

Synopsis of Fit For 55 acts I

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

As amended by:

- ▶ **Decision (EU) 2023/852 amending Decision (EU) 2015/1814 as regards the number of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading system until 2030**

July 2023

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.

In July 2021, the European Commission proposed the “Fit for 55-package”, a legislative package that aimed at amending existing acts and establishing new legal acts. The proposals were discussed and amended over the last almost two years. One important legal act due for revision was the Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system scheme and amending Directive 2003/87/EC. The changes to this legal act by Decision (EU) 2023/852 amending Decision (EU) 2015/1814 as regards the number of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading system until 2030 were formally adopted on 19 April 2023 and published in the Official Journal of the European Union on 25 April 2023. This document provides a synopsis for those wanting to better understand as early as possible what changes have been finally adopted, what to consider for future industries and business cases.

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

Amendments to Decision (EU) 2015/1814²

Decision (EU) 2015/1814

Article 1

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 Di-

Amended Decision (EU) 2015/1814

Article 1

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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 June of the subsequent year. The total number of allowances in circulation in a given year shall be the cumulative number of allowances issued in respect of installations and shipping companies and not placed in the reserve in the period since 1 January 2008, including the number of allowances that were issued pursuant to Article 13(2) of Directive 2003/87/EC, in the version in force on 18 March 2018, in that period and entitlements to use international credits exercised by installations under the EU ETS, up to 31 December of that given year, minus the cumulative tonnes of verified emissions from installations and shipping companies under the EU ETS between 1 January 2008 and 31 December of that

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

² Amendments due to Decision (EU) 2023/852

Decision (EU) 2015/1814

rective 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.

~~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.~~

Amended Decision (EU) 2015/1814

same given year, and 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 year of entry into force of this amending Directive], the calculation of the total number of allowances in circulation in any given year shall include the cumulative number of allowances issued in respect of aviation and the cumulative tonnes of verified emissions from aviation under the EU ETS, excluding emissions from flights on routes covered by offsetting calculated pursuant to Article 12(6) of Directive 2003/87/EC, between 1 January ... [the year following the year of entry into force of this amending Directive] and 31 December of that same given year.

The allowances cancelled pursuant to Article 3gb 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 quantity 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 quantity 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

Decision (EU) 2015/1814

Without prejudice to the total amount of allowances to be deducted pursuant to this paragraph, until 31 December ~~2025~~, 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.

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.

Amended Decision (EU) 2015/1814

% of the total number of allowances in circulation. By way of derogation from the second sentence of this subparagraph, until 31 December 2030, the percentage referred to in that sentence shall be doubled. Without prejudice to the total number 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.

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 given year, if paragraph 6 of this Article is not applicable and the condition in Article 29a(1) of Directive 2003/87/EC has been met, 75 million allowances shall be released from the reserve and added to the quantity of allowances to be auctioned by the Member States under Article 10(2) of that Directive. Where fewer than 75 million allowances are in the reserve, all allowances in the reserve shall be released under this paragraph. Where the condition in Article 29a(1) of that Directive is met, the volumes to be released from the reserve in accordance with that Article shall be evenly distributed during a period of three months, starting no later than two months from the date when the condition in Article 29a(1) of that Directive is met as notified by the Commission in accordance with the fourth subparagraph thereof.

Decision (EU) 2015/1814

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.

Amended Decision (EU) 2015/1814

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, road transport and additional sectors**

1. Allowances covered by Chapter IVa of Directive 2003/87/EC shall be placed in and released from a separate section of the reserve established pursuant to Article 1 of this Decision, in accordance with the rules set out in this Article.

2. The placing of allowances in the reserve under this Article shall operate from 1 September 2028. The allowances covered by Chapter IVa of Directive 2003/87/EC shall be placed in, held in, and released from the reserve separately from the allowances covered by Article 1 of this Decision.

3. In 2027, the section referred to in paragraph 1 of this Article shall be created in accordance with Article 30d(2), second subparagraph, of Directive 2003/87/EC. From 1 January 2031, the allowances referred to in that subparagraph that have not been released from the reserve shall no longer be valid.

4. The Commission shall publish the total number of allowances in circulation covered by Chapter IVa of Directive 2003/87/EC each year, by 1 June of the subsequent year, separately from the number of allowances in circulation under Article 1(4) of this Decision. The

Decision (EU) 2015/1814**Amended Decision (EU) 2015/1814**

total number of allowances in circulation under this Article in a given year shall be the cumulative number of allowances covered by that Chapter issued in the period since 1 January 2027, minus the cumulative tonnes of verified emissions covered by that Chapter for the period between 1 January 2027 and 31 December of that same given year and any allowances covered by that Chapter cancelled in accordance with Article 12(4) of Directive 2003/87/EC. The first publication shall take place by 1 June 2028.

5. In any given year, if the total number of allowances in circulation, as set out in the most recent publication as referred to in paragraph 4 of this Article, is above 440 million allowances, 100 million allowances shall be deducted from the quantity of allowances covered by Chapter IVa of Directive 2003/87/EC to be auctioned by the Member States under Article 30d of that Directive 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 lower than 210 million, 100 million allowances covered by Chapter IVa of Directive 2003/87/EC shall be released from the reserve and added to the quantity of allowances covered by that Chapter to be auctioned by the Member States under Article 30d of that Directive. 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 quantity of allowances covered by Chapter IVa of that Directive to be auctioned by the Member States under Article 30d of that Directive. The volumes to be released from the reserve shall be evenly distributed over a period of three months, starting no later than two months after the date on which the conditions were met according to the publication in that regard in the Official Journal of the European Union

Decision (EU) 2015/1814*Article 2*

Directive 2003/87/EC is amended as follows:

(1) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) the following paragraph is inserted after paragraph 1:

‘1a. Where the volume of allowances to be auctioned by Member States in the last year of each period referred to in Article 13(1) 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.’.

Amended Decision (EU) 2015/1814

[pursuant to Article 30h\(8\) of Directive 2003/87/EC](#)

[8. Article 1\(8\) and Article 3 of this Decision shall apply to the allowances covered by Chapter IVa of Directive 2003/87/EC.](#)

[9. By way of derogation from paragraphs 2, 3 and 4 of this Article, where one or both of the conditions referred to in Article 30k\(1\) of Directive 2003/87/EC are met, the placing of allowances in the reserve referred to in paragraph 2 of this Article shall operate from 1 September 2029 and the dates referred to in paragraphs 3 and 4 of this Article shall be put back by one year.](#)

Article 2

Directive 2003/87/EC is amended as follows:

(1) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) the following paragraph is inserted after paragraph 1:

‘1a. Where the volume of allowances to be auctioned by Member States in the last year of each period referred to in Article 13(1) 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.’.

Decision (EU) 2015/1814

(2) In Article 13(2), the second subparagraph is replaced by the following:

‘Member States shall issue allowances to persons for the current period to replace any allowances held by them which are cancelled in accordance with the first subparagraph. Similarly, allowances held in the market stability reserve and which are no longer valid shall be replaced by allowances which are valid for the current period.’.

*Article 3**Review*

The Commission shall monitor the functioning of the reserve in the context of the report provided for in Article 10(5) of Directive 2003/87/EC. That report should consider relevant effects on competitiveness, in particular in the industrial sector, including in relation to GDP, employment and investment indicators. Within three years of the start of the operation of the reserve and at five-year intervals thereafter, the Commission shall, on the basis of an analysis of the orderly functioning of the European carbon market, review the reserve and submit a proposal, where appropriate, to the European Parliament and to the Council. Each review shall pay particular attention to the percentage figure for the determination of the number of allowances to be placed in the reserve pursuant to Article 1(5) of this Decision, **as well as** the numerical value of the threshold for the total number of allowances in circulation ~~and~~ the number of allowances to be released from the reserve pursuant to Article 1(6) or (7) of this Decision. In its review, the Commission shall also look into the impact of the reserve on growth, jobs, the Union's industrial competitiveness and on the risk of carbon leakage.

*Article 4**Transitional provision***Amended Decision (EU) 2015/1814**

(2) In Article 13(2), the second subparagraph is replaced by the following:

‘Member States shall issue allowances to persons for the current period to replace any allowances held by them which are cancelled in accordance with the first subparagraph. Similarly, allowances held in the market stability reserve and which are no longer valid shall be replaced by allowances which are valid for the current period.’.

*Article 3**Review*

The Commission shall monitor the functioning of the reserve in the context of the report provided for in Article 10(5) of Directive 2003/87/EC. That report should consider relevant effects on competitiveness, in particular in the industrial sector, including in relation to GDP, employment and investment indicators. Within three years of the start of the operation of the reserve and at five-year intervals thereafter, the Commission shall, on the basis of an analysis of the orderly functioning of the European carbon market, review the reserve and submit a **legislative** proposal, where appropriate, to the European Parliament and to the Council. Each review shall pay particular attention to the percentage figure for the determination of the number of allowances to be placed in the reserve pursuant to Article 1(5) of this Decision, the numerical value of the threshold for the total number of allowances in circulation, **including with a view to a potential adjustment of that threshold in line with the linear factor referred to in Article 9 of Directive 2003/87/EC, as well as** the number of allowances to be released from the reserve pursuant to Article 1(6) or (7) of this Decision. In its review, the Commission shall also look into the impact of the reserve on growth, jobs, and the Union's industrial competitiveness and on the risk of carbon leakage.

*Article 4**Transitional provision*

Decision (EU) 2015/1814

Article 10(1) of Directive 2003/87/EC as amended by Directive 2009/29/EC of the European Parliament and of the Council ⁽³⁾ shall continue to apply until 31 December 2018.

*Article 5**Entry into force*

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

Amended Decision (EU) 2015/1814

Article 10(1) of Directive 2003/87/EC as amended by Directive 2009/29/EC of the European Parliament and of the Council ⁽²⁾ shall continue to apply until 31 December 2018.

*Article 5**Entry into force*

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

³ Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community (OJ L 140, 5.6.2009, p. 63).

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