

Article 1

Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

- (1) In article 9, the second and third paragraphs are replaced by the following:
“starting in 2021, the linear factor shall be 2.2. %
2% of the total quantity of allowances until 2030 shall be auctioned in accordance with the provisions for auctions of allowances until 2030 shall be auctioned in accordance with the provisions for auctions conducted on the common auction platform set out in Regulation 1031/2010 to establish a fund to improve energy efficiency and modernize the energy systems of certain Member States as set out in Article 10d.”
- (2) The first paragraph of article 10(1) is replaced by:
“From 2021 onwards, the share of allowances to be auctioned by MS and for the Modernisation Fund shall be 57%. The total quantity of allowances to be auctioned by MS shall be distributed in accordance with para 2 below
- (3) In article 10(2):
 - In point a. “88%” is replaced by 90%
 - Point c is deleted; and
 - The final sentence is replaced by
“in case of a limited, one-off reduction in allowances for a Member State in accordance with decision n0 406/2009/EC the quantity of allowances to be auctioned by the MS shall be reduced accordingly.
- (4) In article 10(3) the following points are added:
 - j. to fund financial measures in favor of sectors or sub sectors that are exposed to a genuine risk of CL due to significant indirect costs that are actually incurred from GHG emissions costs passed on in electricity prices, provided that these measures meet the conditions set out in article 10a(6)
 - k. for climate financing actions in third countries, including adaptation to the impact of climate change
- (5) Article 10a(5) is replaced by the following:
In order to respect the auctioning shares set out in article 10, the sum of free allocations is necessarily limited. In every year where the sum of free allocations does not reach the maximum level that respects the MS auctioning share, the remaining allowances up to that level shall be used to prevent or limit reduction of free allocations to respect the MS auctioning shares in later years. Where, nonetheless, the maximum level is reached, free allocations shall be adjusted accordingly. Any such adjustment shall be done in a uniform manner.
- (6) The first paragraph of article 10a(6) is replaced by the following:
The MS should adopt financial measures of sectors or sub sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from GHG emission costs passed on in electricity prices, taking into account any effect on the internal market. Such financial measures to compensate part of these costs shall be in accordance with the relevant state aid rules to be adopted.
- (7) The first sentence of article 10a(7) is replaced by the following:
Allowances from the maximum amount referred to art 10a(5) which were not allocated for free up to 2020 because of the application of article 10a(11) shall be set aside for new entrants and significant production increases, together with 250 million allowances places in the MSR pursuant to art. 1(3) of decision EU 2015/...
- (8) The second sentence of art. 10a(7) is replaced by the following

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

(9) The first para of art. 10a(8) is replaced by the following

8. 400 million allowances shall be available to support innovation in low carbon technologies and processes in industrial sectors listed in annex I, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe CCS of CO₂ as well as demonstration projects of innovative renewables energy technologies, in the territory of the Union.

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

In addition, 50 million unallocated allowances from the MSR shall supplement any existing resources remaining under this paragraph for projects referred to above, with projects in all MS including small scale projects, before 2021.

Projects shall be selected on the basis of objective and transparent criteria. The Commission shall adopt implementing acts for those criteria and the measures in accordance with the procedure referred to in article 22a.

(10) Para 9 and 10 of art. 10a are deleted.

(11) Para 12 of art. 10a is replaced by the following

12. the benchmark values for free allocation shall be updated in order to avoid windfall profits and reflects technological progress in the period 2007-2008 and each later period for which free allocations are determined in accordance with art. 11(1). To this end, benchmark values set by the act adopted pursuant to art. 10a shall be reduced by 1% of the value that was set based on 2007-8 data in respect of each year between 2008 and the middle of the relevant period of free allocation, unless:

(a) on the basis of information submitted pursuant to art 11, the Commission shall identify whether the values of each benchmark calculated using the principle in art 10a differ from the annual reduction referred to above by more than 0,5% higher or lower. If so, that benchmark value shall be adjusted by 0,5% higher or lower in respect of each year between 2008 and the middle of the period for which free allocation is to be made;

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

(c) the measures referred to in art. 10(1) shall also provide for additional allocation from the new entrants reserve for significant production increases by applying the same thresholds and allocation adjustments as applied in respect of partial cessations of operation.

The Commission shall adopt an implementing act for the above para in accordance with art. 22a.

(12) Para 13 to 18 of art 10a are deleted.

(13) Para 1 and 2 of 10b are replaced by the following

1. By way of derogation from art. 10a (11), sectors and subsectors where the product

exceeds 0,2 from multiplying their intensity of trade with third countries defined as ratio between total value of exports to third countries plus the value of imports from third countries and the total market size of the EEA (annual turnover plus total import from third countries), by their emission intensity, measured in kg/CO₂ divided by their GVA (in EUR), shall be deemed to be at risk of CL. Such sectors and subsectors shall be allocated allowances free of charge at 100% of the quantity determined in accordance with the measures adopted pursuant to art. 10a.

3. Other sectors and subsectors are considered to be able to pass on more of the cost of allowances in product prices, and shall be allocated allowances free of charge at 30% of the quantity determined in accordance with the measures pursuant to art 10a.
4. By 31 december 2019, the commission shall adopt an implementing act for the preceding para for activities at a 4-digit level (NACE-4 code) in accordance with art 22a for the period up to 2030 based on data for the three most recent calendar years available.

(14) Para 1 to 7 of art 10c are replaced by the following

1. By derogation from art. 10a (1) to (5), MS which had in 2013 a GDP per capita in EUR at market price below 60% of the EU average may give a transitional free allocation to modernize installations for electricity production.
2. The MS concerned shall organize a competitive bidding process to select the investments to be financed with free allocation. This competitive bidding process shall
 - a. Comply with the principles of transparency, non discrimination, equal treatment, sound financial management, proportionality, and with competition rules;
 - b. Ensure that only projects with the total amount of investment exceeding 10mln EUR which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the infrastructure, clean technologies and modernization of the energy production, transmission and distribution sectors are eligible to bid;
 - c. Define clear, objectives, transparent and non discriminatory selection criteria for the ranking of projects, so as to ensure that projects are selected which:
 - o On the basis of a cost benefit analysis, ensure a net positive gain in terms of emission reduction and realize predetermined significant level of CO₂ reductions,
 - o Are additional, clearly respond to replacement and modernization needs and do not supply a market driven increase in energy demand,
 - o Offer best value for money, and
 - d. Provide for specific conditions, including the place of performance of the selected project being limited to the territory of the MS concerned and any other MS eligible pursuant to par. 1 where duly justified by the objective of the project;

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

3. The value of the intended investments shall at least equal the market value of the free allocation, while taking into account the need to limit directly linked price increases. The market value shall be the average of the price of allowances on the common auction platform in the preceding calendar year.
4. Transnational free allocations shall be deducted from the quantity of allowances that the MS would otherwise auction. The total free allocation shall be no more than 40% of the allowances which the MS concerned receives in the period 2021-30 pursuant to art 10

(2) a spread out in equal annual volumes over the period 2021-30.

5. Allocations to operators shall be made upon demonstration that an investment selected according to the rules of the competitive bidding process has been carried out.
6. MS shall require benefiting electricity generators and network operators to report by 28 Feb of each year on the implementation of their selected investments. MS shall report on this to the COM using common reporting format provided by the COM and the COM shall make such a report public.

(15)The following art shall be inserted:

Article 10d

Modernisation Fund

1. A fund to support investments in modernising energy system and improving energy efficiency in Member State with GDP per capita below 60% of the EU average in 2013 shall be established for the period 2021-30 and financed as set out in Article 9.
2. The fund shall be governed by an investment board and a management committee, which shall be composed of representatives from the Member States, the Commission and the EIB and shall be responsible to determine an EU-level investment policy, appropriate financing instruments and investment selection criteria.
The investments supported shall be consistent with the aim of the ETS Directive and the European Fund for Strategic Investments.
The management committee shall elect a representative from the Commission as chairman. The management committee shall strive to make decisions by consensus. A decision is not adopted, if the EIB recommends not financing an investment or the chairman votes against it.
3. The beneficiary Member State shall report annually to the management committee on investments financed by the fund. The report shall be made public and include:
 - (a) information on the investments financed per beneficiary Member State;
 - (b) an assessment of the added value in terms of energy efficiency or modernisation of the energy system achieved through the investment;
4. The fund shall also finance small- scale investment projects in the modernisation of energy systems and energy efficiency. To this end, the management committee shall develop guidelines and investment selection criteria specific to such projects.
5. The funds shall be distributed based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria, leading to the distribution set out in Annex IIb.
6. Each year, the management committee shall report to the Commission on experience with the evaluation and selection of investments. The Commission shall review the basis on which projects are selected by 31 December 2024 and, where appropriate, make proposals to the management committee."

(16)The following para is added to art. 11(1):

A list of installations covered by this directive for the 5 yrs beginning on 1st Jan 2021 shall be submitted by 30 Sep 2018, and lists for the subsequent 5 yrs shall be submitted every 5yrs thereafter. Each list shall include information on production activity, transfer of heat and gases, electricity production and emissions at subinstallation level over the 5 calendar yrs preceding its submission. Free allocations shall only be given to installations where such information is provided.

(17)The first sentence of art 13(1) is replaced by the following :

Allowances issued from 1 Jan 2013 onwards shall be valid indefinitely. Allowances issued from 1 Jan 2021 onwards shall include an indication showing in which 10year period from 1

Jan 2021 they were issued, and be valid for emissions from the first year of that period onwards.

Similarly, allowances held in the MSR and which are no longer valid shall be replaced by allowances which are valid indefinitely.

(18) Art. 13(2) is deleted

(19) In the table in annex IIa the first, seventh, eleventh, 19th lines are deleted.

(20) Annex II b is replaced by the following:

ANNEX II b

Distribution of funds from the modernization fund up to 31 Dec 2030

BG 5,84%

CZ 15,59

EE 2,78

HR 3,14

LV 1,44

LT 2,57

HU 7,12

PL 43,41

RO 11,98

SK 6,13

Art. 2

Amendments to directive 2003/87/EC in respect of delegated and implementing procedures

Directive 2003/87/EC is amended as follows:

(21) The second para of 3d(3) is replaced by the following:

The COM shall be empowered to adopt a delegated act in accordance with art. 23

(22) Art. 3f(9) is deleted

(23) The third para of art. 10(4) is replaced by the following

The COM shall be empowered to adopt a delegated act in accordance with art. 23

(24) The second para of art. 10a(1) is replaced by the following

The COM shall be empowered to adopt an implementing act in accordance with art. 22a

(25) The first para of art. 10a(7) is deleted

(26) Art. 10a(13) is deleted

(27) Art. 11a (8) is deleted

(28) Art. 11a(9) is deleted

(29) Art. 11 b (7) is deleted

(30) The second para of art. 14(1) is replaced by the following:

The COM shall be empowered to adopt a delegated act in accordance with art. 23

(31) The last para of art. 15 is replaced by the following:

The COM shall be empowered to adopt a delegated act in accordance with art. 23

(32) Art. 16(12) is replaced by the following:

12. where appropriate detailed rules shall be established in respect of the procedures referred to in this article. Those implementing acts shall be adopted in accordance with the procedure adopted in art. 22a

(33) The last sentence of art. 19(3) is replaced by the following

It shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link ETSs. The COM shall be empowered to adopt a delegated act in accordance with art. 23.

(34) The second para of art. 22 is replaced by the following:

The COM shall be empowered to adopt a delegated act in accordance with art. 23

(35)The following art shall be inserted

Art. 22a committee procedure

1. The COM shall be assisted by the committee established by art 8 of decision 93/389/EC. That committee shall be a committee within the meaning of the regulation EU no 182/2011.
2. Where reference is made to this para, art 5 of regulation EU no 182/2011 shall apply. Where the committee delivers no opinion the COM shall not adopt the draft implementing act and the third sub para of art 5(4) of regulation no 182/2011 shall apply.

(36)Art. 23 is replaced by the following

Art. 23 exercise of the delegation

1. The power to adopt delegated acts conferred on the COM subject to the conditions laid down in this article
2. The power to adopt delegated acts referred to in article 3d(3), 10(4), 14(1), 15, 19(3), 24, 24a, 25a shall be conferred on the COM for an indeterminate period of time from the (date of entry into force of the basic legislative act)
3. The delegation of powers referred to in para 2 may be revoked at any time by the EP or Council. Decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the OJ of the EU or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the COM shall notify it simultaneously to the EP and to the Council.
5. A delegated act adopted pursuant to the preceding para shall enter into force only if no objection has been expressed either the EP or the Council within the period of 2 month of notification of that act to the EP or the Council or if before the expiry of that period the EP and the Council have both informed the COM that they will not object. That period shall be extended by 2 months at the initiative of the EP or the Council.

(37)Para a and b and 24(1) are replaced by the following

In accordance with delegated acts which the COM shall be empowered to adopt in accordance with art 23, if the inclusion refers to activities and GHG which are not listed in Annex I.

(38) the second para of art 24(3) is replaced by the following

the COM shall be empowered to adopt delegated acts for such a regulation for the monitoring and reporting of emissions and activity data in accordance with art. 23

(39)The second para of art. 24a(1) is replaced by the following

Such measures shall be consistent with acts adopted pursuant to art 11b (7). The COM shall be empowered to adopt a delegated act in accordance with art. 23.

(40) Art 24 a (2) is deleted

(41)Art 25(2) is deleted

(42)Art 25a(1) is replaced by the following

1. Where a third country adopts measures for reducing the climate change impact of flights departing from that country which land in the community, the COM, after consulting with that third country, and with MS within the Committee referred to in art. 23(1), shall consider options available in order to provide for optimal interaction between the community scheme and that country's measures.
Where necessary, the COM may adopt amendments to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in annex I

or to provide for any other amendments to the aviation activities listed in annex I which are required by an agreement pursuant to the 4th subpara. The COM shall be empowered to adopt such amendment in accordance with art. 23.

(43) The para below the fourth heading of annex IV part A on the monitoring of emissions of other GHG is replaced by the following:

Standardized or acceptable methods shall be used, developed by the COM in collaboration with all relevant stakeholders and adopted pursuant to art. 14(1).

Art 3

Transposition

1. MS shall bring into force the laws, regulations and administrative provisions necessary to comply with the directive by 31 december 2018 at the latest. They shall forthwith communicate to the COM the text of those provisions and a correlation table between those provisions and this directive.
MS's provisions shall contain a reference to this directive or be accompanied by such a reference on the occasion of their official publication. MS shall determine how such reference is to be made.
2. MS shall communicate to the COM the text of the main provisions of national law which they adopt in the field covered by this directive. The COM shall inform the MS thereof.

Art 4

Transitional provision

[Art. 10, 10a(1)-(18), 10c I 11 a] of the Directive 2003/87/EC as amended by directive 2009/29/EC and decision EU 2015/... shall continue to apply until 31 Dec 2020, and art. 13(2) shall continue to apply until 30 Sep 2021.

Art 5

Entry into force

This directive shall enter into force on the 20th day following its publication in the OJ of the EU.

Art 6

Addressees

The directive is addressed to the MS.

Done at Brussels,