



**2015/0148(COD)**

10.11.2016

## **OPINION**

of the Committee on Industry, Research and Energy

for the Committee on the Environment, Public Health and Food Safety

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

Rapporteur (\*)Fredrick Federley

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

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## SHORT JUSTIFICATION

The world is moving towards a low carbon economy, the Paris climate agreement adopted last year marks this development irreversible. The agreement sets out ambitious goals, and for the EU it is important to deliver on its promises. It is equally important that we seize the vast opportunities connected to the transformation of our economy into a low-carbon economy.

Europe has over ten years of experience with the EU emissions trading system (EU ETS). The EU ETS is the world's largest cap-and-trade scheme, covering over 11,000 power plants and industrial installations. It has been successful in bringing climate change on the agenda of boardrooms, by introducing a price on carbon – which has helped to stimulate investments in low-carbon technologies. Governments and the private sector are making the case for carbon markets all across the world, as a tool that can secure competitiveness, encourage innovation, and deliver meaningful emissions reductions. A growing group of countries, including notably China, uses or will use carbon markets to achieve its climate objectives.

In July 2015, the European Commission presented a proposal to revise the EU ETS Directive in order to reach the EU's objective of at least 40% domestic greenhouse gas emission cuts in 2030. The rapporteur welcomes the proposed reforms. However, some elements must be strengthened in order to ensure the integrity of the system, the predictability for industry and a level playing field across companies, sectors and Member States. It is vital, also in view of the recently adopted Paris agreement, that the EU ETS continues to drive adequate emission cuts. At the same time, it must prevent undue carbon costs for the best performing industries which are genuinely exposed to the risk of carbon leakage.

### **Delivering cost-efficient emission reductions**

According to the current Directive, carbon leakage provisions end in 2020. However, for some industrial sectors it will remain necessary to continue the free allocation temporarily, as an exemption to the general rule of auctioning as main allocation method, to prevent the risk of carbon leakage. Allocation rules and benchmarks must be both realistic and provide an incentive for continuous process improvements. More frequent adjustments according to actual production data is needed in order to avoid over-allocation and to not discourage efficient industries from growing. The free allocation must be better targeted on those sectors most exposed to carbon leakage risk, ensuring full support for sectors in greatest need. This approach will minimise the need to apply a cross-sectoral correction factor that may otherwise unjustly and bluntly disadvantage the competitiveness of some industrial sectors.

### **Driving industrial innovation**

The EU ETS can and should be a powerful tool to help scaling up innovative low-carbon technologies. The rapporteur welcomes the Commission's proposal to increase the size of the innovation fund, and the extended scope to low-carbon innovation in industrial sectors. However, the EU ETS currently fails to promote low-carbon investments and innovation on

the scale needed to achieve medium and long term climate objectives. It needs a stronger innovation fund with an additional 150 million allowances to leverage private investments in breakthrough industrial technologies. As the EU ETS cap tightens and the carbon leakage provisions are reformed, the ultimate aim being 100% auctioning, policies to support investment in the transition to a low carbon economy become increasingly more important.

### **Consistent with an increasingly integrated energy market**

The reform of the EU ETS, along with its impact on energy production and energy trade, should be consistent with the objectives of the Energy Union. An innovative and modern European energy system is vital, and more resources should be directed towards this aim. Post-2020 EU ETS rules aimed at the power sector or at the compensation of indirect carbon costs for electricity consumers need to be more harmonised, and should aim to establish a level playing field and not to distort competition in the electricity market between Member States. The transitional free allocation to the energy sector in lower income member states must be conducted in a transparent manner, ensuring economically viable projects in line with EU's long term energy and climate goals. A general review of the interaction between the EU ETS and other climate, air quality and energy policies at European and national level should be conducted regularly, in order to avoid overlapping policies and negative interaction between different instruments.

### **Building on the Paris agreement**

What effects the Paris climate agreement will have for the EU ETS is not yet explored in detail, and is thus not possible to fully take into account for the start of phase 4.

While the Kyoto Protocol only covered 12 % of global emissions, countries accounting for over 95 % of global emissions are now required to implement national climate plans and increase ambition each fifth year. The EU ETS Directive must therefore be aligned with the Paris agreement, including the establishment of an EU ETS ratchet up mechanism that makes it possible to regularly revise the carbon leakage provisions and level of ambition.

## **AMENDMENTS**

The Committee on Industry, Research and Energy calls on the Committee on the Environment, Public Health and Food Safety, as the committee responsible, to take into account the following amendments:

### **Amendment 1**

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

#### **Recital 1**

*Text proposed by the Commission*

(1) Directive 2003/87/EC of the European Parliament and of the Council<sup>15</sup> 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.

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<sup>15</sup> 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).

*Amendment*

(1) Directive 2003/87/EC of the European Parliament and of the Council<sup>15</sup> 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 ***while ensuring the international competitiveness of EU industry and avoiding carbon and investment leakage.***

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<sup>15</sup> 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).

## **Amendment 2**

### **Proposal for a directive**

#### **Recital 2**

*Text proposed by the Commission*

(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 these 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 UN Framework Convention on Climate Change on 6 March 2015<sup>16</sup>.

*Amendment*

(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 these 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 UN Framework Convention on Climate Change on 6 March 2015[1]. ***The Paris Agreement on Climate Change (“the Agreement”), approved at the 21st***

*session of the Conference of the Parties to the United Nations Framework Convention on Climate Change, marks a new level of global commitment, aiming to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5°C. In accordance with the Agreement, all sectors of the economy have to contribute to the reduction of CO2 emissions. Targets and measures agreed at the international level, such as in the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO), are welcomed if they achieve adequate emissions reductions.*

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### Amendment 3

#### Proposal for a directive Recital 3

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

(3) 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

##### *Amendment*

(3) The European Council confirmed that a well-functioning, reformed **and more effective** 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, **third countries or subnational regions**, 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

easily understandable.

transparency and to render the overall system simpler and more easily understandable. *While the Union is clear on its intention to maintain the EU ETS as the centrepiece of Union climate policy, other countries and regions in the world are following the Union climate policies. In 2016, some 40 countries and more than 20 cities, states and provinces use carbon-pricing mechanisms, to different extents, with more planning to implement them in the future. The Union encourages other countries to follow and persevere in their efforts.*

#### Amendment 4

##### Proposal for a directive

##### Recital 4

*Text proposed by the Commission*

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

*Amendment*

(4) It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens. Achieving this requires continuation of ambitious climate action with the EU ETS as the cornerstone of Europe's climate policy, and progress on the other aspects of Energy Union<sup>17</sup>, ***while ensuring these aspects, such as those related to energy efficiency and renewable energy sources, enhance the goals of the EU ETS and do not undermine its market effectiveness.*** 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, ***in order to meet the Union's long-term goal of reducing greenhouse gas emissions by 80-95% in 2050. It is regretted that the carbon price signal during Phase 3 has not been high enough to incentivize investments in low carbon technology and processes. A carbon price that is sufficient to incentivize investments in decarbonisation***

*of the production is key for a well-functioning EU ETS. The re-industrialisation 20% target of industry's share in the Union's GDP by 2020 in this context is to be emphasised, as well as the importance of innovation, investments in R&D, employment and skills renewal.*

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

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

## Amendment 5

### Proposal for a directive Recital 5

*Text proposed by the Commission*

(5) Article 191(2) of the Treaty on the Functioning of the European Union requires that Union policy is 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 postpone full transition, 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.

*Amendment*

(5) Article 191(2) of the Treaty on the Functioning of the European Union requires that Union policy is 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 *the risk of carbon and investment* leakage is a justification to postpone full transition, and targeted free allocation of allowances to industry is justified in order to address genuine risks of increases in *global* greenhouse gas emissions *and diversion of investments to* 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. *A study commissioned by the Commission in 2013 concluded that during the years 2005 to 2012 no carbon leakage had occurred.*

## Amendment 6

### Proposal for a directive Recital 6

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

(6) The auctioning of allowances remains the general rule, with free allocation as *an* exception ***for a transitional period in order to maintain European global competitiveness.*** Consequently, and as confirmed by the European Council, the share of allowances to be auctioned, which was 57% over the period 2013-2020, should not be reduced. ***From 2021 onwards, the share of allowances to be auctioned should be 57% with the possibility of it being decreased by up to five percentage points to ensure a sufficient amount of free allowances.*** The Commission's Impact Assessment<sup>18</sup> provides details on the auction share and specifies that this 57% share is made up of allowances auctioned on behalf of Member States, including allowances set aside for new entrants but not allocated, allowances for modernising electricity generation in some Member States and allowances which are to be auctioned at a later point in time because of their placement in the Market Stability Reserve established by Decision (EU) 2015/... of the European Parliament and of the Council<sup>19</sup>.

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

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

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

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

## **Amendment 7**

### **Proposal for a directive Recital 7**

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

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

## Amendment 8

### Proposal for a directive

#### Recital 8

*Text proposed by the Commission*

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

## Amendment 9

### Proposal for a directive

#### Recital 9

*Text proposed by the Commission*

(9) **Member States** should **partially** compensate, **in accordance with** state aid rules, certain installations in sectors or sub-

*Amendment*

(8) In order to reflect technological progress in the sectors concerned **benchmarks** should be **fully updated with 2017 and 2018 data reflecting real technological improvements. For reasons of predictability and providing a continuous incentive for process improvement, the benchmarks** should be **further updated** through applying a factor that represents the best assessment of progress across sectors, which should then take into account robust, objective and verified data from installations so that sectors whose rate of improvement differs considerably from this factor have a benchmark value closer to their actual rate of improvement. Where the data shows a difference from factor reduction of more than 0.5% of the value higher or lower per year over the relevant period, the related benchmark value shall be adjusted by that percentage. **Where sectors have a lower rate of improvement than 0,3%, that percentage should be applied.** To ensure a level playing field for the production of aromatics, hydrogen and syngas in refineries and chemical plants, the benchmark values for aromatics, hydrogen and syngas should continue to be aligned to the refineries benchmarks.

*Amendment*

(9) **A harmonised EU mechanism** should **be established to** compensate, **taking** state aid rules **into account**, certain

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

installations in sectors or sub-sectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices. The Protocol and accompanying decisions adopted by the Conference of the Parties in Paris need to provide for the dynamic mobilisation of climate finance, technology transfer and capacity building for eligible Parties, particularly those with least capabilities. Public sector climate finance will continue to play an important role in mobilising resources after 2020. Therefore, **at least 80% of the** auction revenues should **be spent on climate actions listed in this Directive, including** for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate. The amount of climate finance to be mobilised will also depend on the ambition and quality of the proposed Intended Nationally Determined Contributions (INDCs), subsequent investment plans and national adaptation planning processes. **The EU** should also **establish a Just Transition Fund to pool** auction revenues to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy.

## Amendment 10

### Proposal for a directive Recital 10

#### *Text proposed by the Commission*

(10) The main long-term incentive from this Directive for the capture and storage **of CO<sub>2</sub> (CCS)**, new renewable energy technologies and breakthrough innovation in low-carbon technologies and processes is the carbon price signal it creates and that allowances will not need to be surrendered for CO<sub>2</sub> emissions which are permanently stored or avoided. In addition, to

#### *Amendment*

(10) The main long-term incentive from this Directive for the capture and storage **(CCS) and carbon capture and use (CCU) of CO<sub>2</sub>**, new renewable energy technologies and breakthrough innovation in **sustainable** low-carbon technologies and processes is the carbon price signal it creates and that allowances will not need to be surrendered for CO<sub>2</sub> emissions which

supplement the resources already being used to accelerate demonstration of commercial CCS facilities and innovative renewable energy technologies, EU ETS allowances should be used to provide guaranteed rewards for deployment of CCS facilities, new renewable energy technologies and industrial innovation in low-carbon technologies and processes in the Union for CO<sub>2</sub> stored or avoided on a sufficient scale, provided an agreement on knowledge sharing is in place. The majority of this support should be dependent on verified avoidance of greenhouse gas emissions, while some support may be given when pre-determined milestones are reached taking into account the technology deployed. The maximum percentage of project costs to be supported may vary by category of project.

are permanently stored or avoided. In addition, to supplement the resources already being used to accelerate demonstration of commercial CCS *and CCU* facilities and innovative renewable energy technologies, EU ETS allowances should be used to provide guaranteed rewards for deployment of CCS *and CCU* facilities, new renewable energy technologies and industrial innovation in *sustainable* low-carbon technologies and processes in the Union for CO<sub>2</sub> stored or avoided on a sufficient scale, provided an agreement on knowledge sharing is in place. The majority of this support should be dependent on verified avoidance of greenhouse gas emissions, while some support may be given when pre-determined milestones are reached taking into account the technology deployed. The maximum percentage of project costs to be supported may vary by category of project.

## Amendment 11

### Proposal for a directive Recital 11

#### *Text proposed by the Commission*

(11) 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 Regulation 1031/2010. Member States who in 2013 had a GDP per capita at market exchange rates of below 60% below the Union average should be eligible for funding from the Modernisation Fund and 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. The rules for governing the

#### *Amendment*

(11) 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 Regulation 1031/2010. Member States who in 2013 had a GDP per capita at market exchange rates of below 60% below the Union average should be eligible for funding from the Modernisation Fund and 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 *in line with the Union's 2030 and 2050 climate and energy goals* while avoiding

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. The function of the governance structure should be commensurate with the purpose of ensuring the appropriate use of the funds. ***That*** governance structure should be composed of an investment board and ***a management 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 banks or through grants via a national programme sharing the objectives of the Modernisation Fund.*** Investments financed from the fund should be proposed by the Member States. To ensure that the investment needs in low income Member States are adequately addressed, the distribution of funds will take into account in equal shares verified emissions and GDP criteria. The financial assistance from the Modernisation Fund could be provided through different forms.

## Amendment 12

### Proposal for a directive Recital 12

#### *Text proposed by the Commission*

(12) The European Council confirmed that the modalities, including transparency, of the optional free allocation to modernise the energy sector in certain Member States should be improved. Investments with a value of €10 million or more should be selected by the Member State concerned through a competitive bidding process on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments modernising the energy sector in line with the Energy

distortions of the internal energy market. 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. The function of the governance structure should be commensurate with the purpose of ensuring the appropriate use of the funds. ***The*** governance structure should be composed of an investment board and ***an advisory board.*** Investments financed from the fund should be proposed by the Member States. To ensure that the investment needs in low income Member States are adequately addressed, the distribution of funds will take into account in equal shares verified emissions and GDP criteria. The financial assistance from the Modernisation Fund could be provided through different forms.

#### *Amendment*

(12) The European Council confirmed that the modalities, including transparency, of the optional free allocation to modernise the energy sector in certain Member States should be improved. Investments with a value of €10 million or more should be selected by the Member State concerned through a competitive bidding process on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments modernising the energy sector in line with the Energy

Union objectives. Investments with a value of less than €10 million should also be eligible for funding from the free allocation. The Member State concerned should select such investments based on clear and transparent criteria. The results of this selection process should be subject to public consultation. The public should be duly kept informed at the stage of the selection of investment projects as well as of their implementation.

Union objectives. ***The list of both selected and rejected projects should be made publicly available.*** Investments with a value of less than €10 million should also be eligible for funding from the free allocation. The Member State concerned should select such investments based on clear and transparent criteria ***set in this Directive.*** The results of this selection process should be subject to public consultation. The public should be duly kept informed at the stage of the selection of investment projects as well as of their implementation.

### Amendment 13

#### Proposal for a directive Recital 13

*Text proposed by the Commission*

(13) EU ETS funding should be coherent with other Union funding programmes, including European Structural and Investment Funds, ***so as*** to ensure the effectiveness of public spending.

*Amendment*

(13) EU ETS funding should be coherent with other Union funding programmes, including ***Horizon 2020, The European Fund for Strategic Investments, and*** European Structural and Investment Funds, ***taking into account the European Investment Bank Climate Investment Strategy*** to ensure the effectiveness of public spending.

### Amendment 14

#### Proposal for a directive Recital 14

*Text proposed by the Commission*

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

*Amendment*

(14) The existing provisions which are in place for small installations to be excluded from the EU ETS allow the installations which are excluded to ***be extended in order to reduce unnecessary administrative costs***, 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

trading period.

this option to do so at the beginning of each trading period.

## **Amendment 15**

### **Proposal for a directive Recital 16 b (new)**

*Text proposed by the Commission*

*Amendment*

***(16b) In order to considerably reduce the administrative burden faced by companies, the Commission could consider measures such as automating the submission and verification of emissions reports, fully exploiting the potential of information and communication technologies;***

## **Amendment 16**

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

*Text proposed by the Commission*

*Amendment*

***In Article 3, paragraph 1, the following point is added:***

***“(ua) small emitter’ means an installation which has reported to the competent authority emissions of less than 50 000 tonnes of carbon dioxide equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW, excluding emissions from biomass, in each of the three years preceding the notification under point (a) of Article 27(1).”***



## Amendment 17

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4 – point a

Directive 2003/87/EC

Article 10 – paragraph 1

#### *Text proposed by the Commission*

(a) **three** new subparagraphs are added to paragraph 1:

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

#### *Amendment*

(a) **four** new subparagraphs are added to paragraph 1:

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

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.

***300 million allowances placed in the market stability reserve shall be cancelled in the year 2021.***”

## Amendment 18

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4 – point b – point i

Directive 2003/87/EC

Article 10 – paragraph 2

#### *Text proposed by the Commission*

(i) **in point (a), “88%” is replaced by “90%”;**

#### *Amendment*

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

2 The total quantity of allowances to be auctioned by each Member State shall be composed as follows:

- (a) 90 % of the total quantity of allowances to be auctioned being distributed amongst Member States in shares that are identical to the share of verified emissions under the Community scheme for 2005 or the average of the period from 2005 to 2007, whichever one is the highest, of the Member State concerned;
- (b) 10% of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity and growth within the Community, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa.";  
*and*

“2 The total quantity of allowances to be auctioned by each Member State shall be composed as follows:

- (a) 90 % of the total quantity of allowances to be auctioned being distributed amongst Member States in shares that are identical to the share of verified emissions under the Community scheme for 2005 or the average of the period from 2005 to 2007, whichever one is the highest, of the Member State concerned;
- (b) 10 % of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity and growth within the Community, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa. ***For those Member States eligible under the Modernisation Fund as set out in Article 10d, their share of allowances specified in Annex IIa shall be transferred to their share in the Modernisation Fund.***”

## Amendment 19

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4 – point b – point ii

Directive 2003/87/EC

Article 10 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

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

***deleted***

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

## Amendment 20

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4 – point c

2003/87/EC

Article 10 – paragraph 3

*Text proposed by the Commission*

(c) *In paragraph 3, the following points (j), (k) and (l) are added:*

3 Member States shall determine the use of revenues generated from the auctioning of allowances. At least **50 %** of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in paragraph 2, points (b) and (c), or the equivalent in financial value of these revenues, **should** be used for one or more of the following:

(a) to reduce greenhouse gas emissions, including by contributing to the Global Energy Efficiency and Renewable Energy Fund and to the Adaptation Fund as made operational by the Poznan Conference on Climate Change (COP 14 and COP/MOP 4), to adapt to the impacts of climate change and to fund research and development as well as demonstration projects for reducing emissions and for adaptation to climate change, including participation in initiatives within the framework of the European Strategic Energy Technology Plan and the European Technology Platforms;

(b) to develop renewable energies to meet the commitment of the Community to using **20 %** renewable energies by **2020**, 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 Community to increase energy efficiency

*Amendment*

(c) *Paragraph 3 is replaced by the following:*

“3 Member States shall determine the use of revenues generated from the auctioning of allowances. At least **80%** of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in paragraph 2, points (b) and (c), or the equivalent in financial value of these revenues, **shall** be used for one or more of the following:

(a) to reduce greenhouse gas emissions, including by contributing to the Global Energy Efficiency and Renewable Energy Fund and to the Adaptation Fund as made operational by the Poznan Conference on Climate Change (COP 14 and COP/MOP 4), **and to the Green Climate Fund**, to adapt to the impacts of climate change and to fund research and development as well as demonstration projects for reducing emissions and for adaptation to climate change, including participation in initiatives within the framework of the European Strategic Energy Technology Plan and the European Technology Platforms;

(b) to develop renewable energies to meet the commitment of the Community to using **[update in accordance with agreement by the co-legislators]** % renewable energies by **2030**, 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 Community to increase

by **20 % by 2020**;

(c) measures to avoid deforestation and increase afforestation and reforestation in developing countries that have ratified the international agreement on climate change, to transfer technologies and to facilitate adaptation to the adverse effects of climate change in these countries;

(d) forestry sequestration in the Community;

(e) the environmentally safe capture and geological storage of CO<sub>2</sub>, in particular from solid fossil fuel power stations and a range of industrial sectors and subsectors, including in third countries;

(f) to encourage a shift to low-emission and public forms of transport;

(g) to finance research and development in energy efficiency and clean technologies in the sectors covered by this Directive;

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

(i) ***to cover administrative expenses of the management of the Community scheme.***

(j) ***to fund financial measures in favour of sectors or subsectors that 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 that these measures meet the conditions set out in Article 10a(6);***

(k) ***for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate***

energy efficiency by ***[update in accordance with agreement by the co-legislators]% by 2030***;

(c) measures to avoid deforestation and increase afforestation and reforestation in developing countries that have ratified the international agreement on climate change, to transfer technologies and to facilitate adaptation to the adverse effects of climate change in these countries;

(d) forestry sequestration in the Community;

(e) the environmentally safe capture and geological storage ***or use*** of CO<sub>2</sub>, in particular from solid fossil fuel power stations and a range of industrial sectors and subsectors, including in third countries;

(f) to encourage a shift to low-emission and public forms of transport;

(g) to finance research and development in energy efficiency and clean technologies in the sectors covered by this Directive;

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

(i) ***for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate change.;***

(j) ***to encourage resource efficiency and a circular economy;***

(k) ***In addition, revenues may be used for one or more of the following:***

*change.;*

*(i) to cover administrative expenses of the management of the Community scheme;*

*(ii) to fund financial measures in favour of sectors or subsectors that 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 that these measures meet the conditions set out in Article 10a(6);*

*(l) to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy in close coordination with the social partners.*

Member States shall be deemed to have fulfilled the provisions of this paragraph if they have in place and implement fiscal or financial support policies, including in particular in developing countries, or domestic regulatory policies, which leverage financial support, established for the purposes set out in the first subparagraph and which have a value equivalent to at least 50 % of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in paragraph 2, points (b) and (c).

Member States shall inform the Commission as to the use of revenues and the actions taken pursuant to this paragraph in their reports submitted under Decision No 280/2004/EC."

Member States shall be deemed to have fulfilled the provisions of this paragraph if they have in place and implement fiscal or financial support policies, including in particular in developing countries, or domestic regulatory policies, which leverage financial support, established for the purposes set out in the first subparagraph and which have a value equivalent to at least 50 % of the revenues generated from the auctioning of allowances referred to in paragraph 2, including all revenues from the auctioning referred to in paragraph 2, points (b) and (c).

Member States shall inform the Commission as to the use of revenues and the actions taken pursuant to this paragraph in their reports submitted under Decision No 280/2004/EC. ***That information shall be provided through a standardised template provided by the Commission, with a minimum level of detail allowing for transparency and comparability, including information on additionality of the funds. The Commission shall make this information available to the public on its website.***"

## Amendment 21

### Proposal for a directive

#### Article 1 – paragraph 1 – point 4 – point c a (new)

Directive 2003/87/EC

Article 10 – paragraph 3a and 3b (new)

*Text proposed by the Commission*

*Amendment*

**(ca) the following paragraphs are inserted:**

**“3a Up to 260 million of the total quantity of allowances, half of which are taken from the share of allowances to be auctioned as referred to in Article 10(1) and half of which would otherwise be allocated for free, shall be auctioned to establish a harmonised arrangement at Union level as set out in Article 10a(6).**

**3b. Just Transition Fund**

**A Just Transition Fund shall be created as of 1 January 2021 as a complement to the European Regional Development Fund and the European Social Fund and shall be funded through the pooling of 2% of the auctioning revenues.**

**The revenues of those auctions would remain at Union level, with the goal of using them to cushion the social impact of climate policies in regions which combine a high share of workers in carbon-dependent sectors and a GDP per capita well below the Union average. Such measures shall respect the principle of subsidiarity.**

**Those auctioning revenues aimed at just transition can be put to use in different ways, such as:**

- **creating redeployments and/or mobility cells,**
- **education/training initiatives to re-skill or upskill workers,**
- **support in job search,**

- *business creation, and*
- *monitoring and pre-emptive measures to avoid or minimise the negative impact of restructuring process on physical and mental health.*

*Since the core activities to be financed by a Just Transition Fund are, strongly related to the labour market, social partners shall be actively involved into the fund management – on the model of the European Social Fund committee – and the participation of local social partners shall be a key requirement for projects to get funding.”*

## **Amendment 22**

### **Proposal for a directive**

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

Directive 2003/87/EC

Article 10 – paragraph 5

#### *Present text*

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

#### *Amendment*

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

“5. The Commission shall monitor the functioning of the European carbon market. Each year, it shall submit a report to the European Parliament and to the Council on the functioning of the carbon market including the implementation of the auctions, liquidity and the volumes traded. ***The report shall also address the interaction between the EU ETS and other climate and energy measures at Union and national level, and shall analyse the implications of various policy instruments on the functioning of EU ETS market, especially on the supply-demand balance in the carbon market. The report shall also address the pass-through of the costs of allowances in the product prices for the most relevant sectors and sub-sectors, in particular in relation to their market shares. If***

necessary, Member States shall ensure that any relevant information is submitted to the Commission at least two months before the Commission adopts the report.”

## **Amendment 23**

### **Proposal for a directive**

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

Directive 2003/87/EC

Article 10 – paragraph 5a (new)

*Text proposed by the Commission*

*Amendment*

**(db) the following paragraph is added:**

**“5a. Member States shall communicate to the Commission the closures of electricity generation capacity due to national measures. The Commission shall calculate the equivalent number of allowances that those closures represent. Member States may retire a corresponding volume of allowances.”**

## **Amendment 24**

### **Proposal for a directive**

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

Directive 2003/87/EC

Article 10a – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

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

1 By 31 December 2010, the Commission shall adopt Communitywide and fully-harmonised implementing measures for the allocation of the allowances referred to in paragraphs 4, 5, 7 and 12, including any necessary provisions for a harmonised application of paragraph 19.

The Commission shall be empowered to adopt a delegated act in accordance with

**(a) paragraphs 1, 2 and 3 are replaced by the following:**

“1 By 31 December 2010, the Commission shall adopt Communitywide and fully-harmonised implementing measures for the allocation of the allowances referred to in paragraphs 4, 5, 7 and 12, including any necessary provisions for a harmonised application of paragraph 19.

The Commission shall be empowered to adopt a delegated act in accordance with



Article 23. *This act shall also provide* for additional allocation from the new entrants reserve for significant production *increases by applying the same thresholds and allocation adjustments as apply in respect of partial cessations of operation.*

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

For each sector and subsector, in principle, the benchmark shall be calculated for products rather than for inputs, in order to maximise greenhouse gas emissions reductions and energy efficiency savings throughout each production process of the sector or the subsector concerned.

2. In defining the principles for setting ex-ante benchmarks in individual sectors or subsectors, the starting point shall be the average performance of the 10 % most efficient installations in a sector or subsector in the Community in the years 2007-2008. The Commission shall consult

Article 23 *supplementing this Directive by providing* for additional allocation from the new entrants reserve for significant production *changes. Any increase or decrease of more than 10% in production expressed as a rolling average of verified production activity for the two preceding years compared to the production activity reported in accordance with Article 11 shall be adjusted with a corresponding amount of allowances by placing allowances into and releasing allowances from the reserve referred to in paragraph 7.*

The measures referred to in the first subparagraph shall, to the extent feasible, determine Community-wide ex-ante benchmarks so as to ensure that allocation takes place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques *while providing predictability to industrial installations*, by taking account of the most efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass and capture and storage of CO<sub>2</sub>, where such facilities are available, and shall not provide incentives to increase emissions. No free allocation shall be made in respect of any electricity production, except for cases falling within Article 10c and electricity produced from waste gases."

For each sector and subsector, in principle, the benchmark shall be calculated for products rather than for inputs, in order to maximise greenhouse gas emissions reductions and energy efficiency savings throughout each production process of the sector or the subsector concerned.

2. In defining the principles for setting ex-ante benchmarks in individual sectors or subsectors, the starting point shall be the average performance of the 10 % most efficient installations in a sector or subsector in the Community in the years 2007-2008. The Commission shall consult

the relevant stakeholders, including the sectors and subsectors concerned.

The regulations pursuant to Articles 14 and 15 shall provide for harmonised rules on monitoring, reporting and verification of production-related greenhouse gas emissions with a view to determining the ex-ante benchmarks.

*The benchmark values for free allocation shall be adjusted in order to avoid windfall profits and reflect technological progress in the period between 2007-8 and each later period for which free allocations are determined in accordance with Article 11(1). This adjustment shall reduce the benchmark values set by the act adopted pursuant to Article 10a by 1% of the value that was set based on 2007-8 data in respect of each year between 2008 and the middle of the relevant period of free allocation, unless:*

(i) On the basis of information submitted pursuant to Article 11, the Commission shall identify whether the values for each benchmark calculated using the principles in Article 10a differ from the annual reduction referred to above by more than 0.5% of the **2007-8** value higher or lower annually. If so, that benchmark value shall be adjusted either 0.5% or 1.5% **in respect of each year between 2008 and the**

the relevant stakeholders, including the sectors and subsectors concerned. ***Free allocation shall only be given to sectors and subsectors for which data is provided in accordance with harmonised established methodology, in order to ensure equality and transparency.***

The regulations pursuant to Articles 14 and 15 shall provide for harmonised rules on monitoring, reporting and verification of production-related greenhouse gas emissions with a view to determining the ex-ante benchmarks, ***taking into account the long term emissions reduction potential with a view to achieving the Union's long term climate goals.***

***Before the start of the trading period, benchmarks in individual sectors and subsectors shall be fully updated based on the average of the verified emissions of the 10% most efficient installations in a sector or subsector in the Union in the years 2017 and 2018. Benchmarks shall be set on the basis of information submitted pursuant to Article 11.***

***The benchmarks shall reflect real technological progress and its emission reductions compared to the starting point set out in the first subparagraph. Based on the full update with 2017 and 2018 data, the values shall be reduced each subsequent year by 1% compared to the value that was set, unless:"***

(i) On the basis of information submitted pursuant to Article 11, the Commission shall identify whether the values for each benchmark calculated using the principles in Article 10a differ from the annual reduction referred to above by more than 0.5% of the **2017-2018** value higher or lower annually. If so, that benchmark value shall be adjusted either 0.5% or 1.5% each year;

*middle of the period for which free allocation is to be made;*

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

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

3 Subject to paragraphs 4 and 8, and notwithstanding Article 10c, no free allocation shall be given to electricity generators, to installations for the capture of CO<sub>2</sub>, to pipelines for transport of CO<sub>2</sub> or to CO<sub>2</sub> storage sites.

## **Amendment 25**

### **Proposal for a directive**

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

Directive 2003/87/EC

Article 10a – paragraph 2 – subparagraph 3

*Text proposed by the Commission*

*(b) a new third subparagraph is added to paragraph 2 as follows:*

*The benchmark values for free allocation shall be adjusted in order to avoid windfall profits and reflect technological*

*(ii) On the basis of information submitted pursuant to Article 11, the Commission shall identify whether the values for each benchmark calculated using the principles in Article 10a is lower compared to the annual reduction referred to above by more than 0,7% of the 2017-2018 value annually in the two most recent years for which data is available. If so, that benchmark value shall be lowered in that year by 0,3%;*

*(iia) By way of derogation regarding the benchmark values for aromatics, hydrogen and syngas, those 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.*

The Commission shall adopt an implementing act for this purpose in accordance with Article 22a, **and shall aim at reducing the administrative burden on SMEs in data collection.**

3 Subject to paragraphs 4 and 8, and notwithstanding Article 10c, no free allocation shall be given to electricity generators, to installations for the capture of CO<sub>2</sub>, to pipelines for transport of CO<sub>2</sub> or to CO<sub>2</sub> storage sites.”

*Amendment*

*deleted*

*progress in the period between 2007-8 and each later period for which free allocations are determined in accordance with Article 11(1). This adjustment shall reduce the benchmark values set by the act adopted pursuant to Article 10a by 1% of the value that was set based on 2007-8 data in respect of each year between 2008 and the middle of the relevant period of free allocation, unless:*

*(i) On the basis of information submitted pursuant to Article 11, the Commission shall identify whether the values for each benchmark calculated using the principles in Article 10a differ from the annual reduction referred to above by more than 0.5% of the 2007-8 value higher or lower annually. If so, that benchmark value shall be adjusted either 0.5% or 1.5% in respect of each year between 2008 and the middle of the period for which free allocation is to be made;*

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

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

## **Amendment 26**

### **Proposal for a directive**

**Article 1 – paragraph 1 – point 5 – point c**

Directive 2003/87/EC

Article 10a – paragraph 5

*Text proposed by the Commission*

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

**5. In order to respect the auctioning share set out in Article 10, the sum of free**

*Amendment*

**(c) paragraphs 5, 6, 7 and 8 are replaced by the following:**

**“5. Where the sum of free allocations in every year does not reach the maximum**

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

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

level that respects the Member State auctioning share *set out in Article 10*, 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, *an amount of allowances equivalent to a reduction of up to five percentage points of the share of allowances to be auctioned by Member States over the entire ten-year period beginning on 1 January 2021 shall be distributed free of charge to sectors and sub-sectors pursuant to Article 10b. Where, nonetheless, this reduction is insufficient to meet the demand of sectors or subsectors pursuant to Article 10b*, free allocations shall be adjusted accordingly. Any such adjustment shall be done in a uniform manner, *applied so that the 10% best performers, as defined in Article 10a based on the information submitted pursuant to Article 11, are not impacted.*”

6. *A harmonised arrangement at Union level is established to compensate installations*, in favour of sectors *and* sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, taking into account any effects on the internal market. *That harmonised compensation shall be financed as set out in Article 10 for such costs.*

*Compensation shall be proportionate, take account of State aid rules, and shall be applied in a way to avoid negative effects on the internal market and overcompensation. The compensation measures shall maintain an incentive for energy efficiency and a switch from high-carbon to low-carbon electricity use. Where the amount of compensation as set out in Article 10 is not sufficient to compensate for all eligible costs, the amount of aid for all eligible installations shall be reduced uniformly. Such*

***measures, including additional compensation by Member States according to Article 10(3), shall be in line with State aid rules, and shall not create new market distortions.***

7. Allowances from the maximum amount referred to Article 10a(5) of this Directive which were not allocated for free up to 2020 shall be set aside for new entrants and significant production increases, together with 250 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/... of the European Parliament and of the Council(\*).

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(\*) [insert the full title of the Decision and the OJ reference].

From 2021, allowances not allocated to installations because of the application of paragraphs 19 and 20 shall be added to the reserve.

Allocations shall be adjusted by the linear factor referred to in Article 9.

No free allocation shall be made in respect of any electricity production by new entrants.

By 31 December 2010, the Commission shall adopt harmonised rules for the application of the definition of “new entrant”, in particular in relation to the definition of “significant extensions”.

7. Allowances from the maximum amount referred to Article 10a(5) of this Directive which were not allocated for free up to 2020 shall be set aside for new entrants and significant production increases, together with 250 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/... of the European Parliament and of the Council(\*).

---

(\*) [insert the full title of the Decision and the OJ reference].

From 2021, allowances not allocated to installations because of the application of paragraphs 19 and 20 shall be added to the reserve.

Allocations shall be adjusted by the linear factor referred to in Article 9.

No free allocation shall be made in respect of any electricity production by new entrants.

By 31 December 2010, the Commission shall adopt harmonised rules for the application of the definition of “new entrant”, in particular in relation to the definition of “significant extensions”.

***7a. Where sectors and sub sectors concerned by Article 10b paragraphs 1 and 2 receive free allocations in excess, the monetary value of the excess allowances shall be exclusively invested (either engaged or paid) by 31 December 2030 in low carbon investments in the firm's installations covered by the EU ETS fulfilling the requirements in Article 10 paragraph 3 points (b), (e) and (g) as well as Article 10c paragraphs 2 and 3.***

***A balance will be made twice during phase IV, in 2025 and 2030, with a***

8. **400** million allowances shall be available to support innovation in low-carbon technologies and processes in industrial sectors listed in Annex I, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe capture and geological storage (CCS) of CO<sub>2</sub> as well as demonstration projects of innovative renewable energy technologies, in the territory of the Union.

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

In addition, 50 million unallocated allowances from the market stability reserve established by Decision (EU) 2015/... shall supplement any existing resources remaining under this paragraph for projects referred to above, **with projects in all Member States including small-scale projects, before 2021**. Projects shall

**possibility of sanctions under Article 16.**

8. **600 million allowances, of which 200 million allowances shall taken from the auction share set out in Article 10,** shall be available to support **and leverage investments, using grants and different instruments managed by the European Investment Bank, in** innovation in **the whole range of sustainable** low-carbon technologies and processes in industrial sectors listed in Annex I, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe capture and geological storage (CCS) **or use (CCU)** of CO<sub>2</sub> as well as demonstration projects, **including pilot projects,** of innovative renewable energy technologies **and energy storage**, in the territory of the Union.

The allowances shall be made available for innovation in low-carbon industrial technologies, **products** and processes **in existing and new installations** and support for demonstration projects for the development of a wide range of CCS, **CCU** and innovative renewable energy technologies that are not yet commercially viable. In order to promote innovative projects, up to 60% of the relevant costs of projects may be supported, out of which up to 40% may not be dependent on verified avoidance of greenhouse gas emissions provided that pre-determined milestones are attained taking into account the technology deployed. **The Commission shall publish State-aid guidelines for Member State co-financing of eligible projects by... [12 months of the date of entry into force of this Directive]**

In addition, 50 million unallocated allowances from the market stability reserve established by Decision (EU) 2015/... shall supplement any existing resources remaining under this paragraph for projects referred to above, **including small-scale projects, before 2021**.

be selected on the basis of objective and transparent criteria.

*The monetisation of allowances for the innovation fund shall time the auctioning of allowances in such a way to provide certainty of available funds, while avoiding a negative impact on the orderly functioning of the carbon market. The timetable for the monetisation of allowances shall be published no later than 18 months before the start of Phase IV and shall ensure an even monetisation of the allowances spread out throughout that phase.*

*Projects shall be selected on the basis of objective and transparent criteria, taking into account their relevance in relation to the decarbonisation of the related sectors.*

*Low-carbon industrial projects, including CCS/CCU, shall significantly contribute to emissions reductions and shall enhance competitiveness and productivity.*

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

The Commission shall be empowered to adopt a delegated act in accordance with Article 23, *taking into account that the projects should focus on research and innovation for the design and development of breakthrough solutions and implementation of demonstration programmes in real industrial environments, run close-to-market, address technological solutions with potential for widespread applications or transferability within and possibly beyond the sector, as well as taking geographical balance into consideration where feasible without compromising with the principle of excellence.*

Allowances shall be set aside for the projects that meet the criteria referred to in the third subparagraph. Support for these projects shall be given via Member States and shall be complementary to substantial co-financing by the operator of the installation. They could also be co-financed by the Member State concerned, as well as by other instruments. No project

Allowances shall be set aside for the projects that meet the criteria referred to in the third subparagraph. Support for these projects shall be given via Member States and shall be complementary to substantial co-financing by the operator of the installation. They could also be co-financed by the Member State concerned, as well as by other instruments *and*



shall receive support via the mechanism under this paragraph that exceeds 15 % of the total number of allowances available for this purpose. These allowances shall be taken into account under paragraph 7.

***programmes such as the European Fund for Strategic Investments and Horizon 2020.*** No project shall receive support via the mechanism under this paragraph that exceeds 15 % of the total number of allowances available for this purpose. These allowances shall be taken into account under paragraph 7.

## **Amendment 27**

### **Proposal for a directive**

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

Directive 2003/87/EC

Article 10a – paragraph 6 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

**(d) the first subparagraph of paragraph 6 is replaced by the following:**

***deleted***

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

## **Amendment 28**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 5 – point e**

Directive 2003/87/EC

Article 10a – paragraph 7

*Text proposed by the Commission*

*Amendment*

**(e) paragraph 7 is amended as follows**

***deleted***

***7. Allowances from the maximum amount referred to Article 10a(5) of this Directive which were not allocated for free up to 2020 shall be set aside for new***

*entrants and significant production increases, together with 250 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/... of the European Parliament and of the Council(\*)*.

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*(\*) [insert the full title of the Decision and the OJ reference].*

*From 2021, allowances not allocated to installations because of the application of paragraphs 19 and 20 shall be added to the reserve.*

## **Amendment 29**

### **Proposal for a directive**

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

Directive 2003/87/EC

Article 10a – paragraph 8 – subparagraph 1, 2 and 3

*Text proposed by the Commission*

*Amendment*

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

*400 million allowances shall be available to support innovation in low-carbon technologies and processes in industrial sectors listed in Annex I, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe capture and geological storage (CCS) of CO<sub>2</sub> as well as demonstration projects of innovative renewable energy technologies, in the territory of the Union.*

*The allowances shall be made available for innovation in low-carbon industrial technologies and processes and support for demonstration projects for the development of a wide range of CCS and innovative renewable energy technologies that are not yet commercially viable in geographically balanced locations. In order to promote innovative projects, up to*

***60% of the relevant costs of projects may be supported, out of which up to 40% may not be dependent on verified avoidance of greenhouse gas emissions provided that pre-determined milestones are attained taking into account the technology deployed.***

***In addition, 50 million unallocated allowances from the market stability reserve established by Decision (EU) 2015/... shall supplement any existing resources remaining under this paragraph for projects referred to above, with projects in all Member States including small-scale projects, before 2021. Projects shall be selected on the basis of objective and transparent criteria.***

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

## **Amendment 30**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 6**

Directive 2003/87/EC

Article 10b and Article 10c

*Text proposed by the Commission*

“Article 10b

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 kgCO<sub>2</sub> divided by their gross value added (in €), shall be deemed to be at risk of carbon

*Amendment*

“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 kgCO<sub>2</sub> divided by their gross value added (in €), shall be deemed to be at risk of carbon

leakage. Such sectors and sub-sectors shall be allocated allowances free of charge for the period up to 2030 at 100% of the quantity determined in accordance with the measures adopted pursuant to Article 10a.

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

- 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;
- (c) profit margins as a potential indicator of long-run investment or relocation decisions.

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

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

#### Article 10c

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

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

leakage. Such sectors and sub-sectors shall be allocated allowances free of charge for the period up to 2030 at 100% of the quantity determined in accordance with the measures adopted pursuant to Article 10a.

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

- (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;
- (c) profit margins as a potential indicator of long-run investment or relocation decisions.

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 ***not*** be allocated allowances free of charge for the period up to 2030.

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

#### Article 10c

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

1. By derogation from Article 10a(1) to (5), Member States which had in **2014** a GDP per capita in € at market prices below 60% of the Union average may give a transitional free allocation to installations for electricity production for the

modernisation of the energy sector.

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

(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 and modernisation of the energy production, 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 projects are selected which:

(i) on the basis of a cost-benefit

modernisation *and sustainable transformation* of the energy sector.

*Any beneficiary Member State eligible for using the Modernisation Fund as set out in Article 10d, which has chosen to grant transitional free allocation pursuant to Article 10c, may transfer these allowances to its share of the Modernisation Fund set out in Annex IIb and allocate them pursuant to the provisions of Article 10d.*

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

(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 and modernisation of the energy production, ***including district heating, energy efficiency, energy storage***, transmission and distribution sectors are eligible to bid; ***where projects relate to electricity production, total greenhouse gas emissions per kilowatt hour of electricity produced in the installation shall not exceed 450 grams of CO2 equivalents; where projects relate to heat production, the Commission shall adopt an implementing act in accordance with Article 23a specifying the criteria.***

(c) define clear, objective, transparent and non-discriminatory selection criteria ***in line with the EU 2050 climate and energy objectives*** for the ranking of projects, so as to ensure that 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;

(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;

By 30 June 2019, any Member State intending to make use of optional free allocation shall publish a detailed national framework setting out the competitive bidding process and selection criteria for public comment.

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

3. The value of the intended investments shall at least equal the market value of the free allocation, while taking

analysis, ensure a net positive gain in terms of emission reduction and realise a pre-determined significant level of CO2 reductions;

(ii) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand; ***were not funded through the national investment plan 2013-2020;***

(iii) offer best value for money;

***(iiia) do not contribute to new coal-fired energy generation and heat capacity nor increase coal-dependency;***

***Projects selected shall aim to promote local- and community-driven integrated approaches.***

***The Commission shall keep under review the requirements set out in this paragraph, taking into account technological progress and the climate strategy of the European Investment Bank, and, if appropriate, adopt a delegated act in accordance with Article 23a by 2024.***

By 30 June 2019, any Member State intending to make use of optional free allocation shall publish a detailed national framework setting out the competitive bidding process and selection criteria for public comment.

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

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.

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

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.

6. Member States shall require benefiting electricity generators and network operators to report by 28 February of each year on the implementation of their selected investments. Member States shall report on this to the Commission, and the Commission shall make such reports public.

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 75% of the eligible costs of the intended investments may be supported.***

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

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.

6. Member States shall require benefiting electricity ***and heat*** generators and network operators to report by 28 February of each year on the implementation of their selected investments. Member States shall ***annually*** report on this to the Commission, and the Commission shall make such reports public. ***Member States and the Commission shall monitor and analyse potential arbitrage with regard to the threshold of €10 million for small projects and shall prevent unjustified dividing up of an investment over smaller projects by excluding more than one investment in the same beneficiary installation.***

## **Amendment 31**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 7**

Directive 2003/87/EC

Article 10d

*Text proposed by the Commission*

(7) the following Article 10d is inserted  
“Article 10d

Modernisation Fund

1. A fund to support investments in modernising energy systems and improving energy efficiency in Member States with a GDP per capita below 60% of the Union average in 2013 shall be established for the period 2021-30 and financed as set out in Article 10.

The investments supported shall be consistent with the aims of this Directive and the European Fund for Strategic Investments.

*Amendment*

(7) the following Article 10d is inserted  
“Article 10d

Modernisation Fund

1. A fund to support ***and leverage*** investments in modernising energy systems, ***including district heating, transmission and distribution systems and interconnectors***, and improving energy efficiency, ***in particular in buildings*** in Member States with a GDP per capita below 60% of the Union average in 2013 shall be established for the period 2021-30 and financed as set out in Article 10.

The investments supported shall be consistent with the aims of this Directive, ***the Union’s long-term climate and energy goals, the Energy Union*** and the European Fund for Strategic Investments.

***Supported projects shall fulfil the following conditions:***

***(i) comply with the principles of transparency, non-discrimination, equal treatment and sound financial management;***

***(ii) contribute to energy savings, renewable energy systems, energy storage and electricity interconnection, transmission and distribution sectors; where projects relate to electricity production, total greenhouse gas emissions per kilowatt hour of electricity produced in the installation shall not exceed 450 grams of CO2 equivalents; where projects relate to heat production, the Commission shall adopt a implementing act in accordance with Article 23a specifying the criteria.***

***(iii) 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,***



*(iv) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand and were not funded through the national investment plan 2013-2020;*

*(v) offer the best value for money;*

*(vi) do not contribute to new coal-fired energy and heat generation capacity nor increase coal-dependency.*

Projects selected should aim to promote local- or community-driven integrated approaches.

The Commission shall keep under review the requirements set out in this paragraph, taking into account technological progress and the climate strategy of the European Investment Bank, and, if appropriate, adopt a delegated act in accordance with Article 23a by 2024.

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

3. The funds shall be distributed based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria, leading to the distribution set out in Annex IIb.

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

2. The fund shall also finance small-scale investment projects in the modernisation of energy systems and energy efficiency. To this end, the investment board shall develop *investment* guidelines and *the advisory board shall on this basis define* selection criteria specific to such projects, *in line with the objectives of this Directive and with the criteria set in paragraph 1. These rules shall be made public.*

3. The funds shall be distributed based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria, leading to the distribution set out in Annex IIb.

4. *The beneficiary Member States shall be responsible for the governance of the fund, and shall jointly establish an investment board composed by one representative per beneficiary Member State, the Commission and three observers from interested parties (industrial federations, trade unions, NGOs). The board shall be responsible for determining a Union-level investment*

*instruments and investment selection criteria. The management committee shall be responsible for the day-to-day management of the fund.*

*policy in line with the requirements set out in this Article and consistent with Union policies and take decisions on investments. .*

*An advisory board shall be established, independent from the investment board, and shall be composed of experts with a high level of relevant market experience in project structuring and project financing. The advisory board shall be composed of three representatives from the beneficiary Member States, three representatives from the other Member States and experts from the Commission, the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD), selected for a period of 5 years. The advisory board shall provide advice with regard to specific projects with regard to pooling public and private financial resources, the eligibility of projects with investment requirements and the needs for project development assistance.*

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

*The chairmanship of the investment board* shall *be elected from its members based on a one-year-term rotation model*. The investment board shall strive to take decisions by consensus. *The advisory board shall adopt its opinion* by simple majority.

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

The *investment board and the advisory board* shall *operate in an open and transparent manner. The minutes of both board meetings shall be published. The composition of the investment board and advisory board shall be published and CVs and declarations of interests of the members shall be made public and regularly updated. The investment board and the advisory board shall on an ongoing basis check the absence of any conflict of interest. The advisory board shall submit twice a year to the European Parliament, the Council and the Commission a list of provided advice to*

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

5. The beneficiary Member States shall report annually to the management committee 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;

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

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

### **projects.**

If the EIB recommends not financing an investment and provides reasons for this recommendation **in line with the investment policy adopted by the investment board and the selection criteria set out in paragraph 1, a positive opinion** shall only be adopted if a majority of two-thirds of all members vote in favour. The Member State in which the investment will take place and the EIB shall not be entitled to cast a vote in this case.

5. The beneficiary Member States shall report annually to the **investment board and the advisory board** 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;

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

7. The Commission shall be empowered to adopt a delegated act in accordance with Article 23 to implement this Article **for the detailed arrangements and for the effective functioning of the Modernisation Fund**.

## Amendment 32

### Proposal for a directive

#### Article 1 – paragraph 1 – point 8

Directive 2003/87/EC

Article 11 – paragraph 1 – subparagraph 2

#### *Text proposed by the Commission*

A list of installations covered by this Directive for the **five** years beginning on 1 January 2021 shall be submitted by 30 September 2018, 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.

#### *Amendment*

A list of installations covered by this Directive for the **two** years beginning on 1 January 2021 shall be submitted by 30 September 2018, and lists for the subsequent **two** years shall be submitted every **two** 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 **two** calendar years preceding its submission. Free allocations shall only be given to installations where such information is provided.

## Amendment 33

### Proposal for a directive

#### Article 1 – paragraph 1 – point 8 a (new)

Directive 2003/87/EC

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

#### *Text proposed by the Commission*

#### *Amendment*

***(8a) in Article 11, paragraph 1 the following third subparagraph is added:***

***“From 2021 onwards, Member States shall also ensure that during each calendar year every operator reports production activity for adjustments to allocation in accordance with Article 10a paragraph 7.”***

## Amendment 34

### Proposal for a directive

#### Article 1 – paragraph 1 – point 10 a (new)

*Present text*

3a. An obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide<sup>3</sup>.

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<sup>3</sup> OJ L 140, 5.6.2009, p. 114

*Amendment*

**(10 a) In Article 12, paragraph 3a is amended as follows:**

“3a. An obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide<sup>3</sup>, ***nor in respect of emissions verified as captured and/or re-used in an application ensuring a permanent bound of the CO<sub>2</sub>, for the purpose of carbon capture and re-use.***”

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<sup>3</sup> OJ L 140, 5.6.2009, p. 114

## **Amendment 35**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 12 a (new)**

Directive 2003/87/EC

Article 14 – paragraph 1 – subparagraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

**(12a) In Article 14, paragraph 1, a new subparagraph is added:**

***'By 31 December 2018 the Commission shall adjust existing rules on monitoring and reporting of emissions as defined in Commission Regulation (EU) 601/2012<sup>1a</sup> in order to remove regulatory barriers to investment in more recent low carbon technologies such as carbon capture and usage (CCU). Those new rules shall be effective for all CCU technologies as of 1 January 2019.'***

*1a Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council. (OJ L 181, 12.7.2012, p. 30).*

## **Amendment 36**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 19 – point b**

Directive 2003/87/EC

Article 24 – paragraph 3 – subparagraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

The Commission shall be empowered to adopt delegated acts for such a regulation for the monitoring and reporting of emissions and activity data in accordance with Article 23. *As regards monitoring, reporting and verification of emissions, the Commission shall monitor the effective and coherent application and enforcement of penalty procedures at national level. The Commission shall establish an effective monitoring system for cross-border transactions of emission allowances at Union level to mitigate the risk of abuse and fraudulent activities.*

## **Amendment 37**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 20 a (new)**

Directive 2003/87/EC

Article 25 – paragraphs 1ba and 1bb (new)

#### *Text proposed by the Commission*

#### *Amendment*

*(20a) In Article 25, the following paragraphs are added:*

*(1ba) Following up to Article 6(2) of the Paris Agreement, the European Commission shall assess in its report, to*

*be prepared in accordance with Article 28aa, the development of climate mitigation policies, including market-based approaches, in third countries and regions and the effect of these policies on the competitiveness of European industry.*

*(1bb) If this report concludes that a significant risk of carbon leakage remains, the Commission shall, if appropriate, come forward with a legislative proposal introducing a carbon border adjustment, fully compatible with WTO rules, based on a feasibility study to be initiated at the publication of this Directive in the OJ. This mechanism would include in the EU ETS importers of products which are produced by the sectors or sub-sectors determined in accordance with Article 10a.*

## Amendment 38

### Proposal for a directive

#### Article 1 – paragraph 1 – point 22 a (new)

Directive 2003/87/EC

Article 27 – paragraph 1

#### *Present text*

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

#### *Amendment*

*(22a) in Article 27, first paragraph is replaced by the following:*

“Following consultation with the operator **and subject to its agreement**, Member States may exclude from the Community scheme installations which have reported to the competent authority emissions of less than **50 000** tonnes of carbon dioxide equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW, excluding emissions from biomass, in each of the three years preceding the notification under point (a), and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following

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

(b) it confirms that monitoring arrangements are in place to assess whether any installation emits **25 000** tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year. Member States may allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between 2008 and 2010 which are below 5 000 tonnes a year, in accordance with Article 14;

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

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

Hospitals may also be excluded if they undertake equivalent measures.

### **Amendment 39**

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

#### **Article 1 – paragraph 1 – point 22 b (new)**

Directive 2003/87/EC

Article 28a (new)

conditions:

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

(b) it confirms that monitoring arrangements are in place to assess whether any installation emits **50 000** tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year. Member States may allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between 2008 and 2010 which are below 5 000 tonnes a year, in accordance with Article 14;

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

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

Hospitals may also be excluded if they undertake equivalent measures.



**(22b) the following Article 28a is inserted:**

**“Article 28a**

***Adjustments upon global stocktake under the UNFCCC and the Paris Agreement***

***1. Within six months of the global stocktake under the Paris Agreement in 2023 of the collective efforts of Parties in relation to progress towards the global long-term goal, and subsequent global stocktakes thereafter, the Commission shall submit a report assessing the need to update and enhance the Union's climate action, taking into account the efforts undertaken by other major economies, and competitiveness in the context of carbon and investment leakage risks. If appropriate, the report shall be followed by a legislative proposal.***

***2. In its report, the Commission shall assess in particular the appropriate increase of the linear factor referred to in Article 9 and the necessity for additional policies and measures enhancing the greenhouse gas reduction commitments of the Union and of Member States, and may look into the feasibility of introducing an emission performance standard. The Commission shall also assess the carbon leakage provisions with a view to phase out of temporary free allocation.”***

**Amendment 40**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 22 c (new)**

Directive 2003/87/EC

Article 30 – paragraph 4a (new)

**(22c) in Article 30, the following paragraph is added:**

***“4a. A general review of the interaction between the EU ETS and other climate-air quality- and energy policies at Union and national level shall be conducted every five years, with the view to have more coherence and to avoid antagonistic impacts of overlapping policies.”***

## **Amendment 41**

### **Proposal for a directive**

#### **Article 1 – paragraph 1 – point 22 d (new)**

Directive 2003/87/EC

Article 30a (new)

*Text proposed by the Commission*

*Amendment*

***(22d) the following Chapter IV is inserted:***

***“Chapter IV Maritime and aviation sector  
Article 30a***

***The Commission shall monitor that all sectors of the economy contribute to the reduction of CO2 emissions in accordance with the UNFCCC Paris Agreement, including whether targets and measures agreed at the international level, such as in the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO) are achieving adequate emissions reductions.”***

## **Amendment 42**

### **Proposal for a directive**

#### **Annex I – paragraph 1**

Directive 2003/87/EC

Annex IIa

*Text proposed by the Commission*

*Amendment*

Increases in the percentage of allowances to be auctioned by Member States pursuant to Article 10(2)(a) for the purpose of

Increases in the percentage of allowances to be auctioned by Member States pursuant to Article 10(2)(a) for the purpose of

solidarity and growth in order to reduce emissions and adapt to the effects of climate change

solidarity and growth in order to reduce emissions and adapt to the effects of climate change *For those Member States eligible for the Modernisation Fund as set out in Article 10d, their share of allowances specified in Annex IIa shall be transferred to their share in the Modernisation Fund.*

## PROCEDURE – COMMITTEE ASKED FOR OPINION

<b>Title</b>	Cost-effective emission reductions and low-carbon investments	
<b>References</b>	COM(2015)0337 – C8-0190/2015 – 2015/0148(COD)	
<b>Committee responsible</b> Date announced in plenary	ENVI 7.9.2015	
<b>Opinion by</b> Date announced in plenary	ITRE 7.9.2015	
<b>Associated committees - date announced in plenary</b>	10.3.2016	
<b>Rapporteur</b> Date appointed	Fredrick Federley 28.10.2015	
<b>Discussed in committee</b>	17.3.2016	12.7.2016
<b>Date adopted</b>	13.10.2016	
<b>Result of final vote</b>	+: 45	–: 13
	0: 4	
<b>Members present for the final vote</b>	Nikolay Barekov, Nicolas Bay, Bendt Bendtsen, Xabier Benito Ziluaga, José Blanco López, David Borrelli, Jerzy Buzek, Angelo Ciocca, Edward Czesak, Jakop Dalunde, Pilar del Castillo Vera, Christian Ehler, Fredrick Federley, Ashley Fox, Adam Gierek, Theresa Griffin, Hans-Olaf Henkel, Eva Kaili, Kaja Kallas, Barbara Kappel, Krišjānis Kariņš, Seán Kelly, Jaromír Kohlíček, Zdzisław Krasnodębski, Miapetra Kumpula-Natri, Janusz Lewandowski, Ernest Maragall, Edouard Martin, Angelika Mlinar, Nadine Morano, Dan Nica, Morten Helveg Petersen, Miroslav Poche, Carolina Punset, Herbert Reul, Paul Rübig, Algirdas Saudargas, Sergei Stanishev, Neoklis Sylikiotis, Dario Tamburrano, Patrizia Toia, Evžen Tošenovský, Claude Turmes, Vladimir Urutchev, Henna Virkkunen, Martina Werner, Lieve Wierinck, Anna Záborská, Flavio Zanonato, Carlos Zorrinho	
<b>Substitutes present for the final vote</b>	Michał Boni, Rosa D'Amato, Esther de Lange, Jens Geier, Benedek Jávor, Olle Ludvigsson, Vladimír Maňka, Marian-Jean Marinescu, Clare Moody, Maria Spyrali	
<b>Substitutes under Rule 200(2) present for the final vote</b>	Salvatore Cicu, Albert Deß	