



Council of the
European Union

Brussels, 17 November 2016
(OR. en)

Interinstitutional File:
2015/0148 (COD)

11179/4/16
REV 4

LIMITE

CLIMA 87
ENV 495
ENER 282
TRANS 295
IND 161
COMPET 420
MI 502
ECOFIN 704
CODEC 1055

NOTE

| | |
|-----------------|--|
| From: | General Secretariat of the Council |
| To: | Delegations |
| No. prev. doc.: | 11179/3/16 CLIMA 87 ENV 495 ENER 282 TRANS 295 IND 161 COMPET 420 MI 502 ECOFIN 704 CODEC 1055 |
| No. Cion doc.: | 11065/15 CLIMA 88 ENV 499 ENER 289 TRANS 241 IND 116 COMPET 370 MI 498 ECOFIN 621 CODEC 1059 - COM(2015) 337 FINAL |
| Subject: | Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments - Revised Presidency text |

With a view to the meeting of the Working Party on the Environment (WPE) on 25 November 2016, delegations will find attached a new revised Presidency text on the operative part of the above-mentioned Commission proposal containing further Presidency proposals. New suggestions compared to the previous document (doc. 11179/3/16) are shown as **bold and underlined**. Deletions are indicated by [...]. Previous changes suggested by Presidency to the Commission proposal are underlined. The text remains subject to a number of general and/or specific scrutiny reservations.

Proposal for a
DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2003/87/EC to enhance cost-effective emission reductions and
low-carbon investments

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
[p.m. recitals and annexes to be further discussed at a later stage]

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

(-1) Throughout the Directive, the word "Community" is replaced by "Union".

(-2) Throughout the Directive, the word "scheme" is replaced by "system".

(0) In Article 3, point (h) is replaced by the following:

"(h) 'new entrant' means:

- any installation carrying out one or more of the activities indicated in Annex I, which has obtained a greenhouse gas emissions permit for the first time [within the period from 3 months before the date for submission of the list under Article 11(1), until 3 months before the date for the submission of the subsequent list under that Article], or
- any installation carrying out an activity which is included in the Union system pursuant to Article 24(1) or (2) for the first time;

(1) In Article 3d(3), the second subparagraph is replaced by the following:

“The Commission shall be empowered to adopt [...] delegated acts in accordance with Article 23” to supplement this directive concerning the detailed arrangements for the auctioning by Member States of aviation allowances in accordance with paragraphs 1 and 2 of this Article or Article 3f (8). The number of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For the period referred to in Article 3c(1), the reference year shall be 2010 and for each subsequent period referred to in Article 3c the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates. The delegated act shall ensure the respect of the principles set out by Article 10 (4) subparagraph 1.”

(2) In Article 3f, paragraph (9) is deleted.

(2a) In Article 6(1), the third subparagraph is deleted.¹

(2b) **[...] Article 8 is replaced by the following:**

"Article 8

Coordination with Directive 2010/75/EU of the European Parliament and of the Council (*)

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

¹ A general recital to be added on administrative simplification as follows: "The delegated acts referred to in the Directive, particularly in respect of Articles 14, 15 and 19, should aim to simplify rules and reduce administrative burden to the extent possible, without however undermining the environmental integrity, security or reliability of the EU ETS."

(*) **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) ."**

(3) In Article 9, the second and third paragraphs are replaced by the following:

"Starting in 2021, the linear factor shall be 2.2%."

(4) Article 10 is amended as follows:

(a) the following subparagraphs are added to paragraph 1:

"From 2021 onwards [...] the share of allowances to be auctioned [...] shall be 57%.

2% of the total quantity of allowances between 2021 and 2030 shall be auctioned to establish a fund to improve energy efficiency and modernise the energy systems of certain Member States as set out in Article 10d of this Directive ("the Modernisation Fund").

The total remaining quantity of allowances to be auctioned by Member States shall be distributed in accordance with paragraph 2.";

(b) paragraph 2 is amended as follows:

(i) in point (a), "88%" is replaced by "90%";

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

"(b) 10% of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity, growth and interconnections within the Union, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa."; [...]

(iii) point (c) is deleted;

(iv) the third subparagraph is replaced by the following:

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

(c) in paragraph 3, the following points **[...]** are added:

"(j) to fund financial measures in favour of sectors or subsectors that 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 these measures meet the conditions set out in Article 10a(6);

(k) for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate change.;

(l) to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy in close coordination with the social partners."

(d) **[...] in paragraph 4 the first subparagraph and the first sentence of the second subparagraph are** is replaced by the following:

"4. The Commission shall be empowered to adopt [...] delegated acts in accordance with Article 23 to supplement this Directive concerning the timing, administration and other aspects of auctioning to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner.² To this end, the process shall be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available.

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

²

Add text in recital 17 to clarify that the delegation should also not affect the Member States' right to determine the use of their auctioning revenues.

(5) Article 10a is amended as follows:

(a) The first subparagraph of paragraph 1 is replaced by the following:

"The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the Union-wide and fully-harmonised rules for the allocation of the allowances referred to in paragraphs 4, 5, 7, 19 and 20 of this Article [...]."

(b) the following subparagraphs are added to paragraph 2 [...]:

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

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

Where the annual reduction rate exceeds 1,5% or is below 0,3%⁴, the benchmark values for 2021-2025 shall be the benchmark values applicable in the period 2013 to 2020 reduced by the relevant one of these two percentage rates in respect of each year between 2008 and 2023.⁵

³ **Specify in a recital that it is the value in the version applicable on 1 January 2013. Add reference to Commission Decision 2011/278 and the last column in Annex I.**

⁴ Reasoning for the limits should be added in the recital.

⁵ Clarify in a recital that either 1.5% or 0.3% is applied. Add also in the recital the corresponding percentages; **22,5% and 4,5% representing 15 times the relevant percentage rate, i.e. in respect of each year between 2008 and the middle of the period from 2021-2025 (2023).**

For the period from 2026 to 2030, the benchmark values shall be determined in the same manner on the basis of information submitted pursuant to Article 11 for the years 2021-2022 and with the annual reduction rate applying in respect of each year between 2008 and 2028.⁶

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

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

(* Commission Decision 2011/278 of 27 April 2011 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 130, 17.5.2011, p. 1)."

(c) paragraph 5 is replaced by the following:

"5. In order to respect the auctioning share set out in Article 10, the sum of free allocations in every year where the sum of free allocations does not reach the maximum level that respects the Member State auctioning share, the remaining allowances up to that level shall be used to prevent or limit reduction of free allocations to respect the Member State auctioning share 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 Same as footnote 2: **30% and 6% representing 20 times the relevant percentage rate, i.e. in respect of each year between 2008 and the middle of the period from 2026-2030 (2028).**

(d) the first subparagraph of paragraph 6 is replaced by the following:

"Member States should adopt financial measures in favour 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 greenhouse gas emission costs passed on in electricity prices, taking into account any effects on the internal market. Such financial measures to compensate part of these costs shall be in accordance with state aid rules. **Within [3] months of the end of each year, Member States having such financial measures in place shall make available to the public [in an easily accessible form] the total amount of compensation provided per benefitting sectors and sub-sectors.**"

(e) paragraph 7 is amended as follows

(i) The first [...] subparagraph is replaced by the following:

"Allowances from the maximum amount referred to in paragraph 5 of this Article which were not allocated for free up to 2020 shall be set aside for new entrants [...], together with 250 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/1814 of the European Parliament and of the Council(*).

From 2021, allowances not allocated to installations because of the application of paragraphs 19 and 20 shall be added to the amount of allowances set aside in accordance with the previous sentence.

(*) 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)."

(ii) The fifth subparagraph is deleted.

(f) in paragraph 8, the first, second and third subparagraphs are replaced by the following:

"400 million allowances from the quantity which could otherwise be allocated for free pursuant to this Article⁷ shall be available to support innovation in low-carbon technologies and processes, including environmentally safe carbon capture and utilisation (CCU), in industrial sectors listed in Annex I, and to help stimulate the construction and operation of [...] projects that aim at the environmentally safe capture and geological storage (CCS) of CO₂ as well as [...] innovative renewable energy technologies in geographically balanced locations within the Union. Projects in all Member States, including small-scale projects, shall be eligible.

In addition, 50 million unallocated allowances from the market stability reserve established by Decision (EU) 2015/1814 shall supplement any existing resources remaining under this paragraph for projects referred to above [...].

Projects shall be selected on the basis of objective and transparent criteria. Technologies receiving support shall not yet be commercially available, but sufficiently mature to be ready for demonstration at pre-commercial scale. Up to 60% of the relevant costs of projects may be supported, out of which up to 40% may not be dependent on verified avoidance of greenhouse gas emissions provided that pre-determined milestones, [...] taking into account the technology deployed, are attained.

The Commission shall be empowered to adopt a delegated act in accordance with Article 23 to supplement this directive concerning further details on the measures and criteria for the financing of projects eligible to benefit from the allowances referred to in this paragraph."

(g) paragraphs 9 and 10 are deleted.

(h) in paragraph 11, the wording "with a view to reaching no free allocation in 2027" is deleted.

(i) paragraphs 12 to 18 are deleted.

⁷ In addition, it is proposed to add the following sentence at the end of recital 6: "Allowances used to support innovation are not included in this share."

(j) paragraph 20 is replaced by the following:

"20. [...] The level of free allocations given to installations whose operations have increased or decreased by more than [10] % compared to the level initially used to determine the free allocation for the relevant period referred to in Article 11(1) shall, as appropriate, be adjusted. Such adaptations shall be carried out with allowances from, or by adding allowances to, the amount of allowances set aside in accordance with paragraph 7."⁸

(k) the following paragraph is added:

"20a. In order to ensure a non-discriminatory and uniform application of the adaptations and the threshold referred to in paragraph 20 and to avoid undue administrative burden, the Commission may adopt implementing acts which define further arrangements for the adjustments.⁹ Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a "

(6) Articles 10b and 10c are replaced by the following:

"Article 10b

Measures to support certain energy-intensive industries in the event of carbon leakage

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

⁸ **Necessary to add a recital on production level changes; this recital should also underline the need to ensure the integrity of the data used for the purpose of determining free allocation.**

⁹ **Possibly add a recital mentioning the use of a rolling average as an option to be considered.**

2. Sectors and sub-sectors where the product from multiplying their intensity of trade with third countries by their emission intensity is above 0,16 may be included in the group referred to in paragraph 1, on the basis of a qualitative assessment using the following criteria:
- a) the extent to which it is possible for individual installations in the sector or sub-sectors concerned to reduce emission levels or electricity consumption;
 - (b) current and projected market characteristics;
 - (c) profit margins as a potential indicator of long-run investment or relocation decisions.

By way of derogation from the previous sentence, for sectors and sub-sectors referred to therein, an assessment may be carried out on the basis of the classification of goods used for statistics on industrial production in the Union at a 6-digit (CPA) or an 8-digit level (Prodcom) provided that [filters to be defined].

3. Other sectors and sub-sectors 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 for the period up to 2030 at 30% of the quantity determined [...] pursuant to Article 10a.
4. By 31 December 2019, the Commission shall adopt a delegated act for the preceding paragraphs for activities at a 4-digit level (NACE-4 code) as concerns paragraph 1, in accordance with Article 23, based on data for the three most recent calendar years available.

Article 10c

Option for transitional free allocation for the modernisation of the energy sector

1. By derogation from Article 10a(1) to (5), Member States which had in 2013 a gross domestic product (GDP) per capita in euro at market prices below 60% of the Union average may give a transitional free allocation to installations for electricity generation for the modernisation of the energy sector.

2. The Member State concerned shall organise a competitive bidding process, to take place in one or more rounds between 2021 and 2030, for projects with a total amount of investment exceeding EUR [15] million 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 and sound financial management;
- (b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the infrastructure, clean technologies and modernisation of the energy production, transmission and distribution sectors are eligible to bid;
- (c) define clear, objective, transparent and non-discriminatory selection criteria for the ranking of projects, so as to ensure that projects are selected which:
 - (i) on the basis of a cost-benefit analysis, ensure a net positive gain in terms of emission reduction and realise a pre-determined significant level of CO₂ reductions;
 - (ii) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand;
 - (iii) offer best value for money;

By way of derogation from Article 10 (1), in the event an investment selected through the competitive bidding process is cancelled or the intended performance is not reached, the earmarked allowances may be used through a new round of the competitive bidding process at the earliest one year thereafter to finance other investments.

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

Where investments with a value of less than EUR [15] million are supported with free allocation, the Member State shall select projects based on objective and transparent criteria. The results of this selection process shall be published for public comment. On this basis, the Member State concerned shall establish and submit a list of investments to the Commission by 30 June 2019.

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. Transitional free allocations shall be deducted from the quantity of allowances that the Member State would otherwise auction. The total free allocation shall be no more than 40% of the allowances which the Member State concerned receives in the period 2021-2030 pursuant to Article 10(2)(a) spread out in equal annual volumes over the period from 2021-2030.
 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. Member States shall require benefiting electricity generators and network operators to report by 28 February of each year on the implementation of their selected investments. Member States shall report on this to the Commission, and the Commission shall make such reports public."
- (7) The following Article is inserted:

"Article 10d

Modernisation Fund

1. A fund to support investments, including to finance small-scale investment projects, proposed by the beneficiary Member States, in modernising energy systems and improving energy efficiency in Member States with a GDP per capita below 60% of the Union average in 2013 shall be established for the period 2021-30 and financed as set out in Article 10.

The investments supported shall be consistent with the aims of this Directive [and the European Fund for Strategic Investments], as well as the objectives of the Union's 2030 climate and energy policy framework and the long-term objectives as expressed in the Paris Agreement.

- 1a. In order to fulfil the objectives of the fund, the financial resources from the fund shall [primarily] be used to support investments in the generation of electricity from renewable sources, the improvement of energy efficiency, and the modernisation of energy networks, including grids for electricity transmission and the increase of interconnections between Member States. Investments in energy efficiency in sectors not covered by Annex I to this Directive shall also be eligible.[...]
2. [...]
3. The funds shall be distributed amongst the Member States and according to the share set out in Annex IIb.¹⁰
4. The fund shall be governed by an investment board [...], which shall [...] be composed of a representative[...] from each beneficiary Member State[...], the Commission and the EIB, and [three] representatives elected by the other Member States for a period of 5 years. The investment board shall be chaired by the representative from the Commission.

The investment board shall be responsible to determine a Union-level investment policy, appropriate financing instruments and investment selection criteria. The investment board shall also develop guidelines and investment selection criteria specific to small-scale investment projects as referred to in paragraph 1, including a threshold value expressed in euros below which a project qualifies as a small-scale investment project. The investment board shall also be responsible for evaluation and selection of investment projects [...].

¹⁰ Text on distribution key to be moved to a recital: "The distribution of the funds for the Modernisation Fund shall be distributed amongst the Member States based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria".

The beneficiary Member States shall be responsible for [...] the day-to-day management of the fund with respect to selected projects. The beneficiary Member States shall take the final investment decision for projects approved by the investment board.¹¹

The EIB shall be responsible for monetising of allowances, performing an assessment of the financial and technical viability (financial and technical due diligence) of the projects proposed by the beneficiary Member States and providing related recommendations for award decisions to the investment board and management of the revenues.

- 4a. The investment board shall strive to take decisions by consensus. If the investment board is not able to decide by consensus within a deadline set by the chairman, the investment board shall take a decision by simple majority. All decisions **with respect to projects and investments**, and the minutes concerning voting shall be made public.

[...]

If the EIB recommends not financing an investment and provides reasons for this recommendation, a decision shall only be adopted if a majority of two-thirds of all members vote in favour. The investment board shall clearly explain their decision on granting the investment and make this explanation public. The Member State in which the investment will take place and the EIB shall not be entitled to cast a vote in this case. For small-scale projects funded through loans provided by a national promotional bank or through grants contributing to the implementation of a national programme serving specific objectives in line with the objectives of the Modernisation Fund, provided that not more than 10% of the Member States' share set out in Annex IIB is used under the programme, the two preceding sentences shall not apply.

¹¹ **The text needs to make clear which body – a Union body or a Member State – is responsible for the various decisions awarding finance and approving projects. If it is a Union body, its acts will be subject to review by the Court of Justice of the European Union pursuant to the first para of Article 263 TFEU. The fifth para of that Article 263 would allow regulation of this review. If decisions on approval or financing are taken by a Member State, the courts of that state would be responsible for reviewing these acts. In this case, these acts would also be susceptible of constituting state aid.**

5. The beneficiary Member States shall report annually to the investment board 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;
6. The investment board shall report **annually** 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 investment board.
7. [The Commission shall be empowered to adopt a delegated act in accordance with Article 23 to implement this Article]."
- (8) In Article 11(1), the following [...] subparagraph is added:
- "A list of installations covered by this Directive for the five years beginning on 1 January 2021 shall be submitted by [30 September 2018], and lists for the subsequent five years shall be submitted every five years thereafter. Each list shall include information on production activity, transfers of heat and gases, electricity production and emissions at sub-installation level over the five calendar years preceding its submission. Free allocations shall only be given to installations where such information is provided."
- (9) In Article 11a, paragraphs 8 and 9 are deleted.
- (10) In Article 11b, paragraph 7 is deleted.
- (11) Article 13 is replaced by the following:

"Article 13

Validity of allowances

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

- (12) In Article 14(1), the second subparagraph is replaced by the following:

"The Commission shall adopt implementing acts concerning the detailed arrangements for the monitoring and reporting of emissions as set out in paragraphs 1 and 2 and in Annex IV.

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

- (13) In Article 15, the fourth and fifth subparagraphs are replaced by the following:

"The Commission shall adopt implementing acts concerning the verification of emission reports based on the principles set out in Annex V and for the accreditation and supervision of verifiers. It shall specify conditions for the accreditation and withdrawal of accreditation, for mutual recognition and peer evaluation of accreditation bodies, as appropriate.

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

- (14) In Article 16, paragraph 12 is replaced by the following:

"12. **The Commission shall be empowered to adopt implementing acts containing** detailed rules in respect of the procedures referred to in this Article.
Those implementing acts shall be adopted in accordance with the procedure referred to in Article 22a."

(15) In Article 19(3), the third sentence 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 emission trading systems. The Commission shall be empowered to adopt delegated acts in accordance with Article 23 **to supplement this Directive by laying down all necessary requirements concerning the Union Registry for the trading period commencing on 1 January 2013 and subsequent periods in the form of standardised electronic databases containing common data elements to track the issue, holding, transfer and cancellation, as relevant, of allowances, and to provide for public access and confidentiality, as appropriate. It shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems.**"

(16) In Article 22, the second subparagraph is replaced by the following:

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

(17) The following Article is inserted:

"Article 22a

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 26 of Regulation (EU) 525/2013. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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

(18) Article 23 is replaced by the following:

"Article 23

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in [Article 3d(3), Article 10(4), Article 10a(1) and (8), Article 10b, Article 10d, [...], Article 19(3), Article 22, Article 24 [...]] and Article 25a] shall be conferred on the Commission 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 [Article 3d(3), Article 10(4), Article 10a(1) and (8), Article 10b, Article 10d, [...], Article 19(3), Article 22, Article 24 [...]] and Article 25a] may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

- 3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.¹²
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to [Article 3d(3), Article 10(4), Article 10a(1) and (8), Article 10b, Article 10d [...], Article 19(3), Article 22, Article 24 [...] and Article 25a] shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council."

¹² Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (OJ L 123, 12.5.2016, p. 1). The following text to be added to recital 17: "*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.*"

(19) Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

(b) the second subparagraph of paragraph 3 is replaced by the following:

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

(20) Article 24a is amended as follows:

(a) the second subparagraph of paragraph 1 is replaced by the following:

"Such measures shall be consistent with acts adopted pursuant to Article 11b(7). **Where appropriate, the Commission shall be empowered to adopt implementing acts containing harmonised rules in respect of the procedures referred to in this Article. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 22a**".

(b) paragraph 2 is deleted.

(21) Article 25(2) is deleted.

(22) In Article 25a, the first two subparagraphs of paragraph 1 are replaced by the following:

"Where a third country adopts measures for reducing the climate change impact of flights departing from that country which land in the Union, the Commission, after consulting with that third country, and with Member States within the Committee referred to in Article 23(1), shall consider options available in order to provide for optimal interaction between the Union system and that country's measures.

[Where necessary, the Commission 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 fourth subparagraph. The Commission shall be empowered to adopt such amendments in accordance with Article 23.]

[...] **[deleted]**

(22a) In Article 27 (3), the second subparagraph is replaced by the following:

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

(22b) **Article 30 is replaced by the following:**

“Article 30

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

1. The provisions of this Directive [...] shall be kept under review in the light of international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement.
2. The measures to support certain energy intensive industries that may be subject to carbon leakage referred to in Articles 10a and 10b shall also be kept under review in the light of climate policy measures in other major economies.

3. The Commission shall report to the European Parliament and to the Council following each global stocktake agreed under the Paris Agreement, and may make a proposal to the European Parliament and the Council to amend the Directive as appropriate.”
- (23) Annex IIa **of Directive 2003/87/EC** is **replaced by the text appearing** in Annex I to this Directive."
- (24) Annex IIb **of Directive 2003/87/EC** is **replaced by the text appearing in** Annex II to this Directive.
- (25) Annex IV is amended in accordance with the Annex III to this Directive.

Article 2
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2018 at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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.

2. 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 3
Transitional provision

When complying with their obligation as set out in the first subparagraph of Article 2(1) of this Directive, Member States shall ensure that their national legislation transposing Article 10, Article 10a(5) to (7), the first and second subparagraphs of Article 10a(8), Article 10a(12) to (18), Article 10c and Article 11a(8) and (9) and Annex IIa and Annex IIb of Directive 2003/87/EC as last amended by Decision (EU) 2015/1814, continue to apply until 31 December 2020.

Article 4
Entry into force

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

Article 5
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President
