



22.11.2017

PROVISIONAL AGREEMENT RESULTING FROM INTERINSTITUTIONAL NEGOTIATIONS

Subject: 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))

The interinstitutional negotiations on the aforementioned proposal for a directive have led to a compromise. In accordance with Rule 69f(4) of the Rules of Procedure, the provisional agreement, reproduced below, is submitted as a whole to the Committee on the Environment, Public Health and Food Safety for decision by way of a single vote.

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission¹,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee²,

Having regard to the opinion of the Committee of the Regions³,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

Whereas:

- (1) Directive 2003/87/EC of the European Parliament and of the Council⁴ established a system for greenhouse gas emission allowance trading within the Union in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.
- (2) The European Council of October 2014 made a commitment to reduce the overall greenhouse gas emissions of the Union by at least 40% below 1990 levels by 2030. All sectors of the economy should contribute to achieving *those* emission reductions and the target will be delivered in the most cost-effective manner through the Union emission trading system (EU ETS) delivering a reduction of 43% below 2005 levels by 2030. This was confirmed in the intended nationally determined reduction commitment of the Union and its Member States submitted to the Secretariat of the *United Nations* Framework Convention on Climate Change (*UNFCCC*) on 6 March 2015⁵.
- (3) *The Paris Agreement was adopted on 12 December 2015 and entered into force on 4 November 2016. Its Parties have agreed to hold the increase in the global average temperature well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5°C above pre-industrial levels. The Parties have also agreed to periodically take stock of the implementation of the Paris Agreement to assess the collective progress towards achieving the purpose of the Agreement and its long-term goals.*

⁴ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

⁵ <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx>

(4) *In line with the commitment of the co-legislators expressed in Directive 2009/29/EC of the European Parliament and of the Council and Decision No 406/2009/EC of the European Parliament and of the Council, all sectors of the economy should contribute to the reduction of greenhouse gas emissions. Under the Paris Agreement, the EU and its Member States have undertaken an economy-wide reduction target. Efforts to limit international maritime emissions through the International Maritime Organisation (IMO) are under way and should be encouraged. The IMO has set up a process to adopt in 2018 an initial emission reduction strategy to reduce greenhouse gas emissions from international shipping. The adoption of an ambitious emission reduction objective as part of this initial strategy has become a matter of urgency and is important for ensuring that international shipping contributes its fair share to the efforts needed to achieve the well below 2°C objective agreed under the Paris Agreement. The Commission should keep this under regular review, and should report at least once a year to the European Parliament and the Council on the progress achieved in the IMO towards an ambitious emission reduction objective and accompanying measures to ensure that the sector duly contributes to the efforts needed to achieve the objectives agreed under the Paris Agreement. Action from the IMO or the EU should start from 2023, including preparatory work on adoption and implementation and due consideration by all stakeholders.*

- (5) The European Council confirmed 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.
- (6) 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 **the Union's** climate policy, and progress on the other aspects of Energy Union⁶. 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.
- (7) Article 191(2) of the Treaty on the Functioning of the European Union requires that Union policy **be** based on the principle that the polluter should pay and, on this basis, Directive 2003/87/EC provides for a transition to full auctioning over time. Avoiding carbon leakage is a justification to **temporarily** postpone full **auctioning**, and targeted free allocation of allowances to industry is justified in order to address genuine risks of increases in greenhouse gas emissions in third countries where industry is not subject to comparable carbon constraints as long as comparable climate policy measures are not undertaken by other major economies.

⁶ **6594/15 - COM(2015)80**, establishing a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy.

- (8) The auctioning of allowances remains the general rule, with free allocation as the exception. ■ The Commission's Impact Assessment⁷ *specifies that the share of allowances to be auctioned was 57% over the period 2013-2020. In principle, the share should remain 57%. It 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 Council⁸.75 million allowances used to support innovation are included in this share. In case the demand for free allowances triggers the need to apply a uniform cross-sectoral correction factor before 2030, the share of allowances to be auctioned over the ten year period beginning on 1 January 2021 should be reduced by up to 3% of the total quantity. For the purposes of solidarity, growth and interconnections, 10% of the EU ETS allowances to be auctioned by the Member States should be distributed among those countries whose GDP per capita at market prices did not exceed 90% of the EU average (in 2013), and the rest of the allowances should be distributed among all Member States on the basis of verified emissions. The derogation from contributions to this distribution in 2013-2020 for certain Member States with an average level of income per capita more than 20% higher than the average in the Union should expire.*
- (9) *Recognising the interaction between climate policies at Union and national level, Member States should have the possibility to cancel allowances from their auction volume in the event of closures of electricity generation capacity in their territory. To ensure predictability for operators and market participants with regard to the amount of auction allowances available, that possibility should be limited to an amount corresponding to the average verified emissions of the installation concerned over a period of five years preceding the closure.*

⁷ 11065/15 ADD2 - SWD (2015) 135 final.

⁸ 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).

- (10) 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, **transitional** 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 **to have** 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. **While the assessment of sectors and subsectors should take place at a 4-digit level (NACE-4 code), specific circumstances should also be foreseen where it may be appropriate to have the possibility to request an assessment at a 6-digit or an 8-digit level (Prodcom). Such possibility should exist where sectors and subsectors have previously been considered as exposed to carbon leakage at Prodcom level, also considering that certain NACE codes, in particular those ending with .99, regroup heterogeneous activities not elsewhere classified (n.e.c.). Where a sector or subsector is subject to the refineries benchmark and another product benchmark, this circumstance should be taken into account so as to allow, where relevant, for a qualitative analysis of the risk of carbon leakage to ensure a level playing field for products produced both in refineries and in chemical plants.** 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. **Other sectors** should be considered **to have** a low risk or no 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 also reduce windfall profits. **Unless otherwise decided in the review pursuant to Article 30, free allocations to sectors and sub-sectors considered to have a low risk or no risk of carbon leakage, except district heating, should decrease by equal amounts after 2026 so as to reach no free allocation in 2030.**

(11) *The benchmark values for free allocation applicable from 2013 onwards should be reviewed in order to avoid windfall profits and reflect technological progress in the sectors concerned in the period between 2007-2008 and each later period for which free allocations are determined in accordance with Article 11(1).* 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 **■** 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 **■** *considering the performance of the 10% most efficient installations, so that benchmark values reflect the* actual rate of improvement. Where the data shows *an annual* reduction of *less than 0,2% or more than 1,6%* of the 2007-2008 value **■** over the relevant period, the related benchmark value *should be adjusted with rates other than the actual rates of improvement to preserve emission reduction incentives and properly reward innovation. For the period 2021-2025, these benchmark values would be adjusted in respect of each year between 2008 and the middle of that period with either 0,2% or 1,6%, leading to an improvement of 3% or 24% respectively compared to the value applicable in the period 2013-2020. For the period 2026-2030, they would be adjusted in the same way, leading to an improvement of 4% or 32% respectively compared to the value applicable in the period 2013-2020.* 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.

(12) The level of free allocation for installations should be better aligned with their actual production levels. To this end, allocations should be periodically adjusted in a symmetrical manner to take account of relevant increases and decreases in production. Data used in this context should be complete, consistent, independently verified and should present the same high level of accuracy and quality as the data used to determine the free allocation. In order to prevent manipulation or abuse of the system for adjustments to allocation and avoid undue administrative burden, considering the deadline that applies to the notification of changes in production, and bearing in mind the need to ensure that the changes to the allocations are carried out in an effective, non-discriminatory and uniform manner, the relevant threshold should be set at 15% and be assessed on the basis of a rolling average of two years. The Commission should be able to consider further measures to be put in place, such as the use of absolute thresholds regarding the changes to allocations, or with respect to the deadline that applies to the notification of changes in production.

(13) ***It would be desirable that*** Member States █ 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 ***including inter alia for the consumption of electricity by the installations themselves produced through the combustion of waste gases. By seeking to use no more than 25% of the revenues generated from auctioning for indirect cost compensation, Member States are likely both to facilitate the achievement of the objectives of the EU ETS and to preserve the integrity of the internal market and of conditions of competition. To enhance the transparency on the extent to which such compensation is provided, Member States should regularly report to the public on the measures they have in place and the beneficiaries ensuring, however, that the confidential nature of certain information and related data protection concerns are duly taken into account. Where a Member State uses a significant amount of its auction revenues for compensating indirect costs, there is an increased interest in making public the reasons for this choice. When reviewing the state aid guidelines on indirect compensation the Commission should consider inter alia the usefulness of upper limits on the compensation granted by Member States. The review of the Directive should consider the extent to which those financial measures have been effective in avoiding significant risks of carbon leakage due to indirect costs and consider the possibility of further harmonisation of the measures, including a harmonised mechanism.*** 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, ***in particular Least Developed Countries (LDCs)***, including adaptation to the impacts of climate ***change, inter alia through the UNFCCC Green Climate Fund.*** The amount of climate finance to be mobilised will also depend on the ambition and quality of the █ Nationally Determined Contributions (NDCs), subsequent investment plans and national adaptation planning processes. ***Regarding the potential social impacts of policies and investments required,*** Member States should also use auction revenues to ***contribute to a just transition to a low-carbon economy by promoting*** skill formation and reallocation of labour ***in social dialogue with the communities and regions*** affected by the transition of jobs █.

(14) The main long-term incentive from Directive *2003/87/EC* for the capture and storage of CO₂ (CCS), new renewable energy technologies and breakthrough innovation in low-carbon technologies and processes, ***including environmentally safe carbon capture and utilisation (CCU)***, is the carbon price signal it creates and that allowances will not need to be surrendered for CO₂ emissions which are ***avoided or*** permanently stored **■** . In addition, to supplement the resources already being used to accelerate demonstration of commercial CCS facilities and innovative renewable energy technologies, **■** allowances should be used to provide guaranteed rewards for deployment of CCS ***or CCU*** facilities, new renewable energy technologies and industrial innovation in low-carbon technologies and processes in the Union for CO₂ stored or avoided on a sufficient scale, provided an agreement on knowledge sharing is in place. ***In addition to 400 million allowances initially made available for the period from 2021 onwards, revenues from the 300 million allowances available for the period from 2013 to 2020 not yet committed to innovation activities should be supplemented with 50 million unallocated allowances from the market stability reserve and be used in a timely manner to support innovation. Depending on the extent to which the share of allowances to be auctioned is reduced to avoid the need to apply a uniform cross-sectoral correction factor, the amount of allowances available under this fund should be increased by up to 50 million allowances.*** 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 ***and the specific circumstances of the sector in which it is being deployed. Milestones should be defined so as to make adequate financial resources available to the project.*** The maximum percentage of project costs to be supported may vary by category of project. ***Due consideration should be given to projects that will have a significant innovation impact across the Union.***

(15) Greece had a GDP per capita at market prices below 60% of the Union average in 2014 but is not a beneficiary of the Modernisation Fund, and should therefore be able to claim allowances to co-finance decarbonisation of the electricity supply of islands within its territory. These allowances should come from the maximum amount referred to in Article 10a(5) which were not allocated for free by 31 December 2020. These allowances should be auctioned in accordance with the modalities applicable to the Modernisation Fund.

(16) A Modernisation Fund should be established from 2% of the total EU ETS allowances, and auctioned in accordance with the rules and modalities for auctions taking place on the Common Auction Platform set out in *Commission Regulation (EU) No 1031/2010*⁹. *Depending on the extent to which the share of allowances to be auctioned is reduced to avoid the need to apply a uniform cross-sectoral correction factor, the amount of allowances available under this fund should be increased by up to 0,5% of the total quantity of allowances. Member States which in 2013 had a GDP per capita at market prices below 60% of the Union average should be eligible for funding from the Modernisation Fund and be able to derogate up to 2030 from the principle of full auctioning for electricity generation by using the option of free allocation in order to transparently promote real investments modernising their energy sector while avoiding distortions of the internal energy market. Investments under the Modernisation Fund aiming at improving energy efficiency could include investments in electrification of transport, in particular of road transport.* The rules for governing the Modernisation Fund should provide a coherent, comprehensive and transparent framework to ensure the most efficient implementation possible, taking into account the need for easy access by all participants *and the possibilities to leverage investments in Member States*. The function of the governance structure should be commensurate with the purpose of ensuring the appropriate use of the funds. That governance structure should *include* an investment committee and due account should be taken of the expertise of the EIB in the decision-making process unless support is provided to small projects through loans from a national promotional bank or through grants via a national programme sharing the objectives of the Modernisation Fund. *In order to identify and disclose any potential conflict of interest, the composition of the investment committee, the CVs of its members as well as their declaration of interests should be published and regularly be updated.*

⁹ *Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).*

To ensure that the investment needs in low income Member States are adequately addressed, the *funds for the Modernisation Fund should be distributed amongst the Member States based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria*. The financial assistance from the Modernisation Fund could be provided through different forms. *To leverage resources and ensure an increased impact of relevant investments, free allowances for modernising electricity generation in some Member States and the resources available from the Modernisation Fund for investments outside the list of priority areas should be complemented by resources from private legal entities, which may include separate resources from private legal entities entirely or partially owned by public authorities.*

- (17) *In order to streamline the funding mechanisms and minimise the administrative burden related to their implementation, the Member States concerned should have the possibility to use their share of the 10% redistributed allowances and of the transitional free allocation for the modernisation of the energy sector under the provisions of the Modernisation Fund. To ensure predictability and transparency with regard to the volumes of allowances either available for auctioning or for the transitional free allocation and the assets managed by the Modernisation Fund, Member States should inform the Commission of their intention to increase their resources under the Modernisation Fund ahead of 2021.*

- (18) The **October 2014** European Council confirmed ***that the option to give free allocation to the energy sector should continue up to 2030 and*** 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 €12,5 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 ***or diversifying*** the energy sector in line with the Energy Union objectives. Investments with a value of less than €12,5 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. ***Investments should be complemented by resources from private legal entities, which may include separate resources from private legal entities entirely or partially owned by public authorities.***
- (19) EU ETS funding should be coherent with ***the objectives of the Union's 2030 climate and energy policy framework and the long-term objectives expressed in the Paris Agreement, as well as*** other Union funding programmes **■** , so as to ensure the effectiveness of public spending.

- (20) 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 *allocation period. At the same time, to avoid undue administrative burden it should also be possible for installations emitting less than 2500 tonnes of CO₂ equivalent in each of the three years preceding the beginning of each allocation period and for reserve or backup units operating less than 300 hours in each year of that period to be excluded from the EU ETS. The possibility to include additional activities and gases in the system should continue, without these being considered to be new entrants. This possibility for the inclusion of additional activities and gases after 2020 should be without prejudice to the Union-wide quantity of allowances under the ETS and amounts derived from it.*
- (21) *Directive 2003/87/EC requires Member States to provide a report on its implementation on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure referred to in Directive 91/692/EEC¹⁰. The Commission has proposed to repeal the reporting requirements under Directive 91/692/EEC¹¹. It is therefore appropriate to replace the reference to Directive 91/692/EEC by a reference to the procedure referred to in this Directive.*
- (22) Decision (EU) 2015/1814 establishes a Market Stability Reserve for the EU ETS in order to make auction supply more flexible and make the system more resilient. This decision also provides for allowances not allocated to new entrants up to 2020 and not allocated because of cessations and partial cessations to be placed in the Market Stability Reserve.

¹⁰ *Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (OJ L 377, 31.12.1991, p. 48.)*

¹¹ *COM(2016) 789 final.*

(23) A well-functioning, reformed EU ETS with an instrument to stabilise the market is a key pillar for the EU to reach its agreed target for 2030 and the commitments under the Paris Agreement. To address the current imbalance between supply and demand of allowances in the market, a Market Stability Reserve will be established in 2018 and become operational as of 2019. Considering the need to deliver a credible investment signal to reduce CO2 emissions in a cost-efficient manner and with a view to strengthening the EU ETS, Decision (EU) 2015/1814 should be amended so as to increase until 31 December 2023 the percentage rates for determining the number of allowances to be placed each year in the reserve. Furthermore, as a long-term measure to improve the functioning of the EU ETS, unless otherwise decided in the first review in accordance with Article 3 of Decision (EU) 2015/1814, as from 2023, allowances held in the reserve above the total number of allowances auctioned during the previous year should no longer be valid. Regular reviews of the functioning of the reserve should also consider whether to maintain those increased rates.

- (24) *The provisions of this Directive should be kept under review in the light of international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement. The measures to support certain energy intensive industries that may be subject to carbon leakage referred to in Articles 10a and 10b should also be kept under review in the light of climate policy measures in other major economies. In that context the review may consider whether it is appropriate to replace, adapt or complement any existing measures to prevent carbon leakage with carbon border adjustments or alternative measures, provided that these are fully compatible with WTO rules, so as to include in the EU ETS importers of products which are produced by the sectors or sub-sectors determined in accordance with Article 10a. The Commission should report to the European Parliament and to the Council in the context of each global stocktake agreed under the Paris Agreement, in particular with regard to the need for increased stringency of Union policies and measures, including the EU ETS, in view of necessary greenhouse gas reductions by the Union and its Member States. The Commission may make a proposals to the European Parliament and the Council to amend the Directive as appropriate. As part of its regular reporting under Regulation (EU) No 525/2013, the Commission should also assess the outcome of the 2018 Facilitative Dialogue.*
- (25) In order to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Article 3d(3), Article 10(4), Article 10a(1), *10a(8)* and ■ Article 10b, ■ Article 19(3), Article 22, Article 24, Article 24a, *Article 25a and Article 28c* of Directive 2003/87/EC. ■

- (26) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level **■**, *and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts*, the European Parliament and **■** *the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts*. As regards the delegation in respect of Article 10(4) of Directive 2003/87/EC, those Member States which do not use the common platform for auctioning may continue not to do so. *The delegation should also not affect the Member States' right to determine the use of their auctioning revenues.*
- (27) In order to ensure uniform conditions for the implementation of the third *to eighth subparagraphs* of Article 10a(2), *Article 10a(21), Article 10d, Article 14(1) and (2) and Annex IV, Article 15 and Annex V*, and Article 16 **■** of Directive 2003/87/EC, implementing powers should be conferred on the Commission. Those **■** implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹².
- (28) In order to reduce *the empowerments to the Commission* to the minimum, the existing *powers* in respect of *the adopting of acts concerning the operation of the special reserve, for further specifying quantities of international credits for exchange, for attributing quantities of international credits which may be exchanged and placing further standards for what may be exchanged and for further rules on double counting in Article 3f(9), Article 11a(8), Article 11a(9) and Article 11b(7) of Directive 2003/87/EC* should be deleted. Acts adopted pursuant to *those provisions* continue to apply.

¹² Regulation (EU) No 182/2011 of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers, OJ L 55, 28.02.2011, p. 13.

- (29) *Acts adopted pursuant to Directive 2003/87/EC concerning subject matters for which this Directive grants the Commission the power to adopt delegated or implementing acts continue to apply until repealed or amended by the latter. In the case of Commission Decision 2011/278/EU, the last column of Annex I thereof will be repealed if and when the Commission adopts an implementing act for the purposes of determining the revised benchmark values for free allocation. In order to increase predictability and simplify administrative processes, Commission Decision 2014/746/EU should continue to apply until the end of the year 2020.*
- (30) *The delegated and implementing acts referred to in this Directive, particularly in respect of provisions on monitoring, reporting and verification and on the Union Registry, should aim to simplify rules and reduce administrative burden to the extent possible, without undermining the environmental integrity, security or reliability of the EU ETS. When preparing those acts, the Commission should in particular assess the effectiveness of simplified monitoring rules, including for emergency and backup electricity generation units, taking into account the operating hours per year, and for other small emitters, and the possibilities to further develop such rules.*
- (31) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents¹³, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers, where appropriate, the transmission of such documents to be justified.

¹³ [_____](#) OJ C 369, 17.12.2011, p. 14.

- (32) This Directive seeks to contribute to the objective of a high level of environmental protection in accordance with the principle of sustainable development in the most economically efficient manner while providing installations adequate time to adapt and providing for more favourable treatment of specially affected persons in a proportionate manner to the maximum extent compatible with the other objectives of this Directive.
- (33) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (34) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

(1) **■** *Throughout the Directive, the term "Community scheme" is replaced by "EU ETS" and any necessary grammatical changes are made.*

(2) *Throughout the Directive, the word "scheme" is replaced by "system".*

(3) *Throughout the Directive, except in the cases referred to in point (1) of this Article and in Article 26, the term "Community" is replaced by "Union" and any necessary grammatical changes are made.*

(4) *In Article 3, point (h) is replaced by the following:*

"(h) 'new entrant' means:

- *any installation carrying out one or more of the activities indicated in Annex I, which has obtained a greenhouse gas emissions permit for the first time within the period from 3 months before the date for submission of the list under Article 11(1), until 3 months before the date for the submission of the subsequent list under that Article*

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

■ *"The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to supplement this directive concerning the detailed arrangements for the auctioning by Member States of aviation allowances 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. The delegated act shall ensure the respect of the principles set out by Article 10 (4) subparagraph 1."

- (6) In Article 3f, paragraph (9) is deleted.
- (7) *In Article 6(1), the third subparagraph is deleted.*
- (8) *Article 8 is replaced by the following:*

"Article 8

Coordination with Directive 2010/75/EU

of the European Parliament and of the Council ()*

Member States shall take the necessary measures to ensure that, where installations carry out activities that are included in Annex I to Directive 2010/75/EU (), the conditions of, and procedure for, the issue of a greenhouse gas emissions permit are coordinated with those for the permit provided for in that Directive. The requirements of Articles 5, 6 and 7 of this Directive may be integrated into the procedures provided for in Directive 2010/75/EU.*

(*) *Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17) ."*

(9) In Article 9, the second and third paragraphs are replaced by the following:

"Starting in 2021, the linear factor shall be 2,2%."

(10) Article 10 is amended as follows:

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

"1. From 2019 onwards, Member States shall auction all allowances that are not allocated free of charge in accordance with Articles 10a and 10c and that are not placed in the market stability reserve established by Decision (EU) 2015/1814 of the European Parliament and of the Council or cancelled in accordance with Article 12(4).

From 2021 onwards, *and without prejudice to a possible reduction pursuant to Article 10a(5a)*, the share of allowances to be auctioned **■** shall be 57%.

2% of the total quantity of allowances between 2021 and 2030 shall be auctioned to establish a fund to improve energy efficiency and modernise the energy systems of certain Member States as set out in Article 10d of this Directive ("the Modernisation Fund").

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

(b) paragraph 2 is amended as follows:

(i) in point (a), "88%" is replaced by "90%";

(ii) point (b) is replaced by the following:

"(b) 10% of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity **■**, growth *and interconnections* within the *Union*, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa."; **■**

- (iii) point (c) is deleted;
- (iv) the third subparagraph is replaced by the following:

"If necessary, the percentage referred to in point (b) shall be adapted in a proportional manner to ensure that the distribution is 10%."

(c) in paragraph 3, *point (b) is replaced by the following* :

"(b) to develop renewable energies to meet the commitment of the Union to renewable energies, as well as to develop other technologies contributing to the transition to a safe and sustainable low-carbon economy and to help meet the commitment of the Union to increase energy efficiency, at the levels agreed in appropriate legislative acts;"

(d) *in paragraph 3, point (h) is replaced by the following:*

"(h) measures intended to increase energy efficiency, district heating systems and insulation or to provide financial support in order to address social aspects in lower and middle income households;"

(e) *in paragraph 3, the following points are added:*

"(j)

for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate change ;

to promote skill formation and reallocation of labour in order to contribute to a just transition to a low carbon economy, in particular in regions most affected by the transition of jobs , *in close coordination with the social partners* ;"

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

"4. The Commission shall be empowered to adopt ■ delegated acts in accordance with Article 23 to supplement this Directive concerning the 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.

Those delegated acts shall ensure that auctions are designed to ensure that:

- (a) operators, and in particular any SMEs covered by the Community scheme, 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."*
- (g) *In paragraph 5, the second sentence is replaced by the following:*

"Each year, it shall submit a report to the European Parliament and to the Council on the functioning of the carbon market and other relevant climate and energy policies, including the implementation of the auctions, liquidity and the volumes traded, and summarising the information provided by Member States on the financial measures referred to in Article 10a(6)."

(11) Article 10a is amended as follows:

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

"The Commission shall be empowered to adopt **■** delegated *acts* in accordance with Article 23 to supplement this Directive concerning the Union-wide and fully-harmonised rules for the allocation of the allowances referred to in paragraphs 4, 5, 7 and 19 of this Article."

(b) *the following subparagraphs are* added to paragraph 2 **■** :

"The **■** Commission shall adopt implementing acts for the purposes of determining the revised benchmark values for free allocation. Those acts shall be in accordance with the delegated acts adopted pursuant to paragraph 1 of this Article and shall comply with the following:

■ a) *For the period from 2021 to 2025, the benchmark values shall be determined on the basis of information submitted pursuant to Article 11 for the years 2016-2017.*

On the basis of a comparison of the benchmark values based on this information with the benchmark value contained in Commission Decision 2011/278, as adopted on 27 April 2011 (), the Commission shall determine the annual reduction rate for each benchmark and apply it to the benchmark values applicable in the period 2013-2020 in respect of each year between 2008 and 2023 to determine the benchmark values for the years 2021-2025.*

() Commission Decision 2011/278 of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1)."*

- (b) *Where the annual reduction rate exceeds 1,6% or is below 0,2%, the benchmark values for 2021-2025 shall be the benchmark values applicable in the period 2013 to 2020 reduced by the relevant one of these two percentage rates in respect of each year between 2008 and 2023.*
- (c) *For the period from 2026 to 2030, the benchmark values shall be determined in the same manner on the basis of information submitted pursuant to Article 11 for the years 2021-2022 and with the annual reduction rate applying in respect of each year between 2008 and 2028.*

■ 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.

■

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a.

In order to promote the efficient energy recovery from waste gases, for the period referred to in point (b) above, the benchmark value for hot metal, which predominantly relates to waste gases, shall be updated with an annual reduction rate of 0,2%."

- (c) *paragraph 4 is replaced by the following:*

"4. Free allocation shall be given to district heating as well as to high efficiency cogeneration, as defined by Directive 2004/8/EC, for economically justifiable demand, in respect of the production of heating or cooling. In each year subsequent to 2013, the total allocation to such installations in respect of the production of that heat shall be adjusted by the linear factor referred to in Article 9, except for any year in which these allocations are adjusted in a uniform manner pursuant to paragraph 5."

(d) paragraph 5 is replaced by the following

"5. In order to respect the auctioning share set out in Article 10, █ 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.";

(e) *the following paragraphs are added:*

"5a. By way of derogation from paragraph 5 of this Article, an additional amount of up to 3% of the total quantity shall, to the extent necessary, be used to increase the maximum level available under paragraph 5.

5b. Where less than 3% of the total quantity is needed to increase the maximum level available under paragraph 5:

- a maximum of 50 million allowances shall be used to increase the amount of allowances available to support innovation in accordance with Article 10a(8); and

- a maximum of 0,5% of the total quantity of allowances shall be used to increase the amount of allowances available to modernise energy systems of certain Member States in accordance with Article 10d."

(f) **█** paragraph 6 is replaced by the following:

"6. Member States should adopt financial measures *in accordance with the second and fourth subparagraphs* 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 *provided such* financial measures **are** in accordance with state aid rules, *notably do not cause undue distortions of competition on the internal market. Where the amount available for such financial measures exceeds 25% of the revenues generated from the auctioning of allowances, the Member State concerned shall set out the reasons for exceeding that amount.*

Member States shall also seek to use no more than 25% of the revenues generated from the auctioning of allowances for such financial measures. Within three months of the end of each year, Member States having such financial measures in place shall make available to the public in an easily accessible form the total amount of compensation provided per benefiting sectors and sub-sectors. As from 2018, in any year where here a Member State uses more than 25% of the revenues generated from the auctioning of allowances for such purposes, it shall publish a report setting out the reasons for exceeding that amount. The report shall include relevant information on power prices for large industrial consumers benefiting from such financial measures, without prejudice to requirements regarding the protection of confidential information. The report shall also include information on whether due consideration has been given to other measures to sustainably lower indirect carbon costs in the medium to long term.

The Commission shall include in its report pursuant to Article 10 (5), inter alia, an assessment of the effects of such financial measures on the internal market and, if appropriate, recommend any measures that may be necessary pursuant to this assessment.

Those measures shall ensure an adequate protection against the risk of carbon leakage based on ex-ante benchmarks of the indirect emissions of CO₂ per unit of production. The ex-ante benchmarks shall be calculated for a given sector or subsector as the product of the electricity consumption per unit of production corresponding to the most efficient available technologies and of the CO₂ emissions of the relevant European electricity production mix."

(g) paragraph 7 is amended as follows:

(i) The first **■** subparagraph *is* replaced by the following:

*"Allowances from the maximum amount referred to in paragraph 5 of this Article which were not allocated for free up to 2020 shall be set aside for new entrants **■**, together with 200 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/1814 of the European Parliament and of the Council(*). Up to 200 million allowances set aside that are not allocated over the period from 2021 to 2030 shall be returned to the market stability reserve at the end of that period.*

From 2021, allowances not allocated to installations because of the application of paragraphs 19 and 20 shall be added to the *amount of allowances set aside in accordance with the first sentence of the first subparagraph."*

() 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)."*

(ii) The *fourth and fifth subparagraphs are deleted.*

(h) in paragraph 8, the first, second and third subparagraphs ■ are replaced by the following:

"325 million allowances from the quantity which could otherwise be allocated for free pursuant to this Article, and 75 million allowances from the quantity which could otherwise be auctioned pursuant to Article 10, shall be available to support innovation in low-carbon technologies and processes, including environmentally safe carbon capture and utilisation (CCU) that contributes substantially to mitigate climate change, as well as products substituting carbon intensive ones produced, in sectors listed in Annex I, and to help stimulate the construction and operation of ■ projects that aim at the environmentally safe capture and geological storage (CCS) of CO₂ as well as ■ innovative renewable energy and energy storage technologies ■ ; in geographically balanced locations within the territory of the Union. Projects in all Member States, including small-scale projects, shall be eligible.

In addition, 50 million unallocated allowances from the market stability reserve established by Decision (EU) 2015/1814 shall supplement any remaining revenues from the 300 million allowances available in the period 2013-2020 under Commission Decision 2010/670/EU and be used in a timely manner for innovation support as referred to in the first subparagraph.

Projects shall be selected on the basis of objective and transparent criteria, taking into account, where relevant, the extent to which projects contribute to emission reductions well below the benchmarks referred to in paragraph 2. Projects shall have the potential for widespread application or for significantly lowering the costs of transitioning towards a low-carbon economy for the sectors concerned. Projects involving CCU shall deliver a net reduction in emissions and ensure avoidance or permanent storage of CO₂. Technologies receiving support shall not yet be commercially available, but shall represent breakthrough solutions or be sufficiently mature to be ready for demonstration at pre-commercial scale. 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 [REDACTED], taking into account the technology deployed [REDACTED], *are attained*.

[REDACTED]

The Commission is empowered to adopt **■** delegated *acts* in accordance with Article 23 to supplement this Directive concerning rules on the operation of the fund, including the selection procedure and criteria."

(i) *paragraph 9 is replaced by the following:*

"9. Greece, which had a GDP per capita at market prices below 60% of the Union average in 2014, may claim, prior to the application of paragraph 7 of this Article, allowances from the maximum amount referred to in paragraph 5 of this Article which were not allocated for free by 31 December 2020, up to 25 million allowances for co-financing up to 60% of decarbonising the electricity supply of islands within its territory. Article 10d(2) shall apply mutatis mutandis to such allowances. Allowances may be claimed where due to restricted access to the international debt markets, a project aiming at the decarbonisation of the electricity supply of the countries' islands could otherwise not be realised and where the EIB confirms the financial viability and the socio-economic benefits of the project."

(j) **■** *paragraph 10 is deleted.*

(k) in paragraph 11, the wording "with a view to reaching no free allocation in 2027" is deleted.

(l) paragraphs 12 to 18 are deleted.

(m) *paragraph 20 is replaced by the following:*

"20. The level of free allocations given to installations whose operations have increased or decreased, as assessed on the basis of a rolling average of two years, by more than 15% compared to the level initially used to determine the free allocation for the relevant period referred to in Article 11(1) shall, as appropriate, be adjusted. Such adaptations shall be carried out with allowances from, or by adding allowances to, the amount of allowances set aside in accordance with paragraph 7."

(n) *the following paragraph is added:*

"21. In order to ensure an effective, non-discriminatory and uniform application of the adaptations and the threshold referred to in paragraph 20, to avoid undue administrative burden and to prevent manipulation or abuse of the adjustments to the allocation, the Commission may adopt implementing acts which define further arrangements for the adjustments. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a."

(12) Articles 10b and 10c are replaced by the following:

"Article 10b

Transitional measures to support certain energy-intensive industries in the event of carbon leakage

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 kgCO₂ divided by their gross value added (in *euro*), 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 pursuant to Article 10a.

2. Sectors and sub-sectors where the product from multiplying their intensity of trade with third countries by their emission intensity is above **0,15** may be included in the group referred to in paragraph 1 *using data for the years 2014-2016* on the basis of a qualitative assessment **and** the following criteria:

- (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;
- (b) current and projected market characteristics, ***including any common reference price where relevant***;
- (c) profit margins as a potential indicator of long-run investment or relocation decisions, ***taking into account changes in costs of production relating to emission reductions***.

2a. Sectors and sub-sectors that do not exceed the threshold referred to in paragraph 1, but with an emission intensity measured in kgCO₂ divided by their gross value added (in euro) which exceeds 1,5, shall also be assessed at a 4-digit level (NACE-4 code). The Commission shall make the results of this assessment public.

Within three months from the publication referred to in the previous subparagraph, those sectors and sub-sectors may apply to the Commission for either a qualitative assessment of their carbon leakage exposure at a 4-digit level (NACE-4 code) or an assessment on the basis of the classification of goods used for statistics on industrial production in the Union at an 8-digit level (Prodcom). To this end, a sector and subsector shall submit duly substantiated, complete and independently verified data to enable the Commission to carry out the assessment together with the application.

Where a sector or subsector chooses to be assessed at a 4-digit level (NACE-4 code), it may be included in the group referred to in paragraph 1 on the basis of the criteria referred to in paragraph 2, points (a), (b) and (c). Where a sector or subsector chooses to be assessed at an 8-digit level (Prodcom), it shall be included in the group referred to in paragraph 1 where, at this level, the threshold of 0,2 referred to in paragraph 1 is exceeded.

Sectors and subsectors for which free allocation is calculated on the basis of the benchmark values referred to in the fourth subparagraph of Article 10a(2) may also request to be assessed in accordance with the third subparagraph of this paragraph.

By way of derogation from paragraphs 1 and 2, a Member State may request by 30 June 2018 that a sector or sub-sector listed in the Annex to Commission Decision 2014/746/EU in respect of classifications at a 6-digit or an 8-digit level (Prodcom) be considered to be included in the group referred to in paragraph 1. Any such request shall only be considered where the requesting Member State establishes that the application of this derogation is justified on the basis of duly substantiated, complete, verified and audited data for the five most recent years provided by the sector or sub-sector concerned and includes all relevant information with its request. On the basis of this data, the sector or sub-sector concerned shall be included in respect of those classifications where, within a heterogeneous NACE-4 code, it is shown they have a substantially higher trade and emission intensity at Prodcom level, exceeding the threshold set in paragraph 1.

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 ■ at 30% of the quantity determined ■ pursuant to Article 10a. *Unless otherwise decided in the review pursuant to Article 30, free allocations to other sectors and sub-sectors except district heating shall decrease by equal amounts after 2026 so as to reach no free allocation in 2030.*
4. By 31 December 2019, the Commission shall *be empowered to* adopt *delegated acts in accordance with Article 23 to supplement this Directive concerning the determination of sectors and subsectors deemed at risk of carbon leakage, as referred to in paragraphs 1, 2 and 2a*, for activities at a 4-digit level (NACE-4 code) as concerns paragraph 1, ■ based on data for the three most recent calendar years available.

Article 10c

Option for transitional free allocation for the modernisation of the energy sector

1. By *way of* derogation from Article 10a(1) to (5), Member States which had in 2013 a **gross domestic product** (GDP) per capita in *euro* at market prices below 60% of the Union average may give a transitional free allocation to installations for electricity **generation for the modernisation and diversification and sustainable transformation of the energy sector. The investments supported shall be consistent with the transition to a safe and sustainable low-carbon economy, the objectives of the Union's 2030 climate and energy policy framework, and reaching the long term objectives as expressed in the Paris Agreement. This derogation shall end on 31 December 2030.**
2. The Member State concerned shall organise a competitive bidding process, **to take place in one or more rounds between 2021 and 2030**, for projects with a total amount of investment exceeding **EUR 12,5 million** to select the investments to be financed with free allocation. This competitive bidding process shall:
 - (a) comply with the principles of transparency, non-discrimination, equal treatment and sound financial management;
 - (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, **such as renewable technologies, or modernisation of the energy production, such as efficient and sustainable district heating**, transmission and distribution sectors are eligible to bid;

- (c) define clear, objective, transparent and non-discriminatory selection criteria for the ranking of projects, so as to ensure that **only** projects are selected which:
- (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 CO₂ reductions ***taking into account the size of the project;***
 - (ii) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand;
 - (iii) offer best value for money;
 - (iv) ***do not contribute to or improve the financial viability of highly emission-intensive electricity generation nor increase dependency on emission-intensive fossil fuels.***

By way of derogation from Article 10 (1) and without prejudice to the last sentence of paragraph 1, in the event an investment selected through the competitive bidding process is cancelled or the intended performance is not reached, the earmarked allowances may be used through a single additional round of the competitive bidding process at the earliest one year thereafter to finance other investments.

By 30 June 2019, any Member State intending to make use of optional *transitional* free allocation *for the modernisation of the energy sector* shall publish a detailed national framework setting out the competitive bidding process, *including the planned number of rounds referred to in the first subparagraph of this paragraph*, and selection criteria for public comment.

Where investments with a value of less than *EUR 12,5 million to be* supported with free allocation *are not selected through the competitive bidding process referred to in this paragraph*, 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, *publish* and submit a list of investments to the Commission by 30 June 2019. *Where more than one investment is carried out within the same installation, these shall be assessed as a whole to establish whether or not the value threshold referred to above is exceeded, unless they are independently technically or financially viable.*

3. The value of the intended investments shall at least equal the market value of the free allocation, while taking into account the need to limit directly linked price increases. The market value shall be the average of the price of allowances on the common auction platform in the preceding calendar year. *Up to 70% of the relevant costs of an investment may be supported using the free allocation provided that the remaining cost is financed from private legal entities.*

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 2021-2030 pursuant to Article 10(2)(a) spread out in equal annual volumes over the period from 2021-2030.

4a. Where a Member State uses allowances distributed for the purpose of solidarity and growth within the Union in accordance with Article 10(2)(b) pursuant to Article 10d(2a), that Member State may, by way of derogation from paragraph 4 of this Article, use for transitional free allocation a total quantity of up to a 60% of the allowances received in the period 2021-2030 pursuant to Article 10(2)(a), using a corresponding number of the allowances distributed in accordance with Article 10(2)(b).

Any allowances not allocated under this Article up to 2020 may be allocated over to the period 2021-2030 to investments selected through the competitive bidding process referred to in paragraph 2 of this Article, unless the Member State concerned informs the Commission by 30 September 2019 of its intention not to allocate all or part of these allowances over the period 2021-2030 and of the amount of allowances to be auctioned instead in 2020. Where such allowances are allocated over the period 2021-2030, the corresponding amount shall be taken into account for the application of the 60% limit set out above.

5. Allocations to operators shall be made upon demonstration that an investment selected according to the rules of the competitive bidding process has been carried out. ***Where an investment leads to additional electricity generation capacity, the operator concerned shall also demonstrate that a corresponding amount of more emission-intensive electricity generation capacity has been decommissioned by it or another associated operator by the start of operation of the additional capacity.***
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 balance of free allocation and investment expenditure incurred and the types of investments supported.*** Member States shall report on this to the Commission, and the Commission shall make such reports public."

(13) The following Article **█** is inserted:

"Article 10d

Modernisation Fund

1. A fund to support investments ***proposed by the beneficiary Member States, including to finance small-scale investment projects,*** in modernising energy systems and improving energy efficiency in Member States with a GDP per capita ***at market prices*** below 60% of the Union average in 2013 shall be established for the period 2021-2030. ***The fund shall be financed through the auctioning of allowances*** as set out in Article 10.

The investments supported shall be consistent with the aims of this Directive, ***as well as the objectives of the Union's 2030 climate and energy policy framework and the long-term objectives as expressed in the Paris Agreement. No support from this fund shall be provided to energy generation facilities using solid fossil fuels other than efficient and sustainable district heating in Member States with a GDP per capita at market prices below 30% of the Union average in 2013 provided that at least an amount of allowances of an equivalent value is used for investments not involving solid fossil fuels under Article 10c.***

█

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- 1a. At least 70% of the financial resources from the fund shall be used to support investments in the generation and use of electricity from renewable sources, the improvement of energy efficiency except from energy generation using solid fossil fuels, energy storage and the modernisation of energy networks, including district heating pipelines, grids for electricity transmission and the increase of interconnections between Member States, as well as to support a just transition in carbon-dependent regions in the beneficiary Member States, so as to support the redeployment, re-skilling and up-skilling of workers, education, job-seeking initiatives and start-ups, in dialogue with the social partners. Investments in energy efficiency in transport, buildings, agriculture and waste shall also be eligible.*
- 2. The fund shall operate under the responsibility of the beneficiary Member States. The European Investment Bank (EIB) shall ensure the allowances are auctioned in accordance with the principles and modalities laid down in Article 10(4) and shall be responsible for managing the revenues. It shall pass on the revenues to the Member States upon a disbursement decision from the Commission, where this disbursement for investments is in line with paragraph 1a or, where the investments do not fall into the areas listed in paragraph 1a, is in line with the recommendations of the investment committee. The Commission shall adopt its decision in a timely manner. The revenues shall be distributed amongst the Member States and according to the share set out in Annex IIb, in accordance with paragraphs 4 to 9.*

2a. Any Member State concerned may use the total free allocation pursuant to Article 10c(4), or part of it, and the amount of allowances distributed for the purpose of solidarity and growth within the Union in accordance with Article 10(2), point (b), or part of it, in accordance with Article 10d to support investments within the framework of the Modernisation Fund, thereby increasing the resources distributed to that Member State. By 30 September 2019, the Member State concerned shall notify the respective amounts of allowances to be used under Article 10(2), point (b), Article 10c and Article 10d to the Commission.

3. An investment committee for the fund is hereby established. The investment committee shall be composed of a representative from each beneficiary Member State, the Commission and the EIB, and three representatives elected by the other Member States for a period of 5 years. It shall be chaired by the representative from the Commission. One representative of each Member State which is not a member of the investment committee may attend meetings of the committee as an observer.

The investment committee shall operate in a transparent manner. The composition of the investment committee and the CVs and declarations of interests of its members shall be made available to the public and, where necessary, updated.

4. *Before a beneficiary Member State may decide to finance an investment from its share in the fund, it shall present the investment project to the investment committee and to the EIB.*

Where the EIB confirms that an investment falls into the areas listed in paragraph 1a, the Member State may proceed to the financing of the investment project from its share.

Where an investment in the modernisation of energy systems, which is proposed to be financed from the fund, does not fall into the areas listed in paragraph 1a, the investment committee shall assess the technical and financial viability of such investments, including the emission reductions they realise, and issue a recommendation on financing the investment from the fund. The investment committee shall ensure that any investment relating to district heating realises a substantial improvement in energy efficiency and emission reductions. This recommendation may include suggestions regarding appropriate financing instruments **■** *. Up to 70% of the relevant costs of an investment which does not fall into the areas listed in paragraph 1a may be supported with resources from the fund provided that the remaining cost is financed from private legal entities.*

5. The investment *committee* shall strive to **adopt its recommendations** by consensus. If the investment *committee* is not able to decide by consensus within a deadline set by the chairman, *it* shall take a decision by simple majority.

■

If the *representative of the EIB does not endorse* financing an investment, a recommendation **■** shall only be adopted if a majority of two-thirds of all members vote in favour. The *representative of the* Member State in which the investment will take place and *the representative of* the EIB shall not be entitled to cast a vote in this case. **This subparagraph shall not apply for small-scale** 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 **■** .

- 5a. *Any acts or recommendations by the EIB or the investment committee pursuant to paragraphs 4 and 5 shall be made in a timely manner and state the reasons on which they are based. Such acts and recommendations shall be made public.*
6. *The beneficiary Member States shall be responsible for following up on the implementation with respect to selected projects.*
7. The beneficiary Member States shall report annually to the **Commission** on investments financed by the fund. The report shall be made public and include:
- (a) information on the investments financed per beneficiary Member State;
 - (b) an assessment of the added value in terms of energy efficiency or modernisation of the energy system achieved through the investment .
8. *The investment* committee shall report *annually* to the Commission on experience with the evaluation ■ of investments. *By 31 December 2024, taking into consideration the findings of the investment committee, the Commission shall review the areas for projects referred to in paragraph 1a and the basis on which the investment committee bases its recommendations.*
9. The Commission shall *adopt implementing acts concerning detailed rules on the operation of the fund. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a."*

(14) In Article 11(1), the following **■** subparagraph is added:

"A list of installations covered by this Directive for the five years beginning on 1 January 2021 shall be submitted by 30 September **2019**, and lists for the subsequent five years shall be submitted every five years thereafter. Each list shall include information on production activity, transfers of heat and gases, electricity production and emissions at sub-installation level over the five calendar years preceding its submission. Free allocations shall only be given to installations where such information is provided."

(15) In Article 11a, paragraphs 8 and 9 are deleted.

(16) In Article 11b, *paragraph* 7 is deleted.

(17) *In Article 12, the following sentences are added at the end of paragraph 4:*

"In case of closure of electricity generation capacity in their territory due to additional national measures, Member States may cancel allowances from the total quantity of allowances to be auctioned by them referred to in Article 10(2) up to the average verified emissions of the installation concerned over a period of five years preceding the closure. The Member State concerned shall inform the Commission of such intended cancellation in accordance with the delegated acts adopted pursuant to Article 10(4)."

(18) Article 13 is replaced by the following:

"Article 13

Validity of allowances

Allowances issued from 1 January 2013 onwards shall be valid indefinitely. Allowances issued from 1 January 2021 onwards shall include an indication showing in which ten-year period beginning from 1 January 2021 they were issued, and be valid for emissions from the first year of that period onwards."

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

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"The Commission shall adopt implementing acts concerning the detailed arrangements for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, for 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 requirements set out in paragraph 2 of this Article. Those implementing acts shall also specify the global warming potential of each greenhouse gas in the requirements for monitoring and reporting emissions for that gas.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a."

(20) *In Article 15, the third, fourth and fifth subparagraphs are replaced by the following:*

"The Commission shall adopt implementing acts concerning the verification of emission reports based on the principles set out in Annex V and for the accreditation and supervision of verifiers. The Commission may also adopt implementing acts for the verification of reports submitted by aircraft operators pursuant to Article 14(3) and applications under Articles 3e and 3f, including the verification procedures to be used by verifiers. It shall specify conditions for the accreditation and withdrawal of accreditation, for mutual recognition and peer evaluation of accreditation bodies, as appropriate.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a."

(21) In Article 16, paragraph 12 is replaced by the following:

"12. *The Commission shall adopt implementing acts containing* detailed rules 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."

(22) Article 19(3), is replaced by the following:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive by laying down all necessary requirements concerning the Union Registry for the trading period commencing on 1 January 2013 and subsequent periods in the form of standardised electronic databases containing common data elements to track the issue, holding, transfer and cancellation, as relevant, of allowances, and to provide for public access and confidentiality, as appropriate. It shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems."

(23) In Article 21, the fourth sentence of paragraph 1 is replaced by the following:

"The report shall be drawn up on the basis of a questionnaire or outline adopted by the Commission in the form of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2)."

(24) In Article 21, the following paragraph is added:

"4. Every three years, the report referred to in paragraph 1 shall also pay particular attention to the equivalent measures adopted for small installations excluded from the EU ETS. This issue shall be considered in the exchange of information referred to in paragraph 3."

(25) Article 22 is replaced by the following:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to amend the Annexes to this Directive, with the exception of Annexes I, IIa and IIb, where appropriate, in the light of the reports provided for in Article 21 and of the experience of the application of this Directive. Annexes IV and V may be amended in order to improve the monitoring, reporting and verification of emissions".

(26) The following Article is inserted:

"Article 22a

Committee procedure

1. The Commission shall be assisted by the *Climate Change* Committee established by Article 26 of Regulation (EU) 525/2013. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply."

(27) Article 23 is replaced by the following:

"Article 23

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3d(3), Article 10(4), Article 10a(1), 10a(8) and Article 10b, Article 19(3), Article 22, Article 24, Article 24a, Article 25a and Article 28c shall be conferred on the Commission for an indeterminate period of time from the (*).

(*) date of entry into force of the basic legislative act.

3. The delegation of powers referred to in *Article 3d(3), Article 10(4), Article 10a(1), 10a(8) and Article 10b, Article 19(3), Article 22, Article 24, Article 24a, Article 25a and Article 28c* may be revoked at any time by the European Parliament or by the Council. A decision *to revoke* shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
 - 3a. *Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.*
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to *Article 3d(3), Article 10(4), Article 10a(1), 10a(8) and Article 10b, Article 19(3), Article 22, Article 24, Article 24a, Article 25a and Article 28c* shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council."

(28) Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. From 2008, Member States may apply emission allowance trading in accordance with this Directive to activities and to greenhouse gases which are not listed in Annex I, taking into account all relevant criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the *Union system* and the reliability of the planned monitoring and reporting system, provided that inclusion of such activities and greenhouse gases is approved by the Commission, *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.";

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

"The Commission shall be empowered to adopt delegated acts *to supplement this Directive to this effect*".

(29) Article 24a is amended as follows:

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

"1. *In addition to the inclusions provided for in Article 24, measures for issuing allowances or credits in respect of projects administered by Member States that reduce greenhouse gas emissions not covered by the Union system may be adopted.*

Such measures shall be consistent with acts adopted *pursuant to former* Article 11b(7) *as in force before [date of entry into force of this Directive]*. The Commission *is* empowered to adopt **■** delegated *acts* in accordance with *the procedure referred to in Article 23 to supplement this Directive by setting out the procedure to be followed*".

(b) paragraph 2 is deleted.

(30) Article 25(2) is deleted.

(31) In Article 25a, *the first two subparagraphs of paragraph 1 are* replaced by the following:

"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 23(1), shall consider options available in order to provide for optimal interaction between the *Union system* and that country's measures.

■

The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to amend Annex I of this Directive 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, except in relation to the scope, which are required by an agreement concluded pursuant to Article 218 of the Treaty."

(32) In Article 27 (3), *the second subparagraph is replaced by the following:*

"Any such installation shall stay in the Union system for the rest of the period referred to in Article 11(1) during which it was reintroduced."

(33) *The following Article is inserted:*

"Article 27a

Optional exclusion of installations emitting less than 2500 tonnes

1. *Member States may exclude from the EU ETS installations which have reported to the competent authority emissions of less than 2500 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 all of the following conditions:*
 - (a) *it notifies the Commission of each such installation before the list of installations pursuant to Article 11(1) is to be submitted or at the latest when that list is submitted to the Commission;*
 - (b) *it confirms that simplified monitoring arrangements are in place to assess whether any installation emits 2500 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year;*
 - (c) *it confirms that if any installation emits 2500 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; and*
 - (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.*
3. *Member States may also exclude from the EU ETS reserve or backup units which do not operate more than 300 hours per year in each of the three years preceding the notification under point (a) of paragraph 1 under the same conditions as set out in paragraphs 1 and 2.*

(34) *Article 28c is replaced by the following:*

"Article 28c

Provisions for monitoring, reporting and verification for the purpose of the global market-based measure

The Commission shall adopt delegated acts to supplement this Directive concerning the appropriate monitoring, reporting and verification of emissions for the purpose of implementing the ICAO global market-based measure on all routes covered by it. Those delegated acts shall be based on the relevant instruments adopted in ICAO, shall avoid any distortion of competition and be consistent with the principles contained in the Regulation referred to in Article 14 (1), and shall ensure that the emissions reports submitted are verified in accordance with the verification principles and criteria in Article 15."

(35) *Article 30 is replaced by the following:*

“Article 30

Review in the light of the implementation of the Paris Agreement and the development of carbon markets in other major economies

- 1. The provisions of this Directive shall be kept under review in the light of international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement.***
- 2. The measures to support certain energy intensive industries that may be subject to carbon leakage referred to in Articles 10a and 10b shall also be kept under review in the light of climate policy measures in other major economies. In this context, the Commission shall also consider whether measures in relation to the compensation of indirect costs should be further harmonised.***
- 3. The Commission shall report to the European Parliament and to the Council in the context of each global stocktake agreed under the Paris Agreement, in particular with regard to the need for additional Union policies and measures in view of necessary greenhouse gas reductions by the Union and its Member States, including as concerns the linear factor referred to in Article 9, and may make proposals to the European Parliament and the Council to amend the Directive as appropriate.”.***

(36) *In Annex IIa of Directive 2003/87/EC, the entries for Belgium, Italy, Luxembourg and Sweden are deleted.*

(37) *Annex IIb of Directive 2003/87/EC is replaced by the text appearing in Annex I to this Directive.*

(38) *Annex IV is amended in accordance with **■** Annex II to this Directive.*

Article 2
Amendments to Decision (EU) 2015/1814

Article 1 of Decision (EU) 2015/1814 is amended as follows:

(1) *in paragraph 5, first subparagraph, the following sentence is added:*

"By way of derogation, until 31 December 2023, the percentages and the 100 million allowances referred to in this subparagraph shall be doubled."

(2) *the following paragraph is inserted:*

"5a. Unless otherwise decided in the first review in accordance with Article 3, as from 2023, allowances held in the reserve above the total number of allowances auctioned during the previous year shall no longer be valid."

Article 3
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ***[18 months following the entry into force of this Directive]*** at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the publication and reporting obligations contained in the second subparagraph of Article 10a(6) of this Directive by 31 December 2018.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4
Transitional provision

When complying with their obligation as set out in the first subparagraph of Article 3(1) of this Directive, Member States shall ensure that their national legislation transposing Article 10, Article 10a(4) to (7), the first and second subparagraphs of Article 10a(8), Article 10a(12) to (18), Article 10c and Article 11a(8) and (9) and Annex IIa and Annex IIb of Directive 2003/87/EC as last amended by Decision (EU) 2015/1814, continue to apply until 31 December 2020. ***The list contained in the Annex to Commission Decision 2014/746/EU¹⁴ shall continue to apply until 31 December 2020.***

Article 5
Entry into force

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

Article 6
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

¹⁴ ***Commission Decision 2014/746/EU of 27 October 2014 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2015 to 2019 (OJ L 308, 29.10.2014, p. 114).***

ANNEXES

to the

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments

ANNEX I

Annex *Ib* to Directive 2003/87/EC is replaced by the following:

[REDACTED]



“ANNEX IIb

Distribution of funds from the Modernisation Fund up to 31 December 2030

Share of Modernisation Fund

Bulgaria	5,84%
Czech Republic	15,59%
Estonia	2,78%
Croatia	3,14%
Latvia	1,44%
Lithuania	2,57%
Hungary	7,12%
Poland	43,41%
Romania	11,98%
Slovakia	6,13% "



ANNEX II

In Annex IV, Part A, to Directive 2003/87/EC, the paragraph under the fourth heading entitled "Monitoring of emissions of emissions of other greenhouse gases" **is** replaced by the following:

"Standardised or accepted methods shall be used, developed by the Commission in collaboration with all relevant stakeholders and adopted pursuant to Article 14(1)."
