

PE-CONS No/YY - 2021/0211(COD)

**DIRECTIVE (EU) 2023/...**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of ...

**amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union *and* Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme** ■

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Having regard to the opinion of the Committee of the Regions<sup>2</sup>,

Acting in accordance with the ordinary legislative procedure<sup>3</sup>,

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<sup>1</sup> OJ C 152, 6.4.2022, p. 175.

<sup>2</sup> OJ C 301, 5.8.2022, p. 116.

<sup>3</sup> *Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...*

Whereas:

- (1) The Paris Agreement, adopted in December 2015 under the United Nations Framework Convention on Climate Change (UNFCCC) entered into force in November 2016 (“the Paris Agreement”)<sup>4</sup>. Its Parties have agreed to hold the increase in the global average temperature well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5 °C above pre-industrial levels. ***This has been reinforced with the adoption of the Glasgow Climate Pact in November 2021, in which the Conference of the Parties recognises that the impacts of climate change will be much lower at the temperature increase of 1,5 °C, compared with 2 °C, and resolve to pursue efforts to limit the temperature increase to 1,5 °C.***
- (1a) ***The urgency of the need to keep the Paris Agreement goal of 1,5 °C alive has become more significant following the findings of the IPCC Sixth Assessment Report, that global warming can only be limited to 1.5 °C, if strong and sustained reductions in global greenhouse gas (GHG) emissions within this decade are immediately undertaken.***
- (2) Tackling climate and environmental-related challenges and reaching the objectives of the Paris Agreement are at the core of the Communication on “The European Green Deal”, adopted by the Commission on 11 December 2019<sup>5</sup>.
- (3) The European Green Deal combines a comprehensive set of mutually reinforcing measures and initiatives aimed at achieving climate neutrality in the EU by 2050, and sets out a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy, where economic growth is decoupled from resource use. It also aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. ***This transition affects workers from various sectors differently.*** At the same time, ***that transition has gender equality aspects as well as*** has a particular impact on some disadvantaged ***and vulnerable*** groups, such as older people, persons with disabilities, persons with a minority racial or ethnic background ***and low and lower-middle income***

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<sup>4</sup> Paris Agreement (OJ L 282, 19.10.2016, p. 4).

<sup>5</sup> COM(2019)640 final.

*individuals and households. It also imposes greater challenges on certain regions, in particular structurally disadvantaged and peripheral regions, as well as islands. It must therefore be ensured that the transition is just and inclusive, leaving no one behind.*

- (3a) *On 17 December 2020, the Union submitted its nationally determined contribution to the United Nations Framework Convention on Climate Change (UNFCCC), following their approval by the Council. Directive (EU) 2003/87/EC as last amended by Directive 2018/410 is one of the instruments cited, subject to revision in light of the enhanced target, in the general description of the target in the Annex to that submission. The Council stated in its conclusions of 24 October 2022 that it stands ready, as soon as possible after the conclusions of the negotiations on the essential elements of ‘Fit for 55’ package, to update, as appropriate, the NDC of the EU and its Member States, in line with § 29 of the Glasgow Climate Pact to reflect how the final outcome of the essential elements of ‘Fit for 55’ package implements the EU headline target as agreed by the EUCO in December 2020. As the EU ETS is a cornerstone of the Union’s climate policy and constitutes its key tool for reducing greenhouse gas emissions in a cost-effective way the amendments to Directive 2003/87, including with regard to the scope thereof, adopted through this Directive are part of the essential elements of the “Fit for 55” package.*
- (4) The necessity and value of **delivering on** the European Green Deal have only grown in light of the very severe effects of the COVID-19 pandemic on the health, living and working conditions and well-being of the Union’s citizens, which have shown that our society and our economy need to improve their resilience to external shocks and act early to prevent or mitigate them **in a manner that is just and results in no one being left behind, including those at risk of energy poverty**. European citizens continue to express strong views that this applies in particular to climate change.
- (5) The Union committed to reduce the Union’s economy-wide net greenhouse gas emissions by at least 55 % by 2030 below 1990 levels in the updated nationally

determined contribution submitted to the UNFCCC Secretariat on 17 December 2020<sup>6</sup>.

- (6) In Regulation (EU) 2021/1119 of the European Parliament and of the Council<sup>7</sup> the Union has enshrined ***in legislation*** the target of economy-wide climate neutrality by 2050, ***at the latest, and the aim to achieve negative emissions thereafter***. That Regulation also establishes a binding Union domestic reduction commitment of net greenhouse gas emissions (emissions after deduction of removals) of at least 55 % below 1990 levels by 2030. ***That Regulation also establishes that the Commission should endeavour to align all future legislative and budgetary proposals with the objectives and targets set out in that Regulation and, in any case of non-alignment, provide the reasons as part of the impact assessment accompanying those proposals.***
- (7) All sectors of the economy need to contribute to achieving those emission reductions. Therefore, the ambition of the EU Emissions Trading System (EU ETS), established by Directive 2003/87/EC of the European Parliament and of the Council<sup>8</sup>, ***should be adjusted to be in line with the economy-wide net greenhouse gas emissions reduction commitment for 2030, and be in line with the objective of achieving climate neutrality by 2050 at the latest, and the aim to achieve negative emissions thereafter, as laid down in Article 2(1) of Regulation (EU) 2021/1119.***
- (8) The EU ETS should incentivise production from installations that partly or fully reduce greenhouse gas emissions. Therefore, the description of some categories of activities in Annex I to Directive 2003/87/EC should be amended to ensure ***that installations performing an activity listed in Annex I and meeting the capacity threshold related to the same activity but not emitting any greenhouse gases are included in the scope of the EU ETS and therefore to ensure*** an equal treatment of installations in the sectors concerned. In addition, free allocation for the production

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<sup>6</sup> [https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/EU\\_NDC\\_Submission\\_December%202020.pdf](https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/EU_NDC_Submission_December%202020.pdf)

<sup>7</sup> Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

<sup>8</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

of a product should *take into account the circular use potential of materials and* be independent of the *feedstock or the type of* production process, *where the production processes have the same purpose*. It is therefore necessary to modify the definition of the products and of the processes and emissions covered for some benchmarks to ensure a level playing field for *installations using new technologies that partly or fully reduce greenhouse gas emissions* and existing technologies. *Notwithstanding the guiding principles, the revised benchmarks for 2026 to 2030 should continue distinguishing between primary and secondary production of steel and aluminium*. It is also necessary to decouple the update of the benchmark values for refineries and for hydrogen to reflect the increasing importance of production of hydrogen, *including green hydrogen*, outside the refineries sector.

- (8a) *Following the modification of the products and of the processes and emissions covered for some benchmarks, it is necessary to ensure that producers do not receive double compensation for the same emissions with both free allocation and indirect costs compensation, and thus to adjust the financial measures to compensate indirect costs passed on in electricity prices accordingly.*
- (8b) *To incentivise new breakthrough technologies in the steel industry and to avoid a significantly disproportionate reduction of the benchmark value and in light of the particular situation of the steel industry such as the high emission intensity and the international and Union market structure, it is necessary to exclude from the calculation of the hot metal benchmark for the period 2026-2030 installations that were operational during the reference period 2021-2022 and that would otherwise be included in that calculation due to the review of its definition.*
- (9) Council Directive 96/61/EC<sup>9</sup> was repealed by Directive 2010/75/EU of the European Parliament and of the Council<sup>10</sup>. The references to Directive 96/61/EC in Article 2 of Directive 2003/87/EC and in its Annex IV should be updated accordingly. Given the need for urgent economy-wide emission reductions, Member States should be able to act to reduce greenhouse gas emissions that are under the scope of the EU ETS

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<sup>9</sup> Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, 10.10.1996, p. 26).

<sup>10</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

through other policies than emission limits adopted pursuant to Directive 2010/75/EU.

- (10) In its Communication ‘Pathway to a Healthy Planet for All’<sup>11</sup>, the Commission calls for steering the EU towards zero pollution by 2050, by reducing pollution across air, freshwaters, seas and soils to levels which are no longer expected to be harmful for health and natural ecosystems. Measures under Directive 2010/75/EU, as the main instrument regulating air, water and soil pollutant emissions, will often also enable emissions greenhouse gases to be reduced. In line with Article 8 of Directive 2003/87/EC, Member States should ensure coordination between the permit requirements of Directive 2003/87/EC and those of Directive 2010/75/EU.
- (11) Recognising that new innovative technologies will often allow reducing emissions of both greenhouse gases and pollutants, it is important to ensure synergies between policies delivering reductions of emissions of both greenhouse gases and pollutants, namely Directive 2010/75/EU, and review their effectiveness in this regard.
- (12) The definition of electricity generators was used to determine the maximum amount of free allocation to industry in the period from 2013 to 2020, but led to different treatment of cogeneration power plants compared to industrial installations. In order to incentivise the use of high efficiency cogeneration and to ***level the playing field for*** all installations receiving free allocation for heat production and district heating, all references to electricity generators in Directive 2003/87/EC should be deleted. In addition, Commission Delegated Regulation (EU) 2019/331<sup>12</sup> specifies the eligibility of all industrial processes for free allocation. Therefore, the provisions on carbon capture and storage in Article 10a(3) of Directive 2003/87/EC have become obsolete and should be deleted.
- (13) Greenhouse gases that are not directly released into the atmosphere should be considered emissions under the EU ETS and allowances should be surrendered for

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<sup>11</sup> Communication from the Commission to the European Parliament, the Council, the European Economic And Social Committee and the Committee of the Regions Pathway to a Healthy Planet for All, EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' (COM/2021/400 final).

<sup>12</sup> Commission Delegated Regulation (EU) 2019/331 of 19 December 2018 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 59, 27.2.2019, p. 8).

those emissions unless they are stored in a storage site in accordance with Directive 2009/31/EC of the European Parliament and of the Council<sup>13</sup>, or they are permanently chemically bound in a product so that they do not enter the atmosphere under normal use ***and any normal activity taking place after the end of the life of the product***. The Commission should be empowered to adopt ***delegated*** acts specifying the conditions where greenhouse gases are to be considered as permanently chemically bound in a product so that they do not enter the atmosphere under normal use ***and any normal activity after the end of life***, including obtaining a carbon removal certificate, where appropriate, in view of regulatory developments with regard to the certification of carbon removals. ***The normal activity after the end of life of the product should be understood broadly, covering all the activities taking place after the end of life of the product, including disposal, reuse, remanufacturing, recycling, incineration, and landfill.***

- (14) International maritime transport activity, consisting of voyages between ports under the jurisdiction of two different Member States or between a port under the jurisdiction of a Member State and a port outside the jurisdiction of any Member State, has been the only means of transportation not included in the Union's past commitments to reduce greenhouse gas emissions. Emissions from fuel sold in the Union for journeys that depart in one Member State and arrive in a different Member State or a third country have grown by around 36 % since 1990. Those emissions represent close to 90 % of all Union navigation emissions as emissions from fuel sold in the Union for journeys departing and arriving in the same Member State have been reduced by 26 % since 1990. In a business-as-usual scenario, emissions from international maritime transport activities are projected to grow by around 14 % between 2015 and 2030 and 34 % between 2015 and 2050. If the climate change impact of maritime transport activities grows as projected, it would significantly undermine reductions made by other sectors to combat climate change ***and therefore to achieve the economy-wide net greenhouse gas emissions reduction target for 2030, the Union's climate-neutrality objective by 2050, at the latest, and the aim of***

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<sup>13</sup> Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ L 140, 5.6.2009, p. 114).

*achieving negative emissions thereafter as laid down in Article 2(1) of Regulation (EU) 2021/1119 and the goal of the Paris Agreement.*

- (15) In 2013, the Commission adopted a strategy for progressively integrating maritime emissions into the Union's policy for reducing greenhouse gas emissions. As a first step in this approach, the Union established a system to monitor, report and verify emissions from maritime transport in Regulation (EU) 2015/757 of the European Parliament and of the Council<sup>14</sup>, to be followed by the laying down of reduction targets for the maritime sector and the application of a market based measure. In line with the commitment of the co-legislators expressed in Directive (EU) 2018/410 of the European Parliament and of the Council<sup>15</sup>, action by the International Maritime Organization (IMO) or the Union should start from 2023, including preparatory work on adoption and implementation of a measure ensuring that the sector duly contributes to the efforts needed to achieve the objectives agreed under the Paris Agreement and due consideration being given by all stakeholders.
- (16) Pursuant to Directive (EU) 2018/410, the Commission should report to the European Parliament and to the Council on the progress achieved in the IMO towards an ambitious emission reduction objective, and on accompanying measures to ensure that the maritime transport sector duly contributes to the efforts needed to achieve the objectives agreed under the Paris Agreement. Efforts to limit global maritime emissions through the IMO are under way and should be encouraged, ***including the rapid implementation of the IMO Initial Strategy on Reduction of Greenhouse Gas Emissions from Ships, adopted in 2018, which also refers to possible market-based measures to incentivise greenhouse gas emission reductions from international shipping.*** However, while ***there recently has been*** progress in the IMO, ***this has so far not been*** sufficient to achieve the objectives of the Paris Agreement. ***Given the international character of shipping, it is important that the Member States and the Union within their respective competences work with third***

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<sup>14</sup> Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55).

<sup>15</sup> Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ L 76, 19.3.2018, p. 3).

*countries to step up diplomatic efforts to strengthen global measures and make progress on the development of a global market-based measure at the IMO level.*

- (17) ***CO<sub>2</sub> emissions from the maritime sector account for around 3-4 % of Union emissions.*** In the European Green Deal, the Commission stated its intention to take additional measures to address greenhouse gas emissions from the maritime transport sector through a basket of measures to enable the Union to reach its emissions reduction targets. In this context, Directive 2003/87/EC should be amended to include the maritime transport sector in the EU ETS in order to ensure this sector contributes *its fair share* to the increased climate objectives of the Union as well as to the objectives of the Paris Agreement, which requires developed countries to take the lead by undertaking economy-wide emission reduction targets, while developing countries are encouraged to move over time towards economy-wide emission reduction or limitation targets<sup>16</sup>. Considering that emissions from international aviation outside Europe should be capped from January 2021 by global market-based action while there is no action in place that caps or prices maritime transport emissions, it is appropriate that the EU ETS covers a share of the emissions from voyages between a port under the jurisdiction of a Member State and port under the jurisdiction of a third country, with the third country being able to decide on appropriate action in respect of the other share of emissions. The extension of the EU ETS to the maritime transport sector should thus include half of the emissions from ships performing voyages arriving at a port under the jurisdiction of a Member State from a port outside the jurisdiction of a Member State, half of the emissions from ships performing voyages departing from a port under the jurisdiction of a Member State and arriving at a port outside the jurisdiction of a Member State, emissions from ships performing voyages arriving at a port under the jurisdiction of a Member State from a port under the jurisdiction of a Member State, and emissions *within* a port under the jurisdiction of a Member State. This approach has been noted as a practical way to solve the issue of Common but Differentiated Responsibilities and Capabilities, which has been a longstanding challenge in the UNFCCC context. The coverage of a share of the emissions from both incoming and outgoing voyages between the Union and third countries ensures the effectiveness of the EU ETS, notably by increasing the environmental impact of the measure compared to a

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<sup>16</sup> Paris Agreement, Article 4(4).

geographical scope limited to voyages within the EU, while limiting the risk of evasive port calls and the risk of delocalisation of transshipment activities outside the Union. To ensure a smooth inclusion of the sector in the EU ETS, the surrendering of allowances by shipping companies should be gradually increased with respect to verified emissions reported for the period 2024 to 2025. To protect the environmental integrity of the system, to the extent that fewer allowances are surrendered in respect of verified emissions for maritime transport during those years, once the difference between verified emissions and allowances surrendered has been established each year, a corresponding ■ number of allowances should be cancelled. As from 2026, *verified emissions* shipping companies should surrender the number of allowances corresponding to all of their verified emissions. *While the climate impact of maritime transport is mainly due to carbon dioxide emissions, non-CO<sub>2</sub> emissions represent a significant share of shipping emissions. According to the Fourth IMO Greenhouse Gas Study<sup>17</sup>, methane emissions increased significantly over the period 2012-2018. Methane and nitrous oxide emissions will likely grow over time, notably with the development of vessels powered by liquefied natural gases or other energy sources. The inclusion of methane and nitrous oxide emissions would be beneficial for environmental integrity and incentivising good practices. These emissions should first be included in Regulation (EU) 2015/757 as from 2024 and they should be included in the EU ETS as from 2026.*

- (17a) *The extension of the scope of Directive 2003/87/EC to maritime transport will lead to changes in the cost of shipping. All parts of the Union will be affected by this as the goods transported to and from ports within the Union by maritime transport have their origin or destination in the different Member States, including in landlocked Member States. The allocation of allowances to be auctioned by the Member States should therefore, in principle, not change as a consequence of the inclusion of maritime activities and include all Member States. However, Member States will be affected to different extents. Notably Member States with a high reliance on shipping will be most exposed to the effect of the extension. Member States with a large maritime sector compared to their relative size will be more affected by the extension of the EU ETS to maritime transport. It is therefore*

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<sup>17</sup> *International Maritime Organization, Fourth IMO Greenhouse Gas Study 2020, p. 110.*

*appropriate to provide additional assistance to those Member States in the form of additional allowances to support decarbonisation of maritime activities and for the administrative costs incurred. The assistance should be gradually introduced in parallel with the introduction of surrender obligations and thus with the increased effect on those Member States. Within the context of the review of Directive 2003/87/EC, the Commission should consider the relevance of this additional assistance in light, notably, of the development in the shipping companies under the responsibility of different Member States.*

- (17b) The EU ETS should contribute significantly to reducing greenhouse gas emissions from maritime activities and to increasing efficiency. The use of EU ETS revenues pursuant to Article 10(3) of the Directive should include, inter alia, the promotion of climate friendly transport and public transport in all sectors.*
- (17c) Renewing fleets of ice-class ships and developing innovative technology that reduces the emissions of such ships will take time and require financial support. Currently, the design enabling ice-class ships to sail in ice conditions, leads to such ships consuming more fuel and producing more emissions than ships of similar size designed for sailing only in open water. Therefore, a flag-neutral method should be implemented under this Directive allowing for a reduction of allowances to be surrendered by shipping companies on the basis of their ships' ice class until 31 December 2030.*
- (17d) Islands with no road or rail link with the mainland are more dependent on maritime transport than the other regions and depend on maritime links for their connectivity. In order to assist islands with a smaller population to remain connected following the inclusion of maritime activities in the scope of Directive 2003/87/EC it is appropriate to provide for the possibility to provide for a temporary derogation from the surrender obligations under that Directive for certain maritime transport activities with islands with a population lower than 200 000 inhabitants.*
- (17e) It should be possible for Member States to request that transnational public service contract or a transnational public service obligation between two Member States should be temporarily exempted from certain obligations under Directive 2003/87/EC. The possibility should be limited to connections between a Member*

*State without a land-border with another Member State and the geographically closest Member State, such as the maritime connection between Cyprus and Greece, which has been absent for over two decades. This temporary derogation contributes to the compelling need to provide a service of general interest and ensure connectivity as well as economic, social and territorial cohesion.*

*(17f) Taking into account the special characteristics and permanent constraints of the outermost regions of the Union as recognised in Article 349 of the Treaty, and given their heavy dependence on maritime transport, special consideration should be given to preserving their accessibility and efficient connectivity by maritime transport. Therefore, a temporary derogation from certain obligations pursuant to Directive 2003/87/EC should be provided for emissions from maritime transport activities between a port located in an outermost region of a Member State and a port located in the same Member State, including ports located in the same outermost region and in another outermost region of the same Member State.*

(18) The provisions of Directive 2003/87/EC as regards maritime transport activities should be kept under review in light of future international developments and efforts undertaken to achieve the objectives of the Paris Agreement, including the second global stocktake in 2028, and subsequent global stocktakes every five years thereafter, intended to inform successive nationally determined contributions, ***and in the event of the adoption by the IMO of a global market-based measure to reduce greenhouse gas emissions from maritime transport. To this end***, the Commission should ***present a report to the European Parliament and to the Council within 18 months of the adoption of such a measure and before it becomes operational. The Commission should in that report examine that global market-based measure as regards its ambition in light of the objectives of the Paris Agreement, its overall environmental integrity, including compared to the provisions of this Directive covering maritime transport, and any issue related to the coherence of the EU ETS and that measure, in particular taking into account the level of participation in that global market-based measure, its enforceability, transparency, penalties for non-compliance, the processes for public input, monitoring, reporting and verification of emissions, registries and accountability. Where appropriate, the report should be accompanied by a legislative proposal to amend this Directive in a manner that is consistent with the Union 2030 climate target and the climate-***

*neutrality objective as set out in Regulation (EU) 2021/1119 and with the aim of preserving the environmental integrity and effectiveness of Union climate action, to ensure coherence between the implementation of a global market-based measure adopted by the IMO, while avoiding any significant double burden, and thereby recalling the Union's competence to regulate its share of emissions from international shipping voyages, in line with the obligations of the Paris Agreement.*

- (18a) *With the increased costs of shipping which the extension of Directive 2003/87/EC to maritime shipping activities entails, there is in the absence of a global measure a risk of circumvention. Evasive port calls to ports outside of the Union and relocation of transshipment activities to ports outside of the Union will not only diminish the environmental benefits of internalising the cost of emissions from maritime activities but may lead to additional emissions due to the extra distance travelled to evade application of Directive 2003/87/EC. It is therefore appropriate to exclude from the concept of port of call certain stops at non-Union ports. That exclusion should be targeted to ports in the Union's vicinity where the risk of evasion is the largest. A limit of 300 nautical miles from a port under the jurisdiction of a Member State, constitutes a proportionate response to evasive behaviour, balancing the additional burden and the risk of evasion. Moreover, the exclusion from the concept of port of call should only target stops by containerships at certain non-Union ports, where the transshipment of containers accounts for most container traffic. For such shipments the risk of evasion, in the absence of mitigating measures, also consists in a shift of port hub to ports outside the Union aggravating the effects of the evasion. To ensure the proportionality and equal treatment of the measure account should be taken to measures in third countries that have an effect equivalent to Directive 2003/87/EC.*
- (19) The Commission should review the functioning of Directive 2003/87/EC in relation to maritime transport activities in the light of experience of its application, including *detecting evasive behaviour in order to prevent them at an early stage*, and should then propose measures to ensure its effectiveness. *Such measure could include increased surrender requirements for voyages where the evasion risk is higher, such as to and from a port that is located in the Union's vicinity, in a third country that has not adopted measures similar to Directive 2003/87/EC.*

- (19a)** *Shipping emissions from vessels below 5 000 gross tonnage represent less than 15 % of shipping emissions, taking into account the geographical scope of application of this Directive, but concern a large number of ships. The inclusion of these vessels from the start of the inclusion of shipping in the ETS is too early for reasons of administrative practicability, but their inclusion in the future would improve the effectiveness of the ETS and potentially reduce evasive behaviours with the use of vessels below the 5000 gross tonnage threshold. Therefore, no later than 31 December 2026, the Commission should present a report to the European Parliament and to the Council in which it should examine the feasibility and economic, environmental and social impacts of the inclusion in this Directive of emissions from ships below 5000 gross tonnage, including offshore ships.*
- (20)** The person or organisation responsible for the compliance with the EU ETS should be the shipping company, defined as the *ship owner* or any other organisation or person, such as the manager or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the *ship owner* and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention. This definition is based on the definition of ‘company’ in Article 3, point (d) of Regulation (EU) 2015/757, and in line with the global data collection system established in 2016 by the IMO.
- (20a)** *The emissions from a ship depend inter alia on the vessel energy efficiency measures taken by the ship-owner and the fuel, the cargo carried, the route and the speed of the ship which may be under the control of a different entity than the ship-owner. The responsibilities for purchasing fuel or taking operational decisions that affect the greenhouse gas emissions of the ship may be assumed by an entity other than the shipping company under a contractual arrangement. At the point of contract negotiation, mainly the latter aspects would not be known and thus the ultimate emissions from the ship covered by Directive 2003/87/EC would be uncertain. However, without a pass through of carbon costs to the entity operating the ship, the incentives to implement operational measures for fuel efficiency would be limited. In line with the polluter pays principle and to encourage the adoption of efficiency measures and the uptake of cleaner fuels, the shipping company should therefore be entitled, under national law, to claim*

*reimbursement for the costs arising from the surrender of allowances from the entity that is directly responsible for the decisions affecting the greenhouse gas emissions of the ship. While such a mechanism of reimbursement could be subject to a contractual arrangement, Member States should, to reduce administrative costs, not be obliged to ensure or control the existence of such contracts but should instead provide, in national law, a statutory entitlement for the shipping company to be reimbursed and the corresponding access to justice to enforce that entitlement. For the same reasons, this entitlement, including any possible conflict relating to the reimbursement between the shipping company and the entity operating the ship, should not affect the obligations of the shipping company vis-à-vis the administering authority nor the enforcement measures that might be necessary against such a company to ensure the full compliance with Directive 2003/87/EC. At the same time, as the purpose served by the provision concerning the entitlement to reimbursement is closely connected with the Union, in particular in relation to the compliance with obligations under this Directive by a shipping company vis-a-vis a given Member State, it is important that this entitlement is observed throughout the Union, in all contractual relations that allow another entity than the ship owner to determine the cargo carried and/or the route and the speed of the ship, in a manner that safeguards undistorted competition in the internal market, which can include provisions preventing parties to such contractual agreements from circumventing the entitlement to reimbursement by a choice of law clause.*

- (21) In order to reduce the administrative burden on shipping companies, one Member State should be responsible for each shipping company. The Commission should publish an initial list of shipping companies that performed a maritime activity falling within the scope of the EU ETS, which specifies the administering authority in respect of each shipping company. The list should be updated **regularly and** at least every two years to reattribute shipping companies to another administering authority as relevant. For shipping companies registered in a Member State, the administering authority should be that Member State. For shipping companies registered in a third country, the administering authority should be the Member State in which the shipping company had the greatest estimated number of port calls from voyages falling within the scope of Directive 2003/87/EC in the last **four** monitoring

years. For shipping companies registered in a third country and which did not perform any voyage falling within the scope of Directive 2003/87/EC in the last **four** monitoring years, the administering authority should be the Member State from where **a ship of** the shipping company **arrived or** started its first voyage falling within the scope of that Directive. The Commission should publish and update on a biennial basis a list of shipping companies falling within the scope of Directive 2003/87/EC, **as relevant**, specifying the administering authority for each shipping company. In order to ensure equal treatment of shipping companies, Member States should follow harmonised rules for the administration of shipping companies for which they have responsibility, in accordance with detailed rules to be established by the Commission.

- (22) Member States should ensure that the shipping companies that they administer comply with the requirements of Directive 2003/87/EC. In the event that a shipping company fails to comply with those requirements and any enforcement measures taken by the administering authority have failed to ensure compliance, Member States should act in solidarity. As a last resort measure, Member States should be able to refuse entry to the ships under the responsibility of the shipping company concerned, except for the Member State whose flag the ship is flying, which should be able to detain that ship.
- (23) Shipping companies should monitor and report their aggregated emissions data from maritime transport activities at company level in accordance with the rules laid down in Regulation (EU) 2015/757. The reports on aggregated emissions data at company level should be verified in accordance with the rules laid down in that Regulation. When performing the verifications at company level, the verifier should not verify the emissions report at ship level and the report referred to in Article 11(2) of that Regulation, as those reports at ship level would have been already verified.
- (24) Based on experience from similar tasks related to environmental protection, the European Maritime Safety Agency (EMSA) or another relevant organisation should, as appropriate and in accordance with its mandate, assist the Commission and the administering authorities in respect of the implementation of Directive 2003/87/EC. Owing to its experience with the implementation of Regulation (EU) 2015/757 and its IT tools, EMSA **should** assist the administering authorities notably as regards the monitoring, reporting and verification of emissions generated by maritime activities

under the scope of this Directive by facilitating the exchange of information or developing guidelines and criteria. *The Commission, assisted by the European Maritime Safety Agency, should endeavour to develop appropriate monitoring tools, as well as guidance to facilitate and coordinate verification and enforcement activities related to the application of this Directive to maritime transport. As far as practicable, such tools should be made available to the Member State and the verifiers in order to better ensure robust enforcement of this Directive.*

- (25) Regulation (EU) 2017/2392 of the European Parliament and of the Council<sup>18</sup> amended Article 12(3) of Directive 2003/87/EC to allow all operators to use all allowances that are issued. The requirement for greenhouse gas emissions permits to contain an obligation to surrender allowances, pursuant to Article 6(2), point (e), of that Directive, should be aligned accordingly.
- (26) Achieving the Union's emissions reduction target for 2030 will require a reduction in the emissions of the sectors covered by the EU ETS of **62 %** compared to 2005. The Union-wide quantity of allowances of the EU ETS needs to be reduced to create the necessary long-term carbon price signal and drive for this degree of decarbonisation. *The total quantity of allowances should be reduced in 2024 and 2026 to bring it more in line with the actual emissions. Moreover, the linear reduction factor should be increased in 2024 and in 2028, also taking into account the inclusion of emissions from maritime transport. The steeper cap trajectory resulting from these changes will lead to significantly greater levels of cumulative emission reductions up to 2030 than would have occurred pursuant to Directive (EU) 2018/410 of the European Parliament and of the Council.* The *figures relating to the maritime inclusion* should be derived from the emissions from maritime transport activities *that are addressed in Article 3g of Directive 2003/87/EC and* reported in accordance with Regulation (EU) 2015/757 for 2018 and 2019 in the Union *and the EEA-EFTA States*, adjusted, from **2021 until 2024**, by the linear reduction factor *for the year 2024. The linear reduction factor*

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<sup>18</sup> Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021 (OJ L 350, 29.12.2017, p. 7).

*will be applied in 2024 to the increase of the Union-wide quantity of allowances in that year.*

- (28) Achieving the increased climate ambition will require substantial public *and private* resources in the EU as well as *in Member States* to be dedicated to the climate transition. To complement and reinforce the substantial climate-related spending in the EU budget, all auction revenues *or the equivalent financial value* that are not attributed to the Union budget *in the form of own resources* should be used for climate-related purposes, *with the exception of the revenues used for the compensation of indirect carbon costs. The list of climate-related purposes should be expanded to cover additional purposes with a positive environmental impact.* This includes the use for financial support to address social aspects in lower- and middle-income households by reducing distortive taxes *and targeted reductions of duties and charges for renewable electricity. Member States should report annually on the use of auctioning revenues in accordance with Article 19 of Regulation (EU) 2018/1999 of the European Parliament and of the Council, specifying if revenues are used to implement their integrated national energy and climate plans and their territorial just transition plan.*
- (28a) *Member States' auctioning revenue will increase as a result of the inclusion of the maritime sector under the EU ETS. Therefore, Member States are encouraged to increase the use of EU ETS revenues pursuant to Article 10(3) of the Directive to contribute to the protection, restoration and better management of marine-based ecosystems, in particular marine protected areas.*
- (28b) *Significant financial resources are needed to implement the goals of Paris Agreement in developing countries and the Glasgow Climate Pact urges developed country Parties to urgently and significantly scale up their provision of climate finance. The Council conclusions on the Preparations for the 27th Conference of the Parties (COP 27) of the United Nations Framework Convention on Climate Change (UNFCCC)<sup>[1]</sup> recall that the EU and its Member States are the largest contributor to international public climate finance and have more than doubled their contribution to climate finance to support developing countries since 2013. It also renews the strong commitment made by the EU and its Member States to continue scaling up their international climate finance towards the developed countries' goal of mobilising at least USD 100 billion per year as soon as possible*

*and through to 2025 from a wide variety of sources, expecting the goal to be met in 2023.*

- (28c)** *Further, to address distributional and social effects of the transition in low-income Member States, an additional amount of 2,5 % of the Union-wide quantity of allowances from [year of entry into force of the Directive] to 2030 should be used to fund the energy transition of the Member States with a gross domestic product (GDP) per capita below 75 % of the Union average in 2016-2018, through the Modernisation Fund referred to in Article 10d of Directive 2003/87/EC.*
- (28d)** *The beneficiary Member States should be able to use the resources allocated to the Modernisation Fund by this directive to finance investments involving the adjacent EU border regions when this is relevant to the energy transition of beneficiary Member States.*
- (29)** *Further incentives to reduce greenhouse gas emissions by using cost-efficient techniques should be provided. To that end, the free allocation of emission allowances to stationary installations from 2026 onwards should be conditional on investments in techniques to increase energy efficiency and reduce emissions **in particular for large energy users.** The Commission should ensure that the application of the conditionality does not jeopardize a level playing field, environmental integrity and equal treatment between installations across the Union. The Commission should therefore without prejudice to the rules applicable under the [Energy Efficiency Directive [2012/27/EU], adopt delegated acts supplementing this Directive to address any issue identified in particular on the above mentioned principles and provide for administratively simple rules for the application of the conditionality. These rules should be part of the general rules for free allocation, using the established procedure for national implementing measures and provide timelines, criteria for the recognition of implemented energy efficiency measures as well as for alternative measures reducing GHG emissions. In addition, incentives to reduce greenhouse gas emissions should be further reinforced for installations with high greenhouse gas emission intensities. To that end, from 2026 onwards, the free allocation of emission allowances to the 20% stationary installations with the highest emission intensities under a given product benchmark should also be conditional on the set-up and implementation of climate neutrality plans.*

(30) The Carbon Border Adjustment Mechanism (CBAM), established under Regulation (EU) [.../...] of the European Parliament and of the Council<sup>19</sup>, is **set to replace the mechanisms established under this Directive to prevent** the risk of carbon leakage. To the extent that sectors and subsectors are covered by that measure, they should not receive free allocation. However, a transitional phasing-out of free allowances is needed to allow producers, importers and traders to adjust to the new regime. The reduction of free allocation should be implemented by applying a factor to free allocation for CBAM sectors, while the CBAM is phased in. **The CBAM factor should be equal to 100 % for the** period between the entry into force of [CBAM Regulation] **and the end of 2025, and subject to the application of provisions referred to in Article 36(3), point (bd), of Regulation (EU) .../... [CBAM Regulation], should be equal to 97,5 % in 2026, 95 % in 2027, 90 % in 2028, 77,5 % in 2029, 51,5 % in 2030, 39 % in 2031, 26,5 % in 2032, 14 % in 2033 and 0 % in 2034, thereby eliminating free allocation by 2034.** The relevant delegated acts on free allocation should be adjusted accordingly for the sectors and subsectors covered by the CBAM. The free allocation no longer provided to the CBAM sectors based on this calculation (CBAM demand) **will be added** to the Innovation Fund, so as to support innovation in low carbon technologies, carbon capture and utilisation ('CCU'), carbon capture and geological storage ('CCS'), renewable energy and energy storage, in a way that contributes to mitigating climate change. **In this context**, special attention should be given to projects in CBAM sectors. To respect the proportion of the free allocation available for the non-CBAM sectors, the final amount to **be deducted** from the free allocation and **made available under the Innovation Fund** should be calculated based on the proportion that the CBAM demand represents in respect of the free allocation needs of all sectors receiving free allocation.

(30a) **In order to mitigate potential carbon leakage risks related to goods subject to CBAM and produced in the Union for export to third countries which do not apply the EU ETS or a similar carbon pricing mechanism, an assessment should be carried out before the end of the transitional CBAM period under the CBAM Regulation. Where the report concludes that there is such a carbon leakage risk, the Commission should, where appropriate, present a legislative proposal to**

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<sup>19</sup> [please insert full OJ reference]

*address that carbon leakage risk in a manner that is compliant with WTO rules. Moreover, Member States should be allowed to use auction revenues to address any residual risk of carbon leakage in CBAM sectors and in accordance with State aid rules. Where allowances due to a reduction of free allocation in application of the conditionality rules are not fully used to exempt the installations with the lowest greenhouse gas emission intensity from the cross-sectoral correction, 50 % of these residual allowances should be added to the Innovation Fund, while the other 50 % should be auctioned on behalf of Member States, which they should be able to use to address any residual risk of carbon leakage in CBAM sectors.*

- (31) In order to better reflect technological progress ■ while ensuring emission reduction incentives and properly rewarding innovation, *the minimum adjustment of the benchmark values should be increased from 0,2 % to 0,3 % per year, and the maximum adjustment ■ should be increased from 1,6 % to 2,5 % per year.* For the period from 2026 to 2030, the benchmark values should thus be adjusted within a range of 6 % to 50 % compared to the value applicable in the period from 2013 to 2020. *In order to provide predictability to installations, the Commission should adopt the implementing acts determining the revised benchmark values for free allocation as soon as possible before the start of the period from 2026 to 2030.*
- (31a) *To reward best performers and innovation, installations setting a given product benchmark should be excluded from the application of the cross-sectoral correction factor. Allowances that are not allocated due to a reduction of free allocation in application of the conditionality rules should be used to cover the deficit in the reduction of free allocation resulting from excluding best performers from the application of the cross-sectoral correction factor.*
- (31b) *In order to speed-up decarbonisation of the economy while strengthening EU industrial competitiveness, an additional 20 million allowances from the quantity which could otherwise be allocated for free and an additional 5 million allowances from the quantity which could otherwise be auctioned are made available to the Innovation Fund. When reviewing the timing and sequencing of the auctioning of the Innovation Fund established in Commission Regulation (EU) No 1031/2010 in view of the changes introduced by this Directive, the Commission should consider making available larger amounts of resources in the first years of implementation*

*of the revised Directive 2003/87/EC to boost the decarbonisation of relevant sectors.*

- (32) A comprehensive approach to innovation is essential for achieving the objectives *of Regulation (EU) 2018/1999*. At EU level, the necessary research and innovation efforts are supported, among others, through Horizon Europe which include significant funding and new instruments for the sectors coming under the ETS. *Consequently, the Commission should seek synergies with Horizon Europe and, where relevant, with other Union funding programmes.*

**(32a)** *The Innovation Fund should support innovative techniques, processes and technologies, including the scaling up of such techniques, processes and technologies, with a view to their broad roll-out across the EU. Breakthrough innovation should be prioritized in the selection of projects supported through grants.*

- (33) The scope of the Innovation Fund referred to in Article 10a(8) of Directive 2003/87/EC should be extended to support innovation in *zero- and* low-carbon technologies and processes that concern the consumption of fuels in the sectors of buildings and road transport, *including collective forms of transport such as public transport and coach service*. In addition, the Innovation Fund should serve to support investments to decarbonise the maritime transport sector, including investments in *energy efficiency of ships, ports, short-sea shipping, in electrification of the sector, in* sustainable alternative fuels, such as hydrogen and ammonia that are produced from renewables, as well as zero-emission propulsion technologies like wind technologies, *and innovations in regard to ice-class ships*. *Special attention should be given to innovative projects contributing to decarbonize the maritime sector and reduce all of its climate impacts, including black carbon emissions. In that respect, the Commission should foresee dedicated topics in Innovation Fund calls for proposals. The calls should take biodiversity protection, noise and water pollution issues into account. As far as maritime transport is concerned, projects with clear EU added value should be eligible.*

(34) Pursuant to Article 10 of Commission Regulation (EU) No 2019/1122<sup>20</sup>, where aircraft operators no longer operate flights covered by the EU ETS, their accounts are set to excluded status, and processes may no longer be initiated from those accounts. To preserve the environmental integrity of the system, allowances which are not issued to aircraft operators due to their closure should be used to cover any shortfall in surrenders by those operators, and any leftover allowances should be used to accelerate action to tackle climate change by being placed in the Innovation Fund.

***(34a) In order to improve the role of Member States in the governance of the Innovation Fund and increase transparency, the Commission should report to the Climate Change Committee on the implementation of the Innovation Fund, providing an analysis of the expected impact of awarded projects by sector and by Member State. The Commission should also provide the report to the Council and the European Parliament and make it public. Subject to the agreement of applicants, following the closure of a call for proposals, the Commission shall inform Member States of the applications for funding of projects in their respective territories and shall provide them with detailed information of those applications in order to facilitate the Member States in their coordination of the support to projects. In addition, the Commission should inform the Member States about the list of pre-selected projects prior to the award of the support. Member States should ensure that the national transposition provisions do not hamper innovations and are technologically neutral, while the Commission should provide technical assistance, in particular to Member States with low effective participation, in order to improve the effective geographical participation in the Innovation Fund and increase the overall quality of submitted projects. The Commission should also ensure comprehensive monitoring and reporting, including information on progress towards effective, quality-based geographical coverage across the Union and appropriate follow up.***

***(34b) Technical assistance from the Commission focused on Member States from which few or no projects have been submitted so far would contribute to achieving a high***

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<sup>20</sup> Commission Delegated Regulation (EU) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry (OJ L 177, 2.7.2019, p. 3).

*number of project applications for funding by the Innovation Fund across all Member States. This assistance should among others support activities aimed at improving the quality of proposals for projects located in the Member States mentioned, for example through sharing information, lessons learned and best practice and at boosting the activities of National Contact Points. Other measures serving the same aim would be raising awareness of funding options and increasing the capacity of those Member States to identify and support potential project applicants. Project partnerships across Member States and matchmaking between potential applicants, in particular for large-scale projects, should also be promoted.*

*(34c) In order to align with the comprehensive nature of the European Green Deal, the selection process of projects supported through grants should give priority to projects addressing multiple environmental impacts. In order to support the replication and the faster market penetration of the supported technologies or solutions, projects funded by the Innovation Fund should share knowledge with other relevant projects as well as with Union-based researchers having a legitimate interest.*

*(35) Contract for Difference (CDs), Carbon Contracts for Difference (CCDs) and fixed premium contracts are ■ important elements to trigger emission reductions in industry by up-scaling new technologies, offering the opportunity to guarantee investors in innovative climate-friendly technologies a price that rewards CO2 emission reductions above those induced by the prevailing carbon price level in the EU ETS. The range of measures that the Innovation Fund can support should be extended to provide support to projects through price-competitive bidding, leading to the award of CDs, CCDs or fixed premium contracts. Competitive bidding would be an important mechanism for supporting the development of decarbonisation technologies and optimising the use of available resources. It would also offer certainty to investors in these technologies. In view of minimising any contingent liability for the Union budget, risk mitigation should be ensured in the design of CDs and CCDs and appropriate coverage by a budgetary commitment should be provided with full coverage at least for the first two rounds with appropriations resulting from the proceeds of auctioning of allowances allocated pursuant to Article 10a(8) of Directive 2003/87/EC. No such risks exist*

*for fixed premium contracts, because the legal commitment will be covered by a matching budgetary commitment. In addition, the Commission should conduct, after concluding the first two rounds of CDs and CCDs, and each time it is necessary afterwards, a qualitative and quantitative assessment of the financial risks arising from their implementation. By a delegated act based on the results of that assessment, the Commission should be allowed to decide to use an appropriate provisioning rate rather than full coverage for further rounds of CDs or CCDs. Such an approach should take into account any elements that may reduce the financial risks for the Union budget, in addition to the allowances available in the Innovation Fund, such as possible sharing of liability with Member States, on a voluntary basis, or a possible re-insurance mechanism from the private sector. It is therefore necessary to allow for derogations from parts of Title X of the Financial Regulation. The provisioning rate for the first two rounds of bidding should be 100 %. However, derogating from Article 210(1), 211(1), 211(2) and 218(1) of the Financial Regulation, a minimum provisioning rate of 50 % as well as a maximum share of revenue from the Innovation Fund to be used for provisioning of 30 % should be set in this Directive for later rounds and the Commission should be able to specify the provisioning rate necessary on the basis of the experience from the first two calls and the amount of revenue to be used for provisioning. The total financial liability borne by the Union budget should thus not exceed 60 % of the proceeds from auctioning for the Innovation Fund. Moreover, as provisioning will come, in general, from the Innovation Fund, derogations should be made from rules in Article 212 to 214 of the Financial Regulation relating to the common provisioning fund established by Article 212 of the Financial Regulation. The novel nature of CDs and CCDs might also necessitate derogations from Articles 209(2)(d) and (h) of the Financial Regulation, given that they do not rely on leverage/multipliers nor depend entirely on an ex ante assessment, from Article 219(3), due to the link to Article 209(2)(d), and from Article 219(6) thereof as implementing partners will not have credit/equity exposures under a guarantee. The use of any derogation from the Financial Regulation should be limited to what is necessary. The Commission should be empowered to amend the maximum share of revenue from the Innovation Fund to be used for provisioning by no more than a total of 20 percentage points above what is provided for in this Directive.*

- (35a) *The Innovation Fund is subject to the general regime of conditionality for the protection of the Union budget established by Regulation (EU, Euratom) 2020/2092.*
- (36) Where an installation's activity is temporarily suspended, free allocation is adjusted to the activity levels which are mandatorily reported annually. In addition, competent authorities can suspend the issuance of emission allowances to installations that have suspended operations as long as there is no evidence that they will resume operations. Therefore, operators should no longer be required to demonstrate to the competent authority that their installation will resume production within a specified and reasonable time in case of a temporary suspension of the activities.
- (37) Corrections of free allocation granted to stationary installations pursuant to Article 11(2) of Directive 2003/87/EC can require granting additional free allowances or transferring back surplus allowances. The allowances set aside for new entrants under Article 10a(7) of Directive 2003/87/EC should be used for those purposes.
- (37a) *Since 2013, electricity producers have been obliged to purchase all the allowances they need to generate electricity. Nevertheless, in accordance with Article 10c of Directive 2003/87/EC, some Member States have the option to provide transitional free allocation for the modernisation of the energy sector for the period 2021 to 2030. Three Member States have chosen to use this option. Given the need for rapid decarbonisation, especially in the energy sector, the end date for Member States concerned should only be able to provide this transitional free allocation for investments carried out until 31 December 2024. They should be able to add any remaining allowances for the period 2021 to 2030 that are not used for such investments, in the proportion they determine, to the total quantity of allowances that the Member State concerned receives for auctioning, or use them to support investments within the framework of the Modernisation Fund. With the exception of the deadline for notification thereof, allowances transferred to the Modernisation Fund should be subject to the same rules concerning investments that are applicable to the allowances already transferred pursuant to Article 10d(4) of Directive 2003/87/EC. To ensure predictability and transparency with regard to the volumes of allowances either available for auctioning or for the transitional free allocation, and with regard to the assets managed by the*

*Modernisation Fund, Member States should inform the Commission of the respective amounts of allowances to be used for each purpose by 15 May 2024.*

- (38) The scope of the Modernisation Fund should be aligned with the most recent climate objectives of the Union by requiring that investments are consistent with the objectives of the European Green Deal and Regulation (EU) 2021/1119, and eliminating the support to any investments related to *energy-generation based on fossil fuels, except as regards the support for such investments with revenue from allowances voluntarily transferred to the Modernisation Fund in accordance with Article 10d(4) of the ETS Directive. In addition, limited support for such investments should continue to be possible with revenue from the allocations referred to in the third subparagraph of Article 10(1) of the ETS Directive under certain conditions, in particular where the activity qualifies as environmentally sustainable under Regulation (EU) 2020/852 and as regards the allowances auctioned until 2027. For the latter category of allowances the downstream uses of non-solid fossil fuels should, in addition, not be supported with revenue from allowances auctioned after 2028. Furthermore, the percentage of the Modernisation Fund that needs to be devoted to priority investments should be increased to 80 % for the Modernisation Fund allowances transferred in accordance with Article 10d(4) of the ETS Directive and referred to in the third subparagraph of Article 10(1) thereof, and to 90 % for the additional amount of 2,5 % from the Union-wide quantity of allowances; energy efficiency should be targeted as a priority area including in industry, transport, buildings, agriculture and waste; and heating and cooling from renewable sources, as well as support of households to address energy poverty, including in rural and remote areas, should be included within the scope of the priority investments. In order to increase transparency and better assess the impact of the Modernisation Fund, the Investment Committee should report annually to the Climate Change Committee on experience with the evaluation of investments, notably in terms of emission reductions and abatement costs.*
- (38a) *Directive (EU) 2018/410 introduced provisions relating to the cancellation by Member States of allowances from their auction volume in respect of closures of electricity-generation capacity in their territory. In view of the increased climate ambition of the Union and the resulting accelerated decarbonisation of the*

*electricity sector, this cancellation has become increasingly relevant. Therefore, the Commission should assess whether the use by Member States of cancellation can be facilitated by amending the relevant delegated acts adopted pursuant to Article 10(4).*

**(38b)** *Adjustments to free allocation introduced in Directive 2018/410 and operationalized in Commission Implementing Regulation (EU) 2019/1842 improved the efficiency and incentives provided by free allocation, but increased the administrative work and made the historic date of issuance of free allocation of 28 February not operational. In order to better take into account the adjustments to free allocation, it is relevant to make adjustments to the compliance cycle. The deadline for competent authorities to grant free allocation should therefore be postponed from 28 February to 30 June and the deadline for operators to surrender allowances should be postponed from 30 April to 30 September.*

(39) Commission Implementing Regulation (EU) 2018/2066<sup>21</sup> lays down rules on the monitoring of emissions from biomass which are consistent with the rules on the use of biomass laid down in the Union legislation on renewable energy. As the legislation becomes more elaborate on the sustainability criteria for biomass with the latest rules established in Directive (EU) 2018/2001 of the European Parliament and of the Council<sup>22</sup>, the conferral of implementing powers in Article 14(1) of Directive 2003/87/EC should be explicitly extended to the adoption of the necessary adjustments for the application in the EU ETS of sustainability criteria for biomass, including biofuels, bioliquids and biomass fuels. In addition, the Commission should be empowered to adopt implementing acts to specify how to account for the storage of emissions from mixes of zero-rated biomass and biomass that is not from zero-rated sources.

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<sup>21</sup> Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 (OJ L 334, 31.12.2018, p. 1).

<sup>22</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

- (40) Renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels can be important to reduce greenhouse gas emissions in sectors that are hard to decarbonise. Where recycled carbon fuels and renewable liquid and gaseous fuels of non-biological origin are produced from captured carbon dioxide under an activity covered by this Directive, the emissions should be accounted under that activity. To ensure that renewable fuels of non-biological origin and recycled carbon fuels contribute to greenhouse gas emission reductions and to avoid double counting for fuels that do so, it is appropriate to explicitly extend the empowerment in Article 14(1) to the adoption by the Commission of implementing acts laying down the necessary adjustments for how to account for the eventual release of carbon dioxide, ***in a way that ensures that all emissions are accounted for, including where such fuels are produced from captured carbon dioxide outside the Union, while avoiding double counting and ensuring appropriate incentives are in place for capturing emissions***, taking also into account the treatment of these fuels under Directive (EU) 2018/2001.
- (41) As carbon dioxide is also expected to be transported by means other than pipelines, such as by ship and by truck, the current coverage in Annex I to Directive 2003/87/EC for transport of greenhouse gases for the purpose of storage should be extended to all means of transport for reasons of equal treatment and irrespective of whether the means of transport are covered by the EU ETS. Where the emissions from the transport are also covered by another activity under Directive 2003/87/EC, the emissions should be accounted for under that other activity to prevent double counting.
- (42) The exclusion of installations using exclusively biomass from the EU ETS has led to situations where installations combusting a high share of biomass have obtained windfall profits by receiving free allowances greatly exceeding actual emissions. Therefore, a threshold value for zero-rated biomass combustion should be introduced above which installations are excluded from the EU ETS. ***The introduction of a threshold will provide more certainty as to which installations are under the ETS scope and will enable free allowances to be more evenly distributed to sectors more at risk of carbon leakage in particular.*** The threshold ***should be set at a 95 % level to balance the advantages and disadvantages for installations to remain under the scope of the EU ETS. Therefore, installations***

*that have retained the physical capacity to burn fossil fuels, should not be incentivised to revert to the use of such fuels. A threshold at 95 % ensures that if an installation uses fossil fuels with the purpose of remaining within the scope of the ETS to benefit from free allocation allowances, the carbon costs related to the use of those fossil fuels will be sufficiently important to act as a disincentive. That threshold will also ensure that installations using a sizeable quantity of fossil fuels will remain within the monitoring obligations of the EU ETS, thus avoiding potential circumvention of existing monitoring, reporting and verification obligations. At the same time such installations which combust a lower share of zero-rated biomass should continue to be encouraged, through a flexible mechanism, to reduce fossil fuels combustion further while remaining under the scope of the ETS until their use of sustainable biomass is so substantial that the inclusion under the ETS is no longer justified. In addition, past experience has shown that the exclusion of installations exclusively using biomass, effectively being a 100 % threshold except for the combustion of fossil fuels during start-up and shut-down phases, requires a reassessment and more precise definition. The 95 % threshold allows for the combustion of fossil fuels during start-up and shut-down phases.*

- (42a) In order to incentivise the uptake of zero- and low-carbon technologies, Member States should provide operators the option to remain in the scope of the EU ETS until the end of the current and next five year period referred to in Article 11(1) if the installation changed its production process to reduce its greenhouse gas emissions and no longer meets the threshold of 20 MW of total rated thermal input.*
- (42b) The European Securities and Markets Authority (ESMA) published its final report on emission allowances and associated derivatives on 28 March 2022. The report is a comprehensive analysis of the integrity of the European carbon market and has provided expertise and recommendations in relation to upholding the proper functioning of the carbon market. In order to continuously monitor market integrity and transparency, the reporting by ESMA should be conducted on a regular basis. ESMA is already assessing market developments and, where necessary, providing recommendations in the area of its competence in their report on trends, risks and vulnerabilities in accordance with Article 32 (3) of the*

*ESMA regulation. Analysis of the European carbon market, which includes the auctions of emission allowances, on-venue and over-the-counter trading in emission allowances and derivatives thereof, should be part of this annual reporting. This obligation will streamline the reporting done by ESMA and allow for cross-market comparisons, in particular due to strong linkages between the ETS and commodity derivative markets. This regular analysis should in particular monitor any market volatility and price evolution, the operation of the auctions and trading operations on the markets, liquidity and the volumes traded, and the categories and trading behaviour of market participants, including speculative activity significantly impacting on prices. The assessment should, where relevant, include recommendations to improve market integrity and transparency as well as reporting obligations, and to enhance the prevention and detection of market abuse and help in maintaining orderly markets for emission allowances and derivatives thereof. The Commission should take due account of the assessments and recommendations in the context of the annual Carbon market report and, where necessary, in the reports to ensure the better functioning of the carbon market.*

*(42c) In order to further incentivise investments required for the decarbonisation of district heating and to address social aspects related to high energy prices and the high greenhouse gas emission intensity of district heating installations, in Member States with a very high share of emissions from district heating in comparison with the size of the economy, operators should be able to apply for additional transitional free allocation to district heating installations in such Member States and the additional value of the free allocation be invested to significantly reduce emissions before 2030. To ensure these reductions take place, the additional transitional free allocation should be conditional to investments made and to emissions reductions achieved laid down in climate neutrality plans to be drawn up by operators for their relevant installations.*

*(42d) Unexpected or sudden excessive price increases in the carbon market can negatively affect market predictability, which is essential for the planning of decarbonisation investments. Therefore, the measure which applies in the event of excessive price fluctuations in the market for emissions covered under Chapters II and III of Directive 2003/87/EC, should be strengthened in a careful manner to*

*improve its reactivity to unwarranted price evolutions. If the concrete triggering conditions based on the increase in the average allowance price are met, this rule-based safeguard measure should be triggered automatically, whereby a predetermined number of allowances will be released from the Market Stability Reserve. The triggering conditions should be closely monitored by the Commission and published monthly in order to improve transparency. To ensure the orderly auctioning of the allowances released from the Market Stability Reserve pursuant to this safeguard measure and to improve market predictability, this measure should not apply again until at least twelve months after the end of the previous release of allowances in the market under the measure.*

- (43) The Communication of the Commission on Stepping up Europe's 2030 climate ambition<sup>23</sup>, underlined the particular challenge to reduce the emissions in the sectors of road transport and buildings. Therefore, the Commission announced that a further expansion of emissions trading could include emissions from road transport and buildings *while indicating that covering all emissions of fuel combustion would present important benefits*. Emissions trading *should be applied to fuels used for combustion in buildings, road transport and industrial activities not covered by Annex I of Directive 2003/87/EC, such as heating of industrial facilities*. For these sectors, *a separate but adjacent emissions trading system should be established to avoid any disturbance of the well-functioning emissions trading system for stationary installations and aviation*. The new system is accompanied by complementary policies shaping expectations of market participants and aiming for a carbon price signal for the whole economy *while providing measures to avoid undue price impacts*. Previous experience has shown that the development of the new system requires setting up an efficient monitoring, reporting and verification system. In view of ensuring synergies and coherence with the existing Union infrastructure for the EU ETS, it is appropriate to set up emissions trading for the road transport, buildings *and additional* sectors via an amendment to Directive 2003/87/EC.
- (44) In order to establish the necessary implementation framework and to provide a reasonable timeframe for reaching the 2030 target, emissions trading in the new

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<sup>23</sup> COM(2020)562 final.

sectors should start in 2025. During the first *years*, the regulated entities should be required to hold a greenhouse gas emissions permit and to report their emissions for the years 2024 *to* 2026. The issuance of allowances and compliance obligations for these entities should be applicable as from 2027. This sequencing will allow starting emissions trading in the sectors in an orderly and efficient manner. It would also allow the ■ measures to be in place to ensure a socially fair introduction of the EU emissions trading into the *new* sectors so as to mitigate the impact of the carbon price on vulnerable households and transport users.

- (45) Due to the very large number of small emitters in the *new* sectors ■ , it is not possible to establish the point of regulation at the level of entities directly emitting greenhouse gases, as is the case for stationary installations and aviation. Therefore, for reasons of technical feasibility and administrative efficiency, it is more appropriate to establish the point of regulation further upstream in the supply chain. The act that triggers the compliance obligation under the new emissions trading should be the release for consumption of fuels which are used for combustion in the sectors of buildings and road transport, including for combustion in road transport of greenhouse gases for geological storage, *as well as in the additional sectors, which correspond to industrial activities not covered by Annex I of Directive 2003/87/EC*. To avoid double coverage, the release for consumption of fuels which are used in ■ activities under Annex I to *that* Directive ■ should not be covered.
- (46) The regulated entities in the ■ new sectors and the point of regulation should be defined in line with the system of excise duty established by Council Directive (EU) 2020/262<sup>24</sup>, with the necessary adaptations, as that Directive already sets a robust control system for all quantities of fuels released for consumption for the purposes of paying excise duties. End-users of fuels in those sectors should not be subject to obligations under Directive 2003/87/EC.
- (47) The regulated entities falling within the scope of the emissions trading in the *new* sectors ■ should be subject to similar greenhouse gas emissions permit requirements as the operators of stationary installations. It is necessary to establish rules on permit applications, conditions for permit issuance, content, and review, and any changes

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<sup>24</sup> Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).

related to the regulated entity. In order for the new system to start in an orderly manner, Member States should ensure that regulated entities falling within the scope of the new emissions trading have a valid permit as of the start of the system in 2025.

- (48) The total quantity of allowances for the new emissions trading **system** should follow a linear trajectory to reach the 2030 emissions reduction target, taking into account the cost-efficient contribution of buildings and road transport of **43 %** emission reductions by 2030 compared to 2005 **and of the additional sectors, a combined cost-efficient contribution of 42 % emission reductions by 2030 compared to 2005**. The total quantity of allowances should be established for the first time in **2027**, to follow a trajectory starting in 2024 from the value of the 2024 emissions limits<sup>25</sup>, calculated in accordance with Article 4(2) of Regulation (EU) 2018/842 of the European Parliament and of the Council<sup>25</sup> on the basis of the reference emissions for **the covered** sectors for **2005 and** the period from 2016 to 2018 **as determined under Article 4(3) of that Regulation**. Accordingly, the linear reduction factor should be set at **5,10 %**. From 2028, the total quantity of allowances should be set on the basis of the average reported emissions for the years 2024, 2025 and 2026, and should decrease by the same absolute annual reduction as set from 2024, which corresponds to a **5,38 %** linear reduction factor compared to the comparable 2025 value of the above defined trajectory. If those emissions are significantly higher than this trajectory value and if this divergence is not due to small-scale differences in emission measurement methodologies, the linear reduction factor should be adjusted to reach the required emissions reduction in 2030.
- (49) The auctioning of allowances is the simplest and the most economically efficient method for allocating emission allowances, which also avoids windfall profits. Both the buildings and road transport sectors are under relatively small or non-existent competitive pressure from outside the Union and are not exposed to a risk of carbon

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<sup>25</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).

leakage. Therefore, allowances for buildings and road transport should only be allocated via auctioning without there being any free allocation.

- (50) In order to ensure a smooth start *of the new* emissions trading *system* and taking into account the need of the regulated entities to hedge or buy ahead allowances to mitigate their price and liquidity risk, a higher amount of allowances should be auctioned early on. In **2027**, the auction volumes should therefore be 30 % higher than the total quantity of allowances for **2027**. This amount would be sufficient to provide liquidity, both if emissions decrease in line with reduction needs, and in the event emission reductions only materialise progressively. The detailed rules for this front-loading of auction volume are to be established in a delegated act related to auctioning, adopted pursuant to Article 10(4) of Directive 2003/87/EC.
- (51) The distribution rules on auction shares are highly relevant for any auction revenues that would accrue to the Member States, especially in view of the need to strengthen the ability of the Member States to address the social impacts of a carbon price signal in the buildings and road transport sectors. Notwithstanding the fact that the *new* sectors have very different characteristics, it is appropriate to set a common distribution rule similar to the one applicable to stationary installations. The main part of allowances should be distributed among all Member States on the basis of the average distribution of the emissions in *road transportation, commercial and institutional buildings and residential buildings*, during the period from 2016 to 2018.
- (52) The introduction of the carbon price in road transport and buildings should be accompanied by effective social compensation, especially in view of the already existing levels of energy poverty. About 34 million Europeans, *nearly* 6,9 % of the Union population, have said that they cannot afford to heat their home sufficiently in a **2021** EU-wide survey<sup>1</sup>. To achieve an effective social and distributional compensation, Member States should be required to spend the auction revenues *from emissions trading for the buildings, road transport and additional sectors* on the climate and energy-related purposes already specified for the existing emissions trading, *giving priority to activities that can contribute to address social aspects of the emission trading in the new sectors*, or for measures added specifically to address related concerns for the new sectors<sup>2</sup>, including related policy measures

under Directive 2012/27/EU of the European Parliament and of the Council<sup>26</sup>. A new Social Climate Fund will provide dedicated funding to Member States to support the **most affected vulnerable groups, especially households in energy or transport poverty**. This Fund will promote fairness and solidarity between and within Member States while mitigating the risk of energy and **transport poverty** during the transition. It will build on and complement existing solidarity mechanisms, **in synergy with other EU spending programmes and Funds. 50 million allowances of the EU ETS pursuant to Article 10a(8b) and 150 million allowances from emissions trading in the buildings, road transport and additional sectors should be made available to the Social Climate Fund. Moreover, revenue generated from the auctioning of allowances concerning the new sectors, up to EUR 65 000 000 000, should be used for the financing of the Social Climate Fund in the form of external assigned revenue on a temporary and exceptional basis, pending the discussions and deliberations on the Commission's proposal 2021/0430 for a Council Decision amending Decision (EU, Euratom) 2020/2053 on the system of own resources of the European Union of 22 December 2021 concerning the establishment of a new own resource based on ETS in accordance with Article 311(3) TFEU. It is necessary to provide that in case a decision is adopted in accordance with Article 311(3) TFEU establishing that new own resource, the same revenue should cease to be externally assigned when such a decision enters into force. With regard to the SCF, the Commission is in case of adoption of such a decision, to present, as appropriate, the necessary proposals in accordance with Article 24(5a) of the SCF Regulation. This is without prejudice to the outcome of the post 2027 Multiannual Financial Framework negotiations.**

- (53) Reporting on the use of auctioning revenues should be aligned with the current reporting established by Regulation (EU) 2018/1999 of the European Parliament and of the Council<sup>27</sup>.

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<sup>26</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).

<sup>27</sup> Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC,

- (55) Regulated entities covered by the *new* emissions trading should surrender allowances for their verified emissions corresponding to the quantities of fuels they have released for consumption. They should surrender allowances for the first time for their verified emissions in **2027**. In order to minimise the administrative burden, a number of rules applicable to the existing emissions trading system for stationary installations and aviation should be made applicable to *the new* emissions trading for buildings, road transport **and additional sectors**, with the necessary adaptations. This includes, in particular, rules on transfer, surrender and cancellation of allowances, as well as the rules on the validity of allowances, penalties, competent authorities and reporting obligations of Member States.
- (55a) *Certain Member States already have national carbon taxes that apply to the buildings, road transport and additional sectors covered by Annex III to Directive 2003/87/EC. Therefore, a temporary derogation should be introduced until the end of 2030. To ensure the objectives of Directive 2003/87/EC and the coherence of the new emissions trading system, the option to apply that derogation should only be available where the national tax rate is higher than the average auctioning price for the relevant year and only apply to the surrender obligation of the regulated entities paying such a tax. To ensure stability and transparency of the system, the national tax, including the relevant tax rates, should be notified to the Commission at the end of the transposition period of this Directive. The derogation should not affect the externally assigned revenue for the Social Climate Fund or, if established in accordance with Article 311(3) TFEU, an own resource based on the auctioning revenue from the ETS in the buildings, road transport and additional sectors.*
- (56) For emissions trading in the buildings, road transport **and additional** sectors to be effective, it should be possible to monitor emissions with high certainty and at reasonable cost. Emissions should be attributed to regulated entities on the basis of fuel quantities released for consumption and combined with an emission factor. Regulated entities should be able to reliably and accurately identify and differentiate

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2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

the sectors in which the fuels are released for consumption, as well as the final users of the fuels, in order to avoid undesirable effects, such as double burden. ***In the small number of cases where double counting between emissions in the existing ETS and the new system for the road transport, buildings and additional sectors cannot be excluded, or where costs arise due to surrender of allowances for emissions outside activities included in this Directive, Member States should use such revenue to compensate for the unavoidable double counting or other such costs outside the road transport, building and additional sectors in accordance with Union law and implementing powers should therefore be conferred on the Commission to ensure uniform conditions. To further mitigate any issues of double counting, the deadlines for monitoring and surrendering in the new emission trading system should come one month after the deadlines in the existing system for stationary installations and aviation.*** To have sufficient data to establish the total number of allowances for the period from 2028 to 2030, the regulated entities holding a permit at the start of the system in 2025 should report their associated historical emissions for 2024.

***(56a) Transparency on carbon costs and to which extent they are passed on to consumers is of key importance for enabling swift and cost-efficient emission reductions in all sectors of the economy. This is of particular importance in an emission trading system which is based on upstream obligations. The new emissions trading is meant to incentivise regulated entities to reduce the carbon content of the fuels and they should not make undue profits by passing on more carbon costs to consumers than they incur. While full auctioning of emissions allowances under the emissions trading system for buildings, road transport and additional sectors already limits the occurrence of such undue profits, the Commission should monitor the extent to which regulated entities pass through carbon costs so that windfall profits are avoided. In relation to Chapter IVa, the Commission should report annually where possible by type of fuel on the average level of the carbon costs which have been passed on to European consumers.***

**(57)** It is appropriate to introduce measures to address the potential risk of excessive price increases, which, if particularly high at the start of the ***new*** emissions trading, may undermine the readiness of households and individuals to invest in reducing their greenhouse gas emissions. These measures should complement the safeguards

provided by the Market Stability Reserve established by Decision (EU) 2015/1814 of the European Parliament and of the Council<sup>28</sup> and that became operational in 2019. While the market will continue to determine the carbon price, safeguard measures will be triggered by rules-based automatism, whereby allowances will be released from the Market Stability Reserve only if concrete triggering conditions based on the increase in the average allowance price are met. This additional mechanism should also be highly reactive, in order to address excessive volatility due to factors other than changed market fundamentals. The measures should be adapted to different levels of excessive price increase, which will result in different degrees of the intervention. The triggering conditions should be closely monitored by the Commission and the measures should be adopted by the Commission as a matter of urgency when the conditions are met. This is without prejudice to any accompanying measures that Member States may adopt to address adverse social impacts.

***(57a) In order to increase certainty for citizens that the carbon price in the initial years of the new emissions trading system does not go above EUR 45, it is appropriate to include an additional price stability mechanism to release allowances from the Market Stability Reserve in case the carbon price exceeds that level. In principle, the measure should apply once during a period of 12 months. However, it should also be able to apply again during the same period of 12 months in case the Commission, assisted by the Climate Change Committee, considers that the evolution of the price justifies another release of allowances. In view of the aim of this mechanism to ensure stability in the initial years, the Commission should assess its functioning and whether it should be continued after 2029.***

***(57b) As an additional safeguard mechanism ahead of the start of emissions trading in buildings, road transport and additional sectors, it should be possible to delay the application of the cap and the surrendering obligations in case gas or oil wholesale prices are exceptionally high compared to historical trends. The mechanism should be automatic, whereby the application of the cap and the***

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<sup>28</sup> Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L 264, 9.10.2015, p. 1).

*surrendering obligations should be delayed by one year if concrete energy price triggers are met. The reference prices should be determined on the basis of benchmark contracts in the gas and oil wholesale markets which are immediately available and the most relevant for end consumers. Separate trigger conditions for gas and oil prices should be envisaged, as their price developments follow different historical trends. In order to ensure market certainty, the Commission should provide clarity on the application of the delay sufficiently in advance through a notice in the Official Journal.*

- (58) The application of emissions trading in the buildings, road transport **and additional** sectors should be monitored by the Commission, including the degree of price convergence with the existing ETS, and, if necessary, a review should be proposed to the European Parliament and the Council to improve the effectiveness, administration and practical application of emissions trading for those sectors on the basis of acquired knowledge as well as increased price convergence. The Commission should be required to submit the first report on those matters by 1 January 2028.
- (59) In order to ensure uniform conditions for the implementation of Articles **3g(1), 3gd(2), 3gd(3), 12(3-d), 12(3-c), 14(1), 30f(2a), 30f(4) and 30h(4)** of Directive 2003/87/EC, implementing powers should be conferred on the Commission. To ensure synergies with the existing regulatory framework, the conferral of implementing powers in Articles 14 and 15 of that Directive should be extended to cover the **road transport, buildings and additional sectors**. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>29</sup>.
- (59a) *In order to achieve the objectives laid down in this Directive and other Union legislation, particularly those in Regulation (EU) 2021/1119, the Union and its Member States should make use of the latest scientific evidence while implementing policies. Therefore, when the Scientific Advisory Board on Climate Change provides scientific advice and issues reports regarding the EU ETS, the Commission should take those into account, in particular, as regards the need for***

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<sup>29</sup> Regulation (EU) No 182/2011 of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.02.2011, p. 13).

*additional Union policies and measures to ensure compliance with the objectives and targets of Regulation (EU) 2021/1119, and additional Union policies and measures in view of the ambition and environmental integrity of global market-based measures for aviation and maritime transport.*

- (59b) To acknowledge the contribution of EU ETS revenues to the climate transition, an EU ETS label should be introduced. Among other measures to ensure the visibility of funding from the EU ETS, Member States and the Commission should ensure that projects and activities supported through the Modernisation Fund and the Innovation Fund are clearly indicated as coming from EU ETS revenues by displaying an appropriate label.*
- (59c) With a view to achieving the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119, a Union-wide climate target for 2040 should be set, based on a proposal from the Commission. The EU ETS should be reviewed to align it with the Union 2040 climate target. As a result, by July 2026 the Commission should report on several aspects of the EU ETS to the European Parliament and to the Council, accompanying the report, where appropriate, by a legislative proposal and impact assessment. In line with Regulation (EU) 2021/1119, priority should be given to direct emissions reductions, which will have to be complemented by increased CO<sub>2</sub> removals in order to achieve climate neutrality. Therefore, among other aspects, by July 2026 the Commission should report to the European Parliament and to the Council on how emissions removed from the atmosphere and safely and permanently stored, for example through direct air capture, could potentially be covered by emissions trading, without offsetting necessary emissions reductions. For as long as not all stages of the life of a product in which captured carbon is used are subject to carbon pricing, in particular at the stage of waste incineration, reliance on accounting of emissions at the point of their release from products into the atmosphere would result in emissions being undercounted. In order to regulate the capture of carbon in a way that reduces net emissions, ensures that all emissions are accounted for and that double counting is avoided, while generating economic incentives, the Commission should assess by July 2026, whether all greenhouse gas emissions covered by Directive 2003/87/EC are effectively accounted for, and whether double counting is effectively avoided. In particular, it should assess the*

*accounting of the greenhouse gas emissions which are considered to have been captured and utilised in a product in a way other than that referred to in paragraph 3b of Article 12 and take into account the downstream stages, including disposal and waste incineration. Finally, the Commission should also report on to the Council and the European Parliament on the feasibility of lowering the 20 MW total rated thermal input thresholds for the activities in Annex I of Directive 2003/87/EC, taking into account the environmental benefit and administrative burden.*

*(59d) By July 2026, the Commission should also assess and report to the European Parliament and to the Council on the feasibility of including municipal waste incineration installations in the EU ETS, including with a view to their inclusion from 2028 and with an assessment of the potential need for a possibility for a Member State to opt out until the end of 2030, taking into account the importance of all sectors contributing to emission reductions. Inclusion of municipal waste incineration installations in the EU ETS would contribute to the circular economy by encouraging recycling, reuse and repair of products, while also contributing to economy-wide decarbonisation. The inclusion of municipal waste incineration installations would reinforce incentives for sustainable management of waste in line with the waste hierarchy and would create a level playing field between the regions that have included municipal waste incineration under the scope of the EU ETS. To avoid deviation of waste from municipal waste incineration installations towards landfills in the Union, which create methane emissions, and exports of waste to third countries, with a potentially negative impact on the environment, in its report the Commission should take into account the potential diverting towards disposal of waste by landfilling in the Union and waste exports to third countries. The Commission should also take into account the effects on the internal market, potential distortions of competition, environmental integrity, alignment with the objectives of the Waste Framework Directive and robustness and accuracy with respect to the monitoring and calculation of emissions. Considering the methane emissions from landfilling and to avoid creating an uneven playing field, the Commission should also assess the possibility of including other waste management processes, such as landfilling, fermentation,*

*composting and mechanical-biological treatment, in the EU ETS, when assessing the feasibility of including municipal waste incineration installations.*

(60) In order to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Articles 10(4) and 10a(8) of that Directive. Moreover, to ensure synergies with the existing regulatory framework, the delegation in Articles 10(4) and 10a(8) of Directive 2003/87/EC should be extended to cover the sectors of road transport and buildings. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

***(60a) The provisions relating to the existing EU ETS and its extension to maritime transport should apply from 2024 in line with the need for urgent climate action and for all sectors to contribute to emission reductions in a cost-effective manner. Consequently, Member States should transpose the provisions relating to those sectors by 31 December 2023 at the latest. However, the deadline for transposing the provisions relating to the emissions trading system for buildings, road transport and additional sectors should be 30 June 2024, as the rules on monitoring, reporting, verification and permitting for those sectors apply from 1 January 2025, and require sufficient lead time for orderly implementation. As an exception, to guarantee transparency and robust reporting, Member States should transpose the obligation to report on historical emissions for those sectors by 31 December 2023, as this obligation relates to the emissions of the year 2024. In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>30</sup>, Member States***

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<sup>30</sup> OJ C 369, 17.12.2011, p. 14.

*have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.*

- (61) A well-functioning, reformed EU ETS comprising an instrument to stabilise the market is a key means for the Union to *achieve the economy-wide net greenhouse gas emissions reduction target for 2030, the Union's climate-neutrality objective by 2050, at the latest, and the aim of achieving negative emissions thereafter as laid down in Article 2(1) of Regulation (EU) 2021/1119 and the goal of the Paris Agreement.* The Market Stability Reserve seeks to address the imbalance between supply and demand of allowances in the market. Article 3 of Decision (EU) 2015/1814 provides that the reserve is to be reviewed three years after it becomes operational, paying particular attention to the percentage figure for the determination of the number of allowances to be placed in the Market Stability Reserve, the threshold for the total number of allowances in circulation (TNAC) that determines the intake of allowances, and the number of allowances to be released from the reserve. *The current threshold determining the placing of allowances in the Market Stability reserve was established in 2018, with the last review of the EU ETS, while the linear reduction factor is being increased with this Directive. Therefore, as part of the regular review of the functioning of the Market Stability Reserve, the Commission should also assess the need for a potential adjustment of this threshold, in line with the linear factor referred to in Article 9 of Directive 2003/87/EC.*
- (62) Considering the need to deliver a stronger investment signal to reduce emissions in a cost-efficient manner and with a view to strengthening the EU ETS, Decision (EU) 2015/1814 should be amended so as to increase the percentage rate for determining the number of allowances to be placed each year in the Market Stability Reserve. In addition, for lower levels of the TNAC, the intake should be equal to the difference between the TNAC and the threshold that determines the intake of allowances. This would prevent the considerable uncertainty in the auction volumes that results when the TNAC is close to the threshold, and at the same time ensure that the surplus

reaches the volume bandwidth within which the carbon market is deemed to operate in a balanced manner.

- (63) Furthermore, in order to ensure that the level of allowances that remains in the Market Stability Reserve after the invalidation is predictable, the invalidation of allowances in the reserve should no longer depend on the auction volumes of the previous year. The number of allowances in the reserve should, therefore, be fixed at a level of 400 million allowances, which corresponds to the lower threshold for the value of the TNAC.
- (64) The analysis of the impact assessment accompanying the proposal for this Directive has also shown that net demand from aviation should be included in the total number of allowances in circulation. In addition, since aviation allowances can be used in the same way as general allowances, including aviation in the reserve would make it a more accurate, and thus a better tool to ensure the stability of the market. The calculation of the total number of allowances in circulation should include aviation emissions and allowances issued in respect of aviation as of the year following the entry into force of this Directive.
- (65) To clarify the calculation of the total number of allowances in circulation (TNAC), Decision (EU) 2015/1814 should specify that only allowances issued and not put in the Market Stability Reserve are included in the supply of allowances. Moreover, the formula should no longer subtract the number of allowances in the Market Stability Reserve from the supply of allowances. This change would have no material impact on the result of the calculation of the TNAC, including on the past calculations of the TNAC or on the reserve.
- (66) In order to mitigate the risk of supply and demand imbalances associated with the start of emissions trading for the buildings, road transport *and additional* sectors, as well as to render it more resistant to market shocks, the rule-based mechanism of the Market Stability Reserve should be applied to those new sectors. For that reserve to be operational from the start of the system, it should be established with an initial endowment of 600 million allowances for emissions trading in the road transport, buildings *and additional* sectors. The initial lower and upper thresholds, which trigger the release or intake of allowances from the reserve, should be subject to a general review clause. Other elements such as the publication of the total number of

allowances in circulation or the quantity of allowances released or placed in the reserve should follow the rules of the reserve for other sectors.

- (67) ***In parallel .to the adoption of this Directive, Regulation (EU) 2015/757 is being amended to provide for monitoring, reporting and verification rules that are necessary for an extension of the EU ETS to maritime transport activities and to provide for the monitoring, reporting and verification of emissions of additional greenhouse gases and ship types.***
- (67a) ***Since the objectives of this Directive to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient way in a manner commensurate with this economy-wide net greenhouse gas emissions reduction target for 2030 through an extended and amended Union wide market based mechanism cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.***
- (68) Directive 2003/87/EC **and** Decision (EU) 2015/1814 ■ should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

## Article 1

### Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

**(-1) in Article 1, the second paragraph is replaced by the following:**

***“This Directive also provides for the reductions of greenhouse gas emissions to be increased so as to contribute to the levels of reductions that are considered scientifically necessary to avoid dangerous climate change. It contributes to the achievement of the Union’s climate-neutrality objective and its climate targets as laid down in Regulation (EU) 2021/1119 and thereby to the objectives of the Paris Agreement.”;***

**(1) in Article 2, paragraphs 1 and 2 are replaced by the following:**

1. This Directive shall apply to the activities listed in Annexes I and III, and to the ■ greenhouse gases listed in Annex II. Where an installation that is included in the scope of the EU ETS due to the operation of combustion units with a total rated thermal input exceeding 20 MW changes its production processes to reduce its greenhouse gas emissions and no longer meets that threshold, ***the Member State shall provide the operator with the options to remain in the scope of the EU ETS until the end of the current and next five year period referred to in Article 11(1), second subparagraph, following the change to its production process. The operator of that installation may decide that the installation remains in the scope of the EU ETS until the end of that current five year period only or also in the next five year period, following the change to its production process. The Member State concerned shall notify to the Commission changes compared to the list submitted to the Commission pursuant to Article 11(1).***

2. This Directive shall apply without prejudice to any requirements pursuant to Directive 2010/75/EU of the European Parliament and of the Council(\*).

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

(2) Article 3 is amended as follows:

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

“(b) ‘emissions’ means the release of greenhouse gases from sources in an installation or the release from an aircraft performing an aviation activity listed in Annex I or from ships performing a maritime transport activity listed in Annex I of the gases specified in respect of that activity, or the release of greenhouse gases corresponding to the activity referred to in Annex III;”;

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

“(d) ‘greenhouse gas emissions permit’ means the permit issued in accordance with Articles 5, 6 and 30b;”;

(c) point (u) is deleted;

(d) the following points (v) to (z) are added:

“(v) ‘shipping company’ means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the shipowner and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention, set out in Annex I to Regulation (EC) No 336/2006 of the European Parliament and of the Council(\*);

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(\*) Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95 (OJ L 64, 4.3.2006, p. 1).

(va) *‘voyage’ means a voyage as defined in Article 3, point (c), of Regulation (EU) 2015/757 of the European Parliament and of the Council(\*);*

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- (\*) *Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55).*
- (w) ‘administering authority in respect of a shipping company’ means the authority responsible for administering the EU ETS in respect of a shipping company in accordance with Article 3gd;
- (wa) ‘port of call’ means the port where a ship stops to load or unload cargo or to embark or disembark passengers, or the port where an offshore ship stops to relieve the crew, considering that stops for the sole purposes of refuelling, obtaining supplies, relieving the crew of a ship other than an offshore ship, going into dry-dock or making repairs to the ship and/or its equipment, stops in port because the ship is in need of assistance or in distress, ship-to-ship transfers carried out outside ports, stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities, and stops of containerships in a neighbouring container transshipment port listed in the implementing act adopted pursuant to Article 3g(1) are excluded;
- (wb) ‘cruise passenger ship’ means a passenger ship not having a cargo deck, designed exclusively for commercial transportation of passengers in overnight accommodation on a sea voyage;
- (wc) ‘Contract for Difference (CD)’ means a contract between the Commission and the producer of a low- and zero-carbon product who has been selected through a competitive bidding mechanism such as an auction, whereby the contract provides the producer with support from the Innovation Fund covering the difference between the winning price (the strike price) on the one hand and a reference price, as derived from the price of the produced low- and zero-carbon product, the market price of a close substitute or a combination of those two on the other hand;
- (wd) ‘Carbon Contract for Difference (CCD)’ means a contract between the Commission and the producer of a low- and zero-carbon product who

*has been selected through a competitive bidding mechanism such as an auction, whereby the contract provides the producer with support from the Innovation Fund covering the difference between the winning price (the strike price) on the one hand and a reference price, as derived from an average price of the allowances on the other hand;*

*(we) ‘Fixed premium contract’ means a contract between the Commission and the producer of a low- and zero-carbon product who has been selected through a competitive bidding mechanism such as an auction, whereby the contract provides the producer with support in the form of a fixed amount per unit of the produced product;*

(x) ‘regulated entity’ for the purposes of Chapter IVa shall mean any natural or legal person, except for any final consumer of the fuels, that engages in the activity referred to in Annex III and that falls within one of the following categories:

(i) where the fuel passes through a tax warehouse as defined in Article 3(11) of Council Directive (EU) 2020/262(\*), the authorised warehouse keeper as defined in Article 3(1) of that Directive, liable to pay the excise duty which has become chargeable pursuant to Article 7 of that Directive;

(ii) if point (i) is not applicable, any other person liable to pay the excise duty which has become chargeable pursuant to Article 7 of Directive (EU) 2020/262 *or Article 21(5), first subparagraph, of Council Directive 2003/96/EC* in respect of the fuels covered by this Chapter;

(iii) if points (i) and (ii) are not applicable, any other person which has to be registered by the relevant competent authorities of the Member State for the purpose of being liable to pay the excise duty, including any person exempt from paying the excise duty, as referred to in Article 21(5), fourth sub-paragraph, of Council Directive 2003/96/EC(\*\*);

(iv) if points (i), (ii) and (iii) are not applicable, or if several persons are jointly and severally liable for payment of the same excise duty, any other person designated by a Member State.

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(\*) Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 058 27.2.2020, p. 4).

(\*\*) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283 31.10.2003, p. 51).

(y) ‘fuel’ for the purposes of Chapter IVa shall mean any **energy product referred to in Article 2(1) of Directive 2003/96/EC, including the fuels listed in Table-A and Table C of Annex I to that Directive** , as well as any other product **intended for use**, offered for sale **or used** as motor fuel or heating fuel as specified in Article 2(3) of that Directive, **including for the production of electricity;**

(z) ‘release for consumption’ for the purposes of Chapter IVa shall have the same meaning as in Article 6(3) of Directive (EU) 2020/262;

(za) **‘TTF gas price’ for the purposes of Chapter IV shall mean the price of the gas futures month-ahead contract traded at the Title Transfer Facility (TTF) Virtual Trading Point, operated by Gasunie Transport Services B.V.;**

(zb) **‘Brent crude oil price’ for the purposes of Chapter IV shall mean the futures month-ahead price for crude oil used as a benchmark price for the purchases of oil.”;**

(3) the title of Chapter II is replaced by the following:

“AVIATION AND MARITIME TRANSPORT”

(4) Article 3a is replaced by the following:

“Article 3a

Scope

Articles 3b to 3f shall apply to the allocation and issue of allowances in respect of the aviation activities listed in Annex I. Articles 3g to 3ge shall apply in respect of the maritime transport activities listed in Annex I.”

(5) Articles 3f and 3g are replaced by the following:

“Article 3f

Monitoring and reporting plans

The administering Member State shall ensure that each aircraft operator submits to the competent authority in that Member State a monitoring plan setting out measures to monitor and report emissions and tonne-kilometre data for the purpose of an application under Article 3e and that such plans are approved by the competent authority in accordance with the acts referred to in Article 14.

Article 3g

Scope of application to maritime transport activities

1. The allocation of allowances and the application of surrender requirements in respect of maritime transport activities shall apply in respect of fifty percent (50 %) of the emissions from ships performing voyages departing from a port *of call* under the jurisdiction of a Member State and arriving at a port *of call* outside the jurisdiction of a Member State, fifty percent (50 %) of the emissions from ships performing voyage departing from a port *of call* outside the jurisdiction of a Member State and arriving at a port *of call* under the jurisdiction of a Member State, one hundred percent (100 %) of emissions from ships performing voyages departing from a port *of call* under the jurisdiction of a Member State and arriving at a port *of call* under the jurisdiction of a Member State and one hundred percent (100 %) of emissions from ships *within a port of call under the jurisdiction of a Member State*.

*1a. The Commission shall by 31 December 2023 by means of implementing acts establish a list of the neighbouring container transshipment ports and update this list before 31 December every two years thereafter.*

*Those implementing acts shall list neighbouring container transshipment ports where the share of transshipment of containers, measured in twenty-foot equivalent unit, exceeds 65 % of the total container traffic of that port during the most recent twelve-month period for which relevant data are*

*available located outside the Union but less than 300 nautical miles of a port under the jurisdiction of a Member State. For the purpose of this paragraph containers shall be considered as transhipped when they are unloaded from a ship to the port for the sole purpose of loading them on another ship. The list shall not include ports located in a third country that effectively apply measures equivalent to this Directive.*

*Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).*

2. Articles 9, 9a and 10 shall apply to maritime transport activities in the same manner as they apply to other activities covered by the EU ETS *with the following exception with regard to the application of Article 10.*

*Until 31 December 2030, a share of allowances shall be attributed to Member States with a ratio of shipping companies that would have been under their responsibility according to Article 3gd compared to population in 2020 and based on data available for the period 2018-2020, above 15 shipping companies per million inhabitants. The quantity of allowances shall correspond to 3,5 % of the additional quantity of allowances due to the increase in the cap for maritime transport referred to in Article 9, third subparagraph in the relevant year. For the years 2024 to 2026, the quantity of allowances shall in addition be multiplied by the percentages applicable to the relevant year pursuant to Article 3ga, points (a) to (c). The revenue from the auctioning of this share of allowances should be used for the purposes referred to in Article 10(3) point (g), with regard to the maritime sector, and points (f) and (i). 50 % of the quantity of allowances shall be distributed among the relevant Member States based on the share of shipping companies under their responsibility and the remainder distributed in equal shares between them.”*

- (6) the following Articles 3ga to 3ge are added:

“Article 3ga

Phase-in of requirements for maritime transport

Shipping companies shall be liable to surrender allowances according to the following schedule:

- (a) **40** % of verified emissions reported for **2024**;
- (b) **70** % of verified emissions reported for **2025**;
- (c) **100** % of verified emissions reported for **2026 and each year thereafter**.

To the extent that fewer allowances are surrendered compared to the verified emissions from maritime transport for the years 2024 and 2025, once the difference between verified emissions and allowances surrendered has been established in respect of each year, a corresponding quantity of allowances shall be cancelled rather than auctioned pursuant to Article 10.

#### **Article 3gaa**

##### ***Provisions for transfer of the costs of the ETS from the shipping company to another entity***

- 1. Member States shall take the necessary measures to ensure that when the ultimate responsibility for the purchase of the fuel and/or the operation of the ship is assumed by a different entity than the shipping company pursuant to a contractual arrangement, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances.***

***Operation of the ship for the purposes of this Article means determining the cargo carried and/or the route and the speed of the ship. The shipping company remains the responsible entity for surrendering allowances as required under Article 3ga and Article 12 of this Directive and for overall compliance with the provisions of national law transposing this Directive. Member States shall ensure that shipping companies under their responsibility comply with their obligations to surrender allowances, notwithstanding their entitlement to be reimbursed by the commercial operators for the costs arising from the surrender.***

#### Article 3gb

##### Monitoring and reporting of emissions from maritime transport

In respect of emissions from maritime transport activities listed in Annex I, the administering authority ***in the respect of a shipping company*** shall ensure that a shipping company under its responsibility monitors and reports the relevant

parameters during a reporting period, and submits aggregated emissions data at company level to the administering authority in line with Chapter II of Regulation (EU) 2015/757 of the European Parliament and of the Council (\*).

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(\*) Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55).

#### Article 3gc

##### Verification and accreditation of emissions from maritime transport

The administering authority in respect of a shipping company shall ensure that the reporting of aggregated emissions data at shipping company level submitted by a shipping company pursuant to Article 3gb is verified in accordance with the verification and accreditation rules set out in Chapter III of Regulation (EU) 2015/757 (\*).

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(\*) Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55).

#### Article 3gd

##### Administering authority in respect of a shipping company

1. The administering authority in respect of a shipping company shall be:
  - (a) in the case of a shipping company registered in a Member State, the Member State in which the shipping company is registered;
  - (b) in the case of a shipping company that is not registered in a Member State, the Member State with the greatest estimated number of port calls from voyages performed by that shipping company in the last **four** monitoring years and falling within the scope set out in Article 3g;

- (c) in the case of a shipping company that is not registered in a Member State and that did not carry out any voyage falling within the scope set out in Article 3g in the preceding **four** monitoring years, the administering authority shall be the Member State ■ where **a ship of** the shipping company has **arrived or** started its first voyage falling within the scope set out in Article 3g.

■

2. Based on the best available information, the Commission shall **establish by means of implementing acts**:
- (a) before 1 February 2024, publish a list of shipping companies which performed a maritime activity listed in Annex I that fell within the scope defined in Article 3g on or with effect from 1 January **2024**, specifying the administering authority for each shipping company in accordance with paragraph 1;
- (b) **before 1 February** every two years thereafter, **an updated** list to reattribute shipping companies **registered in a Member State** to another administering authority **if they changed the Member State of registration within the Union in accordance with paragraph 1(a) of this Article** or to include shipping companies which have subsequently performed a maritime activity listed in Annex I that fell within the scope defined in Article 3g **in accordance with paragraph 1(c) of this Article**; **and**
- (c) **before 1 February every four years thereafter, an updated list to reattribute shipping companies that are not registered in a Member State to another administering authority in accordance with paragraph 1(b) of this Article.**
- 2a. **The administering authority that according to the list established pursuant to paragraph 2 is responsible for a shipping company shall retain that responsibility regardless of subsequent changes in the shipping company's activities or registration until those changes are reflected in an updated list.**
3. The Commission shall adopt implementing acts to establish detailed rules relating to the administration of shipping companies by administering

authorities under this Directive. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

#### Article 3ge

##### Reporting and review

1. ***In the event of*** the adoption by the International Maritime Organization (***IMO***) of a global market-based measure to reduce greenhouse gas emissions from maritime transport, ***the Commission shall review this Directive in light of that adopted measure.***

***To this end, the Commission shall present a report to the European Parliament and to the Council within 18 months of the adoption of such a measure and before it becomes operational. In that report the Commission shall examine the global market-based measure as regards:***

- (a) its ambition in light of the objectives of the Paris Agreement;***
- (b) its overall environmental integrity, including compared to the provisions of this Directive covering maritime transport; and***
- (c) any issue related to the coherence between the EU ETS and that measure.***

***Where appropriate, the Commission may accompany that report with a legislative proposal to amend this Directive in a manner that is consistent with the Union 2030 climate target and the climate-neutrality objective as set out in Regulation (EU) 2021/1119 and with the aim of preserving the environmental integrity and effectiveness of Union climate action, to ensure coherence between the implementation of a global market-based measure adopted by the IMO and the EU ETS, while avoiding any significant double burden.***

- 1a. In the event that the International Maritime Organization does not adopt by 2028 a global market-based measure to reduce greenhouse gas emissions from maritime transport in line with the objectives of the Paris Agreement and at least to a level comparable to that resulting from the Union measures taken under this Directive, the Commission shall present a report to the European Parliament and to the Council in which it shall examine the need to***

*apply the allocation of allowances and surrender requirements in respect of more than fifty percent (50 %) of the emissions from ships performing voyages between a port of call under the jurisdiction of a Member State and a port of call outside the jurisdiction of a Member State, in light of the objectives of the Paris Agreement. In that report, the Commission shall in particular consider progress at IMO level and examine whether any third country has a market-based measure equivalent to this Directive and assess the risk of an increase in evasive practices, including through a shift to other modes of transport or a shift of port hubs to ports outside the Union.*

*Where appropriate, the report shall be accompanied by a legislative proposal to amend this Directive* .

2. The Commission shall monitor the implementation of this Chapter *in relation to maritime transport, in particular to detect evasive behaviour in order to prevent this at an early stage, including consideration of outermost regions, and report biennially from [the year following the entry into force of this amending Directive] on the implementation of this Chapter* and possible trends as regards companies seeking to avoid being bound by the requirements of this Directive. *The Commission shall also monitor impacts as regards, inter alia, possible transport cost increases, market distortions and changes in port traffic such as port evasion and shifts of transshipment hubs, the overall competitiveness of the maritime sector in the Member States, and in particular impacts on those shipping services that provide essential services of territorial continuity.* If appropriate, the Commission shall propose measures to *ensure the effective implementation of this Chapter, in particular measures to address these trends as regards companies seeking to evade the requirements of this Directive.*
  - 2a. *No later than 30 September 2028, the Commission shall assess the appropriateness of extending the application of the second subparagraph of Article 3g(2) beyond 31 December 2030 and, if appropriate, submit a legislative proposal to that effect.*
3. *No later than 31 December 2026, the Commission shall present a report to the European Parliament and to the Council in which it shall examine the*

*feasibility and economic, environmental and social impacts of the inclusion in this Directive of emissions from ships, including offshore ships, below 5000 gross tonnage but not below 400 gross tonnage building notably on the analysis accompanying the review of Regulation (EU) 2015/757 due by end of 2024.*

*That report shall also consider the interlinkages between this Directive and Regulation (EU) 2015/757 and draw on experiences from the application thereof. In that report, the Commission shall also examine how this Directive can best account for the uptake of renewable and low-carbon maritime fuels on a lifecycle basis. If appropriate, the report may be accompanied by legislative proposals.”;*

(7) Article 3h is replaced by the following:

“Article 3h  
Scope

The provisions of this Chapter shall apply to greenhouse gas emissions permits and the allocation and issue of allowances in respect of activities listed in Annex I other than aviation and maritime transport activities.”;

(8) in Article 6(2), point (e) is replaced by the following:

“(e) an obligation to surrender allowances equal to the total emissions of the installation in each calendar year, as verified in accordance with Article 15 ***in accordance with the deadline provided in Article 12(3).***”;

(9) Article 8 is amended as follows:

(a) the words “of the European Parliament and of the Council(1)” and footnote (1) are deleted;

(b) the following paragraph is added:

“The Commission shall review the effectiveness of synergies with Directive 2010/75/EU. Environmental and climate relevant permits should be coordinated to ensure efficient and speedier execution of measures needed to comply with EU climate and energy objectives. The Commission may submit a report to the European Parliament and the Council in the context of any future review of this Directive.”;

(10) in Article 9, the following *paragraphs are* added:

“In **2024**, the Union-wide quantity of allowances shall be decreased by **90** million allowances █. In **2026**, the Union-wide quantity of allowances shall be *decreased* by **27** million allowances █. In **2024**, *the Union-wide quantity of allowances shall be increased by 78,4 million allowances for maritime transport*. The linear factor shall be **4,3 % from 2024 to 2027 and 4,4% from 2028**. *The linear factor shall also apply to the allowances corresponding to the maritime transport activities’ average emissions reported in accordance with Regulation (EU) 2015/757 for 2018 and 2019 that are addressed in Article 3g*. The Commission shall publish the Union-wide quantity of allowances within 3 months of [date of entry into force of the amendment to be inserted].’

*From 1 January 2026 and 1 January 2027 respectively, the quantity of allowances shall be increased to take into account the coverage of other greenhouse gas emissions than CO<sub>2</sub> emissions from maritime and the coverage of emissions of offshore ships, based on their emissions for the most recent year for which data is available. Notwithstanding Article 10(1), the allowances resulting from that increase shall be made available to support innovation in accordance with Article 10a(8).”;*

(11) Article 10 is amended as follows:

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

“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 (‘the beneficiary Member States’) as set out in Article 10d (‘the Modernisation Fund’). The beneficiary Member States for this amount of allowances shall be the Member States with a GDP per capita at market prices below 60 % of the Union average in 2013. The funds corresponding to this quantity of allowances shall be distributed in accordance with Part A of Annex IIb.

In addition, 2,5 % of the total quantity of allowances between [year following the entry into force of the Directive] and 2030 shall be auctioned for the Modernisation Fund. The beneficiary Member States for this amount of allowances shall be the Member States with a GDP per capita at market prices

below 75 % of the Union average during the period 2016 to 2018. The funds corresponding to this quantity of allowances shall be distributed in accordance with Part B of Annex IIb.”;

- (b) in paragraph 3, the first and second sentence are replaced by the following:
- “3. Member States shall determine the use of revenues generated from the auctioning of allowances *referred to in paragraph 2*, except for the revenues established as own resources in accordance with Article 311(3) TFEU and entered in the Union budget. Member States shall use *those* revenues ■ with the exception of the revenues used for the compensation of indirect carbon costs referred to in Article 10a(6), *or the equivalent in financial value of these revenues*, for one or more of the following:”;

*(ba) in paragraph 3, first subparagraph, points (b) to (f) are replaced by the following:*

- (b) to develop renewable energies and grids for electricity transmission to meet the commitment of the Union to renewable energies and the Union targets on interconnectivity, as well as to develop other technologies that contribute to the transition to a safe and sustainable low-carbon economy, and to help to meet the commitment of the Union to increase energy efficiency, at the levels agreed in relevant legislative acts, including the production of electricity from renewables self-consumers and renewable energy communities;*
- (c) measures to avoid deforestation and support the protection and restoration of peatland, forests and other land or marine based ecosystems, including measures that contribute to the protection, restoration and better management thereof, in particular as regards marine protected areas, and increase biodiversity-friendly afforestation and reforestation, including in developing countries that have ratified the international agreement on climate change, and measures to transfer technologies and to facilitate adaptation to the adverse effects of climate change in those countries;*
- (d) forestry and soil sequestration in the Union;*

- (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, and innovative technological carbon removal methods, such as Direct Air Capture ('DAC') and its storage;*
- (f) *to invest in and accelerate the shift to forms of transport which contribute significantly to the decarbonisation of the sector[BA1], including the development of climate-friendly passenger and freight rail transport and bus services and technologies, measures to decarbonise the maritime sector, including the improvement of the energy efficiency of ships, ports, innovative technologies and infrastructure, and sustainable alternative fuels, such as hydrogen and ammonia that are produced from renewables, and zero-emission propulsion technologies, and to finance measures to support airports' decarbonisation in accordance with Regulation (EU) .../... [deployment of alternative fuels infrastructure], and Regulation (EU) .../... [ensuring a level playing field for sustainable air transport];”;*
- (c) in paragraph 3, point (h) is replaced by the following:
- “(h) measures intended to improve energy efficiency, district heating systems and insulation, *efficient and renewable heating and cooling systems*, or to *support the deep and staged deep renovation of buildings in accordance with Article 2, points (19) and (20), of Directive (EU) .../... [Recast EPBD], starting with the renovation of the worst-performing buildings;*”;
- (ca) *in paragraph 3, first subparagraph, the following points are inserted:*
- “(ha) *to provide financial support in order to address social aspects in lower- and middle-income households, including by reducing distortive taxes, and targeted reductions of duties and charges for renewable electricity;*
- (hb) *to finance national climate dividend schemes with a proven positive environmental impact as documented in the annual report referred to in Article 19(2) of Regulation (EU) 2018/1999 of the European Parliament and of the Council;*”;

*(cb) in paragraph 3, first subparagraph, point (k) is replaced by the following:*

*“(k) to promote skill formation and reallocation of labour in order to contribute to a just transition to a climate-neutral economy, in particular in regions most affected by the transition of jobs, in close coordination with the social partners and invest in upskilling and re-skilling of workers potentially affected by the transition, including workers in the maritime transport sector;*

*(l) to address any residual risk of carbon leakage in the sectors covered by Annex I of the CBAM Regulation, supporting the transition and promoting their decarbonisation in accordance with State aid rules.”;*

*(cc) in paragraph 3, the following subparagraph is inserted after the first subparagraph:*

*“When determining the use of revenues generated from the auctioning of the allowances, Member States shall take into account the need to continue scaling-up international climate finance in vulnerable third countries referred to in point (j) of the first subparagraph.”;*

*(cd) in paragraph 3, the second subparagraph is replaced by the following:*

*“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 the revenues referred to in the first subparagraph.”;*

*(ce) in paragraph 3, the third subparagraph is replaced by the following:*

*“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 Article 19(2) of Regulation (EU) 2018/1999, specifying where relevant and as appropriate, which revenues and the actions are undertaken to implement their integrated national energy and climate plan submitted in accordance with Regulation (EU) 2018/1999, and their territorial just*

*transition plan prepared in accordance with Article 11 of Regulation (EU) 2021/1056 of the European Parliament and of the Council.*

*The reporting shall be sufficiently detailed to enable the Commission to assess the Member States compliance with Article 10(3), first paragraph.”;*

(d) in paragraph 4, the first sentence is replaced by the following:

“4. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the timing, administration and other aspects of auctioning, including the modalities *of the auctioning which are made necessary* for the transfer of a share of revenues to the Union budget *as externally assigned revenue in accordance with Article 30d(3a) or as own resources in accordance with Article 311(3) TFEU*, in order to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner.”

(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 and on other relevant climate and energy policies, including the operation of the auctions, liquidity and the volumes traded, and summarising the information provided by the European Securities and Markets Authority (ESMA) in accordance with paragraph 6 of this Article and the information provided by Member States on the financial measures referred to in Article 10a(6). If necessary, Member States shall ensure that any relevant information is submitted to the Commission at least two months before the Commission adopts the report.”;*

(db) *the following paragraph is added:*

“6. *ESMA shall regularly monitor the integrity and transparency of the European carbon market, in particular with respect to market volatility and price evolution, the operation of the auctions and trading operations on the market of emission allowances and derivatives thereof, including over-the-counter trading, liquidity and the volumes*

*traded, and the categories and trading behaviour of market participants, including positions of financial intermediaries. ESMA shall include the relevant findings and, where necessary, make recommendations in its assessments to the European Parliament, to the Council, to the Commission and to the European Systemic Risk Board in accordance with Article 32(3) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*). For the purposes of the tasks referred to in the first sentence, ESMA and the relevant competent authorities shall cooperate and exchange information on details of all types of transactions in accordance with Article 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council (\*\*).*

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*(\*) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p. 84).*

*(\*\*) Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 12.6.2014, p. 1).”;*

(12) Article 10a is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following **■** subparagraphs are inserted after the second subparagraph:

*“If an installation is covered by the obligation to conduct an energy audit or to implement a certified energy management system under Article 8 of Directive 2012/27/EU of the European Parliament and of the Council(\*) and if the recommendations of the audit report or of the*

*certified energy management system* are *not* implemented, *unless* the pay-back time for the relevant investments *exceeds three years or unless* the costs of those investments are *disproportionate, then* the amount of free allocation shall be reduced by **20 %**. The amount of free allocation shall not be reduced if an operator demonstrates that it has implemented other measures which lead to greenhouse gas emission reductions equivalent to those recommended by the audit report *or the certified energy management system for the installation concerned*. The measures referred to in the first subparagraph *of this paragraph* shall be adjusted accordingly *to provide specific rules for harmonised implementation, including on timelines, criteria for the recognition of implemented energy efficiency measures and alternative measures reducing emissions, using the procedure for national implementing measures in accordance with Article 11(1)*.

*The Commission shall supplement this Directive by providing, in the acts adopted pursuant to Article 10a(1) and without prejudice to the rules applicable under the [Energy Efficiency Directive [2012/27/EU], for administratively simple harmonised rules for the application of the third subparagraph that ensures that the application of the conditionality does not jeopardize a level playing field, environmental integrity or equal treatment between installations across the Union. Those harmonized rules shall in particular provide timelines, criteria for the recognition of implemented energy efficiency measures as well as for alternative measures reducing GHG emissions.*

*In addition to the requirements set out in the third subparagraph of this paragraph the reduction by 20 % referred to in that subparagraph shall be applied where, by 1 May 2024, operators of installations whose greenhouse gas emission levels are higher than the 80 percentile of emission levels for the relevant product benchmarks have not established a climate neutrality plan for each of their installations for its activities covered by this Directive. That plan shall contain the elements specified in Article 10b(4) and be established in accordance with the implementing act provided for in Article 10b(4). Article 10b(4)*

*shall be read as only referring to installation level. The attainment of the targets and milestones referred to in the third subparagraph of Article 10b(4), point (b) shall be verified with respect to the period until 31 December 2025 and with respect to each period ending 31 December of each fifth year thereafter, in accordance with the verification and accreditation procedures provided for in Article 15. No free allowances beyond 80 % shall be allocated if achievement of the intermediate targets and milestones has not been verified with respect to the period up to the end of 2025 or with respect to the period 2026 to 2030.*

*Allowances that are not allocated due to a reduction of free allocation in accordance with the third and fifth subparagraphs of this Article shall be used to exempt installations from the adjustment in accordance with the first subparagraph of Article 10a(5). Where any such allowances remain, 50 % of these allowances shall be made available to support innovation in accordance with Article 10a(8). The other 50 % of these allowances shall be auctioned in accordance with Article 10(1) and Member States should use the respective revenues to address any residual risk of carbon leakage in the sectors covered by [Annex I of the CBAM Regulation], supporting the transition and promoting their decarbonisation in accordance with State aid rules.*

No free allocation shall be given to installations in sectors or subsectors to the extent they are covered by other measures to address the risk of carbon leakage as established by Regulation (EU) ..../. [reference to CBAM](\*\*). The measures referred to in the first subparagraph shall be adjusted accordingly;

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(\*) Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).”;

(\*\*) [CBAM full reference]

(ii) the following sentence is added at the end of the third subparagraph:

“In order to provide further incentives for reducing greenhouse gas emissions and improving energy efficiency *and to ensure a level playing field for installations using new technologies that partly or fully reduce greenhouse gas emissions and existing technologies*, the determined Union-wide ex-ante benchmarks shall be reviewed *for their application in* the period from 2026 to 2030, in view of potentially modifying the definitions and system boundaries of existing product benchmarks, *considering as guiding principles the circular use potential of materials and that the benchmarks should be independent of the feedstock and the type of production process, where the production processes have the same purpose. The Commission shall endeavour to adopt the implementing acts for the purpose of determining the revised benchmark values for free allocation in accordance with the third subparagraph of paragraph 2 as soon as possible and before the start of the period from 2026 to 2030.*”;

(b) the following paragraph 1a is inserted:

“1a. *Subject to the application of CBAM Regulation*, no free allocation shall be given in relation to the production of products listed in Annex I of Regulation [CBAM] █ .

By way of derogation from the *first* subparagraph, for the first years of *application* of Regulation [CBAM], the production of █ products *listed in Annex I to that Regulation* shall benefit from free allocation in reduced amounts. A factor reducing the free allocation for the production of *those* products shall be applied (CBAM factor). The CBAM factor shall be equal to 100 % for the period *between* the entry into force of [CBAM regulation] and the end of 2025 *and, subject to the application of provisions referred to in Article 36(3), point (b), of Regulation (EU) .../... [CBAM Regulation], shall be equal to 97,5 % in 2026, 95 % in 2027, 90 % in 2028, 77,5 % in 2029, 51,5 % in 2030, 39 % in 2031, 26,5 % in 2032 and 14 % in 2033. From 2034, no CBAM factor shall apply.*

The reduction of free allocation shall be calculated annually as the average share of the demand for free allocation for the production of products listed in Annex I of Regulation [CBAM] compared to the calculated total free allocation demand for all installations, for the relevant period referred to in Article 11, paragraph 1. The CBAM factor shall be applied.

Allowances resulting from the reduction of free allocation shall be made available to support innovation in accordance with Article 10a(8).

*[One year before the end of the transitional period defined in [Article X of CBAM Regulation] as part of its annual report to the European Parliament and to the Council pursuant to Article 10(5) of Directive 2003/87/EC, the Commission shall assess the carbon leakage risk for goods subject to CBAM and produced in the Union for export to third countries which do not apply the EU ETS or a similar carbon pricing mechanism. The report shall in particular assess the carbon leakage risk in sectors to which CBAM will apply, in particular the role and accelerated uptake of hydrogen, and the developments as regards trade flows and the embedded emissions of goods produced by those sectors on the global market. Where the report concludes that there is a carbon leakage risk for goods produced in the Union for export to third countries which do not apply the EU ETS or an equivalent carbon pricing mechanism, the Commission shall, where appropriate, present a legislative proposal to address that carbon leakage risk in a manner that is compliant with WTO rules including Article XX of the GATT, and takes into account the decarbonisation of installations in the Union.]*”;

(c) paragraph 2 is amended as follows:

(i) in the third subparagraph, point (c) is replaced by the following:

“(c) For the period from 2026 to 2030, the benchmark values shall be determined in the same manner as set out in points (a) and (d), **taking into account point (e)**, on the basis of information submitted pursuant to Article 11 for the years 2021 and 2022 and

on the basis of applying the annual reduction rate in respect of each year between 2008 and 2028.”;

(ii) in the third subparagraph, the following *points are* added:

“(d) Where the annual reduction rate exceeds 2,5 % or is below 0,3 %, the benchmark values for the period from 2026 to 2030 shall be the benchmark values applicable in the period from 2013 to 2020 reduced by whichever of those two percentage rates is relevant, in respect of each year between 2008 and 2028;

***(e) For the period from 2026 to 2030, the annual reduction rate of the product benchmark hot metal shall not be affected by the change of benchmark definitions and system boundaries applicable pursuant to the fifth subparagraph of article 10a(1).”;***

(iii) the fourth subparagraph is replaced by the following:

“By way of derogation regarding the benchmark values for aromatics 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 those products.”;

(d) paragraphs 3 and 4 are deleted;

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

***“In order to respect the auctioning share set out in Article 10, for every year in which the sum of free allocations does not reach the maximum amount that respects the auctioning share, the remaining allowances up to that amount shall be used to prevent or limit reduction of free allocations to respect the auctioning share in later years. Where, nonetheless, the maximum amount is reached, free allocations shall be adjusted accordingly. Any such adjustment shall be done in a uniform manner. However, installations whose greenhouse gas emission levels are below the average of the 10 % most efficient installations in a sector or subsector in the Union for the relevant benchmarks in a year when the adjustment applies shall be exempted from that adjustment.”;***

(e) in paragraph 6, the first subparagraph is replaced by the following:

“Member States should adopt financial measures in accordance with the second and fourth subparagraphs in favour of sectors or subsectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, provided that such financial measures are in accordance with State aid rules, and in particular do not cause undue distortions of competition in the internal market. The financial measures adopted should not compensate indirect costs covered by free allocation in accordance with the benchmarks established pursuant to paragraph 1. Where a Member State spends an amount higher than the equivalent of 25 % of *the* auction revenues *referred to in Article 10 paragraph 3* of the year in which the indirect costs were incurred, it shall set out the reasons for exceeding that amount.”;

- (f) in paragraph 7, the second subparagraph is replaced by the following:

“From 2021, allowances that pursuant to paragraphs 19, 20 and 22 are not allocated to installations shall be added to the amount of allowances set aside in accordance with the first sentence of the first subparagraph of this paragraph.”;

- (g) paragraph 8 is replaced by the following:

“8. **345** million allowances from the quantity which could otherwise be allocated for free pursuant to this Article, and **80** million allowances from the quantity which could otherwise be auctioned pursuant to Article 10, as well as the allowances resulting from the reduction of free allocation referred to in Article 10a(1a), shall be made available to a Fund with the objective of supporting innovation in *low- and zero carbon techniques, processes and technologies that contribute significantly to the decarbonisation of the sectors covered by this Directive* and contribute to zero pollution *and circularity* objectives *including projects aimed at scaling up such techniques, processes and technologies with a view to their broad roll-out across the EU. Such projects shall possess a significant greenhouse gas emissions abatement potential and contribute to energy and resource savings in line with the Union’s climate and energy targets for 2030.*

***The Commission shall frontload Innovation Fund allowances to ensure an adequate amount of resources is available to foster innovation, including upscaling.***

Allowances that are not issued to aircraft operators due to the closure of aircraft operators and which are not necessary to cover any shortfall in surrenders by those operators, shall also be used for innovation support as referred to in the first subparagraph.

***Moreover, 5 million allowances from the quantity referred to in Article 3c(5) and (6) relating to aviation allocations for 2026 shall be made available for such innovation support.***

In addition, 50 million unallocated allowances from the market stability reserve shall supplement any remaining revenues from the 300 million allowances available in the period from 2013 to 2020 under Commission Decision 2010/670/EU(\*), and shall be used in a timely manner for innovation support as referred to in the first subparagraph. <sup>31</sup>

The Innovation Fund shall cover the sectors listed in Annex I and Annex III, <sup>■</sup> as well as products ***and processes*** substituting carbon intensive ones produced in sectors listed in Annex I, ***including innovative renewable energy and energy storage technologies and environmentally safe carbon capture and utilisation ("CCU") that contributes substantially to mitigating climate change, in particular for unavoidable process emissions*** and to help stimulate the construction and operation of projects aimed at the environmentally safe capture, ***transport*** and geological storage ("CCS") of CO<sub>2</sub>, ***in particular for unavoidable industrial process emissions, and the direct capture of CO<sub>2</sub> from the atmosphere with safe, sustainable and permanent storage ("DACs")***, in geographically balanced locations. The Innovation Fund may also support break-through innovative technologies and infrastructure, ***including production of low- and zero-carbon fuels***, to

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<sup>31</sup> ***Without prejudice to the outcome of negotiations on FuelEU Maritime: "Furthermore, the external assigned revenues referred to in Article 21(2) of Regulation (EU) [FuelEU Maritime] shall be allocated to the Innovation Fund and implemented in line with this paragraph."***

decarbonise the maritime, aviation, rail and road transport *sectors, including collective forms of transport such as public transport and coach service.*

*For aviation, it may also support electrification and actions to reduce the overall climate impacts of aviation.*

*The Commission shall give special attention* ■ *to projects in sectors covered by the [CBAM regulation] to support innovation in low carbon technologies, CCU, CCS, renewable energy and energy storage, in a way that contributes to mitigating climate change with the aim that over the 2021-2030 period, projects in those sectors are awarded a significant share of the equivalence in financial value of allowances mentioned in paragraph 1a of this article, and may launch before 2027 calls for proposals dedicated to the sectors covered by the [CBAM regulation].*

*The Commission shall give special attention to projects contributing to decarbonize the maritime sector and shall include topics dedicated to the decarbonisation of the maritime sector in the Innovation Fund calls for proposals as appropriate, including to electrify transport, and to address its full climate impact, including black carbon emissions. These calls shall also take particular account of the potential for also increasing biodiversity protection and for reducing noise and water pollution of projects and investments in the criteria used for the selection of projects.*

*The Innovation Fund may in accordance with paragraph 8a support projects through competitive bidding, such as CDs, CCDs or fixed premium contracts to support decarbonisation technologies for which the carbon price might not be a sufficient incentive.*

*The Commission shall seek synergies between the Innovation Fund and Horizon Europe, in particular in relation to European partnerships, and shall, where relevant, seek synergies between the Innovation Fund and other Union programmes.*

Projects in the territory of all Member States, including small-scale *and medium-scale* projects, shall be eligible, *and, for maritime activities,*

*projects with clear EU added value.* Technologies receiving support shall be innovative and not yet commercially viable at a similar scale without support but shall represent breakthrough solutions or be sufficiently mature for application at pre-commercial scale.

The Commission shall ensure that the allowances destined for the Innovation Fund are auctioned in accordance with the principles and modalities laid down in Article 10(4). Proceeds from the auctioning shall constitute external assigned revenue in accordance with Article 21(5) of the Financial Regulation. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments.

***By 31 December 2023 and every year thereafter, the Commission shall report to the Climate Change Committee referred to in Article 22a(1), on the implementation of the Innovation Fund, providing an analysis of awarded projects by sector and by Member State and the expected contribution of the awarded projects towards the objective of climate neutrality in the Union as set out in Regulation (EU) 2021/1119. The Commission shall provide the report to the Council and the European Parliament and the report shall be made public.***

***The Commission shall on request provide technical assistance to Member States with low effective participation for the purpose of increasing the capacities of the requesting Member State to support the efforts of project proponents in their respective territories to submit applications for funding from the Innovation Fund, in order to improve the effective geographical participation in the Innovation Fund and increase the overall quality of submitted projects. The Commission shall pursue effective, quality-based geographical coverage across the Union and ensure comprehensive monitoring of its progress and appropriate follow-up.***

***Subject to the agreement of applicants, following the closure of a call for proposals, the Commission shall inform Member States of the applications for funding of projects in their respective territories and***

*shall provide them with detailed information of those applications in order to facilitate the Member States in their coordination of the support to projects. In addition, the Commission shall inform the Member States about the list of pre-selected projects prior to the award of the support.*

Projects shall be selected *by way of a transparent selection procedure, in a technology-neutral manner in accordance with the objectives of the Innovation Fund as set out in the first subparagraph of this paragraph and* on the basis of objective and transparent criteria, taking into account *the extent to which projects provide a significant contribution to the Union's climate and energy targets while contributing to the zero pollution and circularity objectives in accordance with the first subparagraph of this paragraph, and*, where relevant, the extent to which projects contribute to achieving emission reductions well below the benchmarks referred to in paragraph 2. Projects shall have the potential for widespread application or to significantly lower the costs of transitioning towards *climate neutral* economy in the sectors concerned. *Priority shall be given to innovative technologies and processes addressing multiple environmental impacts.* Projects involving CCU shall deliver a net reduction in emissions and ensure avoidance or permanent storage of CO<sub>2</sub>. In the case of grants provided through calls for proposals, up to 60 % of the relevant costs of projects may be supported, out of which up to 40 % need not be dependent on verified avoidance of greenhouse gas emissions, provided that pre-determined milestones, taking into account the technology deployed, are attained. In the case of support provided through competitive bidding and in the case of technical assistance support, up to 100 % of the relevant costs of projects may be supported. *The potential for emission reductions in multiple sectors offered by combined projects, including in nearby areas, shall be taken into account in the criteria used for the selection of projects.*

*Projects funded by the Innovation Fund shall be required to share knowledge with other relevant projects as well as with Union-based*

*researchers having a legitimate interest. The terms of knowledge-sharing shall be defined by the Commission in calls for proposals.*

*The calls for proposal shall be open and transparent. In preparing the calls for proposal, the Commission shall strive to ensure that all sectors are duly covered. The Commission shall take measures to ensure that the calls are communicated as widely as possible, and especially to small and medium-sized enterprises ('SMEs').*

The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning rules on the operation of the Innovation Fund, including the selection procedure and criteria, and the eligible sectors and technological requirements for the different types of support.

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.”;

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- (\*) Commission Decision 2010/670/EU of 3 November 2010 laying down criteria and measures for the financing of commercial demonstration projects that aim at the environmentally safe capture and geological storage of CO<sub>2</sub> as well as demonstration projects of innovative renewable energy technologies under the system for greenhouse gas emission allowance trading within the Union established by Directive 2003/87/EC of the European Parliament and of the Council (OJ L 290, 6.11.2010, p. 39).

*(ga) the following paragraphs are inserted:*

*“8a. For CDs and CCDs awarded upon conclusion of a competitive bidding procedure, appropriate coverage by budgetary commitments resulting from the proceeds of auctioning of allowances available in the Innovation Fund shall be provided and those budgetary commitments may be broken down over several years into annual instalments. For the first two rounds of the competitive bidding mechanism, coverage of*

*the financial liability related to CDs and CCDs shall be fully ensured with appropriations resulting from the proceeds of auctioning of allowances allocated to the Innovation Fund pursuant to this paragraph.*

*On the basis of a qualitative and quantitative assessment by the Commission of the financial risks arising from the implementation of CDs and CCDs, to be made after the conclusion of the first two rounds of competitive bidding mechanism and each time it is necessary afterwards in accordance with the principle of prudence whereby assets and profits shall not be overestimated and liabilities and losses shall not be underestimated, the Commission may, in accordance with the empowerment in the eighth subparagraph decide to cover only part of the financial liability related to CDs and CCDs and the remaining part by other means. The Commission shall aim to limit the use of other means of coverage.*

*Where the assessment leads to the conclusion that other means of coverage are necessary to realize the full potential of the CDs and CCDs, the Commission shall aim for a balanced mix of other means of coverage. By derogating from Article 210(1), the Commission shall determine the extent of the use of other means of coverage pursuant to the delegated act provided for in the eighth subparagraph.*

*The remaining financial liability shall be sufficiently covered, having regard to the principles of Title X of the Financial Regulation, if necessary, adapted to the specificities of CDs and CCDs, by derogating from Articles 209(2) points d) and h), 210(1), 211(1), (2), (4), and (6), 212 to 214, 218(1) and 219(3) and (6). Where applicable, other means of coverage, the provisioning rate and the necessary derogations shall be established in a delegated act provided for in the eighth subparagraph.*

*The Commission shall not use more than [30%] of the proceeds of auctioning of allowances allocated to the Innovation Fund pursuant to this paragraph for provisioning for CDs and CCDs.*

*The provisioning rate shall be no lower than 50 % of the total financial liability borne by the Union budget for CDs and CCDs and when setting it out, the Commission shall take into account elements that may reduce the financial risks for the EU budget, beyond the appropriations available in the Innovation Fund, such as possible sharing of liability with Member States on a voluntary basis, or a possible re-insurance mechanism from the private sector. The Commission shall review the provisioning rate at least every 3 years from the date of application of the delegated act setting it out for the first time.*

*In order to avoid speculative applications, access to competitive bidding may be made conditional on the payment by applicants of a deposit to be forfeited in case of non-fulfilment of the contract. Such forfeited deposits shall accrue to the Innovation Fund as external assigned revenue pursuant to Article 21(5) of the Financial Regulation. Any contribution paid to the granting authority by a beneficiary in accordance with the terms of the CD or CCD where the reference price is higher than the strike price (reflows) shall accrue to the Innovation Fund as external assigned revenue pursuant to Article 21(5) of the Financial Regulation.*

*The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement Directive 2003/87/EC in order to provide for and detail other means of coverage, if any, and, where applicable, the provisioning rate and the necessary additional derogations to Title X of the Financial Regulation as set out in the fourth subparagraph, and in addition the rules on the operation of competitive bidding mechanisms, in particular in relation to deposits and reflows.*

*The Commission is empowered to adopt delegated acts in accordance with Article 23 to amend the fifth subparagraph by raising the limit of 30 % referred in that subparagraph by no more than a total of 20 percentage points where necessary to respond to a demand for CDs and CCDs taking into account the experience of the first rounds of competitive bidding and considering the need to find an appropriate*

*balance in the support from the Innovation Fund between such contracts and grants.*

*Financial support from the Innovation Fund shall be proportionate to the policy objectives set out in this Article and shall not lead to undue distortions of the internal market. To this end, support shall only be granted to cover additional costs or investment risks that cannot be borne by investors under normal market conditions.*

*8b. 40 million allowances from the quantity which could otherwise be allocated for free pursuant to this Article, and 10 million allowances from the quantity which could otherwise be auctioned pursuant to Article 10 shall be made available for the Social Climate Fund established by Regulation (EU) 20.../nn of the European Parliament and of the Council [Social Climate Fund Regulation](\*). The Commission shall ensure that the allowances destined for the Social Climate Fund are auctioned in 2025 in accordance with the principles and modalities of Article 10(4) and the delegated act adopted in accordance with that provision. The revenues from this auctioning shall constitute external assigned revenue in accordance with Article 21(5) of the Financial Regulation, and shall be implemented in accordance with the rules applicable to the Social Climate Fund.”;*

(h) in paragraph 19, the first sentence is replaced by the following:

“19. No free allocation shall be given to an installation that has ceased operating.”;

(i) the following paragraph 22 is added:

“22. Where corrections to free allocations granted pursuant to Article 11(2) are necessary, these shall be carried out with allowances from, or by adding allowances to, the amount of allowances set aside in accordance with paragraph 7 of this Article.”;

**(12a) in Article 10b(4), the following subparagraphs are added:**

***“In Member States where, on average in the years 2014-2018, the share of emissions from district heating of the EU total of such emissions divided by the***

*Member States' share of GDP of the EU total GDP is greater than 5 for district heating for the period from 2026 to 2030, additional free allocation of 30 % of the quantity determined pursuant to Article 10a shall be given to district heating provided that an investment volume equivalent to the value of that additional free allocation received is invested to significantly reduce emissions before 2030 in accordance with climate-neutrality plans in accordance with sub-paragraph 3 and that the attainment of the targets and milestones referred to in point (b) of the third subparagraph are confirmed by the verification carried out in accordance with sub-paragraph 4.*

*By 1 May 2024, operators of district heating shall establish a climate-neutrality plan for the installations for which they apply for additional free allocation in accordance with the second subparagraph. That plan shall be consistent with the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119 and shall set out:*

- (a) measures and investments to reach climate-neutrality by 2050 at installation or company-level, excluding the use of carbon offset credits;*
- (b) intermediate targets and milestones to measure, by 31 December 2025 and by 31 December of each fifth year thereafter, progress made towards reaching climate -neutrality as set out in point (a);*
- (c) an estimate of the impact of each of the measures and investments referred to in point (a) as regards the reduction of greenhouse gas emissions.*

*The attainment of the targets and milestones referred to the third subparagraph of point (b) shall be verified with respect to the period until 31 December 2025 and with respect to each period ending 31 December of each fifth year thereafter, in accordance with the verification and accreditation procedures provided for in Article 15. No free allowances beyond what is referred to in the first subparagraph shall be allocated if achievement of the intermediate targets and milestones has not been verified with respect to the period up to the end of 2025 or with respect to the period 2026 to 2030.*

*The Commission shall adopt implementing acts in accordance with the procedure set out in Article 22a(2) to specify the minimal content of the information referred to in points a) to c) and the format of the climate-neutrality plans referred to in the*

*third subparagraph of this paragraph and in the fifth subparagraph of Article 10a(1). The Commission shall seek synergies with similar plans as provided for in Union law.”;*

(13) in Article 10c, paragraph 7 is replaced by the following:

“Member States shall require benefiting electricity generating installations and network operators to report, by 28 February of each year, on the implementation of their selected investments, including the balance of free allocation and investment expenditure incurred and the types of investments supported. Member States shall report on this to the Commission, and the Commission shall make such reports public.”;

(13a) *the following article is inserted:*

*“Article 10ca*

*Earlier deadline for transitional free allocation for the modernisation of the energy sector*

*By way of derogation from Article 10c, the Member States concerned may only give transitional free allocation to installations in accordance with that Article for investments carried out until 31 December 2024. Any allowances available to the Member States concerned in accordance with Article 10c for the period 2021 to 2030 that are not used for such investments shall, in the proportion determined by the respective Member State:*

- (i) be added to the total quantity of allowances that the Member State concerned is to auction pursuant to Article 10(2); or*
- (ii) be used to support investments within the framework of the Modernisation Fund referred to in Article 10d in accordance with the rules applicable to the revenue from allowances referred to in Article 10d(4).*

*By 15 May 2024, the Member State concerned shall notify the Commission of the respective amounts of allowances to be used under Article 10(2)(a) and, by way of derogation from the second sentence of Article 10d(4), Article 10(4).”*

(14) Article 10d is amended as follows:

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

“1. A fund to support investments proposed by the beneficiary Member States, including the financing of small-scale investment projects, to modernise energy systems and improve energy efficiency shall be established for the period from 2021 to 2030 (the ‘Modernisation Fund’). The Modernisation Fund shall be financed through the auctioning of allowances as set out in Article 10, for the beneficiary Member States set out therein.

The investments supported shall be consistent with the aims of this Directive, as well as the objectives of the Communication from the Commission of 11 December 2019 on The European Green Deal (\*) and Regulation (EU) 2021/1119 of the European Parliament and of the Council (\*\*) and the long-term objectives as expressed in the Paris Agreement. *The beneficiary Member States may, where appropriate, use the resources of the Modernisation Fund to finance investments involving the adjacent EU border regions.* No support from the Modernisation Fund shall be provided to energy generation facilities that use fossil fuels. *Notwithstanding the preceding sentence, revenue from allowances covered by a notification pursuant to Article 10d(4) may be used for investments involving gaseous fossil fuels. Notwithstanding the same sentence, revenue from allowances referred to in the third subparagraph of Article 10(1) may, where the activity qualifies as environmentally sustainable under Regulation (EU) 2020/852 and is duly justified for reasons of ensuring energy security, be used for investments involving gaseous fossil fuels provided that, for energy generation, the allowances are auctioned before 31 December 2027 and, for investments involving downstream uses of gas, the allowances are auctioned before 31 December 2028.*

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(\*) COM(2019) 640 final.

(\*\*) Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving

climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).";

(b) paragraph 2 is replaced by the following:

“2. At least 80 % of the *revenue from allowances referred to in the third subparagraph of Article 10(1) and revenue from allowances covered by a notification pursuant to Article 10d(4) and at least 90 % of the revenue from allowances referred to in the fourth subparagraph of Article 10(1)* shall be used to support investments in the following:

- (a) the generation and use of electricity from renewable sources, *including renewable hydrogen*;
- (b) heating and cooling from renewable sources;
- (c) the *reduction of overall energy use through* energy efficiency, including in *industry*, transport, buildings, agriculture and waste;
- (d) energy storage and the modernisation of energy networks, including *demand-side management*, district heating pipelines, grids for electricity transmission **■** the increase of interconnections between Member States *and infrastructure for zero-emission mobility*;
- (e) the support of low-income households, including in rural and remote areas, to address energy poverty and to modernise their heating systems; and
- (f) a just transition in carbon-dependent regions in the beneficiary Member States, so as to support the redeployment, re-skilling and up-skilling of workers, education, job-seeking initiatives and start-ups, in dialogue with *civil society and* social partners, *consistent with and contributing to the relevant actions included by the Member States in their territorial just transition plans in accordance with Article 8(2), point (k), of Regulation (EU) 2021/1056, where relevant.*”;

(bd) paragraph 11 is replaced by the following:

***“11. The investment committee shall report annually to the Commission on experience with the evaluation of investments, notably in terms of emissions reductions and abatement costs. By 31 December 2024, taking into consideration the findings of the investment committee, the Commission shall review the areas for projects referred to in paragraph 2 and the basis on which the investment committee bases its recommendations.***

***The Investment Committee shall arrange for the publication of the annual report. The Commission shall provide this publication to the Council and the European Parliament.”;***

***(14a) the following Article is inserted:***

***“Article 10e***

***From January 2025, the beneficiary Member States and the Commission shall use the revenues from auctioning of allowances destined for the Innovation Fund pursuant to article 10a(8), and of the allowances referred to in the third and fourth subparagraph of Article 10(1), in accordance with the ‘do no significant harm’ criteria set out in Article 17 of Regulation (EU) 2020/852(\*), where they are used for an economic activity for which technical screening criteria for determining whether an economic activity causes significant harm to one or more of the relevant environmental objective has been established pursuant to Article 10(3)(b) of that Regulation.”***

***(14b) Article 11 is amended as follows:***

***(a) in paragraph 2, "28 February" is replaced by "30 June";***

***(15) Article 12 is amended as follows:***

***(a) paragraph 2 is replaced by the following:***

***“2. Member States shall ensure that allowances issued by a competent authority of another Member State are recognised for the purpose of meeting an operator’s, an aircraft operator’s or a shipping company’s obligations under paragraph 3.”;***

***(b) paragraph 2a is deleted;***

(c) paragraph 3 is replaced by the following:

“3. The Member States, administering Member States and administering authorities in respect of a shipping company shall ensure that, by 30 *September* each year:

- (a) the operator of each installation surrenders a number of allowances that is equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15;
- (b) each aircraft operator surrenders a number of allowances that is equal to its total emissions during the preceding calendar year, as verified in accordance with Article 15;
- (c) each shipping company surrenders a number of allowances equal to its total emissions during the preceding calendar year, as verified in accordance with Article 3gc.

Member States, administering Member States and administering authorities in respect of a shipping company shall ensure that allowances surrendered in accordance with the first subparagraph are subsequently cancelled.”;

(d) *After paragraph 3, the following paragraphs are inserted:*

*“3-e. By way of derogation from paragraph 3, first subparagraph, point (c), shipping companies may surrender 5% fewer allowances than their verified emissions taking place until 31 December 2030 from ice class ships, provided that these ships have the ice-class IA or IA Super or an equivalent ice class, established based on the HELCOM Recommendation 25/7.*

*To the extent that fewer allowances are surrendered compared to the verified emissions, once the difference between verified emissions and allowances surrendered has been established in respect of each year, a corresponding quantity of allowances shall be cancelled rather than auctioned pursuant to Article 10.*

*3-d. By way of derogation from paragraph 3, first subparagraph point (c) and Article 16, the Commission, shall, at the request of a Member*

*State, provide by means of an implementing act that Member States shall consider the requirements set out in those provisions to be satisfied and that they shall take no action against shipping companies in respect of emissions taking place until 31 December 2030 from voyages performed by passenger ships, other than cruise passenger ships, and by ro-pax ships, between a port of an island under the jurisdiction of that requesting Member State with no road or rail link with the mainland and a port under the jurisdiction of that same Member State and from the activities within a port from those ships in relation to those voyages. The island shall have a permanent population of less than 200 000 permanent residents according to the latest best data available in 2022.*

*The Commission shall publish a list of islands referred to in the first subparagraph and the concerned ports and keep that list up to date.*

- 3-c. By way of derogation from paragraph 3, first subparagraph point (c) and Article 16, the Commission shall, at the joint request of two Member States, one of which having no land border with another Member State and the other Member State being the geographically closest Member State to the first, provide by means of an implementing act that Member States shall consider the requirements set out in those provisions to be satisfied and that they shall take no action against shipping companies in respect of emissions taking place until 31 December 2030 from voyages by passenger or ro-pax ships performed in the framework of a transnational public service contract or a transnational public service obligation, set out in the joint request, connecting the two Member States and from the activities within a port from those ships in relation to those voyages.*
- 3-b. An obligation to surrender allowances shall not arise in respect of emissions taking place until 31 December 2030 from voyages between a port located in an outermost region of a Member State and a port located in the same Member State, including ports within and between the Outermost Regions of the same Member State, and from the activities within a port from those ships in relation to those voyages.”*

(e) in paragraph 3-a, the first sentence is replaced by the following:

“3-a. Where necessary, and for as long as is necessary, in order to protect the environmental integrity of the EU ETS, operators, aircraft operators, and shipping companies in the EU ETS shall be prohibited from using allowances that are issued by a Member State in respect of which there are obligations lapsing for aircraft operators, shipping companies and other operators.”;

(f) the following paragraph 3b is inserted:

“3b. An obligation to surrender allowances shall not arise in respect of emissions of greenhouse gases which are considered to have been captured and utilised to become permanently chemically bound in a product so that they do not enter the atmosphere under normal use, ***including any normal activity taking place after the end of life of the product.***

The Commission shall adopt *delegated acts in accordance with Article 23 to supplement this Directive* concerning the requirements to consider that greenhouse gases have become permanently chemically bound in a product so that they do not enter the atmosphere under normal use, ***including any normal activity taking place after the end of the life of the product.***”;

(g) *paragraph 4 is replaced by the following:*

***“4. Member States shall take the necessary steps to ensure that allowances will be cancelled at any time at the request of the person holding them. In the event of closure of electricity generation capacity in their territory due to additional national measures, Member States may cancel allowances, and are strongly encouraged to do so, from the total quantity of allowances to be auctioned by them referred to in Article 10(2) up to an amount corresponding to the average verified emissions of the installation concerned over a period of five years preceding the closure. The Member State concerned shall inform the Commission of such intended cancellation, or the reasons for not cancelling, in accordance with the delegated acts adopted pursuant to Article 10(4).”;***

(16) in Article 14(1), *the* first subparagraph ■ is *replaced by the following*:

***“The Commission shall adopt implementing acts concerning the detailed arrangements for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, and non-CO2 aviation effects on routes for which emissions are reported under this Directive, which shall be based on the principles for monitoring and reporting set out in Annex IV and the requirements set out in paragraph 2 and paragraph 2a of this Article. Those implementing acts shall also specify the global warming potential of each greenhouse gas and take into account up-to-date scientific knowledge on the effects of non-CO2 aviation emissions in the requirements for monitoring and reporting of these emissions and their effects, including non-CO2 aviation effects.***

Those implementing acts shall apply the sustainability and greenhouse gas emission saving criteria for the use of biomass established by Directive (EU) 2018/2001 of the European Parliament and of the Council(\*), with any necessary adjustments for application under this Directive, for this biomass to be zero-rated. They shall specify how to account for storage of emissions from a mix of zero-rated sources and sources that are not zero-rated. They shall also specify how to account for emissions from renewable fuels of non-biological origin and recycled carbon fuels, ensuring that these emissions are accounted for and that double counting is avoided”;

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(\*) Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).”;

(17) the title of Chapter IV is replaced by the following:

**“PROVISIONS APPLYING TO AVIATION, MARITIME TRANSPORT, AND STATIONARY INSTALLATIONS”;**

(18) Article 16 is amended as follows:

(a) paragraph 2 is replaced by the following:

“2. Member States shall ensure the publication of the names of operators, aircraft operators and shipping companies who are in breach of requirements to surrender sufficient allowances under this Directive.”;

- (ab) *in paragraph 3, the date “30 April” is replaced by “30 September”;*
- (b) the following paragraph 3a is inserted:
- “3a. The penalties set out in paragraph 3 shall also apply in respect of shipping companies.”;
- (c) the following paragraph 11a is inserted:
- “11a. In the case of a shipping company that has failed to comply with the surrender requirements for two or more consecutive reporting periods and where other enforcement measures have failed to ensure compliance, the competent authority of the Member State of the port of entry may, after giving the opportunity to the shipping company concerned to submit its observations, issue an expulsion order which shall be notified to the Commission, the European Maritime Safety Agency (EMSA), the other Member States and the flag State concerned. As a result of the issuing of such an expulsion order, every Member State, with the exception of the Member State whose flag the ship is flying, shall refuse entry of the ships under the responsibility of the shipping company concerned into any of its ports until the company fulfils its surrender obligations in accordance with Article 12. Where the ship flies the flag of a Member State *and enters or is found in one of its ports*, the Member State concerned shall, after giving the opportunity to the company concerned to submit its observations, *detain* the ship *until the shipping company fulfils its obligations*.

*Where a ship that flies the flag of a Member is found with a failure referred to in the first subparagraph while in one of the ports of the Member State whose flag the ship is flying, the Member State concerned may, after giving the opportunity to the company concerned to submit its observations, issue a flag detention order until the shipping company fulfils its obligations. It shall inform the Commission, the EMSA and the other Member States thereof. As a result of the issuing of such a flag detention order, every Member State shall take the same measures as following an expulsion order in accordance with the second sentence of the first subparagraph.*

This paragraph shall be without prejudice to international maritime rules applicable in the case of ships in distress.”;

(19) Article 18b is replaced by the following:

“Article 18b

Assistance from the **Commission, the** European Maritime Safety Agency and other relevant organisations

1. For the purposes of carrying out its obligations under Articles 3c(4), 3f, 3gb, 3gc, 3gd, 3ge and 18a, the Commission, **the administering Member State** and administering authorities **in respect of a shipping company** may request the assistance of the European Maritime Safety Agency or another relevant organisation and may conclude to that effect any appropriate agreements with those organisations.
2. **The Commission, assisted by the European Maritime Safety Agency, shall endeavour to develop appropriate tools and guidance to facilitate and coordinate verification and enforcement activities related to the application of this Directive to maritime transport. As far as practicable, such guidance and tools shall be made available to the Member States and the verifiers for information sharing purposes and in order to better ensure robust enforcement of this Directive.”;**

(19a) Article 23 is amended as follows:

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

- “2. The power to adopt delegated acts referred to in Articles 3d(3), 10(4), 10a(1), (8) and (8a), 10b(5), 12(3b), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall be conferred on the Commission for an indeterminate period of time from 8 April 2018.
3. The delegation of power referred to in Articles 3d(3), 10(4), 10a(1), (8) and (8a), 10b(5), 12(3b), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official

*Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.”*

*(b) paragraph 6 is replaced by the following:*

*“6. A delegated act adopted pursuant to Articles 3d(3), 10(4), 10a(1), (8) and (8a), 10b(5), 12(3b), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.”;*

*(19b) Article 29 is replaced by the following:*

*“Article 29*

*Report to ensure the better functioning of the carbon market*

*If the regular reports on the carbon market referred to in Article 10(5) and Article 10(6) contain evidence that the carbon market is not functioning properly, the Commission shall within a period of 3 months submit a report to the European Parliament and to the Council. The report may be accompanied, if appropriate, by legislative proposals aiming at increasing transparency and integrity of the carbon market including related derivative markets and addressing the corrective measures to improve its functioning as well as to enhance the prevention and detection of market abuse activities.”*

*(19c) Article 29a is replaced by the following:*

*“Article 29a*

*Measures in the event of excessive price fluctuations*

- 1. If the average allowance price of the six preceding calendar months is more than 2,4 times the average allowance price of the preceding two years reference period, 75 million allowances shall be released from the Market Stability Reserve in accordance with paragraph 7 of Article 1 of Decision (EU) 2015/1814.*

*The allowance price referred to in the first sub-paragraph shall be the price of auctions carried out in accordance with the act adopted under Article 10(4) for allowances covered by Chapters II and III.*

*The preceding two years reference period referred to in the first sub-paragraph shall be the two-year period that ends before the first month of the period of six calendar months referred to in that sub-paragraph.*

*Where the condition in the first sub-paragraph is met and paragraph 2 is not applicable, the Commission shall publish a notice to that effect in the Official Journal indicating the date on which the condition were fulfilled.*

*The Commission shall publish within the first three working days of each month the average allowance price of the preceding six calendar months and the average allowance price of the preceding two years reference period. If the condition of paragraph 1 of this article is not met, the Commission shall also publish the level of price that the average allowance price should reach in the next month in order to meet the condition in that paragraph.*

2. *When the condition for release of allowances from the Market Stability Reserve pursuant to paragraph 1 of this Article has been met, the condition in paragraph 1 shall not be considered to have been fulfilled again until at least twelve months after the end of the previous release.*
3. *The arrangements for the application of these provisions shall be laid down in the acts referred to in Article 10(4).”;*

(19d) *in Article 30, paragraph 1 is replaced by the following:*

*“1. This Directive shall be kept under review in the light of international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement, and any relevant commitments resulting from the Conferences of the Parties to the United Nations Framework Convention on Climate Change.”;*

(20) *in Article 30, paragraph 2, the following sentence is added:*

*“The measures applicable to CBAM sectors shall be kept under review in light of the application of Regulation xxx [reference to CBAM]. Before 1 January 2028, as well as every two years thereafter as part of its reports to the European Parliament and*

*the Council pursuant to Article 30(6) of [the CBAM regulation], the Commission shall assess the impact of the mechanism on the risk of carbon leakage, including in relation to exports. The report shall assess the need for taking additional measures, including legislative measures, to address carbon leakage risks. The report shall, if appropriate, be accompanied by a legislative proposal.”;*

*(20a) in Article 30, paragraph 3 is replaced by the following:*

*“3. The Commission shall report to the European Parliament and to the Council in the context of each global stocktake agreed under the Paris Agreement, in particular with regard to the need for additional Union policies and measures in view of necessary greenhouse gas reductions by the Union and its Member States, including in relation to the linear factor referred to in Article 9. The Commission may make proposals to the European Parliament and to the Council to amend this Directive where appropriate, in particular in order to ensure compliance with the climate-neutrality objective as laid down in Article 2(1) of Regulation (EU) 2021/1119 and the Union climate targets as laid down in Article 4 of that Regulation. In making its proposal the Commission shall, to that end inter alia consider the projected indicative Union greenhouse gas budget for the 2030-2050 period as referred to in Article 4(4) of that Regulation.”;*

*(20b) in Article 30, the following paragraphs are added:*

*“4a. By 31 July 2026, the Commission shall report to the European Parliament and to the Council on the following, accompanied, where appropriate, by a legislative proposal and impact assessment:*

*(a) how negative emissions resulting from greenhouse gases that are removed from the atmosphere and safely and permanently stored could be accounted for and how these negative emissions could be covered by emissions trading, if appropriate, including a clear scope and strict criteria and safeguards to ensure that such removals are not offsetting necessary emissions reductions in accordance with Union climate targets as laid down in Regulation (EU) 2021/1119;*

*(b) the feasibility of lowering the 20 MW total rated thermal input thresholds for the activities in Annex I of this Directive from 2031;*

- (c) *whether all greenhouse gas emissions covered by this Directive are effectively accounted for, and whether double counting is effectively avoided. In particular, it shall assess the accounting of the greenhouse gas emissions which are considered to have been captured and utilised in a product in a way other than that referred to in paragraph 3b of Article 12.*
- 4b. *When reviewing this Directive, in accordance with paragraphs 1, 2 and 3 of this Article, the Commission shall analyse how linkages between the EU ETS and other carbon markets can be established, without impeding the achievement of the climate-neutrality objective and the Union climate targets as laid down in Regulation (EU) 2021/1119.*
- 4c. *By 31 July 2026, the Commission shall present a report to the European Parliament and to the Council in which it shall assess the feasibility of including municipal waste incineration installations in the EU ETS, including with a view to their inclusion from 2028 and with an assessment of the potential need for a possibility for a Member State to opt out until 31 December 2030. In that regard, the Commission shall take into account the importance of all sectors contributing to emission reductions and the potential diverting towards disposal of waste by landfilling in the Union and waste exports to third countries. The Commission shall in addition take into account relevant criteria such as the effects on the internal market, potential distortions of competition, environmental integrity, alignment with the objectives of the Waste Framework Directive<sup>32</sup> and robustness and accuracy with respect to the monitoring and calculation of emissions. The Commission shall, where appropriate and without prejudice to the provisions laid down in Article 4 of Directive 2008/98/EC, present a legislative proposal accompanying the report to apply the provisions of this Chapter to greenhouse gas emissions permits and the allocation and issue of additional allowances in respect of municipal waste incineration installations and to prevent potential diverting.*

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<sup>32</sup> *Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).*

*In the report referred to in the first subparagraph, the Commission shall also assess the possibility of including in the EU ETS other waste management processes, in particular landfills which create methane and nitrous oxide emissions in the Union. The Commission may, where appropriate, also accompany that report with a legislative proposal to include such other waste management processes in the EU ETS.”;*

(21) the following Chapter IVa is inserted after Article 30:

“CHAPTER IVa

EMISSIONS TRADING SYSTEM FOR BUILDINGS, ROAD TRANSPORT *AND*  
*ADDITIONAL SECTORS*

Article 30a

Scope

The provisions of this Chapter shall apply to emissions, greenhouse gas emission permits, issue and surrender of allowances, monitoring, reporting and verification in respect of the activity referred to in Annex III. This Chapter shall not apply to any emissions covered by Chapters II **■** and III.

Article 30b

Greenhouse *gas* emissions permits

1. Member States shall ensure that, from 1 January 2025, no regulated entity carries out the activity referred to in Annex III unless that regulated entity holds a permit issued by a competent authority in accordance with paragraphs 2 and 3.
2. An application to the competent authority by the regulated entity pursuant to paragraph 1 for a greenhouse gas emissions permit under this Chapter shall include, at least, a description of:
  - (a) the regulated entity;
  - (b) the type of fuels it releases for consumption and which are used for combustion in the **■** sectors **■** defined in Annex III and the means through which it releases those fuels for consumption;

- (c) the end use(s) of the fuels released for consumption for the activity referred to in Annex III;
  - (d) the measures planned to monitor and report emissions, in accordance with the acts referred to in Articles 14 and 30f;
  - (e) a non-technical summary of the information under points (a) to (d).
- 3. The competent authority shall issue a greenhouse gas emissions permit granting authorisation to the regulated entity referred to in paragraph 1 for the activity referred to in Annex III, if it is satisfied that the entity is capable of monitoring and reporting emissions corresponding to the quantities of fuels released for consumption pursuant to Annex III.
- 4. Greenhouse gas emissions permits shall contain, at least, the following:
  - (a) the name and address of the regulated entity;
  - (b) a description of the means by which the regulated entity releases the fuels for consumption in the sectors covered by this Chapter;
  - (c) a list of the fuels the regulated entity releases for consumption in the sectors covered by this Chapter;
  - (d) a monitoring plan that fulfils the requirements established by the acts referred to in Article 14;
  - (e) reporting requirements established by the acts referred to in Article 14;
  - (f) an obligation to surrender allowances, issued under this Chapter, equal to the total emissions in each calendar year, as verified in accordance with Article 15, *in accordance with the deadline provided in Article 30e(2)*.
- 5. Member States may allow the regulated entities to update monitoring plans without changing the permit. Regulated entities shall submit any updated monitoring plans to the competent authority for approval.
- 6. The regulated entity shall inform the competent authority of any planned changes to the nature of its activity or to the fuels it releases for consumption, which may require updating the greenhouse gas emissions permit. Where appropriate, the competent authority shall update the permit in accordance with the acts referred to in Article 14. Where there is a change in the identity

of the regulated entity covered by this Chapter, the competent authority shall update the permit to include the name and address of the new regulated entity.

#### Article 30c

##### Total quantity of allowances

1. The Union-wide quantity of allowances issued under this Chapter each year from **2027** shall decrease in a linear manner beginning in 2024. The 2024 value shall be defined as the 2024 emissions limits, calculated on the basis of the reference emissions under Article 4(2) of Regulation (EU) 2018/842 of the European Parliament and of the Council(\*) for the sectors covered by this Chapter and applying the linear reduction trajectory for all emissions within the scope of that Regulation. The quantity shall decrease each year after 2024 by a linear reduction factor of **5,10** %. By 1 January **2025**, the Commission shall publish the Union-wide quantity of allowances for the year **2027**.
2. The Union-wide quantity of allowances issued under this Chapter each year from 2028 shall decrease in a linear manner beginning from 2025 on the basis of the average emissions reported under this Chapter for the years 2024 to 2026. The quantity of allowances shall decrease by a linear reduction factor of **5,38** %, except if the conditions of point 1 of Annex IIIa apply, in which case, the quantity shall decrease with a linear reduction factor adjusted in accordance with the rules set out in point 2 of Annex IIIa. By 30 June 2027, the Commission shall publish the Union-wide quantity of allowances for the year 2028 and, if required, the adjusted linear reduction factor.
3. *The Union-wide quantity of allowances issued under this Chapter shall be adjusted for each year from the year after the start of auctioning to compensate for the quantity of allowances surrendered in cases where it was not possible to avoid double counting of emissions or where allowances have been surrendered for emissions not covered by this Chapter as referred to in Article 30f(4). The adjustment shall correspond to the total amount of allowances covered by this Chapter which were compensated for in the relevant reporting year pursuant to the acts referred to in Article 30f(4).*
4. *A Member State having unilaterally included a regulated entity pursuant to Article 30j in the emissions trading established under this Chapter shall*

*ensure that the regulated entity concerned submits by 30 April of the relevant year to the relevant competent authority a duly substantiated report in accordance with the provisions of Article 30f. If the data submitted are duly substantiated, the competent authority shall notify the Commission thereof by 30 June of the relevant year. The quantity of allowances to be issued under paragraph 1 shall be adjusted taking into account the duly substantiated submitted report.*

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- (\*) Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).

#### Article 30d

Auctioning of allowances for the activity referred to in Annex III

1. From **2027**, allowances covered by this Chapter shall be auctioned, unless they are placed in the Market Stability Reserve established by Decision (EU) 2015/1814. The allowances covered by this Chapter shall be auctioned separately from the allowances covered by Chapters II **■** and III.
2. The auctioning of the allowances under this Chapter shall start in **2027** with a volume corresponding to 130 % of the auction volumes for **2027** established on the basis of the Union-wide quantity of allowances for that year and the respective auction shares and volumes pursuant to **paragraphs 3, 4 and 5**. The additional volumes to be auctioned shall only be used for surrendering allowances pursuant to Article 30e(2) and **may be auctioned until 31 May 2028**. **The additional volumes shall** be deducted from the auction volumes for the period from **2029 to 2031**. The conditions for these early auctions shall be set in accordance with paragraph **6** and Article 10(4).

In **2027**, 600 million allowances covered by this Chapter are created as holdings in the Market Stability Reserve pursuant to Article 1a(3) of Decision (EU) 2015/1814.

3. 150 million allowances issued under this Chapter shall be auctioned and all revenues from these auctions made available for the ***Social Climate*** Fund established by ***Regulation (EU) 20.../nn [Social Climate Fund Regulation]*** until 2032.

3a. ***From the remaining amount of allowances and in order to generate, together with the revenue from the allowances referred to in paragraph 3 and Article 10a(8b), a maximum amount of EUR 65 000 000 000, the Commission shall ensure the auctioning of an additional volume of allowances covered by this Chapter that shall be made available for the Social Climate Fund established by Regulation (EU) 20.../nn [Social Climate Fund Regulation] until 2032.***

***The Commission shall ensure that the allowances destined for the Social Climate Fund referred to in paragraph 3 and in this paragraph are auctioned in accordance with the principles and modalities of Article 10(4) and the delegated act adopted in accordance with that provision.***

***The revenues from the auctioning of the allowances referred to in paragraph 3 and in this paragraph shall constitute external assigned revenue in accordance with Article 21(5) of the Financial Regulation, and shall be implemented in accordance with the rules applicable to the Social Climate Fund.***

***The annual amount allocated to the Social Climate Fund in accordance with Article 10a(8b), paragraph 3 and this paragraph shall not exceed:***

- (a) for 2026, EUR 4 000 000 000;***
- (b) for 2027, EUR 10 900 000 000;***
- (c) for 2028, EUR 10 500 000 000;***
- (d) for 2029, EUR 10 300 000 000;***
- (e) for 2030, EUR 10 100 000 000;***
- (f) for 2031, EUR 9 800 000 000;***
- (g) for 2032, EUR 9 400 000 000.***

*Where the emissions trading established in accordance with this Chapter is postponed until 2028 pursuant to Article 30k, the maximum amount to be made available to the Social Climate Fund in accordance with the first subparagraph shall be EUR 54 600 000 000. In such a case, the annual amounts allocated to the Fund shall not exceed cumulatively for 2026-2027, EUR 4 000 000 000, and for the period from 1 January 2028 until 31 December 2032, the relevant annual amount shall not exceed:*

*(a) for 2028, EUR 11 400 000 000;*

*(b) for 2029, EUR 10 300 000 000;*

*(c) for 2030, EUR 10 100 000 000;*

*(d) for 2031, EUR 9 800 000 000;*

*(e) for 2032, EUR 9 000 000 000.*

*In case revenue generated from the auctioning referred to in paragraph 4 is established as an own resource in accordance with Article 311(3) TFEU, Article 10a(8b), paragraph 3 and this paragraph shall cease to apply.*

4. The total quantity of allowances covered by this Chapter after deducting the quantities set out in *paragraphs 3 and 3a*, shall be auctioned by the Member States and distributed amongst them in shares that are identical to the share of reference emissions under Article 4(2) of Regulation (EU) 2018/842 for the *categories of emission sources referred to in paragraph 2 point (b) to (d) of Annex III* for the average of the period from 2016 to 2018, of the Member State concerned, *as comprehensively reviewed pursuant to Article 4(3) of that Regulation.*
5. Member States shall determine the use of revenues generated from the auctioning of allowances referred to in paragraph 4, except for the revenues *constituting externally assigned revenue in accordance with paragraph 3a or the revenues* established as own resources in accordance with Article 311(3) TFEU and entered in the Union budget. Member States shall use their revenues *or the equivalent in financial value of these revenues* for one or more of the *purposes* referred to in Article 10(3), *giving priority to activities*

*that can contribute to address social aspects of the emission trading under this Chapter*, or for one or more of the following:

- (a) measures intended to contribute to the decarbonisation of heating and cooling of buildings or to the reduction of the energy needs of buildings, including the integration of renewable energies and related measures according to Articles 7(11), 12 and 20 of Directive 2012/27/EU [references to be updated with the revised Directive], as well as measures to provide financial support for low-income households in worst-performing buildings;
- (b) measures intended to accelerate the uptake of zero-emission vehicles or to provide financial support for the deployment of fully interoperable refuelling and recharging infrastructure for zero-emission vehicles or measures to encourage a shift to public forms of transport and improve multimodality, or to provide financial support in order to address social aspects concerning low and middle-income transport users;
- (c) *to finance their Social Climate Plan in accordance with Article 14(1) of [SCF Regulation];*
- (d) *to provide financial compensation to the final consumers of the fuels in cases where it was not possible to avoid double counting of emissions or where allowances have been surrendered for emissions not covered by this Chapter as referred to in Article 30f(4).*

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 or regulatory policies, which leverage financial support, established for the purposes set out in the first subparagraph and which have a value equivalent to the revenues *referred to in the first subparagraph* generated from the auctioning of allowances referred to in this Chapter.

Member States shall inform the Commission as to the use of revenues and the actions taken pursuant to this paragraph by including this information in their reports submitted under Regulation (EU) 2018/1999 of the European Parliament and of the Council (\*\*).

6. Articles 10(4) and 10(5) shall apply to the allowances issued under this Chapter.

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(\*) Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1).

(\*\*) [insert reference]

#### Article 30e

##### Transfer, surrender and cancellation of allowances

1. Article 12 shall apply to the emissions, regulated entities and allowances covered by this Chapter with the exception of Article 12, paragraphs (2a), (3), (3a), paragraph (4), *second* and *third* sentence, and paragraph (5). For this purpose:
  - (a) any reference to emissions shall be read as if it were a reference to the emissions covered by this Chapter;
  - (b) any reference to operators of installations shall be read as if it were a reference to the regulated entities covered by this Chapter;
  - (c) any reference to allowances shall be read as if it were a reference to the allowances covered by this Chapter.
2. From 1 January **2028**, Member States shall ensure that, by **31 May** each year, the regulated entity surrenders a number of allowances covered by this Chapter, that is equal to the total emissions, corresponding to the quantity of fuels released for consumption pursuant to Annex III, during the preceding calendar year as verified in accordance with Articles 15 and 30f, and that those allowances are subsequently cancelled.

3. *Until 31 December 2030, by way of derogation from the first and second paragraphs, where a regulated entity established in a given Member State is subject to a national carbon tax in force for the years 2027 to 2030, covering an activity referred to in Annex III, the competent authority of the Member State concerned may exempt that regulated entity from the obligation to surrender allowances under paragraph 2 for a given reference year, provided that:*
- (a) the Member State concerned notifies the Commission of its national carbon tax, covering an activity referred to in Annex III by 31 December 2023 and the national law setting the tax rates applicable for the years 2027 to 2030 has, at that point in time, entered into force. The Member State concerned shall notify the Commission of any subsequent change to the national carbon tax;*
  - (b) for the reference year, the national carbon tax of the Member State concerned effectively paid by that regulated entity is higher than the average auction clearing price of the emissions trading system established under this Chapter;*
  - (c) the regulated entity fully complies with the obligations under Article 30b on the greenhouse emissions permits and Article 30f on the monitoring, reporting and verification of its emissions;*
  - (d) the Member State concerned notifies the Commission of the application of any such exemption and the corresponding volume of allowances to be cancelled in accordance with point (g) and the delegated acts adopted pursuant to Article 10(4) by 31 May of the year after the reference year;*
  - (e) the Commission does not raise an objection to the application of the derogation on the ground that the measure notified is not in conformity with the conditions set out in this paragraph, within three months from a notification under point (a) or within one month after the notification for the relevant year under point (d);*
  - (f) the Member State concerned does not auction the volume of allowances referred to in Article 30d(4) for a particular reference year*

*until the quantity of volume of allowances to be cancelled under this paragraph is determined in accordance with point (g). The Member State concerned shall not auction any of the additional volume of allowances pursuant to Article 30d(2), first subparagraph.*

- (g) the Member State concerned cancels a volume of allowances from the total quantity of allowances to be auctioned by it referred to in Article 30d(4) for the reference year equal to the verified emissions of that regulated entity under this Chapter for the reference year. Where the volume of allowance that remains to be auctioned in the reference year following application of point f) is below the volume of allowances to be cancelled under this paragraph, the Member State concerned shall ensure that it cancels the volume of allowances corresponding to the difference by the end of the year after the reference year; and*
- (h) the Member State concerned commits, at the time of the first notification under point (a), to use for one or more of the measures listed or referred to in Article 30d(5), first subparagraph, an amount equivalent to the revenues to which Article 30d(5) would have applied in the absence of this derogation. The second and third subparagraph of Article 30d(5) shall apply and the Commission shall ensure that the information received pursuant thereto is in conformity with the commitment made.*

*The volume of allowances to be cancelled under point (g) shall not affect the externally assigned revenue established pursuant to Article 30d(3a) or, where it has been established pursuant to Article 311(3) TFEU, the own resources of the Union budget pursuant to Council Decision (EU, Euratom) 2020/2053 from the revenues generated from auctioning of allowances in accordance with Article 30d.*

- 4. Hospitals which are not covered by Chapter III of this Directive may be provided financial compensation for the cost passed on to them due to the surrender of allowances under this Chapter. For this purpose, the provisions of this Chapter applicable to the cases of double counting shall apply mutatis mutandis.*

## Article 30f

### Monitoring, reporting, verification of emissions and accreditation

1. Articles 14 and 15 shall apply to the emissions, regulated entities and allowances covered by this Chapter. For this purpose:
  - (a) any reference to emissions shall be read as if it were a reference to the emissions covered by this Chapter;
  - (b) any reference to activity listed in Annex I shall be read as if it were a reference to the activity referred to in Annex III;
  - (c) any reference to operators shall be read as if it were a reference to the regulated entities covered by this Chapter;
  - (d) any reference to allowances shall be read as if it were a reference to the allowances covered by this Chapter.
2. Member States shall ensure that each regulated entity monitors for each calendar year as from 2025 the emissions corresponding to the quantities of fuels released for consumption pursuant to Annex III. They shall also ensure that each regulated entity reports these emissions to the competent authority in the following year, starting in 2026, in accordance with the acts referred to in Article 14(1).
- 2a. ***From 1 January 2028, Member States shall ensure that, by 30 April each year until 2030, the regulated entity reports the average share of costs related to the surrender of allowances under Chapter IVa of Directive 2003/87/EC which they passed on to consumers for the preceding year. The Commission shall adopt implementing acts concerning the requirements and templates for these reports. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2). The Commission shall assess the submitted reports and annually report its findings to the European Parliament and the Council. In the case the Commission finds that improper practices exist with regard to the pass through of carbon costs, the report may be accompanied, if appropriate, by legislative proposals aimed at addressing such improper practices.***

3. Member States shall ensure that each regulated entity holding a permit in accordance with Article 30b on 1 January 2025 report their historical emissions for year 2024 by 30 *April* 2025.
4. Member States shall ensure that the regulated entities are able to identify and document reliably and accurately per type of fuel, the precise volumes of fuel released for consumption which are used for combustion in the ■ sectors ■ identified in Annex III, and the final use of the fuels released for consumption by the regulated entities. The Member States shall take appropriate measures to ***limit the*** risk of double counting of emissions covered under this Chapter and the emissions under Chapters II ■ and III, ***as well as the risk of allowances being surrendered for emissions not covered by this Chapter.***

***The Commission shall adopt implementing acts concerning the detailed rules for avoiding double counting and allowances being surrendered for emissions not covered by this Chapter, as well as for providing financial compensation to the final consumers of the fuels in cases where such double counting or surrender may not be avoided. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2). The calculation of the financial compensation to the final consumers of the fuels shall be based on the average price of allowances in the auctions carried out in accordance with the act adopted under Article 10(4) in the relevant reporting year.***

5. The principles for monitoring and reporting of emissions covered by this Chapter are set out in Part C of Annex IV.
6. The criteria for the verification of emissions covered by this Chapter are set out in Part C of Annex V.
7. ***Member States may allow simplified monitoring, reporting and verification measures for regulated entities whose annual emissions corresponding to the quantities of fuels released for consumption are less than 1000 tonnes of carbon dioxide equivalent, in accordance with the acts referred to in Article 14(1).***

## Article 30g

### Administration

Articles 13, 15a, Article 16(1), (2), (3), (4) and (12), Articles 17, 18, 19, 20, 21, 22, 22a, 23 and 29 shall apply to the emissions, regulated entities and allowances covered by this Chapter. For this purpose:

- (a) any reference to emissions shall be read as if it were a reference to emissions covered by this Chapter;
- (b) any reference to *operators* shall be read as if it were a reference to regulated entities covered by this Chapter;
- (c) any reference to allowances shall be read as if it were a reference to the allowances covered by this Chapter.

## Article 30h

### Measures in the event of excessive price increase

1. Where, for more than three consecutive months, the average price of *allowances* in the auctions carried out in accordance with the act adopted under Article 10(4) is more than twice the average price of *allowances* during the six preceding consecutive months in the auctions for the allowances covered by this Chapter, **50 million allowances covered by this Chapter shall be released** from the Market Stability Reserve in accordance with Article 1a(7) of Decision (EU) 2015/1814.

*For the years 2027 and 2028, the conditions in the first sub-paragraph shall be met where, for more than three consecutive months, the average price of allowance is more than 1,5 times the average price of allowance during a reference period of the six preceding consecutive months.*

- 1a. Where the average price of allowances referred to in paragraph 1 exceeds a price of EUR 45 during a period of two consecutive months, 20 million allowances covered by this Chapter shall be released from the Market Stability Reserve in accordance with Article 1a(7) of Decision (EU) 2015/1814. The indexation to the European index of consumer prices of 2020 shall apply. The mechanism under this paragraph shall release allowances up to 31 December 2029.*

2. Where **■** the average price of *allowances referred to in paragraph 1* is more than three times the average price of allowance during the six preceding consecutive months, 150 million allowances covered by this Chapter ***shall be released*** from the Market Stability Reserve in accordance with Article 1a(7) of Decision (EU) 2015/1814.
  - 2a. *Where a condition referred to in paragraph 1a has been met on the same day as the condition in paragraphs 1 or 2, additional allowances shall be released only pursuant to paragraphs 1 or 2.*
  - 2b. *Before paragraph 1a ceases to apply, the Commission shall present a report to the European Parliament and to the Council in which it assesses whether the mechanism referred to in paragraph 1a has been effective and whether it should be continued. The Commission shall, where appropriate, accompany that report with a legislative proposal to the European Parliament and to the Council to amend this Directive to adjust that mechanism.*
3. *Where a condition referred to in paragraph 1, 1a or 2 has been met and resulted in a release of allowances, additional allowances shall not be released pursuant to this Article earlier than 12 months thereafter.*
4. *Where, within the second half of the period of 12 months referred to in paragraph 3, the condition in paragraph 1a has been met again, the Commission shall, assisted by the Committee, established by Article 44 of Regulation (EU) 2018/1999, assess the effectiveness of the measure and may by means of an implementing act decide that paragraph 3 shall not apply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).*
5. *Where a condition in paragraph 1, 1a or 2 has been met and paragraph 3 is not applicable, the Commission shall promptly publish in the Official Journal the date on which the condition in paragraph 1, 1a or 2 was met.*
6. *Member States that are subject to the obligation to provide a corrective action plan in accordance with Article 8 of ESR (2018/842) shall take due account the effects of the release of additional allowances pursuant to paragraph 1a during the previous two years when considering additional*

*actions to be implemented as referred to in Article 8(1)(c) in order to meet their obligations under that Regulation.*

Article 30i

Review of this Chapter

By 1 January 2028, the Commission shall report to the European Parliament and to the Council on the implementation of the provisions of this Chapter with regard to their effectiveness, administration and practical application, including on the application of the rules under Decision (EU) 2015/1814<sup>1</sup>. Where appropriate, the Commission shall accompany this report with a proposal to the European Parliament and to the Council to amend this Chapter. By 31 October 2031 the Commission should assess the feasibility of integrating the sectors covered by Annex III in the Emissions Trading System covering the sectors listed in annex 1 of Directive 2003/87/EC.

*Article 30j*

*Procedures for unilateral extension of the activity referred to in Annex III to other sectors not subject to Chapter II and III*

- 1. From 2027 Member States may apply emission trading in accordance with this Chapter in sectors not listed in Annex III, taking into account all relevant criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the emission trading system established pursuant to this Chapter and the reliability of the planned monitoring and reporting system, provided that the extension of the activity is approved by the Commission.*

*The Commission is empowered to adopt delegated acts in accordance with Article 23 concerning the approval of an extension, authorisation for the issue of additional allowances and authorisation of other Member States to extend the activity. The Commission may also, when adopting such delegated acts, supplement the extension with further rules governing measures to address possible instances of double counting, including for the issue of additional allowances to compensate for allowances surrendered for use of fuels in activities listed in Annex I. Any financial measures by the Member States in favour of companies in sectors and subsectors 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 fuel prices due to the unilateral extension shall be in accordance with State aid rules, and shall not cause undue distortions of competition in the internal market.*

2. *Additional allowances issued pursuant to an authorisation under this Article shall be auctioned in line with the requirements laid down in Article 30d. Notwithstanding Article 30d (1) to (5) the Member States having unilaterally extended of the activities shall determine the use of revenues generated from the auctioning of those additional allowances.*

#### *Article 30k*

*Postponement of emissions trading for buildings and road transport until 2028 in the event of exceptionally high energy prices*

1. *By 15 July 2026, the Commission shall publish in the Official Journal whether one or both of the following conditions were met:*
  - (a) *the average TTF gas price of the six calendar months ending 30 June 2026 is higher than the average TTF gas price in February and March 2022;*
  - (b) *the average Brent crude oil price of the six calendar months ending 30 June 2026 is more than 2 times the average Brent crude oil price during the five preceding years. The five years reference period shall be the five-year period that ends before the first month of the period of the six calendar months.*
2. *Where one or both of the conditions referred to in paragraph (1) are met, the following rules shall apply:*
  - (a) *by way of derogation from Article 30c(1), the first year for which the Union-wide quantity of allowances is established shall be 2028;*
  - (b) *by way of derogation from Articles 30d(1) and Article 30d(2), the start of auctioning of allowances under this Chapter shall be postponed to 2028;*

- (c) *by way of derogation from Article 30d(2), the additional volumes of allowances for the first year of auctions shall be deducted from the auction volumes for the period from 2030 to 2032 and the initial holdings in the market stability reserve shall be created in 2028;*
- (d) *by way of derogation from Article 30e(2), the deadline for initial surrendering of allowances shall be postponed to 30 April 2029 for the total emissions of the year 2028;*
- (e) *by way of derogation from Article 30i, the deadline for the Commission to report to the European Parliament and to the Council shall be postponed to 1 January 2029.”;*

**(21b)** *the following article is inserted:*

**“Article 30ib**

**Scientific advice**

*The European Scientific Advisory Board on Climate Change established under Article 10a of Regulation (EC) No 401/2009 may, on its own initiative, provide scientific advice and issue reports regarding this Directive. The Commission shall take into account the relevant advice and reports of the Advisory Board, in particular as regards:*

- *the need for additional Union policies and measures to ensure compliance with the objectives and targets referred to in Article 30(3);*
- *the need for additional Union policies and measures in view of agreements on global measures within ICAO to reduce climate impact from aviation and the ambition and environmental integrity of the global market-based measure from the IMO referred to in Article 3ge\*.”;*

**(21c)** *the following Article is inserted after Article 30ib:*

**“Article 30ic**

**Information, communication and publicity**

1. *The Commission shall ensure the visibility of funding from EU ETS auctioning revenues referred to in Article 10a(8) (Innovation Fund) of this Directive by:*

- (a) ensuring that the beneficiaries of such funding acknowledge the origin of those funds and ensure the visibility of the Union funding, in particular when promoting the projects and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public; and*
- (b) ensuring that the recipients of such funding use an appropriate label that reads ‘(co-) funded revenue from by the EU Emissions Trading System (the Innovation Fund)’, as well as the emblem of the Union and the amount of funding. Where the use of this label is not feasible, the Innovation Fund shall be mentioned in all communication activities, including on notice boards at strategic places visible to the public.*

*The Commission shall in the delegated act referred to in Article 10a (8) set the necessary requirements to ensure the visibility of funding from the Innovation Fund, including the mentioning of that Fund.*

- 2. Member States shall ensure the visibility of funding from EU ETS auctioning revenues referred to in Article 10d (Modernisation Fund) corresponding to what is referred to in paragraph 1, points a) and b), including the mentioning of the Modernisation Fund.*
- 3. Taking into account national circumstances, the Member States shall endeavour to ensure the visibility of the source of the funding of actions or projects funded from the EU ETS auctioning revenues for which they determine the use as referred to in Articles 3d (4), 10(3) and Article 30d (5).”;*

- (22) Annexes I, IIb, IV and V to Directive 2003/87/EC are amended in accordance with Annex I to this Directive, and Annexes III, IIIa and IIIb are inserted in Directive 2003/87/EC as set out in Annex I to this Directive.

## Article 2

### Amendments to Decision (EU) 2015/1814

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

- (1) Article 1 is amended as follows:

(a) in paragraph 4, the ***first and second sentences are*** replaced by the following:  
***“The Commission shall publish the total number of allowances in circulation each year by 1 June of the subsequent year. The total number of allowances in circulation in a given year shall be the cumulative number of allowances issued in respect of installations and shipping companies and not put in reserve in the period since 1 January 2008, including the number that were issued pursuant to Article 13(2) of Directive 2003/87/EC as in force until 18 March 2018 in that period and entitlements to use international credits exercised by installations under the EU ETS , up to 31 December of that given year, minus the cumulative tonnes of verified emissions from installations and shipping companies under the EU ETS between 1 January 2008 and 31 December of that same given year, and any allowances cancelled in accordance with Article 12(4) of Directive 2003/87/EC.”;***

(b) the following paragraph 4a is inserted:

“4a. As from [the year following the entry into force of this Directive], the calculation of the total number of allowances in circulation ***in any given year*** shall include the ***cumulative*** number of allowances issued in respect of aviation and ***the cumulative tonnes of verified emissions from aviation under the EU ETS, not including emissions from flights on routes covered by offsetting calculated pursuant to Article 12(6), between 1 January [the year following the entry into force of this Directive] and 31 of December of that year.***

The allowances cancelled pursuant to Article 3ga of Directive 2003/87/EC shall be considered as issued for the purposes of the calculation of the total number of allowances in circulation.”;

(c) paragraph 5 and 5a are replaced by the following:

“5. In any given year, if the total number of allowances in circulation is between 833 million and 1 096 million, a number of allowances equal to the difference between the total number of allowances in circulation, as set out in the most recent publication as referred to in paragraph 4 of this Article, and 833 million, shall be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of

Directive 2003/87/EC and shall be placed in the reserve over a period of 12 months beginning on 1 September of that year. If the total number of allowances in circulation is above 1 096 million allowances, the number of allowances to be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC and to be placed in the reserve over a period of 12 months beginning on 1 September of that year shall be equal to 12 % of the total number of allowances in circulation. By way of derogation from the last sentence, until 31 December 2030, the percentage shall be doubled.

Without prejudice to the total amount of allowances to be deducted pursuant to this paragraph, until 31 December 2030, allowances referred to in Article 10(2), first subparagraph, point (b), of Directive 2003/87/EC shall not be taken into account when determining Member States' shares contributing to that total amount.

- 5a. Unless otherwise decided in the first review carried out in accordance with Article 3, from 2023 allowances held in the reserve above 400 million allowances shall no longer be valid.”;

**(d) paragraph 7 replaced by the following:**

- “7. In any year, if paragraph 6 of this Article is not applicable and the condition in the first paragraph of Article 29a of Directive 2003/87/EC have been met, 75 million allowances shall be released from the reserve and added to the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC. Where fewer than 75 million allowances are in the reserve, all allowances in the reserve shall be released under this paragraph. Where the condition in paragraph 1 of Article 29a of Directive 2003/87/EC Article 29a is fulfilled, the volumes to be released from the reserve in accordance with that provision shall be evenly distributed during a period of three months, starting no later than two months from the date when the condition in paragraph 1 of Article 29a of Directive 2003/87/EC is met as notified by the Commission in accordance with the fourth sub-paragraph thereof.”;**

(2) the following Article 1a is inserted:

“Article 1a

Operation of the Market Stability Reserve for the buildings, road transport *and additional* sectors

1. Allowances covered by Chapter IVa of Directive 2003/87/EC shall be placed in and released from a separate section of the reserve established pursuant to Article 1 of this Decision, in accordance with the rules set out in this Article.
2. The placing in the reserve under this Article shall operate from 1 September **2028**. The allowances covered by Chapter IVa of Directive 2003/87/EC shall be placed in, held in, and released from the reserve separately from the allowances covered by Article 1 of this Decision.
3. In **2027**, the section referred to in paragraph 1 shall be created in accordance with Article 30d(2), second subparagraph, of Directive 2003/87/EC. By 1 January 2031, the allowances referred to in this paragraph that are not released from the reserve shall no longer be valid.
4. The Commission shall publish the total number of allowances in circulation covered by Chapter IVa of Directive 2003/87/EC each year, by **1 June** of the subsequent year separately from the number of allowances in circulation under Article 1(4). The total number of allowances in circulation under this Article in a given year shall be the cumulative number of allowances covered by Chapter IVa of Directive 2003/87/EC issued in the period since 1 January **2027**, minus the cumulative tonnes of verified emissions covered by Chapter IVa of Directive 2003/87/EC for the period between 1 January **2027** and 31 December of that same given year and any allowances covered by Chapter IVa Directive 2003/87/EC cancelled in accordance with Article 12(4) of Directive 2003/87/EC. The first publication shall take place by **1 June 2028**.
5. In any given year, if the total number of allowances in circulation, as set out in the most recent publication as referred to in paragraph 4 of this Article, is above 440 million allowances, 100 million allowances shall be deducted from the volume of allowances covered by Chapter IVa to be auctioned by the Member States under Article 30d of Directive 2003/87/EC and shall be placed

in the reserve over a period of 12 months beginning on 1 September of that year.

6. In any given year, if the total number of allowances in circulation is fewer than 210 million, 100 million allowances covered by Chapter IVa shall be released from the reserve and added to the volume of allowances covered by Chapter IVa to be auctioned by the Member States under Article 30d of Directive 2003/87/EC. Where fewer than 100 million allowances are in the reserve, all allowances in the reserve shall be released under this paragraph.
7. The volumes to be released from the reserve in accordance with Article 30h of Directive 2003/87/EC shall be added to the volume of allowances covered by Chapter IVa to be auctioned by the Member States under Article 30d of Directive 2003/87/EC. ***The volumes to be released from the reserve shall be evenly distributed during a period of three months, starting no later than two months after the date on which the conditions were met according to the publication thereof in the Official Journal pursuant to Article 30h of Directive 2003/87/EC.***
8. Article 1(8) and Article 3 shall apply to the allowances covered by Chapter IVa of Directive 2003/87/EC.
9. ***By derogation from paragraphs 2 to 4, where one or both of the conditions referred to in Article 30k(1) of Directive 2003/87/EC are met, the placing in the reserve referred to in paragraph 2 shall operate from 1 September 2029 and the dates referred to in paragraphs 3 and 4 shall be postponed by one year.***

(2a) ***Article 3 is replaced by the following:***

***“Article 3***

***Review***

***The Commission shall monitor the functioning of the reserve in the context of the report provided for in Article 10(5) of Directive 2003/87/EC. That report should consider relevant effects on competitiveness, in particular in the industrial sector, including in relation to GDP, employment and investment indicators. Within three years of the start of the operation of the reserve and at five-year intervals thereafter, the Commission shall, on the basis of an analysis of the orderly***

*functioning of the European carbon market, review the reserve and submit a proposal, where appropriate, to the European Parliament and to the Council. Each review shall pay particular attention to the percentage figure for the determination of the number of allowances to be placed in the reserve pursuant to Article 1(5) of this Decision, the numerical value of the threshold for the total number of allowances in circulation, including with a view to a potential adjustment of this threshold in line with the linear factor referred to in Article 9 of Directive 2003/87/EC, as well as the number of allowances to be released from the reserve pursuant to Article 1(6) or (7) of this Decision. In its review, the Commission shall also look into the impact of the reserve on growth, jobs, and the Union's industrial competitiveness and on the risk of carbon leakage.”*

■

#### Article 4

##### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with *Article 1* ■ of this Directive by 31 December 2023 ■ .

*However, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the following articles by 30 June 2024:*

- (i). Article 1(2), points (x) to (zb), of this Directive;*
- (ii). Article 1(21) of this Directive with the exception of Article 30f(3) of Directive 2003/87/EC as inserted by that Article; and*
- (iii). Article 1(22) of this Directive regarding Annexes III, IIIa and IIIb of Directive 2003/87/EC as inserted by that Article.*

They shall *immediately inform* the Commission *thereof*.

When Member States adopt those *measures*, they shall contain a reference to this Directive or *shall* be accompanied by such ■ reference on the occasion of their official publication. *The methods of making such reference shall be laid down by Member States* ■ .

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

Article 5  
Transitional provisions


1. When complying with their obligation set out in Article 4(1) of this Directive, Member States shall ensure that their national legislation transposing Article 3, point (u), Article 10a(3) and 10a(4), Article 10c(7) and Annex I, point 1, of Directive 2003/87/EC, in its version applicable on [the day before the date of entry into force of this Directive], continue to apply until 31 December 2025. ***They shall apply their national measures transposing amendments to those provisions from 1 January 2026.***



Article 7  
Entry into force ***and application***

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*. ***Article 2 shall apply from 1 January 2024.***

Article 8  
Addressees

This Directive is addressed to the Member States. 

Done at Brussels ..., ...

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

## ANNEX

Annex I to Directive 2003/87/EC is amended as follows:

■ Points 1 and 3 are replaced by the following:

- “1. Installations or parts of installations used for research, development and testing of new products and processes **are not covered by this Directive. Installations, where *during the preceding relevant five year period referred to in Article 11(1), second subparagraph*, emissions from the combustion of biomass that complies with the criteria set out pursuant to Article 14 contribute *on average* to more than 95 % of the total *average* greenhouse gas emissions are not covered by this Directive.**
3. When the total rated thermal input of an installation is calculated in order to decide upon its inclusion in the EU ETS, the rated thermal inputs of all technical units which are part of it, in which fuels are combusted within the installation, shall be added together. These units may include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units. Units with a rated thermal input under 3 MW shall not be taken into account for the purposes of this calculation.”;

■ The table is amended as follows:

(-i) *The first row is replaced by the following:*

<i>Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste)</i>	<i>Carbon dioxide</i>
<i>From 1 January 2024, combustion of fuels in installations for the incineration of municipal waste with a total rated thermal input exceeding 20 MW, for the purposes of Articles 14 and 15.</i>	

(i) The second row is replaced by the following:

Refining of oil, where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide";
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(ii) The fifth row is replaced by the following:

"Production of iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour	Carbon dioxide";
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(iii) The seventh row is replaced by the following:

"Production of primary aluminium or alumina	Carbon dioxide <i>and perfluorocarbons</i> ";
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(iv) The fifteenth row of categories of activities is replaced by the following:

"Drying or calcination of gypsum or production of plaster boards and other gypsum products, with a production capacity of calcined gypsum or dried secondary gypsum exceeding a total of 20 tonnes per day	Carbon dioxide";
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(v) The eighteenth row is replaced by the following:

"Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues with a production capacity exceeding 50 tonnes per day	Carbon dioxide";
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(vi) The twenty-fourth row is replaced by the following:

"Production of hydrogen ( $H_2$ ) and synthesis gas with a production capacity exceeding 5 tonnes per day	Carbon dioxide";
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(vii) The twenty-seventh row is replaced by the following:

"Transport of greenhouse gases for geological storage in a storage site permitted under Directive 2009/31/EC,	Carbon dioxide";
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with the exclusion of those emissions covered by another activity under this Directive	
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(viii) the following row is added after the last new row, with a separation line in between:

<p>“Maritime transport Maritime transport activities covered by Regulation (EU) 2015/757 of the European Parliament and of the Council with the <i>exception of the maritime transport activities covered by Article 2(1a) and, until 31 December 2026, Article 2(1b) of that Regulation (EU) 2015/757</i></p>	<p><b><i>Carbon dioxide; From 1 January 2026: methane and nitrous oxide</i></b>”;</p>
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(1) Annex IIb to Directive 2003/87/EC is replaced by the following:

“ANNEX IIb

Part A - DISTRIBUTION OF FUNDS FROM THE MODERNISATION FUND CORRESPONDING TO ARTICLE 10(1), THIRD SUBPARAGRAPH

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

Part B - DISTRIBUTION OF FUNDS FROM THE MODERNISATION FUND CORRESPONDING TO ARTICLE 10(1), FOURTH SUBPARAGRAPH

	Share
Bulgaria	<b>4,9 %</b>
Czechia	<b>12,6 %</b>
Estonia	<b>2,1 %</b>
Greece	<b>10,1 %</b>
Croatia	2,3 %
Latvia	<b>1,0 %</b>
Lithuania	1,9 %
Hungary	<b>5,8 %</b>
Poland	<b>34,2 %</b>
Portugal	<b>8,6 %</b>
Romania	<b>9,7 %</b>
Slovakia	<b>4,8 %</b>
<b>Slovenia</b>	<b>2,0 %</b>

(2) The following Annexes are inserted as Annexes III, IIIa and IIIb to Directive 2003/87/EC:

“ANNEX III

ACTIVITY COVERED BY CHAPTER IVa

<p>Activity:</p> <p>1. Release for consumption of fuels which are used for combustion in the sectors of buildings and road transport <b><i>and additional sectors.</i></b></p> <p>This activity shall not include:</p> <p>(a) the release for consumption of fuels used in the activities set out in Annex I to this Directive, except if used for combustion in the activities of transport of greenhouse gases for geological storage (activity row twenty seven) <b><i>or if used for combustion in installations excluded under Article 27a of this Directive;</i></b></p> <p>(b) the release for consumption of fuels for which the emission factor is zero;</p> <p><b><i>(c) the release for consumption of hazardous or municipal waste used as fuel.</i></b></p> <p>2. The sectors of buildings and road transport shall correspond to the following sources of emissions, defined in 2006 IPCC Guidelines for National Greenhouse Gas Inventories, with the necessary modifications to those definitions as follows:</p> <p>(a) Combined Heat and Power Generation (CHP) (source category code 1A1a ii) and Heat Plants (source category code 1A1a iii), insofar as they produce heat for categories under (c) and (d) of this point, either directly or through district heating networks;</p> <p>(b) Road Transportation (source category code 1A3b), excluding the use of agricultural vehicles on paved roads;</p> <p>(c) Commercial / Institutional (source category code 1A4a);</p> <p>(d) Residential (source category code 1A4b).</p> <p><b><i>3. Additional sectors shall correspond to the following sources of emissions, defined in 2006 IPCC Guidelines for National Greenhouse Gas Inventories:</i></b></p>	<p>Greenhouse gases</p> <p>Carbon dioxide (CO<sub>2</sub>)</p>
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<p><i>(a) Energy industries (source category code 1A1), excluding the categories defined under paragraph 2 point (a) of this Annex;</i></p> <p><i>(b) Manufacturing Industries and Construction (source category code 1A2).</i></p>	
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ANNEX IIIa

ADJUSTMENT OF LINEAR REDUCTION FACTOR IN ACCORDANCE WITH ARTICLE 30c(2)

1. If the average emissions reported under Chapter IVa for the years 2024 to 2026 are more than 2% higher compared to the value of the 2025 quantity defined in accordance with Article 30c(1), and if these differences are not due to the difference of less than 5% between the emissions reported under Chapter IVa and the inventory data of 2025 Union greenhouse gas emissions from UNFCCC source categories for the sectors covered under Chapter IVa, the linear reduction factor shall be calculated by adjusting the linear reduction factor referred to in Article 30c(1).
2. The adjusted linear reduction factor in accordance with point 1 shall be determined as follows:

$$LRF_{adj} = 100\% * \left( \frac{MRV_{[2024-2026]} - (ESR_{[2024]} - 6 * LRF_{[2024]} * ESR_{[2024]})}{5 * MRV_{[2024-2026]}} \right), \text{ where,}$$

$LRF_{adj}$  is the adjusted linear reduction factor;

$MRV_{[2024-2026]}$  is the average of verified emissions under Chapter IVa for the years 2024 to 2026;

$ESR_{[2024]}$  is the value of 2024 emissions defined in accordance with Article 30c(1) for the sectors covered under Chapter IVa;

$LRF_{[2024]}$  is the linear reduction factor referred to in Article 30c(1).”

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(3) Annex IV to Directive 2003/87/EC is amended as follows:

(a) in Part A, the section “Calculation” is amended as follows:

(i) in the fourth subparagraph, the last sentence “The emission factor for biomass shall be zero.” is replaced by the following:

“The emission factor for biomass that complies with the sustainability criteria and greenhouse gas emission saving criteria for the use of biomass established by Directive (EU) 2018/2001, with any necessary adjustments for application under this Directive, as set out in the implementing acts referred to in Article 14, shall be zero.”;

(ii) the sixth subparagraph is replaced by the following:

“Default oxidation factors developed pursuant to Directive 2010/75/EU shall be used, unless the operator can demonstrate that activity-specific factors are more accurate.”;

(b) in Part B, section “Monitoring of carbon dioxide emissions”, fourth subparagraph, the last sentence “The emission factor for biomass shall be zero.” is replaced by the following:

“The emission factor for biomass that complies with the sustainability criteria and greenhouse gas emission saving criteria for the use of biomass established by Directive (EU) 2018/2001, with any necessary adjustments for application under this Directive, as set out in the implementing acts referred to in Article 14, shall be zero.”;

(c) the following Part C is added:

“PART C — Monitoring and reporting of emissions corresponding to the activity referred to in Annex III

**Monitoring of emissions**

Emissions shall be monitored by calculation.

**Calculation**

Emissions shall be calculated using the following formula:

***Fuel released for consumption × emission factor***

Fuel released for consumption shall include the quantity of fuel released for consumption by the regulated entity.

Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of these Guidelines, shall be used unless fuel-specific emission factors identified by independent accredited laboratories using accepted analytical methods are more accurate.

A separate calculation shall be made for each regulated entity, and for each fuel.

### **Reporting of emissions**

Each regulated entity shall include the following information in its report:

- A. Data identifying the regulated entity, including:
- name of the regulated entity;
  - its address, including postcode and country;
  - type of the fuels it releases for consumption and its activities through which it releases the fuels for consumption, including the technology used;
  - address, telephone, fax and email details for a contact person; and
  - name of the owner of the regulated entity, and of any parent company.
- B. For each type of fuel released for consumption and which is used for combustion in the ■ sectors ■ defined in Annex III, for which emissions are calculated:
- quantity of fuel released for consumption;
  - emission factors;
  - total emissions;
  - end use(s) of the fuel released for consumption; and

— uncertainty.

Member States shall take measures to coordinate reporting requirements with any existing reporting requirements in order to minimise the reporting burden on businesses.”;

(4) in Annex V to Directive 2003/87/EC, the following Part C is added:

“PART C — Verification of emissions corresponding to the activity referred to in Annex III

### **General Principles**

1. Emissions corresponding to the activity referred to in Annex III shall be subject to verification.
2. The verification process shall include consideration of the report pursuant to Article 14(3) and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, and in particular:
  - (a) the reported fuels released for consumption and related calculations;
  - (b) the choice and the employment of emission factors;
  - (c) the calculations leading to the determination of the overall emissions.
3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the regulated entity to show that:
  - (a) the reported data is free of inconsistencies;
  - (b) the collection of the data has been carried out in accordance with the applicable scientific standards; and
  - (c) the relevant records of the regulated entity are complete and consistent.
4. The verifier shall be given access to all sites and information in relation to the subject of the verification.
5. The verifier shall take into account whether the regulated entity is registered under the Union Eco-Management and Audit Scheme (EMAS).

### **Methodology**

### Strategic analysis

6. The verification shall be based on a strategic analysis of all the quantities of fuels released for consumption by the regulated entity. This requires the verifier to have an overview of all the activities through which the regulated entity is releasing the fuels for consumption and their significance for emissions.

### Process analysis

7. The verification of the information submitted shall, where appropriate, be carried out on the site of the regulated entity. The verifier shall use spot-checks to determine the reliability of the reported data and information.

### Risk analysis

8. The verifier shall submit all the means through which the fuels are released for consumption by the regulated entity to an evaluation with regard to the reliability of the data on the overall emissions of the regulated entity.
9. On the basis of this analysis the verifier shall explicitly identify any element with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those elements with a high risk of error and the abovementioned aspects of the monitoring procedure.
10. The verifier shall take into consideration any effective risk control methods applied by the regulated entity with a view to minimising the degree of uncertainty.

### Report

11. The verifier shall prepare a report on the validation process stating whether the report pursuant to Article 14(3) is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to Article 14(3) is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

### Minimum competency requirement for the verifier

12. The verifier shall be independent of the regulated entity, carry out his or her activities in a sound and objective professional manner, and understand:
  - (a) the provisions of this Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1);
  - (b) the legislative, regulatory, and administrative requirements relevant to the activities being verified; and
  - (c) the generation of all information related to all the means through which the fuels are released for consumption by the regulated entity, in particular, relating to the collection, measurement, calculation and reporting of data.”.