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#### NOTE

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union, Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and Regulation (EU) 2015/757 – Revised Presidency compromise text

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Delegations will find attached a revised Presidency compromise text on the general ETS proposal. With certain targeted exceptions, the recitals have not been adapted. The text also contains some editorial changes and correction of errors.

Changes to the previous version of the Presidency compromise text are marked in **bold and underlined**, deletions by [...]. Previous changes are underlined.

**Proposal for a Directive of the European Parliament and of the Council  
amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance  
trading within the Union, Decision (EU) 2015/1814 concerning the establishment and  
operation of a market stability reserve for the Union greenhouse gas emission trading scheme  
and Regulation (EU) 2015/757**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Paris Agreement, adopted in December 2015 under the United Nations Framework Convention on Climate Change (UNFCCC) entered into force in November 2016 (“the Paris Agreement”)<sup>3</sup>. Its Parties have agreed to hold the increase in the global average temperature well below 2 °C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5 °C above pre-industrial levels.

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<sup>1</sup> OJ C , , p. .

<sup>2</sup> OJ C , , p. .

<sup>3</sup> Paris Agreement (OJ L 282, 19.10.2016, p. 4).

- (2) Tackling climate and environmental-related challenges and reaching the objectives of the Paris Agreement are at the core of the Communication on “The European Green Deal”, adopted by the Commission on 11 December 2019<sup>4</sup>.
- (3) The European Green Deal combines a comprehensive set of mutually reinforcing measures and initiatives aimed at achieving climate neutrality in the EU by 2050, and sets out a new growth strategy that aims to transform the Union into a fair and prosperous society, with a modern, resource-efficient and competitive economy, where economic growth is decoupled from resource use. It also aims to protect, conserve and enhance the Union's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. At the same time, this transition affects women and men differently and has a particular impact on some disadvantaged groups, such as older people, persons with disabilities and persons with a minority racial or ethnic background. It must therefore be ensured that the transition is just and inclusive, leaving no one behind.
- (4) The necessity and value of the European Green Deal have only grown in light of the very severe effects of the COVID-19 pandemic on the health, living and working conditions and well-being of the Union's citizens, which have shown that our society and our economy need to improve their resilience to external shocks and act early to prevent or mitigate them. European citizens continue to express strong views that this applies in particular to climate change<sup>5</sup>.
- (5) The Union committed to reduce to reduce the Union's economy-wide net greenhouse gas emissions by at least 55 % by 2030 below 1990 levels in the updated nationally determined contribution submitted to the UNFCCC Secretariat on 17 December 2020<sup>6</sup>.

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<sup>4</sup> COM(2019)640 final.

<sup>5</sup> Special Eurobarometer 513 on Climate Change, 2021  
([https://ec.europa.eu/clima/citizens/support\\_en](https://ec.europa.eu/clima/citizens/support_en)).

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

- (6) In Regulation (EU) 2021/1119 of the European Parliament and of the Council<sup>7</sup> the Union has enshrined the target of economy-wide climate neutrality by 2050 in legislation. That Regulation also establishes a binding Union domestic reduction commitment of net greenhouse gas emissions (emissions after deduction of removals) of at least 55 % below 1990 levels by 2030.
- (7) All sectors of the economy need to contribute to achieving those emission reductions. Therefore, the ambition of the EU Emissions Trading System (EU ETS), established by Directive 2003/87/EC of the European Parliament and of the Council<sup>8</sup> to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner, should be increased in a manner commensurate with this economy-wide net greenhouse gas emissions reduction target for 2030.
- (8) The EU ETS should incentivise production from installations that partly or fully reduce greenhouse gas emissions. Therefore, the description of some categories of activities in Annex I to Directive 2003/87/EC should be amended to ensure that installations performing an activity listed in Annex I and meeting the capacity threshold related to the same activity but not emitting any greenhouse gases are included in the scope of the EU ETS and therefore to ensure an equal treatment of installations in the sectors concerned. In addition, free allocation for the production of a product should be independent of the nature of the production process. It is therefore necessary to modify the definition of the products and of the processes and emissions covered for some benchmarks to ensure a level playing field for new and existing technologies. It is also necessary to decouple the update of the benchmark values for refineries and for hydrogen to reflect the increasing importance of production of hydrogen outside the refineries sector.

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

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

- (8a) Following the modification of the products and of the processes and emissions covered for some benchmarks, it is necessary to ensure that producers do not receive double compensation for the same emissions with both free allocation and indirect costs compensation, and thus to adjust the financial measures to compensate indirect costs passed on in electricity prices accordingly.
- (9) Council Directive 96/61/EC<sup>9</sup> was repealed by Directive 2010/75/EU of the European Parliament and of the Council<sup>10</sup>. The references to Directive 96/61/EC in Article 2 of Directive 2003/87/EC and in its Annex IV should be updated accordingly. Given the need for urgent economy-wide emission reductions, Member States should be able to act to reduce greenhouse gas emissions that are under the scope of the EU ETS through other policies than emission limits adopted pursuant to Directive 2010/75/EU.
- (10) In its Communication ‘Pathway to a Healthy Planet for All’<sup>11</sup>, the Commission calls for steering the EU towards zero pollution by 2050, by reducing pollution across air, freshwaters, seas and soils to levels which are no longer expected to be harmful for health and natural ecosystems. Measures under Directive 2010/75/EU, as the main instrument regulating air, water and soil pollutant emissions, will often also enable emissions greenhouse gases to be reduced. In line with Article 8 of Directive 2003/87/EC, Member States should ensure coordination between the permit requirements of Directive 2003/87/EC and those of Directive 2010/75/EU.
- (11) Recognising that new innovative technologies will often allow reducing emissions of both greenhouse gases and pollutants, it is important to ensure synergies between policies delivering reductions of emissions of both greenhouse gases and pollutants, namely Directive 2010/75/EU, and review their effectiveness in this regard.

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

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

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

- (12) The definition of electricity generators was used to determine the maximum amount of free allocation to industry in the period from 2013 to 2020, but led to different treatment of cogeneration power plants compared to industrial installations. In order to incentivise the use of high efficiency cogeneration and to ensure equal treatment of all installations receiving free allocation for heat production and district heating, all references to electricity generators in Directive 2003/87/EC should be deleted. In addition, Commission Delegated Regulation (EU) 2019/331<sup>12</sup> specifies the eligibility of all industrial processes for free allocation. Therefore, the provisions on carbon capture and storage in Article 10a(3) of Directive 2003/87/EC have become obsolete and should be deleted.
- (13) Greenhouse gases that are not directly released into the atmosphere should be considered emissions under the EU ETS and allowances should be surrendered for those emissions unless they are stored in a storage site in accordance with Directive 2009/31/EC of the European Parliament and of the Council<sup>13</sup>, or they are permanently chemically bound in a product so that they do not enter the atmosphere under normal use. The Commission should be empowered to adopt implementing acts specifying the conditions where greenhouse gases are to be considered as permanently chemically bound in a product so that they do not enter the atmosphere under normal use, including obtaining a carbon removal certificate, where appropriate, in view of regulatory developments with regard to the certification of carbon removals.

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

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

- (14) International maritime transport activity, consisting of voyages between ports under the jurisdiction of two different Member States or between a port under the jurisdiction of a Member State and a port outside the jurisdiction of any Member State, has been the only means of transportation not included in the Union's past commitments to reduce greenhouse gas emissions. Emissions from fuel sold in the Union for journeys that depart in one Member State and arrive in a different Member State or a third country have grown by around 36 % since 1990. Those emissions represent close to 90 % of all Union navigation emissions as emissions from fuel sold in the Union for journeys departing and arriving in the same Member State have been reduced by 26 % since 1990. In a business-as-usual scenario, emissions from international maritime transport activities are projected to grow by around 14 % between 2015 and 2030 and 34 % between 2015 and 2050. If the climate change impact of maritime transport activities grows as projected, it would significantly undermine reductions made by other sectors to combat climate change.
- (15) In 2013, the Commission adopted a strategy for progressively integrating maritime emissions into the Union's policy for reducing greenhouse gas emissions. As a first step in this approach, the Union established a system to monitor, report and verify emissions from maritime transport in Regulation (EU) 2015/757 of the European Parliament and of the Council<sup>14</sup>, to be followed by the laying down of reduction targets for the maritime sector and the application of a market based measure. In line with the commitment of the co-legislators expressed in Directive (EU) 2018/410 of the European Parliament and of the Council<sup>15</sup>, action by the International Maritime Organization (IMO) or the Union should start from 2023, including preparatory work on adoption and implementation of a measure ensuring that the sector duly contributes to the efforts needed to achieve the objectives agreed under the Paris Agreement and due consideration being given by all stakeholders.

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

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

- (16) Pursuant to Directive (EU) 2018/410, the Commission should report to the European Parliament and to the Council on the progress achieved in the IMO towards an ambitious emission reduction objective, and on accompanying measures to ensure that the maritime transport sector duly contributes to the efforts needed to achieve the objectives agreed under the Paris Agreement. Efforts to limit global maritime emissions through the IMO are under way and should be encouraged, including the rapid implementation of the IMO Initial Strategy on Reduction of Greenhouse Gas Emissions from Ships, adopted in 2018, that also refers to possible market-based measures to incentivise GHG emission reductions from international shipping. However, while the recent progress achieved through the IMO is welcome, **so far** measures [...] **have not been sufficient** to achieve the objectives of the Paris Agreement.
- (17) In the European Green Deal, the Commission stated its intention to take additional measures to address greenhouse gas emissions from the maritime transport sector through a basket of measures to enable the Union to reach its emissions reduction targets. In this context, Directive 2003/87/EC should be amended to include the maritime transport sector in the EU ETS in order to ensure this sector contributes to the increased climate objectives of the Union as well as to the objectives of the Paris Agreement, which requires developed countries to take the lead by undertaking economy-wide emission reduction targets, while developing countries are encouraged to move over time towards economy-wide emission reduction or limitation targets.<sup>16</sup> Considering that emissions from international aviation outside Europe should be capped from January 2021 by global market-based action while there is no action in place that caps or prices maritime transport emissions, it is appropriate that the EU ETS covers a share of the emissions from voyages between a port under the jurisdiction of a Member State and port under the jurisdiction of a third country, with the third country being able to decide on appropriate action in respect of the other share of emissions. The extension of the EU ETS to the maritime transport sector should thus include half of the emissions from ships performing voyages arriving at a port under the jurisdiction of a Member State from a port outside the jurisdiction of a Member State, half of the emissions from ships performing voyages departing from a port under the jurisdiction of a Member State and arriving at a port outside the jurisdiction of a Member State, emissions from ships performing voyages arriving at a port under the jurisdiction of a Member State

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



from a port under the jurisdiction of a Member State, and emissions at berth in a port under the jurisdiction of a Member State. This approach has been noted as a practical way to solve the issue of Common but Differentiated Responsibilities and Capabilities, which has been a longstanding challenge in the UNFCCC context. The coverage of a share of the emissions from both incoming and outgoing voyages between the Union and third countries ensures the effectiveness of the EU ETS, notably by increasing the environmental impact of the measure compared to a geographical scope limited to voyages within the EU, while limiting the risk of evasive port calls and the risk of delocalisation of transshipment activities outside the Union. To ensure a smooth inclusion of the sector in the EU ETS, the surrendering of allowances by shipping companies should be gradually increased with respect to verified emissions reported for the period 2024 to 2026. To protect the environmental integrity of the system, to the extent that fewer allowances are surrendered in respect of verified emissions for maritime transport during those years, once the difference between verified emissions and allowances surrendered has been established each year, a corresponding number of allowances should be cancelled. As from 2027, shipping companies should surrender the number of allowances corresponding to all of their verified emissions reported in the preceding year.

- (18) The provisions of Directive 2003/87/EC as regards maritime transport activities should be kept under review in light of future international developments and efforts undertaken to achieve the objectives of the Paris Agreement, including the second global stocktake in 2028, [...] and in the event of the adoption by the International Maritime Organization of a global market-based measure to reduce greenhouse gas emissions from maritime transport to take such progress into account, in particular if the measure is sufficiently ambitious and robust. [...] To this end, the Commission should without delay [...] any time before the second global stocktake in 2028 - and therefore no later than by 30 September 2028 – present a report to the European Parliament and to the Council. The Commission should in that report examine that measure as regards its ambition in light of the objectives of the Paris Agreement and its overall environmental integrity. It should also examine any issue related to the possible co-existence or alignment of this Directive with that measure [...] Where appropriate, the report should be accompanied by a legislative proposal to amend this Directive, consistent with the Union economy-wide greenhouse gas emission commitments, and with the aim of preserving the environmental integrity and effectiveness of the Union climate action, ensuring appropriate implementation of the global market-based measure

adopted by the International Maritime Organization, while taking into account the need for coherence between the EU ETS and the global market-based measure and avoidance of any resulting significant double burden.

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

- (19a) CO<sub>2</sub> emissions represent the large majority of shipping emissions. The inclusion of additional greenhouse gas emissions from maritime transport [...] from the start of the inclusion of shipping in the ETS is too early for reasons of administrative practicability, but emissions from greenhouse gases other than CO<sub>2</sub> will likely grow over time with the development of vessels powered by liquefied natural gases or other energy sources, so their inclusion in the future in the ETS would be beneficial for environmental integrity and incentivizing good practices. Therefore, emissions from [...] **methane and nitrous oxides** should be included in the MRV Regulation. No later than 31 December 2026, the Commission should present a report to the European Parliament and to the Council in which it should examine the feasibility and cost-effectiveness of the inclusion in this Directive of additional greenhouse gas emissions from maritime transport.
- (19b) Shipping emissions from vessels below 5000 gross tonnage represent a minority of shipping emissions but concern a large number of ships. The inclusion of these vessels [...] from the start of the inclusion of shipping in the ETS is too early for reasons of administrative practicability, but their inclusion in the future would improve the effectiveness of the ETS and potentially reduce evasive behaviours with the use of vessels below the 5000 gross tonnage threshold. Therefore, no later than 31 December 2026, the Commission should present a report to the European Parliament and to the Council in which it should examine the feasibility and cost-effectiveness of the inclusion in this Directive of emissions from ships below 5000 gross tonnage.
- (20) The person or organisation responsible for the compliance with the EU ETS should be the shipping company, defined as 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. This definition is based on the definition of ‘company’ in Article 3, point (d) of Regulation (EU) 2015/757, and in line with the global data collection system established in 2016 by the IMO. [...]

**(20a) The emissions from a ship depend *inter alia* on the vessel energy efficiency measures taken by the ship-owner and the fuel, the cargo carried, the route and the speed of the ship which may be under the control of a different entity than the ship-owner. At the point of contract negotiation mainly the latter aspects would not be known and thus the ultimate emissions from the ship covered by Directive 2003/87/EC would be uncertain. However, without a pass through of carbon costs to the entity operating the ship, the incentives to implement operational measures for fuel efficiency would be limited. In line with the polluter pays principle, the shipping company should therefore be entitled, under national law, to claim reimbursement for the costs arising from the surrender of allowances from the entity that is directly responsible for the decisions affecting the CO<sub>2</sub> emissions of the ship. While such a mechanism of reimbursement could be subject to a contractual arrangement, Member States should, to reduce administrative costs, not be obliged to ensure or control the existence of such contracts but should instead provide, in national law, a statutory entitlement for the shipping company to be reimbursed and the corresponding access to justice to enforce that entitlement. For the same reasons, this entitlement, including any possible conflict relating to the reimbursement between the shipping company and the entity operating the ship, should not affect the obligations of the shipping company vis-à-vis the administering authority nor the enforcement measures that might be necessary against such a company to ensure the full compliance with Directive 2003/87EC.**

- (21) In order to reduce the administrative burden on shipping companies, one Member State should be responsible for each shipping company. The Commission should publish an initial list of shipping companies that performed a maritime activity falling within the scope of the EU ETS, which specifies the administering authority in respect of each shipping company. The list should be updated at least every two years to reattribute shipping companies to another administering authority as relevant. For shipping companies registered in a Member State, the administering authority should be that Member State. For shipping companies registered in a third country, the administering authority should be the Member State in which the shipping company had the greatest estimated number of port calls from voyages falling within the scope of Directive 2003/87/EC in the last **four** monitoring years. For shipping companies registered in a third country and which did not perform any voyage falling within the scope of Directive 2003/87/EC in the last **four** monitoring years, the administering authority should be the Member State from where **a ship of** the shipping company **arrived or** started its first voyage falling within the scope of that Directive. The Commission should publish and update on a biennial basis a list of shipping companies falling within the scope of Directive 2003/87/EC, **as relevant**, specifying the administering authority for each shipping company. In order to ensure equal treatment of shipping companies, Member States should follow harmonised rules for the administration of shipping companies for which they have responsibility, in accordance with detailed rules to be established by the Commission.
- (22) Member States should ensure that the shipping companies that they administer comply with the requirements of Directive 2003/87/EC. In the event that a shipping company fails to comply with those requirements and any enforcement measures taken by the administering authority have failed to ensure compliance, Member States should act in solidarity. As a last resort measure, Member States should be able to refuse entry to the ships under the responsibility of the shipping company concerned, except for the Member State whose flag the ship is flying, which should be able to detain that ship.

- (23) Shipping companies should monitor and report their aggregated emissions data from maritime transport activities at company level in accordance with the rules laid down in Regulation (EU) 2015/757. The reports on aggregated emissions data at company level should be verified in accordance with the rules laid down in that Regulation. When performing the verifications at company level, the verifier should not verify the emissions report at ship level and the report referred to in Article 11(2) of that Regulation, as those reports at ship level would have been already verified.
- (24) Based on experience from similar tasks related to environmental protection, the European Maritime Safety Agency (EMSA) or another relevant organisation should, as appropriate and in accordance with its mandate, assist the Commission and the administering authorities in respect of the implementation of Directive 2003/87/EC. Owing to its experience with the implementation of Regulation (EU) 2015/757 and its IT tools, EMSA could assist the administering authorities notably as regards the monitoring, reporting and verification of emissions generated by maritime activities under the scope of this Directive by facilitating the exchange of information or developing guidelines and criteria. The Commission, assisted by the European Maritime Safety Agency, should endeavour to develop appropriate monitoring tools, as well as guidance to facilitate and coordinate verification and enforcement activities related to the application of this Directive to maritime transport. As far as practicable, such tools should be made available to the Member State and the verifiers in order to better ensure robust enforcement of this Directive.
- (25) Regulation (EU) 2017/2392 of the European Parliament and of the Council<sup>17</sup> amended Article 12(3) of Directive 2003/87/EC to allow all operators to use all allowances that are issued. The requirement for greenhouse gas emissions permits to contain an obligation to surrender allowances, pursuant to Article 6(2), point (e), of that Directive, should be aligned accordingly.

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<sup>17</sup> [Regulation \(EU\) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021 \(OJ L 350, 29.12.2017, p. 7\).](#)

- (26) Achieving the Union's emissions reduction target for 2030 will require a reduction in the emissions of the sectors covered by the EU ETS of 61 % compared to 2005. The Union-wide quantity of allowances of the EU ETS needs to be reduced to create the necessary long-term carbon price signal and drive for this degree of decarbonisation. To this end, the linear reduction factor should be increased, also taking into account the inclusion of emissions from maritime transport. The latter should be derived from the emissions from maritime transport activities reported in accordance with Regulation (EU) 2015/757 for 2018 and 2019 in the Union, adjusted, from year 2021, by the linear reduction factor.
- (27) Bearing in mind that this Directive amends Directive 2003/87/EC in respect of a period of implementation that has already started on 1 January 2021, for reasons of predictability, environmental effectiveness and simplicity, the steeper linear reduction pathway of the EU ETS should be a straight line from 2021 to 2030, such as to achieve emission reductions in the EU ETS of 61 % by 2030, as the appropriate intermediate step towards Union economy-wide climate neutrality in 2050. As the increased linear reduction factor can only apply from the year following the entry into force of this Directive, a one-off reduction of the quantity of allowances should reduce the total quantity of allowances so that it is in line with this level of annual reduction having been made from 2021 onwards.
- (28) Achieving the increased climate ambition will require substantial public resources in the EU as well as national budgets to be dedicated to the climate transition. To complement and reinforce the substantial climate-related spending in the EU budget, all auction revenues that are not attributed to the Union budget with the exception of the revenues used for the compensation of indirect carbon costs should be used for climate-related purposes. This includes the use for financial support to address social aspects in lower- and middle-income households by reducing distortive taxes.
- (28a) Further, to address distributional and social effects of the transition in low-income Member States, an additional amount of 2,5 % of the Union-wide quantity of allowances from [year of entry into force of the Directive] to 2030 should be used to fund the energy transition of the Member States with a gross domestic product (GDP) per capita below 65 % of the Union average in 2016-2018, through the Modernisation Fund referred to in Article 10d of Directive 2003/87/EC.

- (30) The Carbon Border Adjustment Mechanism (CBAM), established under Regulation (EU) [.../...] of the European Parliament and of the Council<sup>18</sup>, is an alternative to free allocation to address the risk of carbon leakage. To the extent that sectors and subsectors are covered by that measure, they should not receive free allocation. However, a transitional phasing-out of free allowances is needed to allow producers, importers and traders to adjust to the new regime. The reduction of free allocation should be implemented by applying a factor to free allocation for CBAM sectors, while the CBAM is phased in. This percentage (CBAM factor) should be equal to 100 % during the transitional period between the entry into force of [CBAM Regulation] and 2025, 90 % in 2026 and should be reduced by 10 percentage points each year to reach 0 % and thereby eliminate free allocation by the tenth year. The relevant delegated acts on free allocation should be adjusted accordingly for the sectors and subsectors covered by the CBAM.

The free allocation no longer provided to the CBAM sectors based on this calculation (CBAM demand) must be auctioned and the revenues will accrue to the Innovation Fund, so as to support innovation in low carbon technologies, carbon capture and utilisation ('CCU'), carbon capture and geological storage ('CCS'), renewable energy and energy storage, in a way that contributes to mitigating climate change. Special attention should be given to projects in CBAM sectors. To respect the proportion of the free allocation available for the non-CBAM sectors, the final amount to deduct from the free allocation and to be auctioned should be calculated based on the proportion that the CBAM demand represents in respect of the free allocation needs of all sectors receiving free allocation.

- (31) In order to better reflect technological progress and adjust the corresponding benchmark values to the relevant period of allocation while ensuring emission reduction incentives and properly rewarding innovation, the maximum adjustment of the benchmark values should be increased from 1,6 % to 2,5 % per year. For the period from 2026 to 2030, the benchmark values should thus be adjusted within a range of 4 % to 50 % compared to the value applicable in the period from 2013 to 2020.

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<sup>18</sup> [please insert full OJ reference]



- (32) A comprehensive approach to innovation is essential for achieving the European Green Deal objectives. At EU level, the necessary research and innovation efforts are supported, among others, through Horizon Europe which include significant funding and new instruments for the sectors coming under the ETS. Member States should ensure that the national transposition provisions do not hamper innovations and are technologically neutral.
- (33) The scope of the Innovation Fund referred to in Article 10a(8) of Directive 2003/87/EC should be extended to support innovation in low-carbon technologies and processes that concern the consumption of fuels in the sectors of buildings and road transport. In addition, the Innovation Fund should serve to support investments to decarbonise the maritime transport sector, including investments in sustainable alternative fuels, such as hydrogen and ammonia that are produced from renewables, as well as zero-emission propulsion technologies like wind technologies. [...] To ensure sufficient funding is available for innovation within this extended scope, the Innovation Fund should be supplemented with 50 million allowances, stemming partly from the allowances that could otherwise be auctioned, and partly from the allowances that could otherwise be allocated for free, in accordance with the current proportion of funding provided from each source to the Innovation Fund.
- (34) Pursuant to Article 10 of Commission Regulation (EU) No 2019/1122<sup>19</sup>, where aircraft operators no longer operate flights covered by the EU ETS, their accounts are set to excluded status, and processes may no longer be initiated from those accounts. To preserve the environmental integrity of the system, allowances which are not issued to aircraft operators due to their closure should be used to cover any shortfall in surrenders by those operators, and any leftover allowances should be used to accelerate action to tackle climate change by being placed in the Innovation Fund.

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<sup>19</sup> [Commission Delegated Regulation \(EU\) 2019/1122 of 12 March 2019 supplementing Directive 2003/87/EC of the European Parliament and of the Council as regards the functioning of the Union Registry \(OJ L 177, 2.7.2019, p. 3\).](#)

- (34a) Technical assistance from the Commission focused on Member States from which few or no projects have been submitted so far would contribute to achieving a high number of project applications for funding by the Innovation Fund across all Member States. This assistance should among others support activities aimed at improving the quality of proposals for projects located in the Member States mentioned, for example through sharing information, lessons learned and best practice-and at boosting the activities of National Contact Points. Other measures serving the same aim would be raising awareness of funding options and increasing the capacity of those Member States to identify and support potential project applicants. Project partnerships across Member States and matchmaking between potential applicants, in particular for large-scale projects, should also be promoted.
- (34b) In order to improve the role of Member States in the governance of the Innovation Fund and increase transparency, the Commission should report to the Climate Change Committee on the implementation of the Innovation Fund, providing an analysis of the expected impact of awarded projects by sector and by Member State. This report should include information on progress towards effective, quality-based geographical coverage across the Union and be accompanied by analysis of possible corrective measures, if necessary. Subject to the agreement of applicants, the Commission should inform Member States of the applications for funding from the Innovation Fund for projects in their respective territories and should provide them with detailed information on those applications in order to facilitate the Member States in their coordination of the support to projects.
- (35) Carbon Contracts for Difference (CCDs) are an important element to trigger emission reductions in industry, offering the opportunity to guarantee investors in innovative climate-friendly technologies a price that rewards CO<sub>2</sub> emission reductions above those induced by the current price levels in the EU ETS. The range of measures that the Innovation Fund can support should be extended to provide support to projects through price-competitive tendering, such as CCDs. The Commission should be empowered to adopt delegated acts on the precise rules for this type of support.

- (36) Where an installation's activity is temporarily suspended, free allocation is adjusted to the activity levels which are mandatorily reported annually. In addition, competent authorities can suspend the issuance of emission allowances to installations that have suspended operations as long as there is no evidence that they will resume operations. Therefore, operators should no longer be required to demonstrate to the competent authority that their installation will resume production within a specified and reasonable time in case of a temporary suspension of the activities.
- (37) Corrections of free allocation granted to stationary installations pursuant to Article 11(2) of Directive 2003/87/EC can require granting additional free allowances or transferring back surplus allowances. The allowances set aside for new entrants under Article 10a(7) of Directive 2003/87/EC should be used for those purposes.
- (38) The scope of the Modernisation Fund should be aligned with the most recent climate objectives of the Union by requiring that investments are consistent with the objectives of the European Green Deal and Regulation (EU) 2021/1119, and eliminating the support to any investments related to fossil fuels. In addition, the percentage of the Modernisation Fund that needs to be devoted to priority investments should be increased to 80 %; energy efficiency should be targeted as a priority area at the demand side including in industry, transport, buildings, agriculture and waste; and heating and cooling from renewable sources, as well as support of households to address energy poverty, including in rural and remote areas, should be included within the scope of the priority investments. In order to increase transparency and better assess the impact of the Modernisation Fund, the Investment Committee should report annually to the Climate Change Committee on experience with the evaluation of investments, notably in terms of emissions reduction and abatement costs.

- (39) Commission Implementing Regulation (EU) 2018/2066<sup>20</sup> lays down rules on the monitoring of emissions from biomass which are consistent with the rules on the use of biomass laid down in the Union legislation on renewable energy. As the legislation becomes more elaborate on the sustainability criteria for biomass with the latest rules established in Directive (EU) 2018/2001 of the European Parliament and of the Council<sup>21</sup>, the conferral of implementing powers in Article 14(1) of Directive 2003/87/EC should be explicitly extended to the adoption of the necessary adjustments for the application in the EU ETS of sustainability criteria for biomass, including biofuels, bioliquids and biomass fuels. In addition, the Commission should be empowered to adopt implementing acts to specify how to account for the storage of emissions from mixes of zero-rated biomass and biomass that is not from zero-rated sources.
- (40) Renewable liquid and gaseous fuels of non-biological origin and recycled carbon fuels can be important to reduce greenhouse gas emissions in sectors that are hard to decarbonise. Where recycled carbon fuels and renewable liquid and gaseous fuels of non-biological origin are produced from captured carbon dioxide under an activity covered by this Directive, the emissions should be accounted under that activity. To ensure that renewable fuels of non-biological origin and recycled carbon fuels contribute to greenhouse gas emission reductions and to avoid double counting for fuels that do so, it is appropriate to explicitly extend the empowerment in Article 14(1) to the adoption by the Commission of implementing acts laying down the necessary adjustments for how to account for the eventual release of carbon dioxide and how to avoid double counting to ensure appropriate incentives are in place, taking also into account the treatment of these fuels under Directive (EU) 2018/2001.

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<sup>20</sup> Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 (OJ L 334, 31.12.2018, p. 1).

<sup>21</sup> Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (OJ L 328, 21.12.2018, p. 82).

- (41) As carbon dioxide is also expected to be transported by means other than pipelines, such as by ship and by truck, the current coverage in Annex I to Directive 2003/87/EC for transport of greenhouse gases for the purpose of storage should be extended to all means of transport for reasons of equal treatment and irrespective of whether the means of transport are covered by the EU ETS. Where the emissions from the transport are also covered by another activity under Directive 2003/87/EC, the emissions should be accounted for under that other activity to prevent double counting.
- (42) The exclusion of installations using exclusively biomass from the EU ETS has led to situations where installations combusting a high share of biomass have obtained windfall profits by receiving free allowances greatly exceeding actual emissions. Therefore, a threshold value for zero-rated biomass combustion should be introduced above which installations are excluded from the EU ETS. [...]. The introduction of a threshold will provide more certainty as to which installations are under the ETS scope and will enable free allowances to be more evenly distributed to sectors more at risk of carbon leakage in particular. The threshold should be set at a 95% level to balance the advantages and disadvantages for installations to remain under the scope of the EU ETS. Therefore, installations that have retained the physical capacity to burn fossil fuels, should not be incentivised to revert to the use of such fuels. A threshold at 95% ensures that if an installation uses fossil fuels with the purpose of remaining within the scope of the ETS to benefit from free allocation allowances, the carbon costs related to the use of those fossil fuels will be sufficiently important to act as a disincentive. That threshold will also ensure that installations using a sizeable quantity of fossil fuels will remain within the monitoring obligations of the EU ETS, thus avoiding potential circumvention of existing monitoring, reporting and verification obligations. At the same time such installations which combust a lower share of zero-rated biomass should continue to be encouraged, through a flexible mechanism, to reduce fossil fuels combustion further while remaining under the scope of the ETS until their use of sustainable biomass is so substantial that the inclusion under the ETS is no longer justified. In addition, past experience has shown that the exclusion of installations exclusively using biomass, effectively being a 100% threshold except for the combustion of fossil fuels during start-up and shut-down phases, requires a reassessment and more precise definition. The 95% threshold allows for the combustion of fossil fuels during start-up and shut-down phases.

- (42a) In order to incentivize the uptake of low carbon technologies, Member States shall provide operators the option to remain in the scope of the EU ETS until the end of the relevant five year period referred to in Article 11(1) if the installation changed its production process to reduce its greenhouse gas emissions and no longer meets the threshold of 20 MW of total rated thermal input.
- (42b) Dynamic allocation introduced in Directive 2018/410 and operationalized in Commission Implementing Regulation (EU) 2019/1842 improved the efficiency and incentives provided by free allocation, but increased the administrative work and made the historic date of issuance of free allocation of 28 February not operational. In order to better take into account dynamic allocation, it is relevant to make adjustments to the compliance cycle.
- (43) The Communication of the Commission on Stepping up Europe's 2030 climate ambition<sup>22</sup>, underlined the particular challenge to reduce the emissions in the sectors of road transport and buildings. Therefore, the Commission announced that a further expansion of emissions trading could include emissions from road transport and buildings. Emissions trading for these two new sectors would be established through separate but adjacent emissions trading. This would avoid any disturbance of the well-functioning emissions trading in the sectors of stationary installations and aviation. The new system is accompanied by complementary policies and measures safeguarding against undue price impacts, shaping expectations of market participants and aiming for a carbon price signal for the whole economy. Previous experience has shown that the development of the new market requires setting up an efficient monitoring, reporting and verification system. In view of ensuring synergies and coherence with the existing Union infrastructure for the EU ETS covering the emissions from stationary installations and aviation, it is appropriate to set up emissions trading for the road transport and buildings sectors via an amendment to Directive 2003/87/EC.

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<sup>22</sup> COM(2020)562 final.

- (44) In order to establish the necessary implementation framework and to provide a reasonable timeframe for reaching the 2030 target, emissions trading in the two new sectors should start in 2025. During the first year, the regulated entities should be required to hold a greenhouse gas emissions permit and to report their emissions for the years 2024 and 2025. The issuance of allowances and compliance obligations for these entities should be applicable as from 2026. This sequencing will allow starting emissions trading in the sectors in an orderly and efficient manner. It would also allow the EU funding and Member State measures to be in place to ensure a socially fair introduction of the EU emissions trading into the two sectors so as to mitigate the impact of the carbon price on vulnerable households and transport users.
- (45) Due to the very large number of small emitters in the sectors of buildings and road transport, it is not possible to establish the point of regulation at the level of entities directly emitting greenhouse gases, as is the case for stationary installations and aviation. Therefore, for reasons of technical feasibility and administrative efficiency, it is more appropriate to establish the point of regulation further upstream in the supply chain. The act that triggers the compliance obligation under the new emissions trading should be the release for consumption of fuels which are used for combustion in the sectors of buildings and road transport, including for combustion in road transport of greenhouse gases for geological storage. To avoid double coverage, the release for consumption of fuels which are used in other activities under Annex I to Directive 2003/87/EC should not be covered.
- (46) The regulated entities in the two new sectors and the point of regulation should be defined in line with the system of excise duty established by Council Directive (EU) 2020/262<sup>23</sup>, with the necessary adaptations, as that Directive already sets a robust control system for all quantities of fuels released for consumption for the purposes of paying excise duties. End-users of fuels in those sectors should not be subject to obligations under Directive 2003/87/EC.

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<sup>23</sup> Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58 27.2.2020, p. 4).

- (47) The regulated entities falling within the scope of the emissions trading in the sectors of buildings and road transport should be subject to similar greenhouse gas emissions permit requirements as the operators of stationary installations. It is necessary to establish rules on permit applications, conditions for permit issuance, content, and review, and any changes related to the regulated entity. In order for the new system to start in an orderly manner, Member States should ensure that regulated entities falling within the scope of the new emissions trading have a valid permit as of the start of the system in 2025.
- (48) The total quantity of allowances for the new emissions trading should follow a linear trajectory to reach the 2030 emissions reduction target, taking into account the cost-efficient contribution of buildings and road transport of 43 % emission reductions by 2030 compared to 2005. The total quantity of allowances should be established for the first time in 2026, to follow a trajectory starting in 2024 from the value of the 2024 emissions limits (1 109 304 000 CO<sub>2</sub>t), calculated in accordance with Article 4(2) of Regulation (EU) 2018/842 of the European Parliament and of the Council<sup>24</sup> on the basis of the reference emissions for these sectors for the period from 2016 to 2018. Accordingly, the linear reduction factor should be set at 5,15 %. From 2028, the total quantity of allowances should be set on the basis of the average reported emissions for the years 2024, 2025 and 2026, and should decrease by the same absolute annual reduction as set from 2024, which corresponds to a 5,43 % linear reduction factor compared to the comparable 2025 value of the above defined trajectory. If those emissions are significantly higher than this trajectory value and if this divergence is not due to small-scale differences in emission measurement methodologies, the linear reduction factor should be adjusted to reach the required emissions reduction in 2030.

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<sup>24</sup> Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ L 156, 19.6.2018, p. 26).



- (49) The auctioning of allowances is the simplest and the most economically efficient method for allocating emission allowances, which also avoids windfall profits. Both the buildings and road transport sectors are under relatively small or non-existent competitive pressure from outside the Union and are not exposed to a risk of carbon leakage. Therefore, allowances for buildings and road transport should only be allocated via auctioning without there being any free allocation.
- (50) In order to ensure a smooth start to emissions trading in the buildings and road transport sectors and taking into account the need of the regulated entities to hedge or buy ahead allowances to mitigate their price and liquidity risk, a higher amount of allowances should be auctioned early on. In 2026, the auction volumes should therefore be 30 % higher than the total quantity of allowances for 2026. This amount would be sufficient to provide liquidity, both if emissions decrease in line with reduction needs, and in the event emission reductions only materialise progressively. The detailed rules for this front-loading of auction volume are to be established in a delegated act related to auctioning, adopted pursuant to Article 10(4) of Directive 2003/87/EC.
- (51) The distribution rules on auction shares are highly relevant for any auction revenues that would accrue to the Member States, especially in view of the need to strengthen the ability of the Member States to address the social impacts of a carbon price signal in the buildings and road transport sectors. Notwithstanding the fact that the two sectors have very different characteristics, it is appropriate to set a common distribution rule similar to the one applicable to stationary installations. The main part of allowances should be distributed among all Member States on the basis of the average distribution of the emissions in the sectors covered during the period from 2016 to 2018.

(52) The introduction of the carbon price in road transport and buildings should be accompanied by effective social compensation, especially in view of the already existing levels of energy poverty. About 34 million Europeans reported an inability to keep their homes adequately warm in 2018, and 6,9 % of the Union population have said that they cannot afford to heat their home sufficiently in a 2019 EU-wide survey<sup>25</sup>. To achieve an effective social and distributional compensation, Member States should be required to spend the auction revenues on the climate and energy-related purposes already specified for the existing emissions trading, but also for measures added specifically to address related concerns for the new sectors of road transport and buildings, including related policy measures under Directive 2012/27/EU of the European Parliament and of the Council<sup>26</sup>. Auction revenues should be used to address social aspects of the emission trading for the new sectors with a specific emphasis in vulnerable households, micro-enterprises and transport users. In this spirit, a new Social Climate Fund will provide dedicated funding to Member States to support the European citizens most affected or at risk of energy or mobility poverty. This Fund will promote fairness and solidarity between and within Member States while mitigating the risk of energy and mobility poverty during the transition. It will build on and complement existing solidarity mechanisms. The resources of the new Fund will in principle correspond to 25 % of the expected revenues from new emission trading in the period 2026-2032, and will be implemented on the basis of the Social Climate Plans that Member States should put forward under Regulation (EU) 20.../nn of the European Parliament and the Council<sup>27</sup>. In addition, each Member State should use their auction revenues *inter alia* to finance a part of the costs of their Social Climate Plans.

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<sup>25</sup> Data from 2018. Eurostat, SILC [ilc\_mdcs01].

<sup>26</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1–56).

<sup>27</sup> [Add ref to the Regulation establishing the Social Climate Fund].

- (53) Reporting on the use of auctioning revenues should be aligned with the current reporting established by Regulation (EU) 2018/1999 of the European Parliament and of the Council<sup>28</sup>.
- (54) Innovation and development of new low-carbon technologies in the sectors of buildings and road transport are crucial for ensuring the cost-efficient contribution of these sectors to the expected emission reductions. Therefore, 150 million allowances from emissions trading in the buildings and road transport sectors should also be made available to the Innovation Fund to stimulate the cost-efficient emission reductions.
- (55) Regulated entities covered by the buildings and road transport emissions trading should surrender allowances for their verified emissions corresponding to the quantities of fuels they have released for consumption. They should surrender allowances for the first time for their verified emissions in 2026. In order to minimise the administrative burden, a number of rules applicable to the existing emissions trading system for stationary installations and aviation should be made applicable to emissions trading for buildings and road transport, with the necessary adaptations. This includes, in particular, rules on transfer, surrender and cancellation of allowances, as well as the rules on the validity of allowances, penalties, competent authorities and reporting obligations of Member States.
- (56) For emissions trading in the buildings and road transport sectors to be effective, it should be possible to monitor emissions with high certainty and at reasonable cost. Emissions should be attributed to regulated entities on the basis of fuel quantities released for consumption and combined with an emission factor. Regulated entities should be able to reliably and accurately identify and differentiate the sectors in which the fuels are released for consumption, as well as the final users of the fuels, in order to avoid undesirable effects, such as double burden. To have sufficient data to establish the total number of allowances for the period from 2028 to 2030, the regulated entities holding a permit at the start of the system in 2025 should report their associated historical emissions for 2024.

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<sup>28</sup> Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (OJ L 328, 21.12.2018, p. 1–77).

- (57) It is appropriate to introduce measures to address the potential risk of excessive price increases, which, if particularly high at the start of the buildings and road transport emissions trading, may undermine the readiness of households and individuals to invest in reducing their greenhouse gas emissions. These measures should complement the safeguards provided by the Market Stability Reserve established by Decision (EU) 2015/1814 of the European Parliament and of the Council<sup>29</sup> and that became operational in 2019. While the market will continue to determine the carbon price, safeguard measures will be triggered by rules-based automatism, whereby allowances will be released from the Market Stability Reserve only if concrete triggering conditions based on the increase in the average allowance price are met. This additional mechanism should also be highly reactive, in order to address excessive volatility due to factors other than changed market fundamentals. The measures should be adapted to different levels of excessive price increase, which will result in different degrees of the intervention. The triggering conditions should be closely monitored by the Commission and the measures should be adopted by the Commission as a matter of urgency when the conditions are met. This is without prejudice to any accompanying measures that Member States may adopt to address adverse social impacts.
- (58) The application of emissions trading in the buildings and road transport sectors should be monitored by the Commission, including the degree of price convergence with the existing ETS, and, if necessary, a review should be proposed to the European Parliament and the Council to improve the effectiveness, administration and practical application of emissions trading for those sectors on the basis of acquired knowledge as well as increased price convergence. The Commission should be required to submit the first report on those matters by 1 January 2028.

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<sup>29</sup> Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L 264, 9.10.2015, p. 1).

- (59) In order to ensure uniform conditions for the implementation of Articles 3gd(3), 12(3b) and 14(1) of Directive 2003/87/EC, implementing powers should be conferred on the Commission. To ensure synergies with the existing regulatory framework, the conferral of implementing powers in Articles 14 and 15 of that Directive should be extended to cover the sectors of road transport and buildings. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>30</sup>.
- (60) In order to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Articles 10(4) and 10a(8) of that Directive. Moreover, to ensure synergies with the existing regulatory framework, the delegation in Articles 10(4) and 10a(8) of Directive 2003/87/EC should be extended to cover the sectors of road transport and buildings. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts. In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>31</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified

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<sup>30</sup> Regulation (EU) No 182/2011 of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.02.2011, p. 13).

<sup>31</sup> OJ C 369, 17.12.2011, p. 14.

- (61) A well-functioning, reformed EU ETS comprising an instrument to stabilise the market is a key means for the Union to reach its agreed target for 2030 and the commitments under the Paris Agreement. The Market Stability Reserve seeks to address the imbalance between supply and demand of allowances in the market. Article 3 of Decision (EU) 2015/1814 provides that the reserve is to be reviewed three years after it becomes operational, paying particular attention to the percentage figure for the determination of the number of allowances to be placed in the Market Stability Reserve, the threshold for the total number of allowances in circulation (TNAC) that determines the intake of allowances, and the number of allowances to be released from the reserve.
- (62) Considering the need to deliver a stronger investment signal to reduce emissions in a cost-efficient manner and with a view to strengthening the EU ETS, Decision (EU) 2015/1814 should be amended so as to increase the percentage rate for determining the number of allowances to be placed each year in the Market Stability Reserve. In addition, for lower levels of the TNAC, the intake should be equal to the difference between the TNAC and the threshold that determines the intake of allowances. This would prevent the considerable uncertainty in the auction volumes that results when the TNAC is close to the threshold, and at the same time ensure that the surplus reaches the volume bandwidth within which the carbon market is deemed to operate in a balanced manner.
- (63) Furthermore, in order to ensure that the level of allowances that remains in the Market Stability Reserve after the invalidation is predictable, the invalidation of allowances in the reserve should no longer depend on the auction volumes of the previous year. The number of allowances in the reserve should, therefore, be fixed at a level of 400 million allowances, which corresponds to the lower threshold for the value of the TNAC.
- (64) The analysis of the impact assessment accompanying the proposal for this Directive has also shown that net demand from aviation should be included in the total number of allowances in circulation. In addition, since aviation allowances can be used in the same way as general allowances, including aviation in the reserve would make it a more accurate, and thus a better tool to ensure the stability of the market. The calculation of the total number of allowances in circulation should include aviation emissions and allowances issued in respect of aviation as of the year following the entry into force of this Directive.

- (65) To clarify the calculation of the total number of allowances in circulation (TNAC), Decision (EU) 2015/1814 should specify that only allowances issued and not put in the Market Stability Reserve are included in the supply of allowances. Moreover, the formula should no longer subtract the number of allowances in the Market Stability Reserve from the supply of allowances. This change would have no material impact on the result of the calculation of the TNAC, including on the past calculations of the TNAC or on the reserve.
- (66) In order to mitigate the risk of supply and demand imbalances associated with the start of emissions trading for the buildings and road transport sectors, as well as to render it more resistant to market shocks, the rule-based mechanism of the Market Stability Reserve should be applied to those new sectors. For that reserve to be operational from the start of the system, it should be established with an initial endowment of 600 million allowances for emissions trading in the road transport and buildings sectors. The initial lower and upper thresholds, which trigger the release or intake of allowances from the reserve, should be subject to a general review clause. Other elements such as the publication of the total number of allowances in circulation or the quantity of allowances released or placed in the reserve should follow the rules of the reserve for other sectors.
- (67) It is necessary to amend Regulation (EU) 2015/757 to take into account the inclusion of the maritime transport sector in the EU ETS. Regulation (EU) 2015/757 should be amended to oblige companies to report aggregated emissions data at company level and to submit for approval their verified monitoring plans and aggregated emissions data at company level to the responsible administering authority. To ensure coherence in administration and enforcement, the entity responsible for compliance with this Regulation should be the same as the entity responsible for compliance with Directive 2003/87/EC. In addition, the Commission should be empowered to adopt delegated acts to amend the methods for monitoring [...] emissions and the rules on monitoring, as well as any other relevant information set out in Regulation (EU) 2015/757, to ensure the effective functioning of the EU ETS at administrative level and to supplement Regulation (EU) 2015/757 with the rules for the approval of monitoring plans and changes thereof by administering authorities, with the rules for the monitoring, reporting and submission of the aggregated emissions data at company level and with the rules for the verification of the aggregated emissions data at company level and for the issuance of a verification report in respect of the aggregated emissions data at company level. The data monitored, reported and verified under

Regulation (EU) 2015/757 might also be used for the purpose of compliance with other Union law requiring the monitoring, reporting and verification of the same ship information.

(67a) Since the objectives of this Directive to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient way in a manner commensurate with this economy-wide net greenhouse gas emissions reduction target for 2030 through an extended and amended Union wide market based mechanism cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives<sup>32</sup>.

(68) Directive 2003/87/EC, Decision (EU) 2015/1814 and Regulation (EU) 2015/757 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Amendments to Directive 2003/87/EC**

Directive 2003/87/EC is amended as follows:

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

“1. This Directive shall apply to the activities listed in Annexes I and III, and to the greenhouse gases listed in Annex II. Where an installation that is included in the scope of the EU ETS due to the operation of combustion units with a total rated thermal input exceeding 20 MW changes its production processes to reduce its greenhouse gas emissions and no longer meets that threshold, the Member State shall provide the operator with the option to [...]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. The Member State concerned shall notify to the Commission changes compared to the list submitted to the Commission pursuant to Article 11(1).

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<sup>32</sup> Standard recital on subsidiarity and proportionality.



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

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

(2) Article 3 is amended as follows:

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

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

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

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

(c) point (u) is deleted;

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

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

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

(w) ‘administering authority in respect of a shipping company’ means the authority responsible for administering the EU ETS in respect of a shipping company in accordance with Article 3gd;”;

(wa) ‘port of call’ means the port where a ship stops to load or unload cargo or to embark or disembark passengers, considering that 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, stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities, and stops of containerships in a neighbouring container transshipment port listed in the implementing act adopted pursuant to Article 3g(1) are excluded.;

(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 .

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

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

(y) ‘fuel’ for the purposes of Chapter IVa shall mean any 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;

(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.”;

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

**“AVIATION AND MARITIME TRANSPORT”**

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

*“Article 3a*

**Scope**

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

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

*“Article 3f*

**Monitoring and reporting plans**

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

*Article 3g*

**Scope of application to maritime transport activities**

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

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

Those implementing acts shall list neighbouring container transshipment ports located outside the Union but less than 300 nautical miles of the Union territory, where the share of transshipment of containers, measured in twenty-foot equivalent unit, exceeds 65% of the total container traffic of that port during the most recent twelve-month period for which relevant data are available. For the purpose of this paragraph containers shall be considered as transhipped when they are unloaded from a ship to the port for the sole purpose of loading them on another ship. The list shall not include ports located in a third country that effectively apply measures equivalent to this Directive.

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

2. Articles 9, 9a and 10 shall apply to maritime transport activities in the same manner as they apply to other activities covered by the EU ETS.”

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

*“Article 3ga*

### **Phase-in of requirements for maritime transport**

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

- (a) 20 % of verified emissions reported for [...] [the first full year after the deadline of transposition of this amending Directive];
- (b) 45 % of verified emissions reported for [...] [the second full year after the deadline of transposition of this amending Directive];
- (c) 70 % of verified emissions reported for [...] [the third full year after the deadline of transposition of this amending Directive];
- (d) 100 % of verified emissions reported for [...] [the fourth full year after the deadline of transposition of this amending Directive] and each year thereafter.

To the extent that fewer allowances are surrendered compared to the verified emissions from maritime transport for the years [...] [the first three years after the deadline of transposition of this amending Directive], once the difference between verified emissions and allowances surrendered has been established in respect of each year, a corresponding quantity of allowances shall be cancelled rather than auctioned pursuant to Article 10.

#### Article 3gaa

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

Member States shall take the necessary measure to ensure that when the ultimate responsibility for the purchase of the fuel and/or the operation of the ship is assumed [...] by a different entity than the shipping company, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances. Operation of the ship for the purposes of this Article means determining the cargo carried, [...], the route and the speed of the ship. [...] The shipping company remains the responsible entity for surrendering allowances as required under Article 3ga and Article 12 of this Directive and for overall compliance with the provisions of national law transposing this Directive. Member States shall ensure that shipping companies under their responsibility comply with their obligations to surrender allowances, notwithstanding their entitlement to be reimbursed by the commercial operators for the cost arising from the surrender.

#### Article 3gb

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

In respect of emissions from maritime transport activities listed in Annex I, the administering authority **in the respect of a shipping company** shall ensure that a shipping company under its responsibility monitors and reports the relevant parameters during a reporting period, and submits aggregated emissions data at company level to the administering authority in line with Chapter II of Regulation (EU) 2015/757 of the European Parliament and of the Council (\*).

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

*Article 3gc*

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

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

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

*Article 3gd*

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

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

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

[...]

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



3. The Commission shall adopt implementing acts to establish detailed rules relating to the administration of shipping companies by administering authorities under this Directive. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).”

*Article 3ge*

**Reporting and review**

1. [...] In the event of the adoption by the International Maritime Organization of a global market-based measure to reduce greenhouse gas emissions from maritime transport, the Commission shall review this Directive to take such progress into account. [...] To this end, it shall without delay and in any event before the 2028 global stocktake and no later than 30 September 2028 [...], present a report to the European Parliament and to the Council [...]. The Commission shall in that report examine that measure as regards its ambition in light of the objectives of the Paris Agreement and its overall environmental integrity. It shall also examine any issue related to the possible co-existence or alignment of this Directive with that measure. Where appropriate, the [...] report shall be accompanied by a legislative proposal to [...] amend this Directive [...], consistent with the Union economy-wide greenhouse gas emission commitments, and with the aim of preserving the environmental integrity and effectiveness of the Union climate action, ensuring appropriate implementation of a global market-based measure adopted by the International Maritime Organization, while taking into account the need for coherence between the EU ETS and the global market-based measure and avoidance of any resulting significant double burden.
2. The Commission shall monitor the implementation of this Chapter in relation to maritime transport, in particular to detect evasive behaviours in order to prevent this at an early stage, and report on possible trends as regards companies seeking to avoid being bound by the requirements of this Directive. If appropriate, the Commission shall propose measures to [...] address these trends.”

3. No later than 31 December 2026, the Commission shall present a report to the European Parliament and to the Council in which it shall examine the feasibility and cost-effectiveness of the inclusion in this Directive:

- a) of additional greenhouse gas emissions from maritime transport,
- b) of emissions from ships [...] **below 5000 gross tonnage but not below 400 gross tonnage.**

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

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

*“Article 3h*

#### **Scope**

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

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

“(e) an obligation to surrender allowances equal to the total emissions of the installation in each calendar year, as verified in accordance with Article 15, within four months following the end of that year.”;

(9) Article 8 is amended as follows:

- (a) the words “of the European Parliament and of the Council(1)” and footnote (1) are deleted;
- (b) the following paragraph is added:

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

- (10) in Article 9, the following paragraph is added:

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 (79 million allowances if entry into force in 2023 / 75 million allowances if entry into force in 2024)] for maritime transport. Starting in [the year following entry 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]. The linear factor shall also apply to the allowances corresponding to the maritime transport activities’ average emissions reported in accordance with Regulation (EU) 2015/757 for 2018 and 2019 that are addressed in Article 3g.

The Commission shall publish the Union-wide quantity of allowances within 3 months of [date of entry into force of the amendment to be inserted].”;

- (11) Article 10 is amended as follows:

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

“2 % of the total quantity of allowances between 2021 and 2030 shall be auctioned to establish a fund to improve energy efficiency and modernise the energy systems of certain Member States (‘the beneficiary Member States’) as set out in Article 10d (‘the Modernisation Fund’). The beneficiary Member States for this amount of allowances shall be the Member States with a GDP per capita at market prices below 60 % of the Union average in 2013. The funds corresponding to this quantity of allowances shall be distributed in accordance with Part A of Annex IIb.

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

- (b) in paragraph 3, the first and second sentence are replaced by the following:

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

- (c) in paragraph 3, point (h) is replaced by the following:

“(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;”;

- (ca) in paragraph 3, subparagraph 2 is replaced by the following:

“Member States shall be deemed to have fulfilled the provisions of this paragraph if they have in place and implement fiscal or financial support policies, including in particular in developing countries, or domestic regulatory policies, which leverage financial support, established for the purposes set out in the first subparagraph and which have a value equivalent to the revenues referred to in the first subparagraph. “;

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

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

- (12) Article 10a is amended as follows:

- (a) paragraph 1 is amended as follows:

- (i) the following [...] subparagraph[...] is inserted after the second subparagraph:

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

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

(\*\*) [*CBAM full reference*]

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

“In order to provide further incentives for reducing greenhouse gas emissions and improving energy efficiency, 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.”;

- (b) the following paragraph 1a is inserted:

“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 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).”;

- (c) paragraph 2 is amended as follows:

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

“(c) For the period from 2026 to 2030, the benchmark values shall be determined in the same manner as set out in points (a) and (d) on the basis of information submitted pursuant to Article 11 for the years 2021 and 2022 and on the basis of applying the annual reduction rate in respect of each year between 2008 and 2028.”;

(ii) in the third subparagraph, the following point (d) is added:

“(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.”;

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

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

(d) paragraphs 3 and 4 are deleted;

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

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

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

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

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

“8. 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 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. <sup>33</sup>[...]

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<sup>33</sup> In the general approach on the proposal on Refuelmaritime, the Council decided to delete the provision determining that revenues from penalties pursuant to that regulation shall be external assigned revenue.



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 CO<sub>2</sub>, as well as of innovative renewable energy and energy storage technologies; in geographically balanced locations. The Innovation Fund may also support break-through innovative technologies and infrastructure to decarbonise the maritime sector and for the production of low- and zero-carbon fuels in maritime, aviation, rail and road transport.

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

The Commission shall give special attention to projects contributing to directly or indirectly decarbonize the maritime sector and may launch calls for proposals to that end as appropriate.

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 pre-commercial scale.

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

By 31 December 2023 and every year thereafter, the Commission shall report to the Climate Change Committee referred to in Article 22a(1) on the implementation of the Innovation Fund, providing an analysis of awarded projects by sector and by Member State.

[...]

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

Subject to the agreement of applicants, following the closure of a call for proposals, the Commission shall inform Member States of the applications for funding of projects in their respective territories and shall provide them with detailed information of those applications in order to facilitate the Member States in their coordination of the support to projects. In addition, the Commission shall inform the Member States about the list of pre-selected projects prior to the award of the support.

Projects shall 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 CO<sub>2</sub>. The Innovation Fund may support projects through competitive tendering, such as Carbon Contracts for Difference. 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 sectors and technological requirements for the different types of support.

No project shall receive support via the mechanism under this paragraph that exceeds 15 % of the total number of allowances available for this purpose. These allowances shall be taken into account under paragraph 7.”;

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

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

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

(i) the following paragraph 22 is added:

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

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

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

(14) Article 10d is amended as follows:

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

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

The investments supported shall be consistent with the aims of this Directive, as well as the objectives of the Communication from the Commission of 11 December 2019 on The European Green Deal (\*) and Regulation (EU) 2021/1119 of the European Parliament and of the Council (\*\*) and the long-term objectives as expressed in the Paris Agreement. No support from the Modernisation Fund shall be provided to energy generation facilities that use fossil fuels.”;

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(\*) COM(2019) 640 final.

(\*\*) Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 (‘European Climate Law’) (OJ L 243, 9.7.2021, p. 1).”;

(b) paragraph 2 is replaced by the following:

“2. At least 80 % of the 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 industry, 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 of workers, education, job-seeking initiatives and start-ups, in dialogue with the social partners.”;

(c) paragraph 11 is replaced by the following:

“11. The investment committee shall report annually to the Commission and to the Climate Change Committee referred to in Article 22a(1) on experience with the evaluation of investments, notably in terms of emissions reductions and abatement costs. By 31 December 2024, taking into consideration the findings of the investment committee, the Commission shall review the areas for projects referred to in paragraph 2 and the basis on which the investment committee bases its recommendations.”

(14a) Article 11 is amended as follows:

(a) In paragraph 2, “28 February” is replaced by “30 June”

(15) Article 12 is amended as follows:

(a) paragraph 2 is replaced by the following:

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

(b) paragraph 2a is deleted;

- (c) paragraph 3 is replaced by the following:

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

(a) the operator of each installation surrenders a number of allowances that is equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15;

(b) each aircraft operator surrenders a number of allowances that is equal to its total emissions during the preceding calendar year, as verified in accordance with Article 15;

(c) each shipping company surrenders a number of allowances equal to its total emissions during the preceding calendar year, as verified in accordance with Article 3gc.

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

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

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

- (e) the following paragraph 3b is inserted:

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

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).”;

- (16) in Article 14(1), first subparagraph, the following sentence is added:

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

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

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

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

- (18) Article 16 is amended as follows:

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

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



- (b) the following paragraph 3a is inserted:

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

- (c) the following paragraph 11a is inserted:

“11a. In the case of a shipping company that has failed to comply with the surrender requirements for two or more consecutive reporting periods and where other enforcement measures have failed to ensure compliance, the competent authority of the Member State of the port of entry may, [...] after giving the opportunity to the shipping company concerned to submit its observations, issue an expulsion order which shall be notified to the Commission, the European Maritime Safety Agency (EMSA), the other Member States and the flag State concerned. As a result of the issuing of such an expulsion order, every Member State, with the exception of the Member State whose flag the ship is flying, shall refuse entry of the ships under the responsibility of the shipping company concerned into any of its ports until the company fulfils its surrender obligations in accordance with Article 12. Where the ship flies the flag of a Member State and enters [...] or is found [...] in one of its ports, the Member State concerned shall, after giving the opportunity to the company concerned to submit its observations, [...] detain the ship until the shipping company fulfils its obligations.

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

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

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

*“Article 18b*

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

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

- (20) In Article 30, paragraphs 2a and 5 are [...] added:

“2a. The measures applicable to CBAM sectors shall be kept under review in light of the application of Regulation xxx [reference to CBAM]. Before 1 January 2026 and every two years thereafter as part of its reports to the European Parliament and the Council pursuant to Article 30 of [the CBAM regulation], the Commission shall assess the impact of the mechanism on the risk of carbon leakage, including in relation to exports. The report shall assess the need for taking additional measures, including legislative measures, to address carbon leakage risks. The report shall, if appropriate, be accompanied by a legislative proposal.”;

“5. By 31 December 2026, the Commission shall submit a report assessing the impact and feasibility of a compulsory inclusion in the Emissions Trading System under Annex 1 of Directive 2003/87/EC from 2031 onwards of installations for the incineration of [...] municipal waste [...], taking into account relevant criteria such as the effects on the internal market, potential distortions of competition, environmental integrity, alignment with the objectives of the Waste Framework Directive<sup>34</sup> and robustness and accuracy with respect to the monitoring and calculation of emissions. The report shall, if appropriate, be accompanied by a legislative proposal [...] to amend this Directive.”

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

“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 [...] and III.

*Article 30b*

**Greenhouse gas emissions permits**

1. Member States shall ensure that, from 1 January 2025, no regulated entity carries out the activity referred to in Annex III unless that regulated entity holds a permit issued by a competent authority in accordance with paragraphs 2 and 3.
2. An application to the competent authority by the regulated entity pursuant to paragraph 1 for a greenhouse gas emissions permit under this Chapter shall include, at least, a description of:

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<sup>34</sup> [Reference to be inserted]

- (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:
- (a) the name and address of the regulated entity;
  - (b) a description of the means by which the regulated entity releases the fuels for consumption in the sectors covered by this Chapter;
  - (c) a list of the fuels the regulated entity releases for consumption in the sectors covered by this Chapter;
  - (d) a monitoring plan that fulfils the requirements established by the acts referred to in Article 14.;
  - (e) reporting requirements established by the acts referred to in Article 14;
  - (f) an obligation to surrender allowances, issued under this Chapter, equal to the total emissions in each calendar year, as verified in accordance with Article 15, 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 [...] **2027** shall decrease in a linear manner beginning in 2024. The 2024 value shall be defined as the 2024 emissions limits, calculated on the basis of the reference emissions under Article 4(2) of Regulation (EU) 2018/842 of the European Parliament and of the Council(\*) for the sectors covered by this Chapter and applying the linear reduction trajectory for all emissions within the scope of that Regulation. The quantity shall decrease each year after 2024 by a linear reduction factor of 5,15 %. By 1 January 2024, the Commission shall publish the Union-wide quantity of allowances for the year [...] **2027**.
2. The Union-wide quantity of allowances issued under this Chapter each year from 2028 shall decrease in a linear manner beginning from 2025 on the basis of the average emissions reported under this Chapter for the years 2024 to 2026. The quantity of allowances shall decrease by a linear reduction factor of 5,43 %, 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 Union-wide quantity of allowances for the year 2028 and, if required, the adjusted linear reduction factor.

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

*Article 30d*

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

1. 1. From [...] **2027**, allowances covered by this Chapter shall be auctioned, unless they are placed in the Market Stability Reserve established by Decision (EU) 2015/1814. The allowances covered by this Chapter shall be auctioned separately from the allowances covered by Chapters II [...] and III.
2. The auctioning of the allowances under this Chapter shall start in [...] **2027** with a volume corresponding to 130 % of the auction volumes for [...] **2027** established on the basis of the Union-wide quantity of allowances for that year and the respective auction shares and volumes pursuant to paragraph 3, **4 and 5** [...]. 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 [...] **2029** to 2030. The conditions for these early auctions shall be set in accordance with paragraph **6** and Article 10(4).

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

3. 150 million allowances issued under this Chapter shall be auctioned and all revenues from these auctions made available for the 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 [...] **should use those revenues, or the equivalent in financial value of these 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 encourage a shift to public forms of transport and improve multimodality, or to provide financial support in order to address social aspects concerning low and middle-income transport users.

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 **referred to in the first subparagraph** generated from the auctioning of allowances referred to in this Chapter.

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

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

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

(\*\*) [*insert reference*]

#### *Article 30e*

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

1. Article 12 shall apply to the emissions, regulated entities and allowances covered by this Chapter with the exception of Article 12, paragraphs (2a), (3), (3a), paragraph (4), third and fourth sentence, and paragraph (5). For this purpose:
  - (a) any reference to emissions shall be read as if it were a reference to the emissions covered by this Chapter;



- (b) any reference to operators of installations shall be read as if it were a reference to the regulated entities covered by this Chapter;
  - (c) any reference to allowances shall be read as if it were a reference to the allowances covered by this Chapter.
2. From 1 January [...] **2028**, Member States shall ensure that, by 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 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 [...] 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;
- (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.

**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, [...] 50 million allowances covered by this Chapter **shall be released** from the Market Stability Reserve in accordance with Article 1a(7) of Decision (EU) 2015/1814.

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

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, 150 million allowances covered by this Chapter **shall be released** from the Market Stability Reserve in accordance with Article 1a(7) of Decision (EU) 2015/1814.
3. **When the condition referred to in paragraph 1 or 2 of this Article has been met, additional allowances shall not be released pursuant to the same paragraph earlier than 12 months thereafter.**
4. **Where the condition in paragraph 1 or 2 has been met and paragraph 3 is not applicable, the Commission shall promptly publish in the Official Journal the date on which the condition in paragraphs 1 or 2 were met.**

**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 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.”;

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

*Article 2*

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

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

- (1) Article 1 is amended as follows:
- (a) in paragraph 4, the second sentence is replaced by the following:

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

- (b) the following paragraph 4a is inserted:

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

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

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

“5. In any given year, if the total number of allowances in circulation is between 833 million and 1 096 million, a number of allowances equal to the difference between the total number of allowances in circulation, as set out in the most recent publication as referred to in paragraph 4 of this Article, and 833 million, shall be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC and shall be placed in the reserve over a period of 12 months beginning on 1 September of that year. If the total number of allowances in circulation is above 1 096 million allowances, the number of allowances to be deducted from the volume of allowances to be auctioned by the Member States under Article 10(2) of Directive 2003/87/EC and to be placed in the reserve over a period of 12 months beginning on 1 September of that year shall be equal to 12 % of the total number of allowances in circulation. By way of derogation from the last sentence, until 31 December 2030, the percentage shall be doubled.

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

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

- (2) the following Article 1a is inserted:

*“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 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 **starting one month after the date on which the conditions were met according to the publication thereof in the Official Journal [...]** pursuant to Article 30h of Directive 2003/87/EC.
8. Article 1(8) and Article 3 shall apply to the allowances covered by Chapter IVa of Directive 2003/87/EC.”.

### *Article 3*

***[Article 3 will be split from this amending Directive and become a self-standing Regulation to amend Regulation (EU) 2015/757 – text moved to after Article 8<sup>35</sup>]***

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<sup>35</sup> Cf. WK 7351/2022 ADD 2



#### Article 4

##### **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with [...] this Directive by 31 December 2023 at the latest. They shall forthwith communicate to the Commission the text of those provisions.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 5

##### **Transitional provisions**

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

#### Article 6

[...] <sup>36</sup>

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<sup>36</sup> As a consequence of the splitting of the amendments to Regulation (EU) 2015/757 from the Directive, Article 6 is to be deleted. In substance replaced by Article 2 of the amending Regulation as set out below.

*Article 7*

**Entry into force and date of application of Article 2**

1. This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. Article 2 shall apply from 1 January 2024<sup>37</sup>.

*Article 8*

**Addressees**

This Directive is addressed to the Member States. [...]

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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<sup>37</sup> This replaces the reference to article 2 in the provision of transposition. The date mentioned ensures that the changes in Article 2 starts to apply at the same time as the national measures transposing article 1.

**Amendments to Regulation (EU) 2015/757 in order to provide for the inclusion of maritime shipping activities in the EU ETS and of other greenhouse gases than CO<sub>2</sub><sup>38</sup>**

**Article 1**

**<sup>39</sup>Regulation (EU) 2015/757 is amended as follows:**

(-2) Throughout the Regulation, except in Articles 1, 2, 3, points (a) and (r), Article 21 (5), Annexes I and II, the words “CO<sub>2</sub> emissions” are replaced by the words “greenhouse gas emissions” and the words “CO<sub>2</sub> emitted” are replaced by the words “greenhouse gases emitted”.

(-1) Article 1 is replaced by the following:

“This Regulation lays down rules for the accurate monitoring, reporting and verification of greenhouse gas emissions and of other relevant information from ships arriving at, within or departing from ports under the jurisdiction of a Member State, in order to promote the reduction of greenhouse gas emissions from maritime transport in a cost effective manner.”

(0) In Article 2, paragraph 1 is replaced by the following:

“1. This Regulation applies to ships of 5,000 gross tonnage and above in respect of the greenhouse gas emissions released during their voyages from their last port of call to a port of call under the jurisdiction of a Member State and from a port of call under the jurisdiction of a Member State to their next port of call, as well as within ports of call under the jurisdiction of a Member State.

1a. The greenhouse gasses covered by this Regulation are:

a) carbon dioxide (CO<sub>2</sub>),

b) with regards to emissions from [1 January 2024] methane (CH<sub>4</sub>), and

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<sup>38</sup> Recitals to added.

<sup>39</sup> Suggestions included from WK 7351/2022 ADD 1.

c) with regards to emissions from [1 January 2024] nitrous oxides (N<sub>2</sub>O).

Where this Regulation refers to total aggregated amounts of emissions or greenhouse gases emitted, it shall be understood as referring to the total aggregated amounts of each gas separately<sup>40</sup>”;

(1) Article 3 is amended as follows:

(a) Point (a) is replaced by the following

‘(a) Greenhouse gas emissions’ means the release of the greenhouse gasses covered by the obligations of this Regulation in accordance with Article 2(1a) [...] by ships;”;

(b) Points (b), (d) and (m) are replaced by the following:

“(b) ‘port of call’ means a “port of call” as defined in point (wa) of Article 3 of Directive 2003/87/EC ”;<sup>41</sup>

“(d) ‘company’ means **the** shipping company as defined in Article 3(v) of Directive 2003/87/EC of the European Parliament and of the Council”;

“(m) ‘reporting period’ means the period from 1 January until 31 December inclusive. For voyages starting and ending in two different calendar years, the respective data shall be accounted under the calendar year concerned;”;

(c) the following points (q) and (r) are added:

“(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\*;

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<sup>40</sup> To ensure that each gas is reported separately throughout the Regulation which would enable a total aggregated amount of CO<sub>2</sub> equivalent emissions to be established.

<sup>41</sup> In line with indications in WK 7351/2022 the changes relating to transshipment ports needs to be reflected also in the MRV Regulation.

(r) ‘aggregated emissions data at company level’ means the sum of the greenhouse gas emissions relating to gases listed in Annex I of Directive 2003/87/EC with regard to maritime transport activities and to be reported under that Directive, in respect of all ships under its responsibility during the reporting period.

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

(2) in Article 4, the following paragraph 8 is added:

“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.”;

(3) in Article 5, paragraph 2 is replaced by the following:

‘2. The Commission is empowered to adopt delegated acts in accordance with Article 23 to amend [...] Annexes I and [...] II, in order to take into account the inclusion of methane and nitrous oxides emissions in the scope of this Regulation, revisions of Directive 2003/87/EC, **including alignment with the implementing acts adopted under Article 14(1) 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.

The Commission shall adopt such delegated acts amending Annexes I and II as is necessary for the inclusion of methane and nitrous oxides emissions into the scope of this Regulation by [1 October 2023]. The methods set out in Annex I and the rules set out in Annex II shall, where appropriate, be aligned with the methods and rules of Regulation [xxx/yyyy] on [FuelEU Maritime, 2021/0210 (COD)].”;

(4) Article 6 is amended as follows:

(-a) paragraph 3, point (b) is replaced by the following:

“(b) the name of the company and the address, telephone and e-mail details of a contact person and the IMO unique company and registered owner identification number”;

(a) paragraph 5 is replaced by the following:

“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).”;

(b) the following paragraphs 6, 7 and 8 are added:

“6. [...] By [1 April 2024], 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 and which shall reflect the inclusion of methane and nitrous oxides emissions in the scope of this Regulation.

7. Notwithstanding paragraph 6, for ships falling under the scope of this Regulation for the first time after [1 January 2024] [...], 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. By [insert date two years after entry into force of this amending Regulation [...], 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 [1 January 2024] [...], 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 shall by [1 October 2023] adopt delegated acts in accordance with Article 23 to amend the provisions concerning the rules for monitoring plans as contained in Articles 6, 7, 8, 9 and 10 to take account of the inclusion of methane and nitrous oxides emissions in the scope of this Regulation.”;

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.”;

(5) Article 7 is amended as follows:

(a) in paragraph 4, the second sentence is replaced by the following:

“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.”;

(b) the following paragraph 5 is added:

“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.”;

(6) in Article 10, first subparagraph, the following point (k) is added<sup>42</sup>:

“(k) total aggregated [...] emissions of greenhouse gases covered by Directive 2003/87/EC in relation to maritime transport activities in accordance with Annex I of that Directive to be reported under that Directive [...] in relation to maritime transport activities.”;

(6a) In Article 11, paragraph 2 is replaced by the following:

“2. Where there is a change of company, the previous company shall submit to their responsible administering authority, to the authorities of the flag States concerned for ships flying the flag of a Member State, to the new company and to the Commission, as close as practical to the day of the completion of the change and no later than three months thereafter, a report covering the same elements as the emissions report but limited to the period corresponding to the activities carried out under its responsibility.”;

(6b) In Article 11, the following paragraph is added:

“4. The Commission is empowered to adopt delegated acts in accordance with Article 23 to amend the provisions concerning the rules for reporting as contained in Articles 11, 11a and 12 to take account of the inclusion of methane and nitrous oxides emissions in the scope of this Regulation. The first such delegated act shall be adopted by [1 October 2023].”;

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<sup>42</sup> Text adjusted to take into account the inclusion on non CO2 emissions.



(7) the following Article 11a is inserted:

*“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.

Starting from 2025 and by 31 March of each year, companies shall submit to their responsible administering authority, to the authorities of the flag States concerned for ships flying the flag of a Member State and to the Commission an emissions report concerning the [...] emissions of greenhouse gases covered by Directive 2003/87/EC in relation to maritime transport activities in accordance with Annex I of that Directive and other relevant information for the entire reporting period for each ship under their responsibility, which has been verified as satisfactory by a verifier in accordance with Article 13. The administering authority may require companies to submit their emissions reports by a date earlier than 31 March, but not earlier than by 28 February.

2. **Starting from 2025** [...], 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 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.”;

(8) Article 12 is amended as follows:

- (a) the title is replaced by the following:

**“Format of the emissions report and reporting of aggregated emissions data at company level”;**

- (b) paragraph 1 is replaced by the following:

“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.”;

(9) Article 13 is amended as follows:

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

“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.”;

- (b) the following paragraphs 5 and 6 are added:

“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.”;

(10) Article 14 is amended as follows:

(a) in paragraph 2, point (d) is replaced by the following:

“(d) the calculations leading to the determination of the overall [...] greenhouse gases emissions and of the total aggregated [...] emissions of greenhouse gases covered by Directive 2003/87/EC in relation to maritime transport activities in accordance with Annex I of that Directive to be reported under that Directive [...] in relation to maritime transport activities;”;

(b) the following paragraph 4 is added:

“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).”;

(11) in Article 15, the following paragraph 6 is added:

“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.”;

(12) in Article 16, paragraph 1 is replaced by the following:

“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.”;

(13) in Article 20, paragraph 3 is replaced by the following<sup>43</sup>:

“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 and enters [...] or is found [...] in one of its ports, the Member State concerned shall, after giving the opportunity to the company concerned to submit its observations, [...] detain the ship order the ship to be detained until the company fulfils its obligations.

Where a ship that flies the flag of a Member is found with a failure referred to in the first subparagraph while in one of the ports of the Member State whose flag the ship is flying, the Member State concerned may, after giving the opportunity to the company concerned to submit its observations, issue a flag detention order until the shipping company fulfils its obligations. It shall inform the Commission, the EMSA and the other Member States thereof. [...]

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<sup>43</sup> To align with the wording of the ETS Directive.

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.”

(13a) In Article 20 (5), the following subparagraph is added:

“The possibility to derogate under this paragraph shall not apply to a Member State whose responsible authority is the administering authority of a shipping company.”;

(13b) In Article 21, paragraph 2 (a) is replaced by the following:

“(a) the identity of the ship (name, company, IMO identification number and port of registry or home port)”;

(13c) In Article 21, paragraph 5 is amended as follows:

“5. The Commission shall every two years assess the maritime transport sector's overall impact on the global climate including through non-CO2-related emissions or effects from other greenhouse gases and of particles with a global warming potential not covered by this Regulation.”;

(13d) The following Article is inserted:

*“Article 22a*

*Review*

The Commission shall, no later than 31 December 2025, review this Regulation, taking into account in particular further experience gained in its implementation. The review shall include an assessment of the appropriateness of including ships [...] **below 5000 gross tonnage but not below 400 gross tonnage** in the scope of this Regulation with a view to a possible subsequent inclusion thereof in Directive 2003/87/EC or to proposing other measures to reduce greenhouse gas emissions from such ships. The review shall, if appropriate, be accompanied by a proposal to amend this Regulation.”.

(14) Article 23 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

“The power to adopt delegated acts referred to in [...] 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].”;

(b) in paragraphs 3 and 5, the words “Articles 5(2), 15(5), 16(3)” are replaced by the words “Articles 5(2), 6(8), 7(5), 11a(4), 13(6) 15(5), 15(6) and 16(3)”.

(c) paragraph 5 the following subparagraph is added:

However, the last sentence of the first subparagraph shall not apply to delegated acts adopted by 1 October 2023 pursuant to the second subparagraph of Article 5(2), the second subparagraph of Article 6(8), Article 11(4) and Article 15(5).

## **Article 2**

### **Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. It shall apply from the date of entry into force. However, Article 1, paragraph (1), point (b) shall apply from 1 January 2024.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

## ANNEX

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

(a) Points 1 and **3** are replaced by the following:

“1. Installations or parts of installations used for research, development and testing of new products and processes [...] are not covered by this Directive. [...] Installations, where during the preceding relevant five year period referred to in Article 11(1), second subparagraph, emissions from the combustion of biomass that complies with the criteria set out pursuant to Article 14 contribute on average to more than 95 % of the total average greenhouse gas emissions, are not covered by this Directive.

**3.** When the total rated thermal input of an installation is calculated in order to decide upon its inclusion in the EU ETS, the rated thermal inputs of all technical units which are part of it, in which fuels are combusted within the installation, shall be added together. These units may include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units. Units with a rated thermal input under 3 MW shall not be taken into account for the purposes of this calculation.”;

(b) the table is amended as follows:

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

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

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

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

(3) “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	(4) Carbon dioxide" ;
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**(iv) The eighteenth row is replaced by the following:**

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

“Production of hydrogen (H <sub>2</sub> ) and synthesis gas with a production capacity exceeding 25 tonnes per day	Carbon dioxide" ;
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**(vi) The twenty-seventh row is replaced by the following:**

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

<p>“Maritime transport</p> <p>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</p>	<p>[...] <u>Carbon dioxide</u>”;</p>
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(1) Annex IIb to Directive 2003/87/EC is replaced by the following:

*“ANNEX IIb*

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

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

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

	Share
Bulgaria	5,0 %
Czechia	12,9 %
Estonia	2,2 %
Greece	10,3 %
Croatia	2,3 %
Latvia	1,1 %
Lithuania	1,9 %
Hungary	5,9 %
Poland	34,8 %
Portugal	8,8 %
Romania	9,9 %
Slovakia	4,9 %

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

*“ANNEX III*

**ACTIVITY COVERED BY CHAPTER IVa**

Activity:	Greenhouse gases
1. Release for consumption of fuels which are used for combustion in the sectors of buildings and road transport.	Carbon dioxide (CO <sub>2</sub> )
This activity shall not include:	
(a) the release for consumption of fuels used in the activities set out in Annex I to this Directive, except if used for combustion in the activities of transport of greenhouse gases for geological storage (activity row twenty seven);	
(b) the release for consumption of fuels for which the emission factor is zero.	
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:	
(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;	
(b) Road Transportation (source category code 1A3b), excluding the use of agricultural vehicles on paved roads;	
(c) Commercial / Institutional (source category code 1A4a);	
(d) Residential (source category code 1A4b).	

**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:

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

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

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

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

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

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

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

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

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

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

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

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

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

**(a) the following Part C is added:**

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

**Monitoring of emissions**

Emissions shall be monitored by calculation.

## Calculation

Emissions shall be calculated using the following formula:

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

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

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

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

## Reporting of emissions

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

A. Data identifying the regulated entity, including:

- name of the regulated entity;
- its address, including postcode and country;
- type of the fuels it releases for consumption and its activities through which it releases the fuels for consumption, including the technology used;
- address, telephone, fax and email details for a contact person; and
- name of the owner of the regulated entity, and of any parent company.

B. For each type of fuel released for consumption and which is used for combustion in the 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.”;

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

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

**General Principles**

1. Emissions corresponding to the activity referred to in Annex III shall be subject to verification.

2. The verification process shall include consideration of the report pursuant to Article 14(3) and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, and in particular:

- (a) the reported fuels released for consumption and related calculations;
- (b) the choice and the employment of emission factors;
- (c) the calculations leading to the determination of the overall emissions.

3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the regulated entity to show that:

(a) the reported data is free of inconsistencies;

(b) the collection of the data has been carried out in accordance with the applicable scientific standards; and

(c) the relevant records of the regulated entity are complete and consistent.

4. The verifier shall be given access to all sites and information in relation to the subject of the verification.

5. The verifier shall take into account whether the regulated entity is registered under the Union Eco-Management and Audit Scheme (EMAS).

## **Methodology**

### **Strategic analysis**

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

### **Process analysis**

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

### **Risk analysis**

8. The verifier shall submit all the means through which the fuels are released for consumption by the regulated entity to an evaluation with regard to the reliability of the data on the overall emissions of the regulated entity.



9. On the basis of this analysis the verifier shall explicitly identify any element with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those elements with a high risk of error and the abovementioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the regulated entity with a view to minimising the degree of uncertainty.

#### Report

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

#### Minimum competency requirement for the verifier

12. The verifier shall be independent of the regulated entity, carry out his or her activities in a sound and objective professional manner, and understand:

- (a) the provisions of this Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1);
- (b) the legislative, regulatory, and administrative requirements relevant to the activities being verified; and
- (c) the generation of all information related to all the means through which the fuels are released for consumption by the regulated entity, in particular, relating to the collection, measurement, calculation and reporting of data.”.