

Synopsis of Fit For 55 drafts I COM(2021) 551 final and COM(2021) 552 final

- ▶ **Directive 2003/87/EC (EU-ETS) on GHG emission allowance trading**
- ▶ **Decision (EU) 2015/1814 on a market stability reserve for the EU-ETS**
- ▶ **Regulation (EU) 2015/757 on carbon dioxide emissions from maritime transport**

August 2021

Dear Reader

The dynamic of the legislative initiatives both at the EU-level and across EU member states is currently unprecedented. We are seeing a new urgency to decarbonise large parts of carbon-intensive sectors combined with the need to prevent carbon-leakage and the transfer of production to economies with less scrutiny on (still) carbon-intensive production processes. The task requires a holistic overhaul of the current framework for carbon-pricing, carbon-quotas, furthering and further enhancement of decarbonisation more broadly.

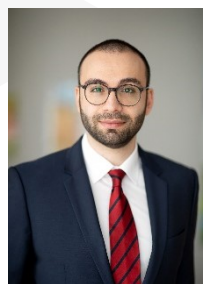
Drafts of the legislative package have recently been published and will be discussed and amended over the coming months. However, the timing of the adoption of the published drafts depends heavily on the political process. One important legal act due for revision is the EU-ETS-Directive, including its extension to shipping, the revision of the rules for aviation emissions and the establishment of a separate emission trading system for road transport and buildings. This document provides a synopsis for those wanting to better understand what changes are discussed, what to consider for future industries and business cases as well as to focus potential lobbying efforts.

We hope you will find this helpful and remain at your disposal for any questions or queries you may have.

Kind regards



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Legislative Amendments¹

I. Amendments to Directive 2003/87/EC (EU-ETS)

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CHAPTER I GENERAL PROVISIONS

Article 1

Subject matter

This Directive establishes a system for greenhouse gas emission allowance trading within the Union (hereinafter referred to as the 'EU ETS') in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.

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.

This Directive also lays down provisions for assessing and implementing a stricter Union reduction commitment exceeding 20 %, to be applied upon the approval by the Union of an international agreement on climate change leading to greenhouse gas emission reductions exceeding those required in Article 9, as reflected in the 30 % commitment endorsed by the European Council of March 2007.

Article 2

Scope

1. This Directive shall apply to emissions from the activities listed in Annex I and greenhouse gases listed in Annex II.

1. This Directive shall apply to the activities listed in Annexes I and III, and to the of 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, it shall remain in the scope of the EU ETS until the end of the relevant five year period referred to in Article 11(1), second subparagraph, following the change to its production process.

2. This Directive shall apply without prejudice to any requirements pursuant to Directive 96/61/EC.

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

¹ Please note that we chose not to correct editorial errors in the European Commission's draft.

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3. The application of this Directive to the airport of Gibraltar is understood to be without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to the dispute over sovereignty over the territory in which the airport is situated.

*Article 3***Definitions**

For the purposes of this Directive the following definitions shall apply:

(a) ‘allowance’ means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of this Directive and shall be transferable in accordance with the provisions of this Directive;

(b) ‘emissions’ means the release of greenhouse gases ~~into the atmosphere~~ from sources in an installation or the release from an aircraft performing an aviation activity listed in Annex I of the gases specified in respect of that activity;

(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;**

(c) ‘greenhouse gases’ means the gases listed in Annex II and other gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

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

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

(e) ‘installation’ means a stationary technical unit where one or more activities listed in Annex I are carried out and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution;

(f) ‘operator’ means any person who operates or controls an installation or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of the installation has been delegated;

(g) ‘person’ means any natural or legal person;

(h) ‘new entrant’ means any installation carrying out one or more of the activities listed in Annex I, which has obtained a greenhouse gas emissions permit for the first time within the period starting from three months before the date for submission of the list under Article 11(1), and ending three months before the date for the submission of the subsequent list under that Article;

(i) ‘the public’ means one or more persons and, in accordance with national legislation or practice, associations, organisations or groups of persons;

(j) ‘tonne of carbon dioxide equivalent’ means one metric tonne of carbon dioxide (CO₂) or an amount of any other greenhouse gas listed in Annex II with an equivalent global-warming potential;

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(k) 'Annex I Party' means a Party listed in Annex I to the United Nations Framework Convention on Climate Change (UNFCCC) that has ratified the Kyoto Protocol as specified in Article 1(7) of the Kyoto Protocol;

(l) 'project activity' means a project activity approved by one or more Annex I Parties in accordance with Article 6 or Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

(m) 'emission reduction unit' or 'ERU' means a unit issued pursuant to Article 6 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

(n) 'certified emission reduction' or 'CER' means a unit issued pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol;

(o) 'aircraft operator' means the person who operates an aircraft at the time it performs an aviation activity listed in Annex I or, where that person is not known or is not identified by the owner of the aircraft, the owner of the aircraft;

(p) 'commercial air transport operator' means an operator that, for remuneration, provides scheduled or non-scheduled air transport services to the public for the carriage of passengers, freight or mail;

(q) 'administering Member State' means the Member State responsible for administering the EU ETS in respect of an aircraft operator in accordance with Article 18a;

(r) 'attributed aviation emissions' means emissions from all flights falling within the aviation activities listed in Annex I which depart from an aerodrome situated in the territory of a Member State and those which arrive in such an aerodrome from a third country;

(s) 'historical aviation emissions' means the mean average of the annual emissions in the calendar years 2004, 2005 and 2006 from aircraft performing an aviation activity listed in Annex I;

(t) 'combustion' means any oxidation of fuels, regardless of the way in which the heat, electrical or mechanical energy produced by this process is used, and any other directly associated activities, including waste gas scrubbing;

~~(u) 'electricity generator' means an installation that, on or after 1 January 2005, has produced electricity for sale to third parties, and in which no activity listed in Annex I is carried out other than the 'combustion of fuels'.~~

(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

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336/2006 of the European Parliament and of the Council(*);

(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;

(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 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.

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

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(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.

CHAPTER II**AVIATION****AVIATION AND MARITIME TRANSPORT***Article 3a***Scope**

The provisions of this Chapter shall apply to the allocation and issue of allowances in respect of aviation activities listed in Annex I.

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.

*Article 3b***Aviation activities**

By 2 August 2009, the Commission shall, in accordance with the examination procedure referred to in Article 22a(2), develop guidelines on the detailed interpretation of the aviation activities listed in Annex I.

*Article 3c***Total quantity of allowances for aviation**

1. For the period from 1 January 2012 to 31 December 2012, the total quantity of allowances to be allocated to aircraft operators shall be equivalent to 97 % of the historical aviation emissions.

2. For the period referred to in Article 13 beginning on 1 January 2013, and, in the absence of any amendments following the review referred to in Article 30(4), for each subsequent period, the total quantity of allowances to be allocated to aircraft operators shall be equivalent to 95 % of the historical aviation emissions multiplied by the number of years in the period.

This percentage may be reviewed as part of the general review of this Directive.

3. The Commission shall review the total quantity of allowances to be allocated to aircraft operators in accordance with Article 30(4).

3a. Any allocation of allowances for aviation activities to and from aerodromes located in countries outside the European Economic Area ('EEA') after 31 December 2023 shall be subject to the review referred to in Article 28b.

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4. By 2 August 2009, the Commission shall decide on the historical aviation emissions, based on best available data, including estimates based on actual traffic information. That decision shall be considered within the Committee referred to in Article 23(1).

5. The Commission shall determine the total quantity of allowances to be allocated in respect of aircraft operators for the year 2024 on the basis of the total allocation of allowances in respect of aircraft operators that were performing aviation activities falling within Annex I in the year 2023, reduced by the linear reduction factor specified in Article 9, and shall publish that quantity, as well as the quantity of free allocation which would have taken place in 2024 if the rules for free allocation were not updated.

6. In respect of flights departing from an aerodrome located in the EEA which arrive at an aerodrome located in the EEA, in Switzerland or in the United Kingdom, which were not covered by the EU ETS in 2023, the total quantity of allowances to be allocated to aircraft operators shall be increased by the levels of allocations, including free allocation and auctioning, which would have been made if they were covered by the EU ETS in that year, reduced by the linear reduction factor specified in Article 9.

7. By way of derogation from Articles 12(2a), 14(3) and Article 16, Member States shall consider the requirements set out in those provisions to be satisfied and shall take no action against aircraft operators in respect of emissions taking place until 2030 from flights between an aerodrome located in an outermost region of a Member State and an aerodrome located in the same Member State outside that outermost region.

*Article 3d***Method of allocation of allowances for aviation through auctioning**

1. ~~In the period referred to in Article 3c(1), 15 % of allowances shall be auctioned.~~

1. In 2024, 25% of the quantity of allowances in respect of which free allocation would have taken place as published in accordance with Article 3c shall be auctioned.

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1a. In 2025, 50% of the quantity of allowances in respect of which free allocation would have taken place in that year, calculated from the publication in accordance with Article 3c shall be auctioned.

1b. In 2026, 75% of the quantity of allowances in respect of which free allocation would have taken place in that year, calculated from the publication in accordance with Article 3c shall be auctioned.

1c. As from 1 January 2027, all of the quantity of allowances in respect of which free allocation would have taken place in that year shall be auctioned.

1.d. Allowances which are allocated for free shall be allocated to aircraft operators proportionately to their share of verified emissions from aviation activities reported in 2023. This calculation shall also take into account verified emissions from aviation activities reported in respect of flights that are only covered by the EU ETS from 1 January 2023.

~~2. From 1 January 2013, 15 % of allowances shall be auctioned. The Commission shall undertake a study on the ability of the aviation sector to pass on the cost of CO₂ to its customers, in relation to the EU ETS and to the global market-based measure developed by the International Civil Aviation Organization ('ICAO'). The study shall assess the ability of the aviation sector to pass on the cost of required emission units, comparing this to industries and to the power sector, with the intention of making a proposal to increase the percentage of auctioning pursuant to the review referred to in Article 28b(2), taking into account the analysis of costs passed on and considering alignment with other sectors and the competitiveness between different modes of transport.~~

3. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the de-

3. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the detailed arrangements for the auctioning by Member

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tailed arrangements for the auctioning by Member States of aviation allowances in accordance with paragraphs 1 and 2 of this Article or with Article 3f(8). The number of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For the period referred to in Article 3c(1), the reference year shall be 2010, and for each subsequent period referred to in Article 3c, the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates. The delegated acts shall ensure that the principles set out in the first subparagraph of Article 10(4) are respected.

4. ~~All revenues generated from the auctioning of allowances should be used to tackle climate change in the Union and third countries, inter alia, to reduce greenhouse gas emissions, to adapt to the impacts of climate change in the Union and third countries, especially developing countries, to fund research and development for mitigation and adaptation, including in particular in the fields of aeronautics and air transport, to reduce emissions through low-emission transport and to cover the cost of administering the EU ETS. Auctioning revenues should also be used to fund common projects to reduce greenhouse gas emissions from the aviation sector, such as the Single European Sky ATM Research (SESAR) Joint Undertaking and the Clean Sky Joint Technology Initiatives and any initiatives enabling the widespread use of GNSS for satellite-based navigation and interoperable capabilities within all Member States, in particular projects that improve air navigation infrastructure, the provision of air navigation services and the use of airspace. The proceeds of auctioning may also be used to fund contributions to the Global Energy Efficiency and Renewable Energy Fund, and measures to avoid deforestation. Special consideration shall be given by Member States that use those revenues for co-financing research and innovation to programmes or initiatives under the Ninth~~

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States of aviation allowances in accordance with paragraphs 1, 1a, 1b, 1c and 1d of this Article, including the modalities for the transfer of a share of revenue from such auctioning to the general budget of the Union. The number of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For the period referred to in Article 3c(1), the reference year shall be 2010, and for each subsequent period referred to in Article 3c, the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates. The delegated acts shall ensure that the principles set out in the first subparagraph of Article 10(4) are respected.

4. Member States shall determine the use of revenues generated from the auctioning of allowances covered by this Chapter, except for the revenues established as own resources in accordance with Article 311(3) of the Treaty and entered in the general budget of the Union. Member States shall use the revenues generated from the auctioning of allowances in accordance with Article 10(3).

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~~Research Framework Programme ('FP9'). Transparency on the use of revenues generated from the auctioning of allowances under this Directive is essential to meeting Union commitments.~~

~~Member States shall inform the Commission of actions taken pursuant to the first subparagraph of this paragraph.~~

5. Information provided to the Commission pursuant to this Directive does not free Member States from the notification obligation laid down in Article 88(3) of the Treaty.

Article 3e**~~Allocation and issue of allowances to aircraft operators~~**

~~1. For each period referred to in Article 3c, each aircraft operator may apply for an allocation of allowances that are to be allocated free of charge. An application may be made by submitting to the competent authority in the administering Member State verified tonne-kilometre data for the aviation activities listed in Annex I performed by that aircraft operator for the monitoring year. For the purposes of this Article, the monitoring year shall be the calendar year ending 24 months before the start of the period to which it relates in accordance with Annexes IV and V or, in relation to the period referred to in Article 3c(1), 2010. Any application shall be made at least 21 months before the start of the period to which it relates or, in relation to the period referred to in Article 3c(1), by 31 March 2011.~~

~~2. At least 18 months before the start of the period to which the application relates or, in relation to the period referred to in Article 3c(1), by 30 June 2011, Member States shall submit applications received under paragraph 1 to the Commission.~~

~~3. At least 15 months before the start of each period referred to in Article 3c(2) or, in relation to the period referred to in Article 3c(1), by 30 September 2011, the Commission shall calculate and adopt a decision setting out:~~

~~(a)~~

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~~the total quantity of allowances to be allocated for that period in accordance with Article 3c;~~

~~(b)~~

~~the number of allowances to be auctioned in that period in accordance with Article 3d;~~

~~(c)~~

~~the number of allowances in the special reserve for aircraft operators in that period in accordance with Article 3f(1);~~

~~(d)~~

~~the number of allowances to be allocated free of charge in that period by subtracting the number of allowances referred to in points (b) and (c) from the total quantity of allowances decided upon under point (a); and~~

~~(e)~~

~~the benchmark to be used to allocate allowances free of charge to aircraft operators whose applications were submitted to the Commission in accordance with paragraph 2.~~

~~The benchmark referred to in point (e), expressed as allowances per tonne kilometre, shall be calculated by dividing the number of allowances referred to in point (d) by the sum of the tonne kilometre data included in applications submitted to the Commission in accordance with paragraph 2.~~

~~4. Within three months from the date on which the Commission adopts a decision under paragraph 3, each administering Member State shall calculate and publish:~~

~~(a)~~

~~the total allocation of allowances for the period to each aircraft operator whose application it submitted to the Commission in accordance with paragraph 2, calculated by multiplying the tonne kilometre data included in the application by the benchmark referred to in paragraph 3(e);~~

~~and~~

~~(b)~~

~~the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its total allocation of allowances for~~

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the period calculated under point (a) by the number of years in the period for which that aircraft operator is performing an aviation activity listed in Annex I.

5. By 28 February 2012 and by 28 February of each subsequent year, the competent authority of the administering Member State shall issue to each aircraft operator the number of allowances allocated to that aircraft operator for that year under this Article or Article 3f.

*Article 3f***Special reserve for certain aircraft operators**

1. In each period referred to in Article 3e(2), 3 % of the total quantity of allowances to be allocated shall be set aside in a special reserve for aircraft operators:

(a) who start performing an aviation activity falling within Annex I after the monitoring year for which tonne kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3e(2); or

(b) whose tonne kilometre data increases by an average of more than 18 % annually between the monitoring year for which tonne kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3e(2) and the second calendar year of that period; and whose activity under point (a), or additional activity under point (b), is not in whole or in part a continuation of an aviation activity previously performed by another aircraft operator.

2. An aircraft operator who is eligible under paragraph 1 may apply for a free allocation of allowances from the special reserve by making an application to the competent authority of its administering Member State. Any application shall be made by 30 June in the third year of the period referred to in Article 3e(2) to which it relates. An allocation to an aircraft operator under paragraph 1(b) shall not exceed 1 000 000 allowances.

3. An application under paragraph 2 shall:

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.

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(a) include verified tonne-kilometre data in accordance with Annexes IV and V for the aviation activities listed in Annex I performed by the aircraft operator in the second calendar year of the period referred to in Article 3e(2) to which the application relates;

(b) provide evidence that the criteria for eligibility under paragraph 1 are fulfilled; and (c)

in the case of aircraft operators falling within paragraph 1(b), state:

(i) the percentage increase in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3e(2) and the second calendar year of that period;

(ii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3e(2) and the second calendar year of that period; and

(iii) the absolute growth in tonne-kilometres performed by that aircraft operator between the monitoring year for which tonne-kilometre data was submitted under Article 3e(1) in respect of a period referred to in Article 3e(2) and the second calendar year of that period which exceeds the percentage specified in paragraph 1(b).

4. No later than six months from the deadline for making an application under paragraph 2, Member States shall submit applications received under that paragraph to the Commission.

5. No later than 12 months from the deadline for making an application under paragraph 2, the Commission shall decide on the benchmark to be used to allocate allowances free of charge to aircraft operators whose applications were submitted to the Commission in accordance with paragraph 4.

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Subject to paragraph 6, the benchmark shall be calculated by dividing the number of the allowances in the special reserve by the sum of:

(a) the tonne kilometre data for aircraft operators falling within paragraph 1(a) included in applications submitted to the Commission in accordance with paragraphs 3(a) and 4; and

(b) the absolute growth in tonne kilometres exceeding the percentage specified in paragraph 1(b) for aircraft operators falling within paragraph 1(b) included in applications submitted to the Commission in accordance with paragraphs 3(c)(iii) and 4.

6. The benchmark referred to in paragraph 5 shall not result in an annual allocation per tonne kilometre greater than the annual allocation per tonne kilometre to aircraft operators under Article 3e(4).

7. Within three months from the date on which the Commission adopts a decision under paragraph 5, each administering Member State shall calculate and publish:

(a) the allocation of allowances from the special reserve to each aircraft operator whose application it submitted to the Commission in accordance with paragraph 4. This allocation shall be calculated by multiplying the benchmark referred to in paragraph 5 by:

(i) in the case of an aircraft operator falling within paragraph 1(a), the tonne kilometre data included in the application submitted to the Commission under paragraphs 3(a) and 4;

(ii) in the case of an aircraft operator falling within paragraph 1(b), the absolute growth in tonne kilometres exceeding the percentage specified in paragraph 1(b) included in the application submitted to the Commission under paragraphs 3(c)(iii) and 4; and

(b) the allocation of allowances to each aircraft operator for each year, which shall be determined by dividing its allocation of allowances under point (a) by the number of full calendar

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years remaining in the period referred to in Article 3c(2) to which the allocation relates.	
8. Any unallocated allowances in the special reserve shall be auctioned by Member States.	
<i>Article 3g</i>	
Monitoring and reporting plans	Scope of application to maritime transport activities
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.	<p>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 under the jurisdiction of a Member State and arriving at a port outside the jurisdiction of a Member State, fifty percent (50 %) of the emissions from ships performing voyage departing from a port outside the jurisdiction of a Member State and arriving at a port under the jurisdiction of a Member State, one hundred percent (100 %) of emissions from ships performing voyages departing from a port under the jurisdiction of a Member State and arriving at a port under the jurisdiction of a Member State and one hundred percent (100 %) of emissions from ships at berth in a port under the jurisdiction of a Member State.</p> <p>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.</p>
<i>Article 3ga</i>	
Phase-in of requirements for maritime transport	
Shipping companies shall be liable to surrender allowances according to the following schedule:	
(a) 20 % of verified emissions reported for 2023;	
(b) 45 % of verified emissions reported for 2024;	
(c) 70 % of verified emissions reported for 2025;	

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(d) 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 2023, 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 3gb***Monitoring and reporting of emissions from maritime transport**

In respect of emissions from maritime transport activities listed in Annex I, the administering authority 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 (*).

*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 (*).

*Article 3gd***Administering authority in respect of a shipping company**

1. The administering authority in respect of a shipping company shall be:

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(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 two 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 two monitoring years, the administering authority shall be the Member State from where the shipping company has started its first voyage falling within the scope set out in Article 3g. Where appropriate, the responsible administering authority in respect of a shipping company shall be updated biennially.

2. Based on the best available information, the Commission shall:

(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 2023, specifying the administering authority for each shipping company in accordance with paragraph 1; and

(b) at least every two years thereafter, update the list to reattribute shipping companies to another administering authority where appropriate 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.

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).

EU-ETS**Proposal***Article 3ge***Reporting and review**

1. The Commission shall consider possible amendments in relation to the adoption by the International Maritime Organization of a global market-based measure to reduce greenhouse gas emissions from maritime transport. In the event of the adoption of such a measure, and in any event before the 2028 global stocktake and no later than 30 September 2028, the Commission shall present a report to the European Parliament and to the Council in which it shall examine any such measure. Where appropriate, the Commission may follow to the report with a legislative proposal to the European Parliament and to the Council to amend this Directive as appropriate.

2. The Commission shall monitor the implementation of this Chapter and possible trends as regards companies seeking to avoid being bound by the requirements of this Directive. If appropriate, the Commission shall propose measures to prevent such avoidance.

CHAPTER III**STATIONARY INSTALLATIONS***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 activities.

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.

*Article 4***Greenhouse gas emissions permits**

Member States shall ensure that, from 1 January 2005, no installation carries out any activity listed in Annex I resulting in emissions specified in relation to that activity unless its operator holds a permit issued by a competent authority in accordance with Articles 5 and 6, or the installation is excluded from the EU ETS pursuant to Article 27. This shall also apply to installations opted in under Article 24.

EU-ETS**Proposal***Article 5***Applications for greenhouse gas emissions permits**

An application to the competent authority for a greenhouse gas emissions permit shall include a description of:

- (a) the installation and its activities including the technology used;
- (b) the raw and auxiliary materials, the use of which is likely to lead to emissions of gases listed in Annex I;
- (c) the sources of emissions of gases listed in Annex I from the installation; and
- (d) the measures planned to monitor and report emissions in accordance with the acts referred to in Article 14.

The application shall also include a non-technical summary of the details referred to in the first subparagraph.

*Article 6***Conditions for and contents of the greenhouse gas emissions permit**

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

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

2. Greenhouse gas emissions permits shall contain the following:

- (a) the name and address of the operator;
- (b) a description of the activities and emissions from the installation;
- (c) a monitoring plan that fulfils the requirements under the acts referred to in Article 14. Member States may allow operators to update monitoring plans without changing the permit. Operators shall submit any updated monitoring plans to the competent authority for approval;
- (d) reporting requirements; and
- (e) an obligation to surrender allowances, ~~other than allowances issued under Chapter II,~~ equal to the total emissions of the installation in each calendar year, as verified in accordance with Article 15, within four months following the end of that year.

*Article 7***Changes relating to installations**

The operator shall inform the competent authority of any planned changes to the nature or functioning of the installation, or any extension or significant reduction of its capacity, which may require updating the greenhouse gas emissions permit. Where appropriate, the competent authority

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shall update the permit. Where there is a change in the identity of the installation's operator, the competent authority shall update the permit to include the name and address of the new operator.

*Article 8***Coordination with Directive 2010/75/EU**

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

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

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.

*Article 9***Union-wide quantity of allowances**

The Union-wide quantity of allowances issued each year starting in 2013 shall decrease in a linear manner beginning from the mid-point of the period from 2008 to 2012. The quantity shall decrease by a linear factor of 1,74 % compared to the average annual total quantity of allowances issued by Member States in accordance with the Commission Decisions on their national allocation plans for the period from 2008 to 2012. The Union-wide quantity of allowances will be increased as a result of Croatia's accession only by the quantity of allowances that Croatia shall auction pursuant to Article 10(1).

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

In [the year following entry into force of this amendment], the Union-wide quantity of allowances shall be decreased by [-- million allowances (to be determined depending on year of entry into force)]. In the same year, the Union-wide quantity of allowances shall be increased by 79 million allowances for maritime transport. Starting in [the year following entry

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into force of this amendment], the linear factor shall be 4,2 %. 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].

*Article 9a***Adjustment of the Union-wide quantity of allowances**

1. In respect of installations that were included in the EU ETS during the period from 2008 to 2012 pursuant to Article 24(1), the quantity of allowances to be issued from 1 January 2013 shall be adjusted to reflect the average annual quantity of allowances issued in respect of those installations during the period of their inclusion, adjusted by the linear factor referred to in Article 9.

2. In respect of installations carrying out activities listed in Annex I, which are only included in the EU ETS from 2013 onwards, Member States shall ensure that the operators of such installations submit to the relevant competent authority duly substantiated and independently verified emissions data in order for them to be taken into account for the adjustment of the Union-wide quantity of allowances to be issued.

Any such data shall be submitted, by 30 April 2010, to the relevant competent authority in accordance with the provisions adopted pursuant to Article 14(1).

If the data submitted are duly substantiated, the competent authority shall notify the Commission thereof by 30 June 2010 and the quantity of allowances to be issued, adjusted by the linear factor referred to in Article 9, shall be adjusted accordingly. In the case of installations emitting greenhouse gases other than CO₂, the competent authority may notify a lower amount of emissions according to the emission reduction potential of those installations.

3. The Commission shall publish the adjusted quantities referred to in paragraphs 1 and 2 by 30 September 2010.

4. In respect of installations which are excluded from the EU ETS in accordance with Article 27, the Union-wide quantity of allowances to be issued from 1 January 2013 shall be adjusted downwards to reflect the average annual verified emissions of those installations in the period from 2008 to 2010, adjusted by the linear factor referred to in Article 9.

*Article 10***Auctioning of allowances**

1. From 2019 onwards, Member States shall auction all allowances that are not allocated free of charge in accordance with Articles 10a and 10c of this Directive and that are not placed in the market stability reserve established by Decision (EU) 2015/1814 of the European Parliament and of the Council (²) (the 'market stability reserve') or cancelled in accordance with Article 12(4) of this Directive.

From 2021 onwards, and without prejudice to a possible reduction pursuant to Article 10a(5a),

1. From 2019 onwards, Member States shall auction all allowances that are not allocated free of charge in accordance with Articles 10a and 10c of this Directive and that are not placed in the market stability reserve established by Decision (EU) 2015/1814 of the European Parliament and of the Council (²) (the 'market stability reserve') or cancelled in accordance with Article 12(4) of this Directive.

From 2021 onwards, and without prejudice to a possible reduction pursuant to Article 10a(5a),

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the share of allowances to be auctioned shall be 57 %.	the share of allowances to be auctioned shall be 57 %.
2 % of the total quantity of allowances between 2021 and 2030 shall be auctioned to establish a fund to improve energy efficiency and modernise the energy systems of certain Member States as set out in Article 10d ('the Modernisation Fund').	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 65 % 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.
The total remaining quantity of allowances to be auctioned by Member States shall be distributed in accordance with paragraph 2.	
1a. Where the volume of allowances to be auctioned by Member States in the last year of each period referred to in Article 13 of this Directive exceeds by more than 30 % the expected average auction volume for the first two years of the following period before application of Article 1(5) of Decision (EU) 2015/1814, two thirds of the difference between the volumes shall be deducted from the auction volumes in the last year of the period and added in equal instalments to the volumes to be auctioned by Member States in the first two years of the following period.	
2. The total quantity of allowances to be auctioned by each Member State shall be composed as follows:	
(a) 90 % of the total quantity of allowances to be auctioned being distributed amongst Member States in shares that are identical to the share of verified emissions under the EU ETS for 2005 or the average of the period from 2005 to 2007, whichever one is the highest, of the Member State concerned;	
(b) 10 % of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purposes of solidarity, growth and interconnections within the Union, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa.	

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For the purposes of point (a), in respect of Member States which did not participate in the EU ETS in 2005, their share shall be calculated using their verified emissions under the EU ETS in 2007.

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

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

3. Member States shall determine the use of revenues generated from the auctioning of allowances, **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 their revenues generated from the auctioning of allowances referred to in paragraph 2, with the exception of the revenues used for the compensation of indirect carbon costs referred to in Article 10a(6), for one or more of the following:

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

(b) to develop renewable energies to meet the commitment of the Union to renewable energies, 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;

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

(d) forestry sequestration in the Union;

(e) the environmentally safe capture and geological storage of CO₂, in particular from solid fossil fuel power stations and a range of industrial sectors and subsectors, including in third countries;

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

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

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

(h) measures intended to improve energy efficiency, district heating systems and insulation, or to provide financial support in order to address social aspects in lower- and middle-income households, **including by reducing distortive taxes;**

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- (i) to cover administrative expenses of the management of the EU ETS;
- (j) to finance climate actions in vulnerable third countries, including the adaptation to the impacts of climate change;
- (k) to promote skill formation and reallocation of labour in order to contribute to a just transition to a low carbon economy, in particular in regions most affected by the transition of jobs, in close coordination with the social partners.

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

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

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, in order to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner. To that end, the process shall be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available.

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

- (a) operators, and in particular any small and medium-sized enterprises covered by the EU ETS, have full, fair and equitable access;
- (b) all participants have access to the same information at the same time and that participants do not undermine the operation of the auctions;
- (c) the organisation of, and participation in, the auctions is cost-efficient and undue administrative costs are avoided; and
- (d) access to allowances is granted to small emitters.

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 for the transfer of a share of revenues to the Union budget,** in order to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner. To that end, the process shall be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available.

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

- (a) operators, and in particular any small and medium-sized enterprises covered by the EU ETS, have full, fair and equitable access;
- (b) all participants have access to the same information at the same time and that participants do not undermine the operation of the auctions;
- (c) the organisation of, and participation in, the auctions is cost-efficient and undue administrative costs are avoided; and
- (d) access to allowances is granted to small emitters.

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Member States shall report on the proper implementation of the auctioning rules for each auction, in particular with respect to fair and open access, transparency, price formation and technical and operational aspects. These reports shall be submitted within one month of the auction concerned and shall be published on the Commission's website.

Member States shall report on the proper implementation of the auctioning rules for each auction, in particular with respect to fair and open access, transparency, price formation and technical and operational aspects. These reports shall be submitted within one month of the auction concerned and shall be published on the Commission's website.

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 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.

*Article 10a***Transitional Union-wide rules for harmonised free allocation**

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

The measures referred to in the first subparagraph shall, to the extent feasible, determine Union-wide ex-ante benchmarks so as to ensure that allocation takes place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques, by taking account of the most efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass and capture and storage of CO₂, where such facilities are available, and shall not provide incentives to increase emissions. No free allocation shall be made in respect of any electricity production, except for cases falling within Article 10c and electricity produced from waste gases.

In the case of installations covered by the obligation to conduct an energy audit under Article 8(4) of Directive 2012/27/EU of the European Parliament and of the Council(*) [Article reference to be updated with the revised Directive], free allocation shall only be granted fully if the recommendations of the audit report are implemented, to the extent that the pay-back time for the relevant investments does not exceed five years and that the costs of those investments are proportionate. Otherwise, the amount of free allocation shall be reduced by 25 %. The amount of free allocation shall not be reduced if an operator demonstrates that it has implemented other measures which lead to greenhouse gas

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emission reductions equivalent to those recommended by the audit report. The measures referred to in the first subparagraph shall be adjusted accordingly.

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.

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

For each sector and subsector, in principle, the benchmark shall be calculated for products rather than for inputs, in order to maximise greenhouse gas emissions reductions and energy efficiency savings throughout each production process of the sector or the subsector concerned. In order to provide further incentives for reducing greenhouse gas emissions and improving energy efficiency, the determined Union-wide ex-ante benchmarks shall be reviewed before the period from 2026 to 2030 in view of potentially modifying the definitions and system boundaries of existing product benchmarks.

In defining the principles for setting ex-ante benchmarks in individual sectors and subsectors, the Commission shall consult the relevant stakeholders, including the sectors and subsectors concerned.

The Commission shall, upon the approval by the Union of an international agreement on climate change leading to mandatory reductions of greenhouse gas emissions comparable to those of the Union, review those measures to provide that free allocation is only to take place where this is fully justified in the light of that agreement.

1a. No free allocation shall be given in relation to the production of products listed in Annex I of Regulation [CBAM] as from the date of application of the Carbon Border Adjustment Mechanism.

By way of derogation from the previous subparagraph, for the first years of operation of Regulation [CBAM], the production of these products shall benefit from free allocation in reduced

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amounts. A factor reducing the free allocation for the production of these products shall be applied (CBAM factor). The CBAM factor shall be equal to 100 % for the period during the entry into force of [CBAM regulation] and the end of 2025, 90 % in 2026 and shall be reduced by 10 percentage points each year to reach 0 % by the tenth year.

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).

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

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

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

(a) For the period from 2021 to 2025, the benchmark values shall be determined on the basis of information submitted pursuant to Article 11 for the years 2016 and 2017. On the basis of a comparison of those benchmark values with the benchmark values contained in Commission Decision 2011/278/EU (³), as adopted on 27 April 2011, the Commission shall determine the annual reduction rate for each benchmark, and shall apply it to the benchmark values applicable in the period from 2013 to 2020 in respect of each year between 2008 and 2023 to determine the benchmark values for the period from 2021 to 2025.

(b) Where the annual reduction rate exceeds 1,6 % or is below 0,2 %, the benchmark values for the period from 2021 to 2025 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 2023.

(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 (b) on the

(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) on the

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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.

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

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

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

~~3. Subject to paragraphs 4 and 8, and notwithstanding Article 10c, no free allocation shall be given to electricity generators, to installations for the capture of CO₂, to pipelines for transport of CO₂ or to CO₂ storage sites.~~

~~4. Free allocation shall be given to district heating as well as to high efficiency cogeneration, as defined by Directive 2012/27/EU of the European Parliament and of the Council (⁴), for economically justifiable demand, in respect of the production of heating or cooling. In each year subsequent to 2013, the total allocation to such installations in respect of the production of that heat shall be adjusted by the linear factor referred to in Article 9 of this Directive, except~~

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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.

(d) Where the annual reduction rate exceeds 2,5 % or is below 0,2 %, 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.

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.

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~~for any year in which those allocations are adjusted in a uniform manner pursuant to paragraph 5 of this Article.~~

5. 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.

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

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

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

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

6. 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. ~~Where the amount available for such financial measures exceeds 25 % of the revenues generated from the auctioning of allowances, the Member State concerned shall~~ set out the reasons for exceeding that amount.

6. 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 their auction revenues of the year in which the indirect costs were incurred, it shall** set out the reasons for exceeding that amount.

Member States shall also seek to use no more than 25 % of the revenues generated from the auctioning of allowances for the financial measures referred to in the first subparagraph. Within three

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months of the end of each year, Member States that have such financial measures in place shall make available to the public, in an easily accessible form, the total amount of compensation provided per benefitting sector and subsector. As from 2018, in any year in which a Member State uses more than 25 % of the revenues generated from the auctioning of allowances for such purposes, it shall publish a report setting out the reasons for exceeding that amount. The report shall include relevant information on electricity prices for large industrial consumers benefiting from such financial measures, without prejudice to requirements regarding the protection of confidential information. The report shall also include information on whether due consideration has been given to other measures to sustainably lower indirect carbon costs in the medium to long term.

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

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

7. Allowances from the maximum amount referred to in paragraph 5 of this Article which were not allocated for free by 2020 shall be set aside for new entrants, together with 200 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/1814. Of the allowances set aside, up to 200 million shall be returned to the market stability reserve at the end of the period from 2021 to 2030 if not allocated for that period.

From 2021, allowances that pursuant to paragraphs 19 and 20 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.

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

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

8. 325 million allowances from the quantity which could otherwise be allocated for free pursuant to this Article, and 75 million allowances from the quantity which could otherwise be auctioned pursuant to Article 10, shall be made available to support innovation in low-carbon technologies and processes in sectors listed in Annex I, including environmentally safe carbon capture and utilisation ('CCU') that contributes

7. Allowances from the maximum amount referred to in paragraph 5 of this Article which were not allocated for free by 2020 shall be set aside for new entrants, together with 200 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/1814. Of the allowances set aside, up to 200 million shall be returned to the market stability reserve at the end of the period from 2021 to 2030 if not allocated for that period.

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.

8. 365 million allowances from the quantity which could otherwise be allocated for free pursuant to this Article, and 85 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

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substantially to mitigating climate change, as well as products substituting carbon intensive ones produced in sectors listed in Annex I, and to help stimulate the construction and operation of projects that aim at the environmentally safe capture and geological storage ('CCS') of CO₂, as well as of innovative renewable energy and energy storage technologies; in geographically balanced locations within the territory of the Union (the 'innovation fund'). Projects in all Member States, including small scale projects, shall be eligible.

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 (⁵), and shall be used in a timely manner for innovation support as referred to in the first subparagraph.

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supporting innovation in low-carbon technologies and processes, and contribute to zero pollution objectives (the 'Innovation Fund'). 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.

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. 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.

The Innovation Fund shall cover the sectors listed in Annex I and Annex III, including environmentally safe carbon capture and utilisation ("CCU") that contributes substantially to mitigating climate change, as well as products substituting carbon intensive ones produced in sectors listed in Annex I, and to help stimulate the construction and operation of projects aimed at the environmentally safe capture and geological storage ("CCS") of CO₂, as well as of innovative renewable energy and energy storage technologies; in geographically balanced locations. The Innovation Fund may also support breakthrough innovative technologies and infrastructure to decarbonise the maritime sector and for the production of low- and zero-carbon fuels in aviation, rail and road transport. Special attention shall be given 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.

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Projects shall be selected on the basis of objective and transparent criteria, taking into account, 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 a low-carbon economy in the sectors concerned. Projects involving CCU shall deliver a net reduction in emissions and ensure avoidance or permanent storage of CO₂. ~~Technologies receiving support shall not yet be commercially available but shall represent breakthrough solutions or be sufficiently mature to be ready for demonstration at pre-commercial scale.~~ Up to 60 % of the relevant costs of projects may be supported, out of which up to 40 % need not be dependent on verified avoidance of greenhouse gas emissions, provided that pre-determined milestones, taking into account the technology deployed, are attained.

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.

Projects in the territory of all Member States, including small-scale projects, shall be eligible. 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 precommercial 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.

Projects shall be selected on the basis of objective and transparent criteria, taking into account, 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 a low-carbon economy in the sectors concerned. Projects involving CCU shall deliver a net reduction in emissions and ensure avoidance or permanent storage of CO₂. ~~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 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~~

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sectors and technological requirements for the different types of support.

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

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.

9. Greece, which had a gross domestic product (GDP) per capita at market prices below 60 % of the Union average in 2014, may claim, prior to the application of paragraph 7 of this Article, up to 25 million allowances from the maximum amount referred to in paragraph 5 of this Article which are not allocated for free by 31 December 2020, for the co-financing of up to 60 % of the decarbonisation of the electricity supply of islands within its territory. Article 10d(3) shall apply *mutatis mutandis* to such allowances. Allowances may be claimed where, due to restricted access to the international debt markets, a project aiming at the decarbonisation of the electricity supply of Greece's islands could otherwise not be realised and where the European Investment Bank (EIB) confirms the financial viability and socio-economic benefits of the project.

11. Subject to Article 10b, the amount of allowances allocated free of charge under paragraphs 4 to 7 of this Article in 2013 shall be 80 % of the quantity determined in accordance with the measures referred to in paragraph 1. Thereafter the free allocation shall decrease each year by equal amounts resulting in 30 % free allocation in 2020.

19. No free allocation shall be given to an installation that has ceased its operations, ~~unless the operator demonstrates to the competent authority that this installation will resume production within a specified and reasonable time.~~ Installations for which the greenhouse gas emissions permit has expired or has been withdrawn and installations for which the operation or resumption of operation is technically impossible shall be considered to have ceased operations.

19. No free allocation shall be given to an installation that has ceased operating. Installations for which the greenhouse gas emissions permit has expired or has been withdrawn and installations for which the operation or resumption of operation is technically impossible shall be considered to have ceased operations.

20. The level of free allocations given to installations whose operations have increased or decreased, as assessed on the basis of a rolling average of two years, by more than 15 % compared to the level initially used to determine the free allocation for the relevant period referred to in Article 11(1) shall, as appropriate, be adjusted. Such adjustments 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.

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21. In order to ensure the effective, non-discriminatory and uniform application of the adjustments and threshold referred to in paragraph 20 of this Article, to avoid any undue administrative burden, and to prevent manipulation or abuse of the adjustments to the allocation, the Commission may adopt implementing acts which define further arrangements for the adjustments. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

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.

*Article 10b***Transitional measures to support certain energy intensive industries in the event of carbon leakage**

1. Sectors and subsectors in relation to which the product resulting from multiplying their intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the European Economic Area (annual turnover plus total imports from third countries), by their emission intensity, measured in kgCO₂, divided by their gross value added (in euros), exceeds 0,2, shall be deemed to be at risk of carbon leakage. Such sectors and subsectors shall be allocated allowances free of charge for the period until 2030 at 100 % of the quantity determined pursuant to Article 10a.

2. Sectors and subsectors in relation to which the product resulting from multiplying their intensity of trade with third countries by their emission intensity exceeds 0,15 may be included in the group referred to in paragraph 1, using data for the years from 2014 to 2016, on the basis of a qualitative assessment and of the following criteria:

- (a) the extent to which it is possible for individual installations in the sector or subsector concerned to reduce emission levels or electricity consumption;
- (b) current and projected market characteristics, including, where relevant, any common reference price;
- (c) profit margins as a potential indicator of long-run investment or relocation decisions, taking into account changes in costs of production relating to emission reductions.

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

Within three months of the publication referred to in the first subparagraph, the sectors and subsectors referred to in that subparagraph may apply to the Commission for either a qualitative assessment of their carbon leakage exposure at a 4-digit level (NACE-4 code) or an assessment on the basis of the classification of goods used for statistics on industrial production in the Union at an 8-digit level (Prodcom). To that end, sectors and subsectors shall submit duly substantiated,

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complete and independently verified data to enable the Commission to carry out the assessment together with the application.

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

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

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

4. Other sectors and subsectors are considered to be able to pass on more of the costs of allowances in product prices, and shall be allocated allowances free of charge at 30 % of the quantity determined pursuant to Article 10a. Unless otherwise decided in the review pursuant to Article 30, free allocations to other sectors and subsectors, except district heating, shall decrease by equal amounts after 2026 so as to reach a level of no free allocation in 2030.

5. The Commission is empowered to adopt, by 31 December 2019, delegated acts in accordance with Article 23 to supplement this Directive concerning the determination of sectors and subsectors deemed at risk of carbon leakage, as referred to in paragraphs 1, 2 and 3 of this Article, for activities at a 4-digit level (NACE-4 code) as far as paragraph 1 of this Article is concerned, based on data for the three most recent calendar years available.

*Article 10c***Option for transitional free allocation for the modernisation of the energy sector**

1. By way of derogation from Article 10a(1) to (5), Member States which had in 2013 a GDP per capita at market prices (in euros) below 60 % of the Union average may give a transitional free allocation to installations for electricity generation for the modernisation, diversification and sustainable transformation of the energy sector. The investments supported shall be consistent with the transition to a safe and sustainable low-carbon economy, the objectives of the Union's 2030 climate and energy policy framework, and reaching the long-term objectives expressed in the Paris Agreement. The derogation provided for in this paragraph shall end on 31 December 2030.

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2. The Member State concerned shall organise a competitive bidding process, to take place in one or more rounds between 2021 and 2030, for projects involving a total amount of investment exceeding EUR 12,5 million, in order to select the investments to be financed with free allocation. That competitive bidding process shall:

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

(b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the infrastructure, clean technologies, such as renewable energy technologies, or modernisation of the energy production sector, such as efficient and sustainable district heating, and of the transmission and distribution sector, are eligible to bid;

(c) define clear, objective, transparent and non-discriminatory selection criteria for the ranking of projects, so as to ensure that only projects are selected which:

(i) on the basis of a cost-benefit analysis, ensure a net positive gain in terms of emission reduction and realise a pre-determined significant level of CO₂ reductions taking into account the size of the project;

(ii) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand;

(iii) offer the best value for money; and

(iv) do not contribute to or improve the financial viability of highly emission-intensive electricity generation or increase dependency on emission-intensive fossil fuels.

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

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

Where investments with a value of less than EUR 12,5 million are to be supported with free allocation and are not selected through the competitive bidding process referred to in this paragraph, the Member State shall select projects based on objective and transparent criteria. The results of this selection process shall be published for public comment. On this basis, the Member State concerned shall, by 30 June 2019, establish, publish and submit to the Commission a list of investments. Where more than one investment is carried out within the same installation, they shall be assessed as a whole to establish whether or not the value threshold of EUR 12,5 million is exceeded, unless those investments are, independently, technically or financially viable.

3. The value of the intended investments shall at least equal the market value of the free allocation, while taking into account the need to limit directly linked price increases. The market value shall

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be the average of the price of allowances on the common auction platform in the preceding calendar year. Up to 70 % of the relevant costs of an investment may be supported using the free allocation, provided that the remaining costs are financed by private legal entities.

4. Transitional free allocations shall be deducted from the quantity of allowances that the Member State would otherwise auction. The total free allocation shall be no more than 40 % of the allowances which the Member State concerned will receive, pursuant to Article 10(2)(a), in the period from 2021 to 2030, spread out in equal annual volumes over that period.

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

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

6. Allocations to operators shall be made upon demonstration that an investment selected in accordance with the rules of the competitive bidding process has been carried out. Where an investment leads to additional electricity generation capacity, the operator concerned shall also demonstrate that a corresponding amount of electricity-generation capacity with higher emission intensity has been decommissioned by it or another associated operator by the start of operation of the additional capacity.

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

7. 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.

*Article 10d***Modernisation Fund**

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, **in Member States with a GDP per**

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

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capita at market prices below 60 % of the Union average in 2013 – (the ‘Modernisation Fund’), shall be established for the period from 2021 to 2030. The Modernisation Fund shall be financed through the auctioning of allowances as set out in Article 10.

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

2. At least 70 % of the financial resources from the Modernisation Fund shall be used to support investments in the generation and use of electricity from renewable sources, the improvement of energy efficiency, except energy efficiency relating to energy generation using solid fossil fuels, energy storage and the modernisation of energy networks, including district heating pipelines, grids for electricity transmission and the increase of interconnections between Member States, as well as to support a just transition in carbon-dependent regions in the beneficiary Member States, so as to support the redeployment, re-skilling and up-skilling of workers, education, job-seeking initiatives and start-ups, in dialogue with the social partners. Investments in energy efficiency in transport, buildings, agriculture and waste shall also be eligible.

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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. No support from the Modernisation Fund shall be provided to energy generation facilities that use fossil fuels.

2. At least 80 % of the financial resources from the Modernisation Fund shall be used to support investments in the following:

- (a) the generation and use of electricity from renewable sources;
- (b) heating and cooling from renewable sources;
- (c) the improvement of demand side energy efficiency, including in transport, buildings, agriculture and waste;
- (d) energy storage and the modernisation of energy networks, including district heating pipelines, grids for electricity transmission and the increase of interconnections between Member States;
- (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

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ling of workers, education, job-seeking initiatives and startups, in dialogue with the social partners.

3. The Modernisation Fund shall operate under the responsibility of the beneficiary Member States. The EIB shall ensure that the allowances are auctioned in accordance with the principles and modalities laid down in Article 10(4), and shall be responsible for managing the revenues. The EIB shall pass on the revenues to the Member States upon a disbursement decision from the Commission, where this disbursement for investments is in line with paragraph 2 of this Article or, where the investments do not fall into the areas listed in paragraph 2 of this Article, is in line with the recommendations of the investment committee. The Commission shall adopt its decision in a timely manner. The revenues shall be distributed amongst the Member States and according to the shares set out in Annex IIB, in accordance with paragraphs 6 to 12 of this Article.

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

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

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

6. Before a beneficiary Member State decides to finance an investment from its share in the Modernisation Fund, it shall present the investment project to the investment committee and to the EIB. Where the EIB confirms that an investment falls into the areas listed in paragraph 2, the Member State may proceed to finance the investment project from its share.

Where an investment in the modernisation of energy systems, which is proposed to be financed from the Modernisation Fund, does not fall into the areas listed in paragraph 2, the investment committee shall assess the technical and financial viability of that investment, including the emission reductions it achieves, and issue a recommendation on financing the investment from the Modernisation Fund. The investment committee shall ensure that any investment relating to district heating achieves a substantial improvement in energy efficiency and emission reductions. That recommendation may include suggestions regarding appropriate financing instruments. Up to 70 % of the relevant costs of an investment which does not fall into the areas listed in paragraph 2 may be supported with resources from the Modernisation Fund provided that the remaining costs are financed by private legal entities.

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

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

8. Any acts or recommendations by the EIB or the investment committee made pursuant to paragraphs 6 and 7 shall be made in a timely manner and state the reasons on which they are based. Such acts and recommendations shall be made public.

9. The beneficiary Member States shall be responsible for following up on the implementation with respect to selected projects.

10. The beneficiary Member States shall report annually to the Commission on investments financed by the Modernisation Fund. The report shall be made public and include:

- (a) information on the investments financed per beneficiary Member State;
- (b) an assessment of the added value, in terms of energy efficiency or modernisation of the energy system, achieved through the investment.

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

12. The Commission shall adopt implementing acts concerning detailed rules on the operation of the Modernisation Fund. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

*Article 11***National implementation measures**

1. Each Member State shall publish and submit to the Commission, by 30 September 2011, the list of installations covered by this Directive in its territory and any free allocation to each installation in its territory calculated in accordance with the rules referred to in Article 10a(1) and Article 10c.

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

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2. By 28 February of each year, the competent authorities shall issue the quantity of allowances that are to be allocated for that year, calculated in accordance with Articles 10, 10a and 10c.
3. Member States may not issue allowances free of charge under paragraph 2 to installations whose inscription in the list referred to in paragraph 1 has been rejected by the Commission.

CHAPTER IV**PROVISIONS APPLYING TO AVIATION
AND STATIONARY INSTALLATIONS****PROVISIONS APPLYING TO AVIATION,
MARITIME TRANSPORT, AND STA-
TIONARY INSTALLATIONS***Article 11a***Use of CERs and ERUs from project activities in the EU ETS before the entry into force of
an international agreement on climate change**

1. ~~Without prejudice to the application of Article 28(3) and (4), paragraphs 2 to 7 of this Article shall apply.~~

1. Subject to paragraphs 2 and 3 of this Article, aircraft operators that hold an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State shall be able to use the following units to comply with their obligations as laid down in Article 12 in respect of emissions from flights to and from countries that are listed in the implementing act adopted pursuant to Article 25a(3):

(a) credits authorised by parties participating in the mechanism established under Article 6(4) of the Paris Agreement;

(b) credits authorised by the parties participating in crediting programmes which have been considered eligible by the ICAO Council as identified in the implementing act adopted pursuant to paragraph 8;

(c) credits authorised by parties agreements pursuant to paragraph 5;

(d) credits issued in respect of Union level projects pursuant to Article 24a.

~~2. To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8, operators may request the competent authority to issue allowances to them valid from~~

2. Units referred to in paragraph 1, points (a) and (b), may be used if the following conditions have been met:

(a) they originate from a country that is a party to the Paris Agreement at the time of use;

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2013 onwards in exchange for CERs and ERUs issued in respect of emission reductions up until 2012 from project types which were eligible for use in the EU ETS during the period from 2008 to 2012.

Until 31 March 2015, the competent authority shall make such an exchange on request.

3. To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8, competent authorities shall allow operators to exchange CERs and ERUs from projects that were registered before 2013 issued in respect of emission reductions from 2013 onwards for allowances valid from 2013 onwards.

The first subparagraph shall apply to CERs and ERUs for all project types which were eligible for use in the EU ETS during the period from 2008 to 2012.

4. To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8, competent authorities shall allow operators to exchange CERs issued in respect of emission reductions from 2013 onwards for allowances from new projects started from 2013 onwards in LDCs.

The first subparagraph shall apply to CERs for all project types which were eligible for use in

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(b) they originate from a country that is listed in the implementing act adopted pursuant to Article 25a(3) as participating in Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA). This condition shall not apply in respect of emissions before 2027, nor shall it apply in respect of Least Developed Countries and Small Island Developing States, as defined by the United Nations, except for those countries whose GDP per capita equals or exceeds the Union average.

3. Units referred to in paragraph 1, points (a), (b) and (c), may be used if arrangements are in place for authorisation by the participating parties, timely adjustments are made to the reporting of anthropogenic emissions by sources and removals by sinks covered by the nationally determined contributions of the participating parties, and that double counting and a net increase in global emissions are avoided.

The Commission shall adopt implementing acts laying down more detailed requirements for the arrangements referred to in the first subparagraph, which may include reporting and registry requirements, and for listing the states or programmes which apply these arrangements. Arrangements shall take account of flexibilities accorded to Least Developed Countries and Small Island Developing States. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

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~~the EU ETS during the period from 2008 to 2012, until those countries have ratified a relevant agreement with the Union or until 2020, whichever is the earlier.~~

5. To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8 and in the event that the negotiations on an international agreement on climate change are not concluded by 31 December 2009, credits from projects or other emission reducing activities may be used in the EU ETS in accordance with agreements concluded with third countries, specifying levels of use. In accordance with such agreements, operators shall be able to use credits from project activities in those third countries to comply with their obligations under the EU ETS.

6. Any agreements referred to in paragraph 5 shall provide for the use of credits in the EU ETS from project types which were eligible for use in the EU ETS during the period from 2008 to 2012, including renewable energy or energy efficiency technologies which promote technological transfer and sustainable development. Any such agreement may also provide for the use of credits from projects where the baseline used is below the level of free allocation under the measures referred to in Article 10a or below the levels required by Union legislation.

7. Once an international agreement on climate change has been reached, only credits from projects from third countries which have ratified that agreement shall be accepted in the EU ETS from 1 January 2013.

8. The Commission shall adopt an implementing act listing credits which, have been considered eligible by the ICAO Council, and that fulfil the conditions laid down in paragraphs 2 and 3. The Commission shall amend that list as appropriate. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

*Article 11b***Project activities**

1. Member States shall take all necessary measures to ensure that baselines for project activities, as defined by subsequent decisions adopted under the UNFCCC or the Kyoto Protocol, undertaken in countries having signed a Treaty of Accession with the Union fully comply with the *acquis communautaire*, including the temporary derogations set out in that Treaty of Accession.

The Union and its Member States shall only authorise project activities where all project participants have headquarters either in a country that has concluded the international agreement relating to such projects or in a country or sub-federal or regional entity which is linked to the EU ETS pursuant to Article 25.

2. Except as provided for in paragraphs 3 and 4, Member States hosting project activities shall ensure that no ERUs or CERs are issued for reductions or limitations of greenhouse gas emissions from activities falling within the scope of this Directive.

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3. Until 31 December 2012, for JI and CDM project activities which reduce or limit directly the emissions of an installation falling within the scope of this Directive, ERUs and CERs may be issued only if an equal number of allowances is cancelled by the operator of that installation.
4. Until 31 December 2012, for JI and CDM project activities which reduce or limit indirectly the emission level of installations falling within the scope of this Directive, ERUs and CERs may be issued only if an equal number of allowances is cancelled from the national registry of the Member State of the ERUs' or CERs' origin.
5. A Member State that authorises private or public entities to participate in project activities shall remain responsible for the fulfilment of its obligations under the UNFCCC and the Kyoto Protocol and shall ensure that such participation is consistent with the relevant guidelines, modalities and procedures adopted pursuant to the UNFCCC or the Kyoto Protocol.
6. In the case of hydroelectric power production project activities with a generating capacity exceeding 20 MW, Member States shall, when approving such project activities, ensure that relevant international criteria and guidelines, including those contained in the World Commission on Dams November 2000 Report 'Dams and Development — A New Framework for Decision-Making', will be respected during the development of such project activities.

*Article 12***Transfer, surrender and cancellation of allowances**

1. Member States shall ensure that allowances can be transferred between:
 - (a) persons within the Union;
 - (b) persons within the Union and persons in third countries, where such allowances are recognised in accordance with the procedure referred to in Article 25 without restrictions other than those contained in, or adopted pursuant to, this Directive.
- 1a. The Commission shall, by 31 December 2010, examine whether the market for emissions allowances is sufficiently protected from insider dealing or market manipulation and, if appropriate, shall bring forward proposals to ensure such protection. The relevant provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) ⁽⁷⁾ may be used with any appropriate adjustments needed to apply them to trade in commodities.
2. Member States shall ensure that allowances issued by a competent authority of another Member State are recognised for the purpose of meeting an aircraft operator's obligations under paragraph 2a or of meeting an operator's obligations under paragraph 3.
- 2a. Administering Member States shall ensure that, by 30 April each year, each aircraft operator surrenders a number of allowances equal to the total emissions during the preceding calendar year from aviation activities listed in Annex
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.

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~~I for which it is the aircraft operator, as verified in accordance with Article 15. Member States shall ensure that allowances surrendered in accordance with this paragraph are subsequently cancelled.~~

3. ~~For the period until 31 December 2020, Member States shall ensure that, by 30 April each year, the operator of each installation surrenders a number of allowances, other than allowances issued under Chapter II, that is equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that those allowances are subsequently cancelled. For the period starting from 1 January 2021, Member States shall ensure that, by 30 April each year, 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, and that those allowances are subsequently cancelled, subject to the review referred to in Article 28b.~~

3-a. Where necessary, and for as long as is necessary, in order to protect the environmental integrity of the EU ETS, aircraft operators ~~and other operators~~ 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 and other operators. ~~The legal act referred to in Article 19 shall include the measures necessary in the cases referred to in this paragraph.~~

3a. An obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide (⁸).

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3. The Member States, administering Member States and administering authorities in respect of a shipping company shall ensure that, by 30 April 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.

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.

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

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 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 in accordance with the delegated acts adopted pursuant to Article 10(4).

5. Paragraphs 1 and 2 apply without prejudice to Article 10c.

6. In accordance with the methodology laid down in the delegated act referred to in paragraph 7, Member States shall calculate the offsetting each year for the preceding calendar year within the meaning of ICAO's International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation, other than those which apply in respect of flights departing from an aerodrome located in the EEA which arrive at an aerodrome located in the EEA, in Switzerland or in the United Kingdom, and by 30 November each year inform the aircraft operators that fulfil all of the following conditions of the level of offsetting:

(a) the aircraft operator holds an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State;

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(b) they produce annual CO₂ emissions greater than 10 000 tonnes from the use of aircrafts with a maximum certified take-off mass greater than 5 700 kg conducting flights covered by Annex I, other than those departing and arriving in the same Member State (including outermost regions of the same Member State), from 1 January 2019. For the purposes of the first subparagraph, point (b), CO₂ emissions from the following types of flights shall not be taken into account:

(i) state flights;

(ii) humanitarian flights;

(iii) medical flights;

(iv) military flights;

(v) firefighting flights.

7. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive by laying down the methodology for calculating offsetting responsibilities for aircraft operators.

8. In respect of flights to, from and between the countries that are listed in the implementing act adopted pursuant to Article 25a(3), aircraft operators that hold an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, shall cancel units referred to in Article 11a only in respect of the quantity notified by that Member State in respect of the relevant calendar year. The cancellation shall take place by 31 January 2025 for emissions in the period 2021 to 2023, by 31 January 2028 for emissions in the period 2024 to 2026, by 31 January 2031 for emissions in the period 2027 to 2029, by 31 January 2031 for emissions in the period 2027 to 2029, by 31 January 2034 for emissions in the period 2030 to 2032 and by 31 January 2037 for emissions in the period 2033 to 2035.

EU-ETS**Proposal***Article 13***Validity of allowances**

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

*Article 14***Monitoring and reporting of emissions**

1. The Commission shall adopt implementing acts concerning the detailed arrangements for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, for the monitoring and reporting of tonne-kilometre data for the purpose of an application under Article 3e or 3f, which shall be based on the principles for monitoring and reporting set out in Annex IV and the requirements set out in paragraph 2 of this Article. Those implementing acts shall also specify the global warming potential of each greenhouse gas in the requirements for monitoring and reporting emissions for that gas.

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

1. The Commission shall adopt implementing acts concerning the detailed arrangements for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, for the monitoring and reporting of tonne-kilometre data for the purpose of an application under Article 3e or 3f, which shall be based on the principles for monitoring and reporting set out in Annex IV and the requirements set out in paragraph 2 of this Article. Those implementing acts shall also specify the global warming potential of each greenhouse gas in the requirements for monitoring and reporting emissions for that gas.

Those implementing acts shall 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.

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

2. The acts referred to in paragraph 1 shall take into account the most accurate and up-to-date scientific evidence available, in particular from the IPCC, and may also specify requirements for

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operators to report on emissions associated with the production of goods produced by energy intensive industries which may be subject to international competition. These acts may also specify requirements for this information to be verified independently.

Those requirements may include reporting on levels of emissions from electricity generation covered by the EU ETS associated with the production of such goods.

3. Member States shall ensure that each operator of an installation or an aircraft operator monitors and reports the emissions from that installation during each calendar year, or, from 1 January 2010, the aircraft which it operates, to the competent authority after the end of that year in accordance with the acts referred to in paragraph 1.

4. The acts referred to in paragraph 1 may include requirements on the use of automated systems and data exchange formats to harmonise communication on the monitoring plan, the annual emission report and the verification activities between the operator, the verifier and competent authorities.

*Article 15***Verification and accreditation**

Member States shall ensure that the reports submitted by operators and aircraft operators pursuant to Article 14(3) are verified in accordance with the criteria set out in Annex V and any detailed provisions adopted by the Commission in accordance with this Article, and that the competent authority is informed thereof.

Member States shall ensure that an operator or aircraft operator whose report has not been verified as satisfactory in accordance with the criteria set out in Annex V and any detailed provisions adopted by the Commission in accordance with this Article by 31 March each year for emissions during the preceding year cannot make further transfers of allowances until a report from that operator or aircraft operator has been verified as satisfactory.

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

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

*Article 15a***Disclosure of information and professional secrecy**

Member States and the Commission shall ensure that all decisions and reports relating to the quantity and allocation of allowances and to the monitoring, reporting and verification of emissions are immediately disclosed in an orderly manner ensuring non-discriminatory access.

Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the applicable laws, regulations or administrative provisions.

EU-ETS**Proposal***Article 16***Penalties**

1. Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that such rules are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission and shall notify it without delay of any subsequent amendment affecting them.

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

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.

3. Member States shall ensure that any operator or aircraft operator who does not surrender sufficient allowances by 30 April of each year to cover its emissions during the preceding year shall be held liable for the payment of an excess emissions penalty. The excess emissions penalty shall be EUR 100 for each tonne of carbon dioxide equivalent emitted for which the operator or aircraft operator has not surrendered allowances. Payment of the excess emissions penalty shall not release the operator or aircraft operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in relation to the following calendar year.

3a. The penalties set out in paragraph 3 shall also apply in respect of shipping companies.

4. The excess emissions penalty relating to allowances issued from 1 January 2013 onwards shall increase in accordance with the European index of consumer prices.

5. In the event that an aircraft operator fails to comply with the requirements of this Directive and where other enforcement measures have failed to ensure compliance, its administering Member State may request the Commission to decide on the imposition of an operating ban on the aircraft operator concerned.

6. Any request by an administering Member State under paragraph 5 shall include:

- (a) evidence that the aircraft operator has not complied with its obligations under this Directive;
- (b) details of the enforcement action which has been taken by that Member State;
- (c) a justification for the imposition of an operating ban at Union level; and
- (d) a recommendation for the scope of an operating ban at Union level and any conditions that should be applied.

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

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8. The adoption of a decision following a request pursuant to paragraph 5 shall be preceded, when appropriate and practicable, by consultations with the authorities responsible for regulatory oversight of the aircraft operator concerned. Whenever possible, consultations shall be held jointly by the Commission and the Member States.

9. When the Commission is considering whether to adopt a decision following a request pursuant to paragraph 5, it shall disclose to the aircraft operator concerned the essential facts and considerations which form the basis for such decision. The aircraft operator concerned shall be given an opportunity to submit written comments to the Commission within 10 working days from the date of disclosure.

10. At the request of a Member State, the Commission may, in accordance with the examination procedure referred to in Article 22a(2), adopt a decision to impose an operating ban on the aircraft operator concerned.

11. Each Member State shall enforce, within its territory, any decisions adopted under paragraph 10. It shall inform the Commission of any measures taken to implement such decisions.

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, the Member State concerned shall, after giving the opportunity to the company concerned to submit its observations, order the ship to be detained until the shipping company fulfils its obligations. This paragraph shall be without prejudice to international maritime rules applicable in the case of ships in distress.

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12. The Commission shall adopt implementing acts concerning detailed rules in respect of the procedures referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

*Article 17***Access to information**

Decisions relating to the allocation of allowances, information on project activities in which a Member State participates or authorises private or public entities to participate, and the reports of emissions required under the greenhouse gas emissions permit and held by the competent authority, shall be made available to the public in accordance with Directive 2003/4/EC.

*Article 18***Competent authority**

Member States shall make the appropriate administrative arrangements, including the designation of the appropriate competent authority or authorities, for the implementation of the rules of this Directive. Where more than one competent authority is designated, the work of these authorities undertaken pursuant to this Directive must be coordinated.

Member States shall in particular ensure coordination between their designated focal point for approving project activities pursuant to Article 6 (1)(a) of the Kyoto Protocol and their designated national authority for the implementation of Article 12 of the Kyoto Protocol respectively designated in accordance with subsequent decisions adopted under the UNFCCC or the Kyoto Protocol.

*Article 18a***Administering Member State**

1. The administering Member State in respect of an aircraft operator shall be:

(a) in the case of an aircraft operator with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers (⁹), the Member State which granted the operating licence in respect of that aircraft operator; and

(b) in all other cases, the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator in the base year.

2. Where in the first two years of any period referred to in Article 3c, none of the attributed aviation emissions from flights performed by an aircraft operator falling within paragraph 1(b) of this Article are attributed to its administering Member State, the aircraft operator shall be transferred to another administering Member State in respect of the next period. The new administering Member State shall be the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator during the first two years of the previous period.

3. Based on the best available information, the Commission shall:

(a) before 1 February 2009, publish a list of aircraft operators which performed an aviation activity listed in Annex I on or after 1 January

3. Based on the best available information, the Commission shall:

(a) before 1 February 2009, publish a list of aircraft operators which performed an aviation activity listed in Annex I on or after 1 January

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2006 specifying the administering Member State for each aircraft operator in accordance with paragraph 1; and

(b) ~~before 1 February of each subsequent year~~, update the list to include aircraft operators which have subsequently performed an aviation activity listed in Annex I.

4. The Commission may, in accordance with the examination procedure referred to in Article 22a(2), develop guidelines relating to the administration of aircraft operators under this Directive by administering Member States.

5. For the purposes of paragraph 1, 'base year' means, in relation to an aircraft operator which started operating in the Union after 1 January 2006, the first calendar year of operation, and in all other cases, the calendar year starting on 1 January 2006.

2006 specifying the administering Member State for each aircraft operator in accordance with paragraph 1; and

(b) **as from 2024, at least every two years**, update the list to include aircraft operators which have subsequently performed an aviation activity listed in Annex I.

*Article 18b***Assistance from ~~Eurocontrol~~****Assistance from **the European Maritime Safety Agency and other relevant organisations****

For the purposes of carrying out its obligations under Articles 3c(4) and 18a, the Commission may request the assistance of ~~Eurocontrol~~ or another relevant organisation and may conclude to that effect any appropriate agreements with those organisations.

For the purposes of carrying out its obligations under Articles 3c(4), **3f, 3gb, 3gc, 3gd, 3ge** and 18a, the Commission **and administering authorities** 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.

*Article 19***Registries**

1. Allowances issued from 1 January 2012 onwards shall be held in the Union registry for the execution of processes pertaining to the maintenance of the holding accounts opened in the Member State and the allocation, surrender and cancellation of allowances under the Commission Acts referred to in paragraph 3.

Each Member State shall be able to fulfil the execution of authorised operations under the UN-FCCC or the Kyoto Protocol.

2. Any person may hold allowances. The registry shall be accessible to the public and shall contain separate accounts to record the allowances held by each person to whom and from whom allowances are issued or transferred.

3. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive by laying down all necessary requirements concerning the Union Registry for the trading period commencing on 1 January 2013 and subsequent periods, in the form of standardised electronic databases containing common data elements to track the issue, holding,

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transfer and cancellation, as applicable, of allowances, and to provide for public access and confidentiality, as appropriate. Those delegated acts shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems.

4. The Acts referred to in paragraph 3 shall contain appropriate modalities for the Union registry to undertake transactions and other operations to implement arrangements referred to in Article 25(1b). These Acts shall also include processes for the change and incident management for the Union registry with regard to issues in paragraph 1 of this Article. It shall contain appropriate modalities for the Union registry to ensure that initiatives of the Member States pertaining to efficiency improvement, administrative cost management and quality control measures are possible.

*Article 20***Central Administrator**

1. The Commission shall designate a Central Administrator to maintain an independent transaction log recording the issue, transfer and cancellation of allowances.
2. The Central Administrator shall conduct an automated check on each transaction in registries through the independent transaction log to ensure there are no irregularities in the issue, transfer and cancellation of allowances.
3. If irregularities are identified through the automated check, the Central Administrator shall inform the Member State or Member States concerned who shall not register the transactions in question or any further transactions relating to the allowances concerned until the irregularities have been resolved.

*Article 21***Reporting by Member States**

1. Each year the Member States shall submit to the Commission a report on the application of this Directive. That report shall pay particular attention to the arrangements for the allocation of allowances, the operation of registries, the application of the implementing measures on monitoring and reporting, verification and accreditation and issues relating to compliance with this Directive and on the fiscal treatment of allowances, if any. The first report shall be sent to the Commission by 30 June 2005. The report shall be drawn up on the basis of a questionnaire or outline adopted by the Commission in the form of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2). The questionnaire or outline shall be sent to Member States at least six months before the deadline for the submission of the first report.
2. On the basis of the reports referred to in paragraph 1, the Commission shall publish a report on the application of this Directive within three months of receiving the reports from the Member States.
3. The Commission shall organise an exchange of information between the competent authorities of the Member States concerning developments relating to issues of allocation, the use of ERUs and CERs in the EU ETS, the operation of registries, monitoring, reporting, verification, accreditation, information technology, and compliance with this Directive.

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

*Article 21a***Support of capacity-building activities**

In accordance with the UNFCCC, the Kyoto Protocol and any subsequent decision adopted for their implementation, the Commission and the Member States shall endeavour to support capacity-building activities in developing countries and countries with economies in transition in order to help them take full advantage of JI and the CDM in a manner that supports their sustainable development strategies and to facilitate the engagement of entities in JI and CDM project development and implementation.

*Article 22***Amendments to the Annexes**

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

*Article 22a***Committee procedure**

1. The Commission shall be assisted by the Climate Change Committee established by Article 26 of Regulation (EU) No 525/2013 of the European Parliament and of the Council (¹⁰). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (¹¹).

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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

*Article 23***Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 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.

2. The power to adopt delegated acts referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 12(7), third subparagraph, 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.

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<p>3. The delegation of power referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>	<p>3. The delegation of power referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 12(7), third subparagraph, 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 <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p>
<p>4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making ⁽¹²⁾.</p>	
<p>5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p>	
<p>6. A delegated act adopted pursuant to Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 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.</p>	<p>6. A delegated act adopted pursuant to Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 12(6), third subparagraph, 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.</p>

Article 24

Procedures for unilateral inclusion of additional activities and gases

1. From 2008, Member States may apply emission allowance trading in accordance with this Directive to activities and to greenhouse gases which are not listed in Annex I, taking into account all relevant criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the EU ETS and the reliability of the planned monitoring and reporting system, provided that the inclusion of such activities and greenhouse gases is approved by the Commission, in accordance with delegated acts which the Commission is empowered to adopt in accordance with Article 23.

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2. When the inclusion of additional activities and gases is approved, the Commission may at the same time authorise the issue of additional allowances and may authorise other Member States to include such additional activities and gases.

3. On the initiative of the Commission or at the request of a Member State, these acts may be adopted on the monitoring of, and reporting on, emissions concerning activities, installations and greenhouse gases which are not listed as a combination in Annex I, if that monitoring and reporting can be carried out with sufficient accuracy.

The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive to this effect.

*Article 24a***Harmonised rules for projects that reduce emissions**

1. In addition to the inclusions provided for in Article 24, the Commission may adopt measures for issuing allowances or credits in respect of projects administered by Member States that reduce greenhouse gas emissions not covered by the EU ETS.

Such measures shall be consistent with acts adopted pursuant to former Article 11b(7) as in force before 8 April 2018. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive by setting out the procedure to be followed.

Any such measures shall not result in the double-counting of emission reductions nor impede the undertaking of other policy measures to reduce emissions not covered by the EU ETS. Measures shall only be adopted where inclusion is not possible in accordance with Article 24, and the next review of the EU ETS shall consider harmonising the coverage of those emissions across the Union.

3. A Member State can refuse to issue allowances or credits in respect of certain types of projects that reduce greenhouse gas emissions on its own territory.

Such projects will be executed on the basis of the agreement of the Member State in which the project takes place.

*Article 25***Links with other greenhouse gas emissions trading systems**

1. Agreements should be concluded with third countries listed in Annex B to the Kyoto Protocol which have ratified the Protocol to provide for the mutual recognition of allowances between the EU ETS and other greenhouse gas emissions trading systems in accordance with the rules set out in Article 300 of the Treaty.

1a. Agreements may be made to provide for the recognition of allowances between the EU ETS and compatible mandatory greenhouse gas emissions trading systems with absolute emissions caps established in any other country or in sub-federal or regional entities.

1b. Non-binding arrangements may be made with third countries or with sub-federal or regional entities to provide for administrative and technical coordination in relation to allowances in the EU ETS or other mandatory greenhouse gas emissions trading systems with absolute emissions caps.

EU-ETS**Proposal***Article 25a***Third country measures to reduce the climate change impact of aviation**

1. Where a third country adopts measures for reducing the climate change impact of flights departing from that third country which land in the Union, the Commission, after consulting with that third country, and with Member States within the Committee referred to in Article 22a(1), shall consider options available in order to provide for optimal interaction between the EU ETS and that country's measures.

The Commission is empowered to adopt delegated acts in accordance with Article 23 to amend Annex I to this Directive to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in Annex I or to provide for any other amendments to the aviation activities listed in Annex I, except in relation to scope, which are required by an agreement concluded pursuant to Article 218 of the Treaty on the Functioning of the European Union.

The Commission may propose to the European Parliament and the Council any other amendments to this Directive.

The Commission may also, where appropriate, make recommendations to the Council in accordance with Article 300(1) of the Treaty to open negotiations with a view to concluding an agreement with the third country concerned.

2. The Union and its Member States shall continue to seek an agreement on global measures to reduce greenhouse gas emissions from aviation. In the light of any such agreement, the Commission shall consider whether amendments to this Directive as it applies to aircraft operators are necessary.

3. The Commission shall adopt an implementing act listing countries other than EEA countries, Switzerland and the United Kingdom, which are considered to be applying CORSIA for the purposes of this Directive, with a baseline of 2019 for 2021 to 2023 and a baseline 2019-2020 for each year thereafter. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

4. In respect of emissions from flights to or from countries that are listed in the implementing act adopted pursuant to paragraph 3, aircraft operators that hold an air operator certificate issued by a country or that is registered in a country that is listed therein shall not be required to cancel units in respect of those emissions.

5. In respect of emissions occurring until 31 December 2026 from flights between the EEA and countries that are not listed in the implementing act adopted pursuant to paragraph 3, other than

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flights to Switzerland and the United Kingdom, aircraft operators shall not be required to cancel units.

6. In respect of emissions from flights to and from Least Developed Countries and Small Island Developing States as defined by the United Nations, other than those listed in the implementing act adopted pursuant to paragraph 3, aircraft operators shall not be required to cancel units.

7. Where the Commission determines that there is a significant distortion of competition which is detrimental to aircraft operators that hold an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, the Commission shall be empowered to adopt implementing acts to exempt those aircraft operators from surrender requirements as laid down in Article 12(8) in respect of emissions from flights to and from such countries. The distortion of competition may be caused by a third country applying CORSIA in a less stringent manner in its domestic law, or failing to enforce CORSIA provisions in a manner equal to all aircraft operators. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

8. Where an aircraft operator that holds an air operator certificate issued by a Member State or is registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, operates flights between two different countries listed in the implementing act adopted pursuant to paragraph 3, including flights that take place between Switzerland, the United Kingdom and countries listed in the implementing act adopted pursuant to paragraph 3, and those countries allow aircraft operators to use other units than those on the list adopted pursuant to Article 11a(8), the Commission shall be empowered to adopt implementing acts allowing those aircraft operators to use unit types additional to that list or not to be

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bound by the conditions of Article 11a(2) and (3) in respect of emissions from such flights. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

*Article 26***Amendment of Directive 96/61/EC**

In Article 9(3) of Directive 96/61/EC the following subparagraphs shall be added:

‘Where emissions of a greenhouse gas from an installation are specified in Annex I to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (^{*1}) in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas unless it is necessary to ensure that no significant local pollution is caused.

For activities listed in Annex I to Directive 2003/87/EC, Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site.

Where necessary, the competent authorities shall amend the permit as appropriate.

The three preceding subparagraphs shall not apply to installations temporarily excluded from the scheme for greenhouse gas emission allowance trading within the Community in accordance with Article 27 of Directive 2003/87/EC.

*Article 27***Exclusion of small installations subject to equivalent measures**

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

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

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

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

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

Hospitals may also be excluded if they undertake equivalent measures.

2. If, following a period of three months from the date of notification for public comment, the Commission does not object within a further period of six months, the exclusion shall be deemed approved.

Following the surrender of allowances in respect of the period during which the installation is in the EU ETS, the installation shall be excluded and the Member State shall no longer issue free allowances to the installation pursuant to Article 10a.

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

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

4. For installations which have not been included in the EU ETS during the period from 2008 to 2012, simplified requirements for monitoring, reporting and verification may be applied for determining emissions in the three years preceding the notification under paragraph 1 point (a).

*Article 27a***Optional exclusion of installations emitting less than 2 500 tonnes**

1. Member States may exclude from the EU ETS installations that have reported to the competent authority of the Member State concerned emissions of less than 2 500 tonnes of carbon dioxide equivalent, disregarding emissions from biomass, in each of the three years preceding the notification under point (a), provided that the Member State concerned:

(a) notifies the Commission of each such installation before the list of installations pursuant to Article 11(1) is to be submitted or at the latest when that list is submitted to the Commission;

(b) confirms that simplified monitoring arrangements are in place to assess whether any installation emits 2 500 tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass, in any one calendar year;

(c) confirms that if any installation emits 2 500 tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass, in any one calendar year, the installation will be reintroduced into the EU ETS; and

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

2. When an installation is reintroduced into the EU ETS pursuant to point (c) of paragraph 1 of this Article, any allowances allocated pursuant to Article 10a shall be granted starting from the year of the reintroduction. Allowances allocated to such an installation shall be deducted from the

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quantity to be auctioned pursuant to Article 10(2) by the Member State in which the installation is situated.

3. Member States may also exclude from the EU ETS reserve or backup units which did not operate more than 300 hours per year in each of the three years preceding the notification under point (a) of paragraph 1, under the same conditions as set out in paragraphs 1 and 2.

*Article 28***Adjustments applicable upon the approval by the Union of an international agreement on climate change**

1. Within three months of the signature by the Union of an international agreement on climate change leading, by 2020, to mandatory reductions of greenhouse gas emissions exceeding 20 % compared to 1990 levels, as reflected in the 30 % reduction commitment as endorsed by the European Council of March 2007, the Commission shall submit a report assessing, in particular, the following elements:

- (a) the nature of the measures agreed upon in the framework of the international negotiations as well as the commitments made by other developed countries to comparable emission reductions to those of the Union and the commitments made by economically more advanced developing countries to contributing adequately according to their responsibilities and respective capabilities;
- (b) the implications of the international agreement on climate change, and consequently, options required at Union level, in order to move to the more ambitious 30 % reduction target in a balanced, transparent and equitable way, taking into account work under the Kyoto Protocol's first commitment period;
- (c) The Union manufacturing industries' competitiveness in the context of carbon leakage risks;
- (d) the impact of the international agreement on climate change on other Union economic sectors;
- (e) the impact on the Union agriculture sector, including carbon leakage risks;
- (f) the appropriate modalities for including emissions and removals related to land use, land use change and forestry in the Union;
- (g) afforestation, reforestation, avoided deforestation and forest degradation in third countries in the event of the establishment of any internationally recognised system in this context;
- (h) the need for additional Union policies and measures in view of the greenhouse gas reduction commitments of the Union' and of Member States.

2. On the basis of the report referred to in paragraph 1, the Commission shall, as appropriate, submit a legislative proposal to the European Parliament and to the Council amending this Directive pursuant to paragraph 1, with a view to the amending Directive entering into force upon the approval by the Union of the international agreement on climate change and in view of the emission reduction commitment to be implemented under that agreement.

The proposal shall be based upon the principles of transparency, economic efficiency and cost-effectiveness, as well as fairness and solidarity in the distribution of efforts between Member States.

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3. The proposal shall allow, as appropriate, operators to use, in addition to the credits provided for in this Directive, CERs, ERUs or other approved credits from third countries which have ratified the international agreement on climate change.
4. The proposal shall also include, as appropriate, any other measures needed to help reach the mandatory reductions in accordance with paragraph 1 in a transparent, balanced and equitable way and, in particular, shall include implementing measures to provide for the use of additional types of project credits by operators in the EU ETS to those referred to in paragraphs 2 to 5 of Article 11a or the use by such operators of other mechanisms created under the international agreement on climate change, as appropriate.
5. The proposal shall include the appropriate transitional and suspensive measures pending the entry into force of the international agreement on climate change.

*Article 28a***Derogations applicable in advance of the implementation of the ICAO's global market-based measure**

1. By way of derogation from Articles 12(2a), 14(3) and Article 16, Member States shall consider the requirements set out in those provisions to be satisfied and shall take no action against aircraft operators in respect of:
 - (a) all emissions from flights to and from aerodromes located in countries outside the EEA in each calendar year from 1 January 2013 to 31 December 2023, subject to the review referred to in Article 28b;
 - (b) all emissions from flights between an aerodrome located in an outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union and an aerodrome located in another region of the EEA in each calendar year from 1 January 2013 to 31 December 2023, subject to the review referred to in Article 28b.

For the purposes of Articles 11a, 12 and 14, the verified emissions from flights other than those referred to in the first subparagraph shall be considered to be the verified emissions of the aircraft operator.

2. By way of derogation from Articles 3e and 3f, aircraft operators benefiting from the derogations provided for in points (a) and (b) of paragraph 1 of this Article shall be issued, each year, with a number of free allowances reduced in proportion to the reduction of the surrender obligation provided for in those points.

By way of derogation from Article 3f(8), allowances that are not allocated from the special reserve shall be cancelled.

From 1 January 2021, the number of allowances allocated to aircraft operators shall be subject to the application of the linear factor referred to in Article 9, subject to the review referred to in Article 28b.

As regards activity in the period from 1 January 2017 to 31 December 2023, Member States shall, before 1 September 2018, publish the number of aviation allowances allocated to each aircraft operator.

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3. By way of derogation from Article 3d, Member States shall auction a number of aviation allowances reduced in proportion to the reduction in the total number of allowances issued.
4. By way of derogation from Article 3d(3), the number of allowances to be auctioned by each Member State in respect of the period from 1 January 2013 to 31 December 2023 shall be reduced to correspond to its share of attributed aviation emissions from flights which are not subject to the derogations provided for in points (a) and (b) of paragraph 1 of this Article.
5. By way of derogation from Article 3g, aircraft operators shall not be required to submit monitoring plans setting out measures to monitor and report emissions in respect of flights which are subject to the derogations provided for in points (a) and (b) of paragraph 1 of this Article.
6. By way of derogation from Articles 3g, 12, 15 and 18a, where an aircraft operator has total annual emissions lower than 25 000 tonnes of CO₂, or where an aircraft operator has total annual emissions lower than 3 000 tonnes of CO₂ from flights other than those referred to in points (a) and (b) of paragraph 1 of this Article, its emissions shall be considered to be verified emissions if determined by using the small emitters tool approved under Commission Regulation (EU) No 606/2010 (¹³) and populated by Eurocontrol with data from its ETS support facility. Member States may implement simplified procedures for non-commercial aircraft operators as long as such procedures provide no less accuracy than the small emitters tool provides.
7. Paragraph 1 of this Article shall apply to countries with whom an agreement pursuant to Article 25 or 25a has been reached only in line with the terms of such agreement.

Article 28b

Reporting and review by the Commission concerning the implementation of the ICAO's global market-based measure

1. Before 1 January 2019 and regularly thereafter, the Commission shall report to the European Parliament and to the Council on progress in the ICAO negotiations to implement the global market-based measure to be applied to emissions from 2021, in particular with regard to: (i) the relevant ICAO instruments, including Standards and Recommended Practices; (ii) ICAO Council-approved recommendations relevant to the global market-based measure; (iii) the establishment of a global registry; (iv) domestic measures taken by third countries to implement the global market-based measure to be applied to emissions from 2021; (v) the implications of reservations by third countries; and (vi) other relevant international developments and applicable instruments.

In line with the UNFCCC's global stocktake, the Commission shall also report on efforts to meet the aviation sector's aspirational long-term emissions reduction goal of halving aviation CO₂ emissions relative to 2005 levels by 2050.

2. Within 12 months of the adoption by the ICAO of the relevant instruments, and before the global market-based measure becomes operational, the Commission shall present a report to the European Parliament and to the Council in which it shall consider ways for those instruments to be implemented in Union law through a revision of this Directive. The Commission shall, in that report, also consider the rules applicable in respect of flights within the EEA, as appropriate. It shall also examine the ambition and overall environmental integrity of the global market-based measure, including its general ambition in relation to targets under the Paris Agreement, the level of participation, its enforceability, transparency, the penalties for non-compliance, the processes

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for public input, the quality of offset credits, monitoring, reporting and verification of emissions, registries, accountability as well as rules on the use of biofuels. In addition, the report shall consider whether the provisions adopted under Article 28c(2) need to be revised.

3. The Commission shall accompany the report referred to in paragraph 2 of this Article with a proposal, where appropriate, to the European Parliament and to the Council to amend, delete, extend or replace the derogations provided for in Article 28a, that is consistent with the Union economy-wide greenhouse gas emission reduction commitment for 2030 with the aim of preserving the environmental integrity and effectiveness of Union climate action.

*Article 28c***Provisions for monitoring, reporting and verification for the purpose of the global market-based measure**

The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the appropriate monitoring, reporting and verification of emissions for the purpose of implementing the ICAO's global market-based measure on all routes covered by it. Those delegated acts shall be based on the relevant instruments adopted in the ICAO, shall avoid any distortion of competition and be consistent with the principles contained in the acts referred to in Article 14(1), and shall ensure that the emissions reports submitted are verified in accordance with the verification principles and criteria laid down in Article 15.

*Article 29***Report to ensure the better functioning of the carbon market**

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

*Article 29a***Measures in the event of excessive price fluctuations**

1. If, for more than six consecutive months, the allowance price is more than three times the average price of allowances during the two preceding years on the European carbon market, the Commission shall immediately convene a meeting of the Committee established by Article 9 of Decision No 280/2004/EC.

2. If the price evolution referred to in paragraph 1 does not correspond to changing market fundamentals, one of the following measures may be adopted, taking into account the degree of price evolution:

(a) a measure which allows Member States to bring forward the auctioning of a part of the quantity to be auctioned;

(b) a measure which allows Member States to auction up to 25 % of the remaining allowances in the new entrants reserve.

Those measures shall be adopted in accordance with the management procedure referred to in Article 23(4).

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3. Any measure shall take utmost account of the reports submitted by the Commission to the European Parliament and to the Council pursuant to Article 29, as well as any other relevant information provided by Member States.

4. The arrangements for the application of these provisions shall be laid down in the acts referred to in Article 10(4).

*Article 30***Review in the light of the implementation of the Paris Agreement and the development of carbon markets in other major economies**

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.

2. The measures to support certain energy-intensive industries that may be subject to carbon leakage referred to in Articles 10a and 10b shall also be kept under review in the light of climate policy measures in other major economies. In this context, the Commission shall also consider whether measures in relation to the compensation of indirect costs should be further harmonised.

3. The Commission shall report to the European Parliament and to the Council in the context of each global stocktake agreed under the Paris Agreement, in particular with regard to the need for additional Union policies and measures in view of necessary greenhouse gas reductions by the Union and its Member States, including 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.

4. Before 1 January 2020, the Commission shall present an updated analysis of the non-CO₂ effects of aviation, accompanied, where appropriate, by a proposal on how best to address those effects.

CHAPTER IVa**EMISSIONS TRADING SYSTEM FOR BUILDINGS AND ROAD TRANSPORT***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, IIa and III.

EU-ETS**Proposal***Article 30b***Greenhouse 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 buildings and road transport sectors as 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:

- (f) the name and address of the regulated entity;
- (g) a description of the means by which the regulated entity releases the fuels for consumption in the sectors covered by this Chapter;

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(h) a list of the fuels the regulated entity releases for consumption in the sectors covered by this Chapter;

(i) a monitoring plan that fulfils the requirements established by the acts referred to in Article 14.;

(j) reporting requirements established by the acts referred to in Article 14;

(k) 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, within four months following the end of that year.

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 2026 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

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scope of that Regulation. The quantity shall decrease each year after 2024 by a linear reduction factor of 5,15 %. By 1 January 2024, the Commission shall publish the Union-wide quantity of allowances for the year 2026.

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 5,43 %, 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 Unionwide quantity of allowances for the year 2028 and, if required, the adjusted linear reduction factor.

*Article 30d***Auctioning of allowances for the activity referred to in Annex III**

1. From 2026, 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, IIa and III.

2. The auctioning of the allowances under this Chapter shall start in 2026 with a volume corresponding to 130 % of the auction volumes for 2026 established on the basis of the Union-wide quantity of allowances for that year and the respective auction shares and volumes pursuant to paragraph 3, 5 and 6. The additional volumes to be auctioned shall only be used for surrendering allowances pursuant to Article 30e(2) and be deducted from the auction volumes for the period from 2028 to 2030. The conditions for these early auctions shall be set in accordance with paragraph 7 and Article 10(4).

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In 2026, 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 Innovation Fund established under Article 10a(8). Article 10a(8) shall apply to the allowances referred to in this paragraph.

4. The total quantity of allowances covered by this Chapter after deducting the quantities set out in paragraph 3, 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 sectors covered by this Chapter for the average of the period from 2016 to 2018, of the Member State concerned.

5. Member States shall determine the use of revenues generated from the auctioning of allowances referred to in paragraph 4, 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 their revenues for one or more of the activities referred to in Article 10(3) 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 encour-

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age 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.

Member States shall use a part of their auction revenues generated in accordance with this Article to address social aspects of the emission trading under this Chapter with a specific emphasis on vulnerable households, vulnerable micro-enterprises and vulnerable transport users as defined under Regulation (EU) 20.../nn [Social Climate Fund Regulation](*). Where a Member State submits to the Commission a [Social Climate Plan] pursuant to that Regulation, the Member State shall use those revenues inter alia to finance that plan.

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 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.

*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), third and fourth sentence, and paragraph (5). For this purpose:

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(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 2027, Member States shall ensure that, by 30 April 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.

*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

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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).

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 March 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 buildings and road transport sectors as 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 avoid any risk of double counting of emissions covered under this Chapter and the emissions under Chapters II, IIa and III. Detailed rules for avoiding double counting shall be adopted in accordance with Article 14(1).

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.

*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;

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(b) any reference to operator 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 allowance in the auctions carried out in accordance with the act adopted under Article 10(4) is more than twice the average price of allowance during the six preceding consecutive months in the auctions for the allowances covered by this Chapter, the Commission shall, as a matter of urgency, adopt a decision to release 50 million allowances covered by this Chapter from the Market Stability Reserve in accordance with Article 1a(7) of Decision (EU) 2015/1814.

2. Where, for more than three consecutive months, the average price of allowance in the auctions carried out in accordance with the act adopted under Article 10(4) is more than three times the average price of allowance during the six preceding consecutive months in the auctions for the allowances covered by this Chapter, the Commission shall, as a matter of urgency, adopt a decision to release 150 million allowances covered by this Chapter from the Market Stability Reserve in accordance with Article 1a(7) of Decision (EU) 2015/1814.

*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 and use of allowances of this

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Chapter to meet compliance obligations of the compliance entities covered by Chapters II, IIa and III. 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 31***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2003 at the latest. They shall forthwith inform the Commission thereof. The Commission shall notify the other Member States of these laws, regulations and administrative provisions.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a 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 provisions of national law which they adopt in the field covered by this Directive. The Commission shall inform the other Member States thereof.

*Article 32***Entry into force**

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

*Article 33***Addressees**

This Directive is addressed to the Member States.

II. Amendments to Decision (EU) 2015/1814 (only changes displayed)

Decision (EU) 2015/1814

Proposal

Article 1

Market stability reserve

1. A market stability reserve shall be established in 2018 and the placing of allowances in the reserve shall operate from 1 January 2019.

2. The quantity of 900 million allowances deducted from auctioning volumes during the period 2014-2016, as determined in Regulation (EU) No 176/2014 pursuant to Article 10(4) of Directive 2003/87/EC, shall not be added to the volumes to be auctioned in 2019 and 2020 but shall instead be placed in the reserve.

3. Allowances not allocated to installations pursuant to Article 10a(7) of Directive 2003/87/EC and allowances not allocated to installations because of the application of Article 10a(19) and (20) of that Directive shall be placed in the reserve in 2020. The Commission shall review Directive 2003/87/EC in relation to those unallocated allowances and, if appropriate, submit a proposal to the European Parliament and to the Council.

4. The Commission shall publish the total number of allowances in circulation each year, by 15 May of the subsequent year. The total number of allowances in circulation in a given year shall be the cumulative number of allowances issued in the period since 1 January 2008, including the number issued pursuant to Article 13(2) of Directive 2003/87/EC in that period and entitlements to use international credits exercised by installations under the EU ETS in respect of emissions up to 31 December of that given year, minus the cumulative tonnes of verified emissions from installations under the EU ETS between 1 January 2008 and 31 December of that same given year, any allowances cancelled in accordance with Article 12(4) of Directive 2003/87/EC ~~and the number of allowances in the reserve~~. No account shall be taken of emissions during the three-year period starting in 2005 and ending in 2007 and allowances issued in respect of those emissions. The first publication shall take place by 15 May 2017.

4. The Commission shall publish the total number of allowances in circulation each year, by 15 May of the subsequent year. The total number of allowances in circulation in a given year shall be the cumulative number of allowances issued **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 in respect of emissions up to 31 December of that given year, minus the cumulative tonnes of verified emissions from installations under the EU ETS between 1 January 2008 and 31 December of that same given year, any allowances cancelled in accordance with Article 12(4) of Directive 2003/87/EC. No account shall be taken of emissions during the three-year period starting in 2005 and ending in 2007 and allowances issued in respect of those emissions. The first publication shall take place by 15 May 2017.

4a. As from [the year following the entry into force of this Directive], the calculation of the total number of allowances in circulation shall include the number of allowances issued in respect of aviation and maritime transport since the beginning of that year, and the number of

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5. Each year, a number of allowances equal to 12 % of the total number of allowances in circulation, as set out in the most recent publication as referred to in paragraph 4 of this Article, 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, unless the number of allowances to be placed in the reserve would be less than 100 million. In the first year of the reserve's operation, placements shall also take place between 1 January and 1 September of that year of 8 % (representing 1 % for each calendar month) of the total number of allowances in circulation as set out in the most recent publication. By way of derogation from the first and second sentences, until 31 December 2023, the percentages and the 100 million allowances referred to in those sentences shall be doubled.

Without prejudice to the total amount of allowances to be deducted pursuant to this paragraph, until 31 December 2023, allowances referred to in point (b) of the first subparagraph of Article 10(2) 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 the total number of allowances auctioned during the previous year shall no longer be valid.

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allowances surrendered by aircraft operators and ship operators in respect of emissions for which allowances are the units which can be used in respect of EU ETS obligations.

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.

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.

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6. In any year, if the total number of allowances in circulation is less than 400 million, 100 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 100 million allowances are in the reserve, all allowances in the reserve shall be released under this paragraph.

7. In any year, if paragraph 6 of this Article is not applicable and measures are adopted under Article 29a of Directive 2003/87/EC, 100 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 100 million allowances are in the reserve, all allowances in the reserve shall be released under this paragraph.

8. Where, following the publication of the total number of allowances in circulation, action is taken pursuant to paragraph 5, 6 or 7, the auction calendars shall take account of the allowances placed in the reserve or to be released from the reserve. The allowances shall be placed in the reserve or released from it over a period of 12 months. Where there is a release of allowances pursuant to paragraph 6 or 7, irrespective of the period during which the release takes place, it shall follow the Member States' shares applicable at the time the allowances were placed in the reserve and it shall also follow the order in which the allowances were placed in the reserve.

*Article 1a***Operation of the Market Stability Reserve for the buildings and road transport 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 2027. 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 2026, 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 15 May of the subsequent year separately from the number of allowances in circulation under Article 1(4). The total number of

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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 2026, minus the cumulative tonnes of verified emissions covered by Chapter IVa of Directive 2003/87/EC for the period between 1 January 2026 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 15 May 2027.

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 within a period of three months from the entry into application of the measure adopted pursuant to Article 30h of Directive 2003/87/EC.

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8. Article 1(8) and Article 3 shall apply to the allowances covered by Chapter IVa of Directive 2003/87/EC.

III. Amendments to Regulation (EU) 2015/757 (only changes displayed)

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Article 3

Definitions

For the purposes of this Regulation, the following definitions apply:

- (a) 'CO₂ emissions' means the release of CO₂ into the atmosphere by ships;
- (b) 'port of call' means the port where a ship stops to load or unload cargo or to embark or disembark passengers; consequently, stops for the sole purposes of refuelling, obtaining supplies, relieving the crew, 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, and stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities are excluded;
- (c) 'voyage' means any movement of a ship that originates from or terminates in a port of call and that serves the purpose of transporting passengers or cargo for commercial purposes;
- (d) 'company' means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, which has assumed the responsibility for the operation of the ship from the shipowner;
- (e) 'gross tonnage' (GT) means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, adopted by the International Maritime Organization (IMO) in London on 23 June 1969, or any successor convention;
- (f) 'verifier' means a legal entity carrying out verification activities which is accredited by a national accreditation body pursuant to Regulation (EC) No 765/2008 and this Regulation;
- (g) 'verification' means the activities carried out by a verifier to assess the conformity of the documents transmitted by the company with the requirements of this Regulation;
- (h) 'document of compliance' means a document specific to a ship, issued to a company by a verifier, which confirms that that ship has complied with the requirements of this Regulation for a specific reporting period;
- (i) 'other relevant information' means information related to CO₂ emissions from the consumption of fuels, to transport work and to the energy efficiency of ships, which enables the analysis of emission trends and the assessment of ships' performances;
- (j) 'emission factor' means the average emission rate of a greenhouse gas relative to the activity data of a source stream, assuming complete oxidation for combustion and complete conversion for all other chemical reactions;
- (k) 'uncertainty' means a parameter, associated with the result of the determination of a quantity, that characterises the dispersion of the values that could reasonably be attributed to the particular quantity, including the effects of systematic as well as of random factors, expressed as a percentage, and describes a confidence interval around the mean value comprising 95 % of inferred values taking into account any asymmetry of the distribution of values;

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- (l) 'conservative' means that a set of assumptions is defined in order to ensure that no under-estimation of annual emissions or over-estimation of distances or amounts of cargo carried occurs;
- (m) 'reporting period' means one calendar year during which CO₂ emissions have to be monitored and reported. For voyages starting and ending in two different calendar years, the monitoring and reporting data shall be accounted under the first calendar year concerned;
- (n) 'ship at berth' means a ship which is securely moored or anchored in a port falling under the jurisdiction of a Member State while it is loading, unloading or hotelling, including the time spent when not engaged in cargo operations;
- (o) 'ice class' means the notation assigned to the ship by the competent national authorities of the flag State or an organisation recognised by that State, showing that the ship has been designed for navigation in sea-ice conditions.

(q) 'administering authority' means the administering authority in respect of a shipping company referred to in Article 3gd of Directive 2003/87/EC of the European Parliament and of the Council;

(r) 'aggregated emissions data at company level' means the sum of the CO₂ emissions to be reported by a company under Directive 2003/87/EC, in respect of all ships under its responsibility during the reporting period.

*Article 4***Common principles for monitoring and reporting**

1. In accordance with Articles 8 to 12, companies shall, for each of their ships, monitor and report on the relevant parameters during a reporting period. They shall carry out that monitoring and reporting within all ports under the jurisdiction of a Member State and for any voyages to or from a port under the jurisdiction of a Member State.
2. Monitoring and reporting shall be complete and cover CO₂ emissions from the combustion of fuels, while the ships are at sea as well as at berth. Companies shall apply appropriate measures to prevent any data gaps within the reporting period.
3. Monitoring and reporting shall be consistent and comparable over time. To that end, companies shall use the same monitoring methodologies and data sets subject to modifications assessed by the verifier.
4. Companies shall obtain, record, compile, analyse and document monitoring data, including assumptions, references, emission factors and activity data, in a transparent manner that enables the reproduction of the determination of CO₂ emissions by the verifier.
5. Companies shall ensure that the determination of CO₂ emissions is neither systematically nor knowingly inaccurate. They shall identify and reduce any source of inaccuracies.
6. Companies shall enable reasonable assurance of the integrity of the CO₂ emission data to be monitored and reported.

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7. Companies shall endeavour to take account of the recommendations included in the verification reports issued pursuant to Article 13(3) or (4) in their subsequent monitoring and reporting.

8. Companies shall report the aggregated emissions data at company level of the ships under their responsibility during a reporting period pursuant to Article 11a.

*Article 5***Methods for monitoring CO₂ emissions and other relevant information**

1. For the purposes of Article 4(1), (2) and (3), companies shall, for each of their ships, determine the CO₂ emissions in accordance with any of the methods set out in Annex I, and monitor other relevant information in accordance with the rules set out in Annex II or adopted pursuant to it.

2. The Commission ~~shall be~~ empowered to adopt delegated acts in accordance with Article 23 to amend the methods set out in Annex I and the rules set out in Annex II, in order to take into account relevant international rules as well as international and European standards. The Commission ~~shall be~~ also empowered to adopt delegated acts in accordance with Article 23 to amend Annexes I and II in order to refine the elements of the monitoring methods set out therein, in the light of technological and scientific developments.

2. The Commission **is** empowered to adopt delegated acts in accordance with Article 23 to amend the methods set out in Annex I and the rules set out in Annex II, in order to take into account **revisions of Directive 2003/87/EC**, relevant international rules as well as international and European standards. The Commission **is** also empowered to adopt delegated acts in accordance with Article 23 to amend Annexes I and II in order to refine the elements of the monitoring methods set out therein, in the light of technological and scientific developments **and in order to ensure the effective operation of the EU ETS established pursuant to Directive 2003/87/EC**.

*Article 6***Content and submission of the monitoring plan**

1. By 31 August 2017, companies shall submit to the verifiers a monitoring plan for each of their ships indicating the method chosen to monitor and report CO₂ emissions and other relevant information.

2. Notwithstanding paragraph 1, for ships falling under the scope of this Regulation for the first time after 31 August 2017, the company shall submit a monitoring plan to the verifier without undue delay and no later than two months after each ship's first call in a port under the jurisdiction of a Member State.

3. The monitoring plan shall consist of a complete and transparent documentation of the monitoring method for the ship concerned and shall contain at least the following elements:

- (a) the identification and type of the ship, including its name, its IMO identification number, its port of registry or home port, and the name of the shipowner;
- (b) the name of the company and the address, telephone and e-mail details of a contact person;
- (c) a description of the following CO₂ emission sources on board the ship: main engines, auxiliary engines, gas turbines, boilers and inert gas generators, and the fuel types used;

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- (d) a description of the procedures, systems and responsibilities used to update the list of CO₂ emission sources over the reporting period;
- (e) a description of the procedures used to monitor the completeness of the list of voyages;
- (f) a description of the procedures for monitoring the fuel consumption of the ship, including:
 - (i) the method chosen from among those set out in Annex I for calculating the fuel consumption of each CO₂ emission source, including, where applicable, a description of the measuring equipment used,
 - (ii) the procedures for the measurement of fuel uplifts and fuel in tanks, a description of the measuring equipment used and the procedures for recording, retrieving, transmitting and storing information regarding measurements, as applicable,
 - (iii) the method chosen for the determination of density, where applicable,
 - (iv) a procedure to ensure that the total uncertainty of fuel measurements is consistent with the requirements of this Regulation, where possible referring to national laws, clauses in customer contracts or fuel supplier accuracy standards;
- (g) single emission factors used for each fuel type, or in the case of alternative fuels, the methodologies for determining the emission factors, including the methodology for sampling, methods of analysis and a description of the laboratories used, with the ISO 17025 accreditation of those laboratories, if any;
- (h) a description of the procedures used for determining activity data per voyage, including:
 - (i) the procedures, responsibilities and data sources for determining and recording the distance,
 - (ii) the procedures, responsibilities, formulae and data sources for determining and recording the cargo carried and the number of passengers, as applicable,
 - (iii) the procedures, responsibilities, formulae and data sources for determining and recording the time spent at sea between the port of departure and the port of arrival;
- (i) a description of the method to be used to determine surrogate data for closing data gaps;
- (j) a revision record sheet to record all the details of the revision history.

4. The monitoring plan may also contain information on the ice class of the ship and/or the procedures, responsibilities, formulae and data sources for determining and recording the distance travelled and the time spent at sea when navigating through ice.

5. Companies shall use standardised monitoring plans based on templates. Those templates, including the technical rules for their uniform application, shall be determined by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

5. Companies shall use standardised monitoring plans based on templates **and monitoring plans shall be submitted using automated systems and data exchange formats**. Those templates, including the technical rules for their uniform application **and automatic transfer**, shall be determined by the Commission by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

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6. Within three months of [date of entry into force of revised ETS Directive], companies shall submit to the responsible administering authority a monitoring plan for each of their ships falling under the scope of this Regulation, which shall first be assessed as being in conformity with this Regulation by the verifier.

7. Notwithstanding paragraph 6, for ships falling under the scope of this Regulation for the first time after the entry into force of [date of entry into force of the revised ETS Directive], companies shall submit a monitoring plan in conformity with the requirements of this Regulation to the responsible administering authority without undue delay and no later than three months after each ship's first call in a port under the jurisdiction of a Member State.

8. Within two years of entry into force of [revised ETS Directive], the responsible administering authorities shall approve the monitoring plans submitted by companies in accordance with the rules laid down in the delegated acts adopted by the Commission pursuant to the second subparagraph. For ships falling under the scope of [revised ETS Directive] for the first time after its entry into force, the responsible administering authority shall approve the submitted monitoring plan within four months after the ship's first call in a port under the jurisdiction of a Member State in accordance with the rules laid down in the delegated acts adopted by the Commission pursuant to the second subparagraph.

The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Regulation concerning rules for the approval of monitoring plans by administering authorities.

*Article 7***Modifications of the monitoring plan**

1. Companies shall check regularly, and at least annually, whether a ship's monitoring plan reflects the nature and functioning of the ship and whether the monitoring methodology can be improved.
2. Companies shall modify the monitoring plan in any of the following situations:

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- (a) where a change of company occurs;
- (b) where new CO₂ emissions occur due to new emission sources or due to the use of new fuels not yet contained in the monitoring plan;
- (c) where a change in availability of data, due to the use of new types of measuring equipment, new sampling methods or analysis methods, or for other reasons, may affect the accuracy of the determination of CO₂ emissions;
- (d) where data resulting from the monitoring method applied has been found to be incorrect;
- (e) where any part of the monitoring plan is identified as not being in conformity with the requirements of this Regulation and the company is required to revise it pursuant to Article 13(1).

3. Companies shall notify to the verifiers without undue delay any proposals for modification of the monitoring plan.

4. Modifications of the monitoring plan under points (b), (c) and (d) of paragraph 2 of this Article shall be subject to assessment by the verifier in accordance with Article 13(1). Following the assessment, the verifier shall notify the company whether those modifications are in conformity.

4. Modifications of the monitoring plan under points (b), (c) and (d) of paragraph 2 of this Article shall be subject to assessment by the verifier in accordance with Article 13(1). Following the assessment, the verifier shall notify the company whether those modifications are in conformity. **The company shall submit its modified monitoring plan to the responsible administering authority once it has received a notification from the verifier that the monitoring plan is in conformity.**

5. The administering authority shall approve modifications of the monitoring plan under paragraph 2, points (a), (b), (c), (d), in accordance with the rules laid down in the delegated acts adopted by the Commission pursuant to the second subparagraph of this paragraph.

The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Regulation concerning rules for the approval of changes in the monitoring plans by administering authorities.

*Article 10***Monitoring on an annual basis**

Based on the monitoring plan assessed in accordance with Article 13(1), for each ship and for each calendar year, companies shall monitor in accordance with Part A of Annex I and with Part B of Annex II the following parameters:

- (a) amount and emission factor for each type of fuel consumed in total;
- (b) total aggregated CO₂ emitted within the scope of this Regulation;
- (c) aggregated CO₂ emissions from all voyages between ports under a Member State's jurisdiction;

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- (d) aggregated CO₂ emissions from all voyages which departed from ports under a Member State's jurisdiction;
- (e) aggregated CO₂ emissions from all voyages to ports under a Member State's jurisdiction;
- (f) CO₂ emissions which occurred within ports under a Member State's jurisdiction at berth;
- (g) total distance travelled;
- (h) total time spent at sea;
- (i) total transport work;
- (j) average energy efficiency.

(j) average energy efficiency;

(k) total aggregated CO₂ emissions to be reported under Directive 2003/87/EC in relation to maritime transport activities.

Companies may monitor information relating to the ship's ice class and to navigation through ice, where applicable.

Companies may also monitor fuel consumed and CO₂ emitted, differentiating on the basis of other criteria defined in the monitoring plan.

*Article 11a***Reporting and submission of the aggregated emissions data at company level**

1. Companies shall determine the aggregated emissions data at company level during a reporting period, based on the data of the emissions report and the report referred to in Article 11(2) for each ship that was under their responsibility during the reporting period, in accordance with the rules laid down in the delegated acts adopted pursuant to paragraph 4.

2. From 2024, the company shall submit to the responsible administering authority by 31 March of each year the aggregated emissions data at company level that covers the emissions in the reporting period to be reported under Directive 2003/87/EC in relation to maritime transport activities, in accordance with the rules laid down in the delegated acts adopted pursuant to paragraph 4 and that is verified in accordance with Chapter III of this Regulation (the 'verified aggregated emissions data at company level').

3. The administering authority may require companies to submit the verified aggregated

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emissions data at company level by a date earlier than 31 March, but not earlier than by 28 February.

4. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Regulation with the rules for the monitoring and reporting of the aggregated data at company level and the submission of the aggregated emissions data at company level to the administering authority.

*Article 12***Format of the emissions report****Format of the emissions report and reporting of aggregated emissions data at company level**

1. The emissions report shall be submitted using automated systems and data exchange formats, including electronic templates.

1. The emissions report and the reporting of aggregated emissions data at company level shall be submitted using automated systems and data exchange formats, including electronic templates.

2. The Commission shall determine, by means of implementing acts, technical rules establishing the data exchange formats, including the electronic templates. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 24(2).

*Article 13***Scope of verification activities and verification report**

1. The verifier shall assess the conformity of the monitoring plan with the requirements laid down in Articles 6 and 7. Where the verifier's assessment identifies non-conformities with those requirements, the company concerned shall revise its monitoring plan accordingly and submit the revised plan for a final assessment by the verifier before the reporting period starts. The company shall agree with the verifier on the timeframe necessary to introduce those revisions. That timeframe shall in any event not extend beyond the beginning of the reporting period.

2. The verifier shall assess the conformity of the emissions report with the requirements laid down in Articles 8 to 12 and Annexes I and II.

~~In particular the verifier shall assess whether the CO₂ emissions and other relevant information included in the emissions report have been determined in accordance with Articles 8, 9 and 10 and the monitoring plan.~~

2. The verifier shall assess the conformity of the emissions report and the report referred to in Article 11(2) with the requirements laid down in Articles 8 to 12 and Annexes I and II.

3. Where the verification assessment concludes, with reasonable assurance from the verifier, that the emissions report is free from material misstatements, the verifier shall issue a verification report stating that the emissions report has been verified as satisfactory. The verification report shall specify all issues relevant to the work carried out by the verifier.

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4. Where the verification assessment concludes that the emissions report includes misstatements or non-conformities with the requirements of this Regulation, the verifier shall inform the company thereof in a timely manner. The company shall then correct the misstatements or non-conformities so as to enable the verification process to be completed in time and shall submit to the verifier the revised emissions report and any other information that was necessary to correct the non-conformities identified. In its verification report, the verifier shall state whether the misstatements or non-conformities identified during the verification assessment have been corrected by the company. Where the communicated misstatements or non-conformities have not been corrected and, individually or combined, lead to material misstatements, the verifier shall issue a verification report stating that the emissions report does not comply with this Regulation.

5. The verifier shall assess the conformity of the aggregated emissions data at company level with the requirements laid down in the delegated acts adopted pursuant to paragraph 6.

Where the verifier concludes, with reasonable assurance, that the aggregated emissions data at company level are free from material misstatements, the verifier shall issue a verification report stating that the aggregated emissions data at company level have been verified as satisfactory in accordance with the rules laid down in the delegated acts adopted pursuant to paragraph 6.

6. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Regulation with the rules for the verification of the aggregated emissions data at company level and the issuance of a verification report.

*Article 14***General obligations and principles for the verifiers**

1. The verifier shall be independent from the company or from the operator of a ship and shall carry out the activities required under this Regulation in the public interest. For that purpose, neither the verifier nor any part of the same legal entity shall be a company or ship operator, the owner of a company, or be owned by them, nor shall the verifier have relations with the company that could affect its independence and impartiality.

2. When considering the verification of the emissions report and of the monitoring procedures applied by the company, the verifier shall assess the reliability, credibility and accuracy of the monitoring systems and of the reported data and information relating to CO₂ emissions, in particular:

2. When considering the verification of the emissions report and of the monitoring procedures applied by the company, the verifier shall assess the reliability, credibility and accuracy of the monitoring systems and of the reported data and information relating to CO₂ emissions, in particular:

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(a) the attribution of fuel consumption to voyages;	(a) the attribution of fuel consumption to voyages;
(b) the reported fuel consumption data and related measurements and calculations;	(b) the reported fuel consumption data and related measurements and calculations;
(c) the choice and the employment of emission factors;	(c) the choice and the employment of emission factors;
(d) the calculations leading to the determination of the overall CO ₂ emissions;	(d) the calculations leading to the determination of the overall CO ₂ emissions and of the total aggregated CO ₂ emissions to be reported under Directive 2003/87/EC in relation to maritime transport activities;
(e) the calculations leading to the determination of the energy efficiency.	(e) the calculations leading to the determination of the energy efficiency.
3. The verifier shall only consider emissions reports submitted in accordance with Article 12 if reliable and credible data and information enable the CO ₂ emissions to be determined with a reasonable degree of certainty and provided that the following are ensured:	
(a) the reported data are coherent in relation to estimated data that are based on ship tracking data and characteristics such as the installed engine power;	
(b) the reported data are free of inconsistencies, in particular when comparing the total volume of fuel purchased annually by each ship and the aggregate fuel consumption during voyages;	
(c) the collection of the data has been carried out in accordance with the applicable rules; and	
(d) the relevant records of the ship are complete and consistent.	

4. When considering the verification of the aggregated emissions data at company level, the verifier shall assess the completeness and the consistency of the reported data with the information provided by the company, including its verified emissions reports and the report referred to in Article 11(2).

Article 15

Verification procedures

1. The verifier shall identify potential risks related to the monitoring and reporting process by comparing reported CO₂ emissions with estimated data based on ship tracking data and characteristics such as the installed engine power. Where significant deviations are found, the verifier shall carry out further analyses.
2. The verifier shall identify potential risks related to the different calculation steps by reviewing all data sources and methodologies used.
3. The verifier shall take into consideration any effective risk control methods applied by the company to reduce levels of uncertainty associated with the accuracy specific to the monitoring methods used.

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4. The company shall provide the verifier with any additional information that enables it to carry out the verification procedures. The verifier may conduct spot-checks during the verification process to determine the reliability of reported data and information.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 23, in order to further specify the rules for the verification activities referred to in this Regulation. When adopting these acts, the Commission shall take into account the elements set out in Part A of Annex III. The rules specified in those delegated acts shall be based on the principles for verification provided for in Article 14 and on relevant internationally accepted standards.

6. In respect of the verification of aggregated emissions data at company level, the verifier and the company shall comply with the verification rules laid down in the delegated acts adopted pursuant to the second subparagraph. The verifier shall not verify the emissions report and the report referred to in Article 11(2) of each ship under the responsibility of the company.

The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Regulation with the rules for the verification of aggregated emissions data at company level, including the verification methods and verification procedure.

*Article 16***Accreditation of verifiers**

1. Verifiers that assess the monitoring plans and the emissions reports, and issue verification reports and documents of compliance referred to in this Regulation shall be accredited for activities under the scope of this Regulation by a national accreditation body pursuant to Regulation (EC) No 765/2008.
1. Verifiers that assess the monitoring plans, the emissions reports and the aggregated emissions data at company level, and issue verification reports and documents of compliance referred to in this Regulation shall be accredited for activities under the scope of this Regulation by a national accreditation body pursuant to Regulation (EC) No 765/2008.
2. Where no specific provisions concerning the accreditation of verifiers are laid down in this Regulation, the relevant provisions of Regulation (EC) No 765/2008 shall apply.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 23, in order to further specify the methods of accreditation of verifiers. When adopting these acts, the Commission shall take into account the elements set out in Part B of Annex III. The methods specified in those delegated acts shall be based on the principles for verification provided for in Article 14 and on relevant internationally accepted standards.

Regulation (EU) 2015/757**Proposal***Article 20***Penalties, information exchange and expulsion order**

1. Member States shall set up a system of penalties for failure to comply with the monitoring and reporting obligations set out in Articles 8 to 12 and shall take all the measures necessary to ensure that those penalties are imposed. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 1 July 2017, and shall notify to the Commission without delay any subsequent amendments.

2. Member States shall establish an effective exchange of information and effective cooperation between their national authorities responsible for ensuring compliance with monitoring and reporting obligations or, where applicable, their authorities entrusted with penalty procedures. National penalty procedures against a specified ship by any Member State shall be notified to the Commission, the European Maritime Safety Agency (EMSA), to the other Member States and to the flag State concerned.

3. In the case of ships that have failed to comply with the monitoring and reporting 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 issue an expulsion order which shall be notified to the Commission, EMSA, the other Member States and the flag State concerned. As a result of the issuing of such an expulsion order, every Member State shall refuse entry of the ship concerned into any of its ports until the company fulfils its monitoring and reporting obligations in accordance with Articles 11 and 18. The fulfilment of those obligations shall be confirmed by the notification of a valid document of compliance to the competent national authority which issued the expulsion order. This paragraph shall be without prejudice to international maritime rules applicable in the case of ships in distress.

3. In the case of ships that have failed to comply with the monitoring and reporting 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 company concerned to submit its observations, issue an expulsion order which shall be notified to the Commission, 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 ship concerned into any of its ports until the company fulfils its monitoring and reporting obligations in accordance with Articles 11 and 18. Where the ship flies the flag of a Member State, the Member State concerned shall, after giving the opportunity to the company concerned to submit its observations, order the ship to be detained until the company fulfils its obligations. The fulfilment of those obligations shall be confirmed by the notification of a valid document of compliance to the competent national authority which issued the expulsion order. This paragraph shall be without prejudice to international maritime rules applicable in the case of ships in distress.

4. The shipowner or operator of a ship or its representative in the Member States shall have the right to an effective remedy before a court or tribunal against an expulsion order and shall be

Regulation (EU) 2015/757**Proposal**

properly informed thereof by the competent authority of the Member State of the port of entry. Member States shall establish and maintain appropriate procedures for this purpose.

5. Any Member State without maritime ports in its territory and which has closed its national ship register or has no ships flying its flag that fall within the scope of this Regulation, and as long as no such ships are flying its flag, may derogate from the provisions of this Article. Any Member State that intends to avail itself of that derogation shall notify the Commission at the latest on 1 July 2015. Any subsequent change shall also be communicated to the Commission.

*Article 23***Exercise of delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article. It is of particular importance that the Commission follow its usual practice and carry out consultations with experts, including Member States' experts, before adopting those delegated acts.

2. The power to adopt delegated acts referred to in Articles 5(2), 15(5) and 16(3) shall be conferred on the Commission for a period of five years from 1 July 2015. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

2. The power to adopt delegated acts referred to in Articles 5(2), 15(5) and 16(3) shall be conferred on the Commission for a period of five years from 1 July 2015. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

The power to adopt delegated acts referred to in Article 5(2), as regards ensuring the functioning of the EU ETS, and Articles 6(8), 7(5), 11a(4), 13(6) and 15(6) shall be conferred on the Commission for an indeterminate period of time from the entry into force of [revised MRV Regulation].

3. The delegation of power referred to in Articles 5(2), 15(5) and 16(3) 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.

3. The delegation of power referred to in Articles 5(2), 6(8), 7(5), 11a(4), 13(6), 15(5), 15(6) and 16(3) 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.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

Regulation (EU) 2015/757

5. A delegated act adopted pursuant to Articles 5(2), 15(5) and 16(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Proposal

5. A delegated act adopted pursuant Articles 5(2), 6(8), 7(5), 11a(4), 13(6), 15(5), 15(6) and 16(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Annexes to the Proposal (only changes displayed)

Amendments to Directive 2003/87/EC

ANNEX I

CATEGORIES OF ACTIVITIES TO WHICH THIS DIRECTIVE APPLIES

Directive 2003/87/EC

1. Installations or parts of installations used for research, development and testing of new products and processes and installations ~~exclusively using biomass~~ are not covered by this Directive.
2. ~~The thresholds values given below generally refer to production capacities or outputs. Where several activities falling under the same category are carried out in the same installation, the capacities of such activities are added together.~~

Proposal

1. Installations or parts of installations used for research, development and testing of new products and processes, and installations **where emissions from the combustion of biomass that complies with the criteria set out pursuant to Article 14 contribute to more than 95 % of the total greenhouse gas emissions** are not covered by this Directive.
2. **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.**

6. From 1 January 2012 all flights which arrive at or depart from an aerodrome situated in the territory of a Member State to which the Treaty applies shall be included.

Activities	Greenhouse gases
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)	Carbon dioxide
Refining of oil, where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production of coke	Carbon dioxide
Metal ore (including sulphide ore) roasting or sintering, including pelletisation	Carbon dioxide

Activities	Greenhouse gases
Production of iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2,5 tonnes per hour	Carbon dioxide
Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smitheries, foundries, coating and pickling	Carbon dioxide
Production of primary aluminium or alumina	Carbon dioxide and perfluorocarbons
Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 MW are operated	Carbon dioxide
Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day	Carbon dioxide
Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
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
Production of pulp from timber or other fibrous materials	Carbon dioxide
Production of paper or cardboard with a production capacity exceeding 20 tonnes per day	Carbon dioxide
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
Production of nitric acid	Carbon dioxide and nitrous oxide
Production of adipic acid	Carbon dioxide and nitrous oxide
Production of glyoxal and glyoxylic acid	Carbon dioxide and nitrous oxide
Production of ammonia	Carbon dioxide

Activities	Greenhouse gases
Production of bulk organic chemicals by cracking, reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide
Production of hydrogen (H ₂) and synthesis gas with a production capacity exceeding 25 tonnes per day	Carbon dioxide
Production of soda ash (Na ₂ CO ₃) and sodium bicarbonate (NaHCO ₃)	Carbon dioxide
Capture of greenhouse gases from installations covered by this Directive for the purpose of transport and geological storage in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
Transport of greenhouse gases for geological storage in a storage site permitted under Directive 2009/31/EC, with the exclusion of those emissions covered by another activity under this Directive	Carbon dioxide
Geological storage of greenhouse gases in a storage site permitted under Directive 2009/31/EC	Carbon dioxide
Maritime transport Maritime transport activities of ships covered by Regulation (EU) 2015/757 of the European Parliament and of the Council performing voyages with the purpose of transporting passengers or cargo for commercial purposes	Greenhouse gases covered by Regulation (EU) 2015/757
Aviation Flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies. This activity shall not include: (a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than a Member State, where this is substantiated by an appropriate status indicator in the flight plan; (b) military flights performed by military aircraft and customs and police flights; (c) flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority; (d) any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention; (e) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made; (f) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers and/or cargo or for the positioning or ferrying of the aircraft; (g) flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;	

Activities	Greenhouse gases
<p>(h) flights performed by aircraft with a certified maximum take-off mass of less than 5 700 kg;</p> <p>(i) flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No 2408/92 on routes within outermost regions, as specified in Article 299(2) of the Treaty, or on routes where the capacity offered does not exceed 30 000 seats per year;</p> <p>(j) flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating either:</p> <ul style="list-style-type: none"> — fewer than 243 flights per period for three consecutive four-month periods, or — flights with total annual emissions lower than 10 000 tonnes per year. <p>Flights referred to in point (l) or performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family; Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point;</p> <p>(k) from 1 January 2013 to 31 December 2030, flights which, but for this point, would fall within this activity, performed by a non-commercial aircraft operator operating flights with total annual emissions lower than 1 000 tonnes per year (including emissions from flights referred to in point (l));</p> <p>l) flights from aerodromes situated in Switzerland to aerodromes situated in the EEA.</p>	

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

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

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

	Share of Modernisation Fund
Bulgaria	5,00 %
Czechia	12,9 %
Estonia	2,2 %
Croatia	10,3 %
Latvia	2,3 %
Lithuania	1,1 %
Hungary	1,9 %
Poland	34,8 %
Portugal	8,8
Romania	9,9 %
Slovakia	4,9 %

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.</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);</p> <p>(b) the release for consumption of fuels for which the emission factor is zero.</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>Greenhouse gases</p> <p>Carbon dioxide (CO₂)</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:

$$[LRF_{adj} = 100\% * ((MRV[2024-2026] - (MRV[2024-2026] + (ESR[2024] - 6 * LRF[2024] * ESR[2024]) - MRV[2024-2026]) / 5)) / MRV[2024-2026]],$$
 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).]

ANNEX IV

PART A — Monitoring and reporting of emissions from stationary installations

Directive 2003/87/EC

Proposal

Monitoring of carbon dioxide emissions

Emissions shall be monitored either by calculation or on the basis of measurement.

Calculation

Calculations of emissions shall be performed using the formula:

Activity data × Emission factor × Oxidation factor

Activity data (fuel used, production rate etc.) shall be monitored on the basis of supply data or measurement.

Accepted emission factors shall be used. Activity-specific emission factors are acceptable for all fuels. Default factors are acceptable for all fuels except non-commercial ones (waste fuels such as tyres and industrial process gases). Seam-specific defaults for coal, and EU-specific or producer country-specific defaults for natural gas shall be further elaborated. IPCC default values are acceptable for refinery products. The emission factor for biomass shall be zero.

If the emission factor does not take account of the fact that some of the carbon is not oxidised, then an additional oxidation factor shall be used. If activity-specific emission factors have been calculated and already take oxidation into account, then an oxidation factor need not be applied.

Default oxidation factors developed pursuant to Directive 96/61/EC shall be used, unless the operator can demonstrate that activity-specific factors are more accurate.

A separate calculation shall be made for each activity, installation and for each fuel.

Calculations of emissions shall be performed using the formula:

Activity data × Emission factor × Oxidation factor

Activity data (fuel used, production rate etc.) shall be monitored on the basis of supply data or measurement.

Accepted emission factors shall be used. Activity-specific emission factors are acceptable for all fuels. Default factors are acceptable for all fuels except non-commercial ones (waste fuels such as tyres and industrial process gases). Seam-specific defaults for coal, and EU-specific or producer country-specific defaults for natural gas shall be further elaborated. IPCC default values are acceptable for refinery products. 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.

If the emission factor does not take account of the fact that some of the carbon is not oxidised, then an additional oxidation factor shall be used. If activity-specific emission factors have been calculated and already take oxidation into account, then an oxidation factor need not be applied.

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.

A separate calculation shall be made for each activity, installation and for each fuel.

Measurement

Measurement of emissions shall use standardised or accepted methods, and shall be corroborated by a supporting calculation of emissions.

Directive 2003/87/EC**Proposal***Monitoring of emissions of other greenhouse gases*

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

Reporting of emissions

Each operator shall include the following information in the report for an installation:

A. Data identifying the installation, including:

- Name of the installation;
- Its address, including postcode and country;
- Type and number of Annex I activities carried out in the installation;
- Address, telephone, fax and email details for a contact person; and
- Name of the owner of the installation, and of any parent company.

B. For each Annex I activity carried out on the site for which emissions are calculated:

- Activity data;
- Emission factors;
- Oxidation factors;
- Total emissions; and
- Uncertainty.

C. For each Annex I activity carried out on the site for which emissions are measured:

- Total emissions;
- Information on the reliability of measurement methods; and
- Uncertainty.

D. For emissions from combustion, the report shall also include the oxidation factor, unless oxidation has already been taken into account in the development of an activity-specific emission factor.

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

PART B — Monitoring and reporting of emissions from aviation activities**Directive 2003/87/EC****Proposal***Monitoring of carbon dioxide emissions*

Emissions shall be monitored by calculation. Emissions shall be calculated using the formula:

Fuel consumption × emission factor

Fuel consumption shall include fuel consumed by the auxiliary power unit. Actual fuel consumption for each flight shall be used wherever possible and shall be calculated using the formula:

Directive 2003/87/EC**Proposal**

Amount of fuel contained in aircraft tanks once fuel uplift for the flight is complete – amount of fuel contained in aircraft tanks once fuel uplift for subsequent flight is complete + fuel uplift for that subsequent flight.

If actual fuel consumption data are not available, a standardised tiered method shall be used to estimate fuel consumption data based on best available information.

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

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

A separate calculation shall be made for each flight and for each fuel.

Reporting of emissions

Each aircraft operator shall include the following information in its report under Article 14(3):

A. Data identifying the aircraft operator, including:

- name of the aircraft operator,
- its administering Member State,
- its address, including postcode and country and, where different, its contact address in the administering Member State,
- the aircraft registration numbers and types of aircraft used in the period covered by the report to perform the aviation activities listed in Annex I for which it is the aircraft operator,
- the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Annex I for which it is the aircraft operator were performed,
- address, telephone, fax and e-mail details for a contact person, and
- name of the aircraft owner.

B. For each type of fuel for which emissions are calculated:

- fuel consumption,
- emission factor,
- total aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator,
- aggregated emissions from:

Directive 2003/87/EC**Proposal**

- all flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator and which departed from an aerodrome situated in the territory of a Member State and arrived at an aerodrome situated in the territory of the same Member State,
- all other flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator,
- aggregated emissions from all flights performed during the period covered by the report which fall within the aviation activities listed in Annex I for which it is the aircraft operator and which:
 - departed from each Member State, and
 - arrived in each Member State from a third country,
- uncertainty.

Monitoring of tonne-kilometre data for the purpose of Articles 3e and 3f

For the purpose of applying for an allocation of allowances in accordance with Article 3e(1) or Article 3f(2), the amount of aviation activity shall be calculated in tonne-kilometres using the following formula:

tonne-kilometres = distance × payload

where:

‘distance’ means the great circle distance between the aerodrome of departure and the aerodrome of arrival plus an additional fixed factor of 95 km; and

‘payload’ means the total mass of freight, mail and passengers carried.

For the purposes of calculating the payload:

- the number of passengers shall be the number of persons on-board excluding crew members,
- an aircraft operator may choose to apply either the actual or standard mass for passengers and checked baggage contained in its mass and balance documentation for the relevant flights or a default value of 100 kg for each passenger and his checked baggage.

Reporting of tonne-kilometre data for the purpose of Articles 3e and 3f

Each aircraft operator shall include the following information in its application under Article 3e(1) or Article 3f(2):

A. Data identifying the aircraft operator, including:

- name of the aircraft operator,
- its administering Member State,
- its address, including postcode and country and, where different, its contact address in the administering Member State,
- the aircraft registration numbers and types of aircraft used during the year covered by the application to perform the aviation activities listed in Annex I for which it is the aircraft operator,
- the number and issuing authority of the air operator certificate and operating licence under which the aviation activities listed in Annex I for which it is the aircraft operator were performed,
- address, telephone, fax and e-mail details for a contact person, and
- name of the aircraft owner.

B. Tonne-kilometre data:

Directive 2003/87/EC**Proposal**

- number of flights by aerodrome pair,
- number of passenger-kilometres by aerodrome pair,
- number of tonne-kilometres by aerodrome pair,
- chosen method for calculation of mass for passengers and checked baggage,
- total number of tonne-kilometres for all flights performed during the year to which the report relates falling within the aviation activities listed in Annex I for which it is the aircraft operator.

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 buildings and road transport sectors as 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.

ANNEX V

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.

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