of the installation. They could also be co-financed by the Member State concerned, as well as by other instruments. No project shall receive support via the mechanism under this paragraph that exceeds **15 %** of the total number of allowances available for this purpose. These allowances shall be taken into account under paragraph 7."

*Amendment*

**(fa) in paragraph 8, the fifth subparagraph is replaced by the following:**

"Allowances shall be set aside for the projects that meet the criteria referred to in the third subparagraph. Support for these projects shall be given via Member States and shall be complementary to substantial co-financing by the operator of the installation. They could also be co-financed by the Member State concerned, as well as by other instruments. No project shall receive support via the mechanism under this paragraph that exceeds **20%** of the total number of allowances available for this purpose. These allowances shall be taken into account under paragraph 7."

Or. en



## Justification

*In order to guarantee enough support for breakthrough technologies, the threshold should be increased.*

### Amendment 40

#### Proposal for a directive

##### Article 1 – point 6

Directive 2003/87/EC

Article 10b – paragraph 1

#### *Text proposed by the Commission*

1. Sectors and sub-sectors **where the product exceeds 0.2 from** multiplying their intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the European Economic Area (annual turnover plus total imports from third countries), by their emission intensity, measured in kgCO<sub>2</sub> divided by their gross value added (in €), **shall be deemed to be at** risk of carbon leakage. **Such** sectors and sub-sectors shall be allocated allowances free of charge for the period up to 2030 at **100%** of the quantity determined in accordance with the measures adopted pursuant to Article 10a.

#### *Amendment*

1. **The level to which** sectors and sub-sectors **are exposed to the risk of carbon leakage shall be assessed by** multiplying their intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the European Economic Area (annual turnover plus total imports from third countries), by their emission intensity, measured in kgCO<sub>2</sub> divided by their gross value added (in EUR). **Considering that some sectors and subsectors exposed to the** risk of carbon leakage **are able to pass on more of the cost of allowances in product prices than others,** sectors and sub-sectors **exposed to the risk of carbon leakage** shall be allocated allowances free of charge for the period up to 2030 at **the following percentages** of the quantity determined in accordance with the measures adopted pursuant to Article 10a:

**(a) for sectors and sub-sectors where the result is equal to or exceeds 1,6, the percentage shall be 100%;**

**(b) for sectors and sub-sectors where the result is equal to or exceeds 0,9, the percentage shall be 75%;**

**(c) for sectors and sub-sectors where the result is equal to or exceeds 0,15, the percentage shall be 50%;**

**(d) for sectors and sub-sectors where the result is below 0,15, the percentage shall be 30%;**

Or. en

*Justification*

*Free allocation will become more scarce as our climate change targets continue to increase. In order to reflect this, and the fact that some sectors can pass on more of the cost of the carbon price in their products than others, more targeted allocation should be introduced.*

**Amendment 41**

**Proposal for a directive**

**Article 1 – point 6**

Directive 2003/87/EC

Article 10b – paragraph 2 - introductory sentence

*Text proposed by the Commission*

2. Sectors and sub-sectors where the product from multiplying their intensity of trade with third countries by their emission intensity is **above 0.18** may be included in the group referred to in paragraph 1, on the basis of a qualitative assessment using the following criteria:

*Amendment*

2. Sectors and sub-sectors where the product from multiplying their intensity of trade with third countries by their emission intensity is **below the thresholds referred to in points (a) to (d) of paragraph 1 by up to 10%**, may be included in the **corresponding higher** group referred to in **points (a) to (d) of paragraph 1**, on the basis of a qualitative assessment using the following criteria:

Or. en

*Justification*

*Qualitative assessment should be available for those sectors and sub-sectors within 10% of a higher threshold*

**Amendment 42**

**Proposal for a directive**

**Article 1 – point 6**

Directive 2003/87/EC

Article 10b – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

(a) the extent to which it is possible for individual installations in the sector or sub-sectors concerned to reduce emission levels or electricity consumption;

(a) the extent to which it is possible for individual installations in the sector or sub-sectors concerned to reduce emission levels or electricity consumption ***taking into account associated increases in costs of production***;

Or. en

*Justification*

*What is possible should be always assessed against costs which will have to be incurred.*

### **Amendment 43**

**Proposal for a directive**

**Article 1 – point 6**

Directive 2003/87/EC

Article 10b – paragraph 3

*Text proposed by the Commission*

*Amendment*

***3. Other sectors and sub-sectors are considered to be able to pass on more of the cost of allowances in product prices, and shall be allocated allowances free of charge for the period up to 2030 at 30% of the quantity determined in accordance with the measures adopted pursuant to Article 10a.***

***deleted***

Or. en

*Justification*

*Obsolete*

### **Amendment 44**

**Proposal for a directive**

**Article 1 – point 6**

Directive 2003/87/EC

Article 10b – paragraph 4

*Text proposed by the Commission*

By 31 December 2019, the Commission **shall adopt a delegated act for the preceding paragraphs for activities at a 4-digit level (NACE-4 code) as concerns paragraph 1, in accordance with Article 23, based on data for the three most recent calendar years available.**

*Amendment*

By 31 December 2019, the Commission **is empowered to adopt delegated acts in accordance with Article 30b to supplement this directive and in relation to paragraph 1 concerning the activities at a 4 digit level (NACE-4 code) based on data for the five most recent calendar years available unless, on the basis of evidence, it is more appropriate for activities to be assessed at a further aggregated or disaggregated level in which case that level of assessment shall be used.**

Or. en

*Justification*

*For some sectors and subsectors NACE-4 level is not an appropriate level of assessment because it is either too crude and captures activities outside of the ETS, or it is too sophisticated and separates out different activities undertaken by the same installation. The Commission should assess these sectors at a different level where appropriate. The assessment should be based on 5-year periods to give a better picture of industrial performance.*

**Amendment 45**

**Proposal for a directive**  
**Article 1 – point 6**  
Directive 2003/87/EC  
Article 10c – paragraph 1

*Text proposed by the Commission*

1. By derogation from Article 10a(1) to (5), Member States which had in 2013 a GDP per capita in € at market prices below 60% of the Union average may give **a** transitional free allocation to installations for electricity **production** for the modernisation of the energy sector.

*Amendment*

1. By **way of** derogation from Article 10a(1) to (5), Member States which had in 2013 a GDP per capita in **EUR** at market prices below 60% of the Union average may give transitional free allocation to installations for electricity **generation (including in cogeneration of heat and power)** for the modernisation of the energy sector.

*Justification*

*Cogeneration, representing the most efficient installations, should also be entitled to take advantage of this mechanism.*

**Amendment 46****Proposal for a directive****Article 1 – point 6**

Directive 2003/87/EC

Article 10c – paragraph 2 – subparagraph 1 - introductory sentence

*Text proposed by the Commission*

2. The Member State concerned shall organise a competitive bidding process for projects with a total amount of investment exceeding **€10** million to select the investments to be financed with free allocation. This competitive bidding process shall:

*Amendment*

2. The Member State concerned shall organise a competitive bidding process for projects with a total amount of investment exceeding **EUR 20** million to select the investments to be financed with free allocation. This competitive bidding process shall:

Or. en

*Justification*

*The European Investment Bank, in some of its programmes, defines small-scale projects as those requiring investment less than 20-25 mln EUR. To be consistent with the idea of the Modernisation Fund the same idea is proposed in the next Article.*

**Amendment 47****Proposal for a directive****Article 1 – point 6**

Directive 2003/87/EC

Article 10c – paragraph 2 – subparagraph 1 – point b

*Text proposed by the Commission*

(b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the

*Amendment*

(b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the

infrastructure, clean technologies *and* modernisation of the energy production, transmission and distribution sectors are eligible to bid;

infrastructure (*including heat distribution networks*), clean technologies *or* modernisation of the energy production, transmission and distribution sectors are eligible to bid;

Or. en

*Justification*

*A single project may not fulfil all of the criteria.*

**Amendment 48**

**Proposal for a directive**

**Article 1 – point 6**

Directive 2003/87/EC

Article 10c – paragraph 2 – subparagraph 1 – point c – point i

*Text proposed by the Commission*

(i) on the basis of a cost-benefit analysis, ensure a net positive gain in terms of emission reduction and realise a pre-determined significant level of CO<sub>2</sub> reductions;

*Amendment*

(i) on the basis of a cost-benefit analysis, ensure a net positive gain in terms of emission reduction and realise a pre-determined significant level of CO<sub>2</sub> reductions *proportionate to the size of the projects*;

Or. en

*Justification*

*The total "net positive gain" depends on the size of installation. The selection criteria have to address possible differences in scale.*

**Amendment 49**

**Proposal for a directive**

**Article 1 – point 6**

Directive 2003/87/EC

Article 10c – paragraph 2 – subparagraph 1 – point c – point ii

*Text proposed by the Commission*

(ii) *are additional*, clearly respond to replacement and modernisation needs and

*Amendment*

(ii) clearly respond to replacement and modernisation needs and do not supply a

do not supply a market-driven increase in energy demand;

market-driven increase in energy demand;

Or. en

#### *Justification*

*Since this mechanism is of a compensatory nature, this limitation is not justified. Yet, the criteria in point (i) makes it clear that investments supported must lead to a decrease in CO2 emissions making it unlawful to spend resources on projects not consistent with the aims of this Directive.*

### **Amendment 50**

#### **Proposal for a directive**

#### **Article 1 – point 6**

Directive 2003/87/EC

Article 10c – paragraph 2 – subparagraph 3

#### *Text proposed by the Commission*

Where investments with a value of less than **€10** million are supported with free allocation, the Member State shall select projects based on objective and transparent criteria. The **results of this** selection process shall be published for public comment. On this basis, the Member State concerned shall establish and submit a list of investments to the Commission by 30 June 2019.

#### *Amendment*

Where investments with a value of less than **EUR 20** million are supported with free allocation, the Member State **concerned** shall select projects based on objective and transparent criteria. The selection process shall be **subject to public consultation and the results of the selection process shall be made publically available**. On this basis, the Member State concerned shall establish and submit a list of investments to the Commission by 30 June 2019. **The list may be subject to review by the Member State every five years thereafter.**

Or. en

#### *Justification*

*The European Investment Bank, in some of its programmes, defines small-scale projects as those requiring investment less than 20-25 mln EUR. After five years Member States may want to support new technologies which were not yet available in 2019.*

## Amendment 51

### Proposal for a directive

#### Article 1 – point 6

Directive 2003/87/EC

Article 10c – paragraph 4

#### *Text proposed by the Commission*

4. Transitional free allocations shall be deducted from the quantity of allowances that the Member State would otherwise auction. The total free allocation shall be no more than 40% of the allowances which the Member State concerned receives in the period 2021-30 pursuant to Article 10(2)(a) spread out in equal annual volumes over the period from 2021-30.

#### *Amendment*

4. Transitional free allocations shall be deducted from the quantity of allowances that the Member State would otherwise auction. The total free allocation shall be no more than 40% of the allowances which the Member State concerned receives in the period 2021-30 pursuant to Article 10(2)(a) spread out in equal annual volumes over the period from 2021-30. ***However, if allowances distributed pursuant to paragraph 2 have not been used due to a failure to conclude the supported investment, they shall be carried over and spread out in equal annual volumes in the remaining part of the period 2021-2030.***

Or. en

#### *Justification*

*If allowances were granted under the bidding process but not used due to a failure of a winning bidder, beneficiary Member States should not be penalised for the failure of a third party.*

## Amendment 52

### Proposal for a directive

#### Article 1 – point 6

Directive 2003/87/EC

Article 10c – paragraph 6

#### *Text proposed by the Commission*

6. Member States shall require benefiting electricity generators and network operators to report by 28 February of each year on the implementation of their selected investments. Member States shall

#### *Amendment*

6. Member States shall require benefiting electricity generators and network operators to report by 28 February of each year on the implementation of their selected investments, ***including the types***



report on this to the Commission, and the Commission shall make such reports public.

*of investments supported and the way in which they achieved the goals set out in point (b) of the first subparagraph of paragraph 2.* Member States shall report on this to the Commission, and the Commission shall make such reports public.

Or. en

#### *Justification*

*These specific requirements are aimed at increasing transparency.*

### **Amendment 53**

#### **Proposal for a directive**

#### **Article 1 – point 7**

Directive 2003/87/EC

Article 10d – paragraph 2

#### *Text proposed by the Commission*

2. The fund shall also finance small-scale investment projects in the modernisation of energy systems and energy efficiency. To this end, the **investment board** shall develop **guidelines** and investment selection criteria specific to such projects.

#### *Amendment*

2. The fund shall also finance small-scale investment projects in the modernisation of energy systems and energy efficiency. To this end, the **beneficiary Member States** shall develop **national rules** and investment selection criteria specific to such projects **based on the guidance from the Commission. The national rules shall be communicated to the Commission and be subject to public consultation before their adoption and publication.**

***For the purpose of this paragraph a small-scale investment project means a project funded through loans provided by a national promotional bank or through grants contributing to the implementation of a national programme serving specific objectives that are in line with those of the Modernisation Fund, of a total amount not exceeding EUR 20 million and provided that not more than 20% of the Member States' share set out in Annex IIb***

*is used.*

Or. en

### *Justification*

*The European Investment Bank, in some of its programmes, defines small-scale projects as those requiring investment less than 20-25 mln EUR. For those small-scale projects the beneficiary Member States should have more control to better reflect the October 2014 Council Conclusions. Nevertheless, these rules should be open to public consultation.*

## **Amendment 54**

### **Proposal for a directive**

#### **Article 1 – point 7**

Directive 2003/87/EC

Article 10d – paragraph 4 – subparagraph 1

#### *Text proposed by the Commission*

4. The fund shall be governed by an investment board and a management committee, **which** shall be composed of representatives from the beneficiary Member States, the Commission, **the EIB and three representatives elected by the other Member States** for a period of 5 years. The investment board shall be responsible to determine an Union-level investment policy, appropriate financing instruments and investment selection criteria. **The** management committee shall be responsible for the day-to-day management of the fund.

#### *Amendment*

4. The fund shall be governed by an investment board and a management committee. **The Investment board** shall be composed of representatives from **all** the beneficiary Member States, the Commission **and the EIB** for a period of 5 years. The investment board shall be responsible to determine an Union-level investment policy, appropriate financing instruments and investment selection criteria. **Public consultation shall be undertaken regarding the investment selection criteria and the results of the public consultation shall be taken into account by the investment board before the adoption of the selection criteria. The** management committee shall be **composed of representatives appointed by the investment board and shall be** responsible for the day-to-day management of the fund. **Decisions of the management committee shall be taken by simple majority.**

Or. en

*Justification*

*This wording better reflects the October 2014 Council Conclusions which clearly stated that the Modernisation Fund shall be governed by the beneficiary Member States. Nevertheless, public consultation on the guidelines and investment selection criteria should be undertaken before their adoption.*

**Amendment 55**

**Proposal for a directive**

**Article 1 – point 7**

Directive 2003/87/EC

Article 10d – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

The investment board shall elect a **representative** from the **Commission** as chairman. The investment board shall strive to take decisions by consensus. If the investment board is not able to decide by consensus within a deadline set by the chairman, the investment board shall take a decision by simple majority.

*Amendment*

The investment board shall elect a **chairman among its members for a one-year term. Representatives** from the **EIB shall not be eligible to be** chairman. The investment board shall strive to take decisions by consensus. If the investment board is not able to decide by consensus within a deadline set by the chairman, the investment board shall take a decision by simple majority.

Or. en

*Justification*

*This wording better reflects the October 2014 Council Conclusions which clearly stated that the Modernisation Fund shall be managed by the beneficiary Member States.*

**Amendment 56**

**Proposal for a directive**

**Article 1 – point 7**

Directive 2003/87/EC

Article 10d – paragraph 4 – subparagraph 3

*Text proposed by the Commission*

**The management committee shall be composed of representatives appointed by the investment board. Decisions of the management committee shall be taken by**

*Amendment*

**deleted**

*simple majority.*

Or. en

*Justification*

*Moved to the third subparagraph.*

#### **Amendment 57**

##### **Proposal for a directive**

##### **Article 1 – point 7**

Directive 2003/87/EC

Article 10d – paragraph 4 – subparagraph 4

*Text proposed by the Commission*

*If the EIB recommends not financing an investment and provides reasons **for this recommendation, a decision shall only be adopted if a majority of two-thirds of all members vote in favour. The Member State in which the investment will take place and the EIB shall not be entitled to cast a vote in this case. For small projects funded through loans provided by a national promotional bank or through grants contributing to the implementation of a national programme serving specific objectives in line with the objectives of the Modernisation Fund, provided that not more than 10% of the Member States' share set out in Annex IIb is used under the programme, the two preceding sentences shall not apply.***

*Amendment*

*If the EIB recommends not financing an investment and provides reasons **why it is not in line with the investment policy or the selection criteria adopted by the investment board, a decision shall only be adopted if a majority of two-thirds of all members vote in favour. This subparagraph shall not apply to small-scale investment projects as referred to in paragraph 2.***

Or. en

*Justification*

*This wording better reflects the October 2014 Council Conclusions which clearly stated that the Modernisation Fund shall be managed by the beneficiary Member States.*

## Amendment 58

### Proposal for a directive

#### Article 1 – point 7

Directive 2003/87/EC

Article 10d – paragraph 6

#### *Text proposed by the Commission*

6. Each year, the management committee shall report to the Commission on experience with the evaluation and selection of investments. The Commission shall review the basis on which projects are selected by 31 December 2024 and, where appropriate, make proposals to the management committee.

#### *Amendment*

6. Each year, the management committee shall report to the Commission on experience with the evaluation and selection of investments. The Commission shall review the basis on which projects are selected by 31 December 2024 and, where appropriate, make proposals to the **investment board and the** management committee.

Or. en

#### *Justification*

*According to the October 2014 Council Conclusions the Commission is supposed to review the criteria on the basis of which the projects are selected. Therefore, it is more appropriate to include the investment board in the scope of this provision.*

## Amendment 59

### Proposal for a directive

#### Article 1 – point 7

Directive 2003/87/EC

Article 10d – paragraph 7

#### *Text proposed by the Commission*

7. The Commission **shall be** empowered to adopt **a** delegated **act** in accordance with Article **23 to implement this Article**.

#### *Amendment*

7. The Commission **is** empowered to adopt delegated **acts** in accordance with Article **30b to supplement this directive and concerning the detailed arrangements for the effective functioning of the Modernisation Fund. This subparagraph shall not apply to paragraph 2.**

Or. en

*Justification*

*Under paragraph 2 it is enough to issue informal guidance.*

**Amendment 60**

**Proposal for a directive**

**Article 1 – point 8 – introductory part**

Directive 2003/87/EC

Article 11 – paragraph 1 – subparagraphs 2 and 2a

*Text proposed by the Commission*

(8) In Article 11(1), the following second **subparagraph is** added:

*Amendment*

(8) In Article 11(1), the following **subparagraphs are** added:

Or. en

**Amendment 61**

**Proposal for a directive**

**Article 1 – point 8**

Directive 2003/87/EC

Article 11 – paragraph 1 – subparagraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

***The Commission shall adopt an implementing act to specify that improvements of energy efficiency shall not result in a decrease of free allocation pursuant to Article 10a, in the case of installations or sub-installations using benchmarks other than the product benchmarks. This implementing act shall be adopted in accordance with the examination procedure referred to in Article 30c(2).***

Or. en

*Justification*

*Installations using the fall-back benchmarks should not be discouraged to improve their energy efficiency if such improvements would result in decrease of allocation.*

## Amendment 62

**Proposal for a directive**  
**Article 1 – point 8 a (new)**  
Directive 2003/87/EC  
Article 11 – paragraph 2

*Present text*

2. By **28 February** of each year, the competent authorities shall issue the quantity of allowances that are to be allocated for that year, calculated in accordance with Articles 10, 10a and 10c."

*Amendment*

**(8a) In Article 11, paragraph 2 is replaced by the following:**

"2. By **31 May** of each year, the competent authorities shall issue the quantity of allowances that are to be allocated for that year, calculated in accordance with Articles 10, 10a and 10c."

Or. en

*Justification*

*The amendment aims at making possible for the competent authorities to take account of significant changes in production capacity that have taken place in the previous year.*

## Amendment 63

**Proposal for a directive**  
**Article 1 – point 10 a (new)**  
Directive 2003/87/EC  
Article 12 – paragraph 3

*Present text*

3. Member States shall ensure that, by 30 **April** each year, the operator of each installation surrenders a number of allowances, other than allowances issued under Chapter II, equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that these are subsequently cancelled.

*Amendment*

**(10a) In Article 12, paragraph 3 is replaced by the following:**

"3. Member States shall ensure that, by 30 **June** each year, the operator of each installation surrenders a number of allowances, other than allowances issued under Chapter II, equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that these are subsequently cancelled.

***Upon request by the operator of a given installation and provided that sufficient***

*allowances are available on the operator's holding account, the number of allowances equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15 shall be surrendered automatically before the deadline referred to in the first subparagraph unless the operator withdraws the request beforehand."*

Or. en

### *Justification*

*Linked to the amendment to Article 11 Paragraph 2. If an operator wishes so the allowances should be surrendered automatically.*

## **Amendment 64**

### **Proposal for a directive**

#### **Article 1 – point 12**

Directive 2003/87/EC

Article 14 – paragraph 1

#### *Text proposed by the Commission*

(12) In Article **14(1)**, the **second subparagraph** is replaced by the following:

'The Commission **shall be** empowered to adopt **a** delegated **act** in accordance with Article **23**.';

#### *Amendment*

(12) In Article **14**, **paragraph 1** is replaced by the following:

**'1.** The Commission **is** empowered to adopt delegated **acts** in accordance with Article **30b to supplement this directive and concerning the detailed arrangements for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, the monitoring and reporting of tonne-kilometre data for the purpose of an application under Articles 3e or 3f, which shall be based on the principles for monitoring and reporting set out in Annex IV and the specification of the global warming potential of each greenhouse gas in the requirements for monitoring and reporting emissions for that gas.**';



*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act with few technical adjustments.*

**Amendment 65****Proposal for a directive****Article 1 – point 13**

Directive 2003/87/EC

Article 15 – paragraphs 4 and 5

*Text proposed by the Commission*

(13) In Article 15, the fifth **subparagraph is** replaced by the following:

'The Commission **shall be** empowered to adopt a delegated act in accordance with Article 23.';

*Amendment*

(13) In Article 15, the **fourth and fifth paragraphs are** replaced by the following:

'The Commission **is** empowered to adopt delegated acts in accordance with Article 30b to supplement this directive and concerning the detailed arrangements for the verification of emission reports based on the principles set out in Annex V and for the accreditation and supervision of verifiers. It shall specify conditions for the accreditation and withdrawal of accreditation, for mutual recognition and peer evaluation of accreditation bodies, as appropriate.';

Or. en

*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act with few technical adjustments.*

**Amendment 66****Proposal for a directive****Article 1 – point -13 a (new)**

Directive 2003/87/EC

Article 16 – paragraph 7

*Present text*

*Amendment*

7. When requests such as those referred to in paragraph 5 are addressed to the Commission, the Commission shall inform the other Member States through their representatives on the Committee referred to in Article **23(1)** in accordance with the Committee's Rules of Procedure.

**(13a)** *In Article 16, paragraph 7 is replaced by the following:*

7. When requests such as those referred to in paragraph 5 are addressed to the Commission, the Commission shall inform the other Member States through their representatives on the Committee referred to in Article **30c(1)** in accordance with the Committee's Rules of Procedure.

Or. en

*Justification*

*Technical adaptation.*

#### **Amendment 67**

##### **Proposal for a directive**

##### **Article 1 – point 14**

Directive 2003/87/EC

Article 16 – paragraph 12

*Text proposed by the Commission*

*Amendment*

12. Where appropriate, detailed rules shall be established in respect of the procedures referred to in this Article. Those implementing acts shall be adopted in accordance with the procedure referred to in Article **22a**.

12. Where appropriate, detailed rules shall be established in respect of the procedures referred to in this Article. Those implementing acts shall be adopted in accordance with the **examination** procedure referred to in Article **30c(2)**.

Or. en

*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act.*

#### **Amendment 68**

**Proposal for a directive**

**Article 1 – point 15**

Directive 2003/87/EC

Article 19 – paragraph 3

*Text proposed by the Commission*

(15) In Article **19(3)**, *the third sentence* is replaced by the following:

**'It shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems. *The Commission shall be empowered to adopt a delegated act in accordance with Article 23.*';**

*Amendment*

(15) In Article **19**, *paragraph 3* is replaced by the following:

**'3 *The Commission is empowered to adopt delegated acts in accordance with Article 30b to supplement this directive and concerning the detailed arrangements for the establishment of a standardised and secure system of registries in the form of standardised electronic databases containing common data elements to track the issue, holding, transfer and cancellation of allowances, to provide for public access and confidentiality, as appropriate, and to ensure that there are no transfers which are incompatible with the obligations resulting from the Kyoto Protocol. Those delegated acts shall also include provisions concerning the use and identification of CERs and ERUs in the EU ETS and the monitoring of the level of such use. Those acts shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems.*';**

Or. en

*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act with few technical adjustments.*

**Amendment 69**

**Proposal for a directive**

**Article 1 – point 16**

Directive 2003/87/EC

Article 22 – paragraph 2

*Text proposed by the Commission*

*Amendment*

The Commission **shall be** empowered to adopt **a** delegated **act** in accordance with Article 23.

The Commission **is** empowered to adopt delegated **acts** in accordance with Article **30b to amend this directive and concerning non-essential elements of the Annexes to this Directive, with the exception of Annexes I, IIa and IIb.**

Or. en

*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act.*

**Amendment 70**

**Proposal for a directive**

**Article 1 – point 17**

Directive 2003/87/EC

Article 22a – title

*Text proposed by the Commission*

*Amendment*

(17) The following **Article 22a** is inserted:

(17) The following **Article 30c** is inserted:

**Article 22a**

**Article 30c**

Committee procedure

Committee procedure

Or. en

*Justification*

*Renumbering for cross-referencing purposes.*

**Amendment 71**

**Proposal for a directive**

**Article 1 – point 18**

Directive 2003/87/EC

Article 23 – title

*Text proposed by the Commission*

*Amendment*

**Article 23**

**Article 30b**

Exercise of the delegation

Exercise of the delegation

Or. en

*Justification*

*Renumbering for cross-referencing purposes.*

**Amendment 72**

**Proposal for a directive**

**Article 1 – point 19 – point a**

Directive 2003/87/EC

Article 24 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***In accordance with delegated acts which the Commission shall be empowered to adopt in accordance with Article 23, if the inclusion refers to activities and greenhouse gases which are not listed in Annex I***

***The Commission is empowered to adopt delegated acts in accordance with Article 30b to supplement this directive and concerning the detailed arrangements for approval of the inclusion of the activities and greenhouse gases referred to in the first subparagraph in the emission allowance trading scheme if that inclusion refers to activities and greenhouse gases which are not listed in Annex I.***

Or. en

*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act with few technical adjustments.*

**Amendment 73**

**Proposal for a directive**

**Article 1 – point 19 – point b**

Directive 2003/87/EC

Article 24 – paragraph 3

*Text proposed by the Commission*

*Amendment*

(b) **the second subparagraph of** paragraph 3 is replaced by the following:

'The Commission **shall be** empowered to adopt delegated acts for such a regulation for the monitoring and reporting of emissions and activity data **in accordance with Article 23.**';

(b) paragraph 3 is replaced by the following:

'3. The Commission **is** empowered to adopt delegated acts **in accordance with Article 30b to supplement this directive and concerning the detailed arrangements for the monitoring of, and reporting on, related to activities, installations and greenhouse gases which are not listed as a combination in Annex I, if that monitoring and reporting can be carried out with sufficient accuracy.**';

Or. en

*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act with few technical adjustments.*

**Amendment 74**

**Proposal for a directive**

**Article 1 – point 20 – point a**

Directive 2003/87/EC

Article 24a – paragraph 1 – subparagraphs 1 and 2

*Text proposed by the Commission*

*Amendment*

(a) the second subparagraph **of paragraph 1 is** replaced by the following:

'**Such measures shall be consistent with acts adopted pursuant to Article 11b(7).** The Commission **shall be** empowered to adopt a delegated act in accordance with Article 23.';

(a) **in paragraph 1, the first and second subparagraphs are** replaced by the following:

'1. The Commission **is** empowered to adopt delegated **acts** in accordance with Article 30b **to supplement this directive and, in addition to the inclusions provided for in Article 24, concerning the detailed arrangements for issuing of allowances or credits in respect of projects administered by Member States that reduce greenhouse gas emissions not covered by the EU ETS.**';

*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act with few technical adjustments.*

**Amendment 75****Proposal for a directive****Article 1 – point 22**

Directive 2003/87/EC

Article 25a – paragraph 1

*Text proposed by the Commission*

Where a third country adopts measures for reducing the climate change impact of flights departing from that country which land in the **Community**, the Commission, after consulting with that third country, and with Member States within the Committee referred to in Article **23(1)**, shall consider options available in order to provide for optimal interaction between the Community scheme and that country's measures.

Where necessary, the Commission may adopt amendments to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in Annex I or to provide for any other amendments to the aviation activities listed in Annex I which are required by an agreement **pursuant to the fourth subparagraph**. The Commission **shall be** empowered to adopt **such amendments** in accordance with Article **23**

*Amendment*

**1.** Where a third country adopts measures for reducing the climate change impact of flights departing from that country which land in the **Union**, the Commission, after consulting with that third country, and with Member States within the Committee referred to in Article **30c(1)**, shall consider options available in order to provide for optimal interaction between the **EU ETS** and that country's measures.

Where necessary, the Commission may adopt amendments to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in Annex I or to provide for any other amendments to the aviation activities listed in Annex I which are required by an **international** agreement. The Commission **is** empowered to adopt **delegated acts** in accordance with Article **30b to amend this directive and concerning such amendments**.

*Justification*

*TFEU alignment. The content of this provision corresponds to the current wording of the basic act.*

## Amendment 76

### Proposal for a directive

#### Article 1 – point 22 a (new)

Directive 2003/87/EC

Article 27 – paragraph 1

#### *Present text*

"Following consultation with the operator, Member States may exclude from the **Community** scheme installations which have reported to the competent authority emissions of less than 25 000 tonnes of carbon dioxide equivalent **and, where they carry out combustion activities, have a rated thermal input below 35 MW**, excluding emissions from biomass, in each of the three years preceding the notification under point (a), and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:

(a) it notifies the Commission of each such installation, specifying the equivalent measures applying to that installation that will achieve an equivalent contribution to emission reductions that are in place, before the list of installations pursuant to Article 11(1) has to be submitted and at the latest when this list is submitted to the Commission;

(b) it confirms that monitoring arrangements are in place to assess whether any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year. Member States may allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between 2008 and 2010 which are below 5 000 tonnes a year, in accordance with Article

#### *Amendment*

**(22 a) In Article 27, paragraph 1 is replaced by the following:**

" Following consultation with the operator, Member States may exclude from the **EU ETS** installations which have reported to the competent authority emissions of less than 50 000 tonnes of carbon dioxide equivalent, excluding emissions from biomass, in each of the three years preceding the notification under point (a), and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:

(a) it notifies the Commission of each such installation, specifying the equivalent measures applying to that installation that will achieve an equivalent contribution to emission reductions that are in place, before the list of installations pursuant to Article 11(1) has to be submitted and at the latest when this list is submitted to the Commission;

(b) it confirms that monitoring arrangements are in place to assess whether any installation emits 50 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year. Member States may allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between 2008 and 2010 which are below 5 000 tonnes a year, in accordance with Article



14;

(c) it confirms that if any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures applying to that installation that will achieve an equivalent contribution to emission reductions are no longer in place, the installation will be reintroduced into the Community scheme;

(d) it **publishes** the information referred to in points (a), (b) and (c) **for public comment**.

Hospitals may also be excluded if they undertake equivalent measures."

14;

(c) it confirms that if any installation emits 50 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures applying to that installation that will achieve an equivalent contribution to emission reductions are no longer in place, the installation will be reintroduced into the **EU ETS**;

(d) it **makes** the information referred to in points (a), (b) and (c) **available to the public**.

Hospitals may also be excluded if they undertake equivalent measures."

Or. en

### *Justification*

*The threshold for small emitters to opt out should be raised to 50,000 to reduce administrative burden on installations that contribute comparatively little in terms of greenhouse gas emissions, Member States and the Commission. Raising the threshold could remove up to 5.6% of ETS emissions. The 35 MW criteria should be removed because there is no clear relationship between thermal capacity and emissions.*

### **Amendment 77**

#### **Proposal for a directive**

#### **Article 1 – point 22 b (new)**

Directive 2003/87/EC

Article 27 a (new)

*Text proposed by the Commission*

*Amendment*

**(22b) The following article is inserted:**

#### **Article 27a**

***Exclusion of small installations not subject to equivalent measures***

***1. Following consultation with the operator, Member States may exclude from the EU ETS installations which have reported to the competent authority emissions of less than 5 000 tonnes of carbon dioxide equivalent, excluding***

*emissions from biomass, in each of the three years preceding the notification under point (a), if the Member State concerned complies with the following conditions:*

*(a) it notifies the Commission of each such installation before the list of installations pursuant to Article 11(1) has to be submitted and at the latest when this list is submitted to the Commission;*

*(b) it confirms that monitoring arrangements are in place to assess whether any installation emits 5 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year;*

*(c) it confirms that if any installation emits 5 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year the installation will be reintroduced into the EU ETS;*

*(d) it makes the information referred to in points (a), (b) and (c) available to the public.*

*2. When an installation is reintroduced into the EU ETS pursuant to paragraph 1(c), any allowances issued pursuant to Article 10a shall be granted starting with the year of the reintroduction. Allowances issued to such installations shall be deducted from the quantity to be auctioned pursuant to Article 10(2) by the Member State in which the installation is situated.”*

Or. en

#### *Justification*

*Absolute exclusion for ultra-small emitters below 5,000 tonnes of CO<sub>2</sub> equivalent will reduce the administrative burden on those small emitters, Member States and the Commission. Excluding these installations would remove 0.26% of 2014 ETS emissions.*

## Amendment 78

### Proposal for a directive

#### Article 1 – point 22 c (new)

Directive 2003/87/EC

Article 29

#### *Present text*

"Article 29

Report to ensure the better functioning of the carbon market

If, on the basis of the regular reports on the carbon market referred to in Article 10(5), the Commission has evidence that the carbon market is not functioning properly, it shall submit a report to the European Parliament and to the Council. The report may be accompanied, if appropriate, by proposals aiming at increasing transparency of the carbon market and addressing measures to improve its functioning."

#### *Amendment*

**(22c) Article 29 is amended as follows:**

"Article 29

Report to ensure the better functioning of the carbon market

If, on the basis of the regular reports on the carbon market referred to in Article 10(5), the Commission has evidence that the carbon market is not functioning properly, it shall submit a report to the European Parliament and to the Council. The report may be accompanied, if appropriate, by proposals aiming at increasing transparency of the carbon market and addressing measures to improve its functioning, ***including measures to limit the impact of overlapping Union-wide energy and climate policies on the supply-demand balance of the EU ETS.***";

Or. en

#### *Justification*

*If the effectiveness of the EU ETS is undermined by other EU wide policies the Commission should be entitled to make a proposal to rectify this.*

## Amendment 79

### Proposal for a directive

#### Article 1 – point 22 d (new)

Directive 2003/87/EC

Article 30 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**(22d) The following article is inserted:**

**“Article 30a**

***Review of the linear reduction factor in respect of global efforts to reduce greenhouse gas emissions***

- 1. The linear reduction factor specified in Article 9 shall be kept under review in respect of global efforts to achieve the contributions that are needed to hold the increase in the global average temperature to well below 2 degrees centigrade above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5 degrees centigrade above pre-industrial levels, in line with the Paris Agreement.***
- 2. The Commission shall report to the European Parliament and the Council as soon as possible following the first stocktaking exercise in the Paris Agreement in 2023 and every five years thereafter, and may make a legislative proposal to amend Article 9 where appropriate.”***

Or. en

*Justification*

*The Commission should look at the result of the first stocktaking exercise under the Paris Agreement and come up with a proposal to adjust the linear reduction factor if necessary.*

# EXPLANATORY STATEMENT

## Introduction

On the 15<sup>th</sup> of July 2015 the European Commission published its proposal for Phase IV of the ETS. The proposal aims to meet the EU's 2030 greenhouse gas emissions target of 'at least' 40% while protecting European industry from the risk of carbon leakage and promoting innovation and modernisation in Europe's industrial and power sectors over the decade from 2020.<sup>1</sup> The proposal stems from the European Council conclusions of the 23<sup>rd</sup> and 24<sup>th</sup> of October 2014, which lay down guidelines on how these aims should be achieved.<sup>2</sup>

The Rapporteur supports the proposal of the European Commission as part of the EU's ongoing 2030 climate and energy package. The Rapporteur believes that a market-based mechanism such as the ETS is the most cost-effective way of meeting our climate change obligations and notes with positivity the spread of carbon pricing around the world.

In creating this report, the Rapporteur has worked closely with his Shadow Rapporteurs, their offices and advisers and would like to put on record his thanks to them for their valuable input in the process so far. Similarly, the Rapporteur would like to put on record his thanks to the European Commission for their sustained and proactive engagement, too.

## Ambition

The Rapporteur welcomes the new linear reduction factor (LRF) of 2.2% and believes it is the minimum by which the overall number of allowances should decline annually throughout Phase IV.

On the 12<sup>th</sup> of December the nations of the world arrived at the Paris Agreement, and in doing so committed to arresting the global temperature rise to 'well below' two degrees, while acknowledging that 1.5 degrees would better combat the worst effects of climate change.<sup>3</sup> The Rapporteur believes it is crucial that the ETS is able to reflect the Paris Agreement going forward and has proposed the following:

- a) A new review clause instructing the European Commission to keep the LRF under review, and if necessary to put a proposal to the European Parliament and Council following the first global stocktake in 2023.

Recognising that overlapping EU climate and energy policy as well as unilateral national measures to reduce electricity generating capacity can undermine the effectiveness of the ETS and contribute to market imbalances, the Rapporteur has also proposed the following:

- a) As part of its annual review of the functioning of the ETS, the Commission should consider the impact of overlapping EU policies and if necessary make a proposal to the European Parliament and the Council.

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<sup>1</sup> [http://ec.europa.eu/clima/policies/ets/revision/index\\_en.htm](http://ec.europa.eu/clima/policies/ets/revision/index_en.htm)

<sup>2</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/145356.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145356.pdf)

<sup>3</sup> <https://unfccc.int/resource/docs/2015/cop21/eng/109r01.pdf>

- b) Every 2 years, Member States may surrender a number of allowances to the MSR equal to the number of allowances connected to electricity capacity that has come offline in that period.

### **Carbon Leakage**

As our climate change ambition continues to ratchet, free allowances will become more scarce. The Rapporteur believes it is essential to afford adequate protection to industries at risk of carbon leakage but recognises the need to further focus this protection while ensuring benchmarks are realistic and the iniquitous cross sectoral correction factor (CSCF) is avoided. The Rapporteur has therefore proposed the following:

- a) A more focussed distribution of free allowances based on the result of multiplying a sector or sub-sectors trade intensity with third countries with its emissions intensity.
- b) Qualitative assessment for all sectors within 10% of a higher category of free allocation.
- c) A new benchmark reduction rate of 0.3% to account for industries that cannot achieve an annual reduction of 0.5%.
- d) Up to 2% points of the auction share will be transferred to the free allowance pot to ameliorate a CSCF if it is triggered.
- e) The Commission may assess sectors or sub-sectors at a further aggregated or disaggregated level other than at NACE-4.

### **Indirect Costs**

The Rapporteur recognises that there is a market distortion when some Member States compensate for indirect costs and others do not. Furthermore, the Rapporteur believes this distortion should be addressed. However, in seeking to do so a legal issue has emerged. In light of the fact that it is against the Treaties to compel Member States to use state aid, the Rapporteur has reverted to the current status that Member State 'may' compensate, pending further discussion with his Shadows and legal experts.

### **More Dynamic Allocation**

Under current rules it is only possible for allocation to change when there is a 50% change in production levels. This has contributed to under-allocation in some sectors while others have made windfall profits. In order to rectify this, the rapporteur has proposed that:

- a) Allocation will change with a corresponding 10% increase or decrease in production of an installation.

### **Simplification**

The cost and administrative burden of the ETS falls heaviest on those who can least afford it. Recognising that there is a strong drive for reducing administrative burden on industry the Rapporteur has proposed the following:

- a) The small-emitters threshold will be raised from 25,000 tCO<sub>2</sub>e to 50,000 tonnes CO<sub>2</sub>e.

- b) Ultra-small emitters of less than 5,000 tCO<sub>2</sub>e should be able to opt out of the ETS with no equivalent measures.

### **Innovation Fund**

Ultimately, industries must be able to innovate their way to a low carbon future. As ambition within the ETS increases and as our greenhouse gas emission limits decrease, it is paramount that new technologies emerge to keep Europe's industries competitive and to safeguard jobs. The Rapporteur has therefore proposed a number of changes to the Innovation Fund:

- a) Half the Innovation Fund will come from the auction share.
- b) The Innovation Fund will be boosted with 150 million unallocated allowances.
- c) Up to 75% of the cost of projects shall be supported.
- d) 60% of funding need not be dependent on verified emissions reductions.
- e) Projects will be financed according to pre-determined milestones.

### **Modernisation Fund**

The Rapporteur believes that, pursuant to the October 2014 Council conclusions, the Modernisation Fund should be primarily governed by the beneficiary Member States with involvement of the EIB and the European Commission. Furthermore, the Rapporteur believes that the investment criteria and rules of the fund should be as transparent as possible. The Rapporteur has proposed the following:

- a) The threshold for small projects will be 20 million Euros.
- b) Member States shall create national rules and selection criteria for small projects and those rules and criteria will be subject to public consultation.
- c) The Investment Board shall be made up of beneficiary Member States, the EIB and the Commission
- d) The Selection Criteria of the Investment Board shall be subject to public consultation.

### **Article 10c**

The Rapporteur welcomes the move towards a competitive bidding process for projects undertaken through Article 10c and recognises that competition will determine best value for money. While broadly accepting the Commission proposal the Rapporteur has proposed the following:

- a) The threshold for competitive bidding will be 20 million Euros.
- b) The co-generation of heat and power shall be eligible for support.