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PROTECTION
AGENCY

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Förslag på lagändringar för att genomföra ändringar i utsläppshandelssystemet EU ETS

Delredovisning i Naturvårdsverkets regeringsuppdrag (KN2023/01935).

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Innehåll

Bilagor

1. ST 6210/23 – utkast på direktiv av den 8 februari 2023 om ändring av utsläppshandelsdirektivet samt på förordning om ändring EU MRV-ändringsförordningen.
2. ST 6215/23 – utkast på direktiv av den 8 februari 2023 om ändring av utsläppshandelsdirektivet avseende flyg.

Sammanfattning

Den 14 juli 2021 presenterade EU-kommissionen förslag på revideringar av EU:s utsläppshandelssystem, EU ETS, som en del av lagstiftningspaketet för att nå EU:s skärpta klimatmål till 2030, det s.k. Fit for 55-paketet. En preliminär politisk överenskommelse om förändringarna i EU ETS slöts i december 2022 och de relaterade EU-lagstiftningsakterna förväntas antas i april 2023. I överenskommelsen ingår bl.a. en skärpning av det befintliga EU ETS, att det utökas för att inkludera sjöfart, och att ett nytt utsläppshandelssystem för byggnader, transporter och viss industri etableras (EU ETS 2).

De EU-lagstiftningsakter som berörs är:

- Utsläppshandelsdirektivet, dvs. Europaparlamentets och rådets direktiv 2003/87/EG av den 13 oktober 2003 om ett system för handel med utsläppsrätter för växthusgaser inom unionen och om ändring av rådets direktiv 96/61/EG. Utsläppshandelsdirektivet innehåller de grundläggande reglerna om utsläppshandelssystemen.
- EU MRV-förordningen, dvs. Europaparlamentets och rådets förordning (EU) 2015/757 om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter och om ändring av direktiv 2009/16/EG. EU MRV-förordningen är central för sjöfartens inkluderande i EU ETS.

Regeringen uppdrog den 12 januari 2023 åt Naturvårdsverket att analysera och föreslå nödvändiga författningsändringar för att genomföra ändringarna avseende EU ETS. Uppdraget ska slutredovisas senast den 31 maj 2023. I uppdraget ingår inte att föreslå författningsändringar för att genomföra de delar som berör EU ETS 2. Naturvårdsverket föreslår i denna delredovisning ändringar i lagen (2020:1173) om vissa utsläpp av växthusgaser som är nödvändiga för att genomföra ändringarna avseende EU ETS. Förslag på förordningsändringar kommer redovisas i slutredovisningen av uppdraget.

Naturvårdsverket har inhämtat synpunkter och underlag från Energimyndigheten och Transportstyrelsen.

Utgångspunkten för förslagen är följande utkast på EU-lagstiftningsakterna, i engelska språkversioner, som godkändes av Coreper I och ansvarigt utskott i Europaparlamentet i februari 2023 inför juristlingvistbehandling och översättning:

- ST 6210/23: utkast på direktiv om ändring av utsläppshandelsdirektivet samt på förordning om ändring av EU MRV-ändringsförordningen (bilaga 1).
- ST 6215/23: utkast på direktiv om ändring av utsläppshandelsdirektivet avseende flyg (bilaga 2).

Utsläppshandelsdirektivet är i huvudsak genomfört i lagen (2020:1173) om vissa utsläpp av växthusgaser och förordningen (2020:1180) om vissa utsläpp av växthusgaser. Naturvårdsverkets förslag innehåller de ändringar i lagen som bedömts vara nödvändiga för att kunna genomföra ändringarna i utsläppshandelsdirektivet och EU MRV-förordningen. I stor utsträckning innehåller förslaget nya och utökade bemyndiganden till regeringen eller den myndighet regeringen bestämmer om att meddela föreskrifter. Merparten av

regleringen föreslås i övrigt placeras på förordningsnivå och Naturvårdsverket avser lämna förslag gällande den regleringen i slutredovisningen i uppdraget.

Lagändringarna föreslås träda i kraft den 1 januari 2024.

Sjötransportveksamheter inkluderas i lagen om vissa utsläpp av växthusgaser

Enligt utsläppshandelsdirektivet ingår i EU ETS sådan sjöfart som omfattas av EU MRV-förordningen, med några undantag. Tillämpningsområdet för lagen om vissa utsläpp av växthusgaser föreslås utökas till att omfatta sjötransportverksamheter och innehåller en definition som anger att det är sådan verksamhet som omfattas av EU MRV-förordningen. Undantag och preciseringar av omfattningen föreslås regleras i förordningen om vissa utsläpp av växthusgaser.

Den svenska förordningen (2017:880) om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter som kompletterar EU MRV-förordningen idag och pekar bl.a. ut Transportstyrelsen som nuvarande tillsynsmyndighet över EU MRV-förordningen. Förordning (2017:880) föreslås upphävas och kompletterande bestämmelser till EU MRV-förordningen föreslås istället införas i lagen om vissa utsläpp av växthusgaser. Förslaget innehåller ett bemyndigande till regeringen att meddela föreskrifter om vilken myndighet som ska vara tillsynsmyndighet (26 §). Det är lämpligt att en och samma myndighet har ansvar för tillsyn över både EU MRV-förordningen och efterlevnaden av lagen om vissa utsläpp av växthusgaser med avseende på sjötransportverksamheter.

Förslaget innehåller nya och ändrade definitioner i lagen. Bl.a. föreslås begreppet *verksamhetsutövare* (2 §) utvidgas, som innebär att den aktör som träffas av skyldigheterna avseende sjötransportverksamhet även den betecknas som verksamhetsutövare på samma sätt som för anläggningar och flygverksamheter.

Regeringen föreslås få flera bemyndiganden att meddela föreskrifter som är relevanta för sjötransportverksamheter. Bl.a. att regeringen får meddela föreskrifter om att det ska krävas en övervakningsplan för att bedriva sjötransportverksamhet (11 d §), om att utsläpp av växthusgaser från sjötransportverksamhet ska täckas av utsläppsrätter (13 §), och om förseningsavgifter och sanktionsavgifter för den som åsidosätter bestämmelserna rörande sjötransportverksamheter (41 §).

Förslaget innehåller en bestämmelse som ger verksamhetsutövare för sjötransportverksamhet en rättighet till ersättning för kostnader för utsläppsrätter om en annan aktör övertagit delar av driften (11 e §). Sjörättsdomstol föreslås vara första domstol i tvistemål rörande sådana förhållanden (11 f §).

Straffsanktionerna i 33 § (otillåtet utsläpp av växthusgaser) och 35 § (försvårande av kontroll av växthusgasutsläpp) föreslås utvidgas för att omfatta förseelser i förhållande till sjötransportverksamheter, på samma sätt som motsvarande förseelser är straffbara med avseende på anläggningar och flygverksamheter.

Regeringen föreslås få ett bemyndigande att meddela föreskrifter om avvisnings- och kvarhållandebeslut för fartyg som inte följer kraven i utsläppshandelsdirektivet och EU MRV-förordningen.

Anläggningar utan utsläpp av växthusgaser och frivilligt deltagande för vissa anläggningar

Det reviderade utsläppshandelsdirektivet innehåller ett flertal ändringar som rör anläggningar och som behöver genomföras. Merparten av dessa kan regleras i förordningen om vissa utsläpp av växthusgaser med stöd av nuvarande bemyndiganden i lagen. Två förändringar i utsläppshandelsdirektivet föranleder dock ändringar i lagen, nämligen att anläggningar utan utsläpp av växthusgaser ska ingå i EU ETS och att vissa anläggningar ska kunna delta frivilligt.

Vad gäller anläggningar utan utsläpp av växthusgaser innebär en ändring i utsläppshandelsdirektivet att det är ett tillräckligt villkor att anläggningar bedriver någon sådan slags verksamhet som listas i direktivets bilaga I för att de ska ingå i systemet, det krävs inte längre att de också har utsläpp av växthusgaser. Den nuvarande definitionen av *anläggning* (3 §) som förutsätter att det sker utsläpp av växthusgaser föreslås därför ändras. Tillståndsplikt ska gälla även för dessa anläggningar och förslaget innehåller därför ett bemyndigande till regeringen att meddela föreskrifter om att det ska krävas tillstånd för anläggningar som inte har utsläpp av växthusgaser (7 §).

Genom ett tillägg i artikel 2.1 i utsläppshandelsdirektivet ska anläggningar som inkluderats i systemet på grund av att de har en installerad tillförd effekt över 20 MW ha möjlighet att fortsätta delta frivilligt i systemet ifall de, i syfte att minska klimatutsläppen, genomför ändringar av produktionsprocessen som medför att den tillförda effekten minskar under 20 MW. Förslaget innehåller nya bestämmelser i lagen (9 a och 9 b §§) om att tillståndsmyndigheten får besluta om att en verksamhetsutövare får behålla sitt tillstånd även när verksamheten inte längre kräver tillstånd på grund av ändring av verksamheten, att verksamhetsutövaren får ansöka om att behålla tillståndet, samt ett bemyndigande till regeringen att meddela föreskrifter om vilka förutsättningarna som ska gälla för att få bibehålla tillstånd och vad ansökan ska innehålla.

Flyg inom EU ETS och genomförandet av Corsia

Det reviderade utsläppshandelsdirektivet genomför kraven på utsläppskompensation inom ramen för EU:s genomförande av Corsia, det globala marknadsbaserade styrmedlet för att begränsa utsläppen av växthusgaser från internationell civil luftfart till en viss nivå, antaget av FN:s internationella civila luftfartsorganisation Icao. Målsättningen ska åstadkommas genom att eventuella utsläpp som överskrider den s.k. basnivån ska kompenseras genom inköp av utsläppskrediter, i utsläppshandelsdirektivet kallade reduktionsenheter, som minskar utsläppen i andra sektorer. Merparten av regleringen gällande Corsia föreslås placeras på förordningsnivå, men vissa ändringar i lagen bedöms vara nödvändiga. Förslaget innehåller bestämmelser om att verksamhetsutövare för flygverksamhet ska överlämna reduktionsenheter (11 a och 11 b §§), och ett bemyndigande till regeringen att meddela föreskrifter som rör reduktionsenheter (11 c §).

Det reviderade utsläppshandelsdirektivet innehåller i övrigt ett flertal ändringar rörande flygverksamheter som behöver genomföras men som, likt för anläggningar, kan regleras i förordningen om vissa utsläpp av växthusgaser med stöd av nuvarande bemyndiganden i lagen.

1. Författningsförslag

Naturvårdsverket har följande förslag till lagtext.

1.1. Förslag till lag om ändring av lagen (2020:1173) om vissa utsläpp av växthusgaser

Härigenom föreskrivs[1] i fråga om lagen (2020:1173) om vissa utsläpp av växthusgaser

dels att 1–7, 9, 13, 16, 26, 27, 31, 33, 35, 41 och 44 §§ ska ha följande lydelse,

dels att det ska införas 10 nya paragrafer, 4 a §, 9 a §, 9 b §, 11 a–11 f § och 42 a § av följande lydelse,

dels att det närmast före 11 a och 42 a §§ ska införas nya rubriker av följande lydelse.

Nuvarande lydelse	*Föreslagen lydelse*
	1 §
Denna lag syftar till att främja kostnadseffektiva och ekonomiskt effektiva minskningar av utsläppen av växthusgaser.	
Lagen kompletterar EU-förordningar som har antagits med stöd av Europaparlamentets och rådets direktiv 2003/87/EG av den 13 oktober 2003 om ett system för handel med utsläppsrätter för växthusgaser inom unionen och om ändring av rådets direktiv 96/61/EG, i lydelsen enligt Europaparlamentets och rådets direktiv (EU) *2018/410* (utsläppshandelsdirektivet).	Lagen kompletterar - EU-förordningar som har antagits med stöd av Europaparlamentets och rådets direktiv 2003/87/EG av den 13 oktober 2003 om ett system för handel med utsläppsrätter för växthusgaser inom unionen och om ändring av rådets direktiv 96/61/EG, i lydelsen enligt Europaparlamentets och rådets direktiv (EU) *2023/NNN*[2] *och Europaparlamentets och rådets direktiv (EU) 2023/YYY*[3] (utsläppshandelsdirektivet)*, och* *- Europaparlamentets och rådets förordning (EU) 2015/757 av den 29 april 2015 om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter*

[1] Jfr Europaparlamentets och rådets direktiv 2003/87/EG av den 13 oktober 2003 om ett system för handel med utsläppsrätter för växthusgaser inom unionen och om ändring av rådets direktiv 96/61/EG, i lydelsen enligt i lydelsen enligt Europaparlamentets och rådets direktiv (EU) 2023/NNN och Europaparlamentets och rådets direktiv (EU) 2023/YYY.

[2] Direktivet har inte antagits och publicerats i EU:s officiella tidning ännu och har därför inget nummer.

[3] Direktivet har inte antagits och publicerats i EU:s officiella tidning ännu och har därför inget nummer.

	och om ändring av direktiv 2009/16/EG i lydelsen enligt Europaparlamentets och rådets förordning (EU) 2023/NNN[4] (EU MRV-förordningen) och EU-förordningar som antagits med stöd av EU MRV-förordningen.
	2 §
I denna lag avses med	
utsläpp av växthusgaser: *frigörande i atmosfären av koldioxid, dikväveoxid eller perfluorkolväten från en eller flera källor belägna inom en anläggning eller från ett luftfartyg*,	utsläpp av växthusgaser: *1. frigörande av koldioxid, dikväveoxid eller perfluorkolväten från en eller flera källor belägna inom en anläggning, eller* *2. frigörande av koldioxid från ett luftfartyg eller icke-koldioxideffekter som uppstår på grund av förbränning i ett luftfartyg, eller* *3. frigörande av koldioxid, metan eller dikväveoxid från ett fartyg,*
ton koldioxidekvivalenter: ett ton koldioxid eller den mängd dikväveoxid eller perfluorkolväten som medför en lika stor klimatpåverkan som utsläpp av ett ton koldioxid, *och*	ton koldioxidekvivalenter: ett ton koldioxid eller den mängd dikväveoxid, *eller metan*, eller perfluorkolväten som medför en lika stor klimatpåverkan som utsläpp av ett ton koldioxid,
utsläppsrätt: en rätt att släppa ut ett ton koldioxidekvivalenter under en fastställd period i enlighet med denna lag och föreskrifter som har meddelats med stöd av lagen.	utsläppsrätt: en rätt att släppa ut ett ton koldioxidekvivalenter under en fastställd period i enlighet med denna lag och föreskrifter som har meddelats med stöd av lagen,
	reduktionsenhet: en enhet som får användas med avseende på skyldigheter att kompensera utsläpp av växthusgaser från flygverksamhet i

[4] Förordningen har inte antagits och publicerats i EU:s officiella tidning ännu och har därför inget nummer.

	enlighet med denna lag och föreskrifter som har meddelats med stöd av lagen, och
	icke-koldioxideffekter: klimatpåverkan från utsläpp av kväveoxider, sotpartiklar, eller oxiderade svavelföreningar som uppstår vid förbränning av bränsle i ett luftfartyg, och klimatpåverkan av vattenånga, inklusive kondensstrimmor, som uppstår från sådan förbränning.
3 §	
Med anläggning avses i denna lag en fast teknisk enhet där det bedrivs en eller flera verksamheter *som ger upphov till utsläpp av växthusgaser* som kräver tillstånd enligt föreskrifter som har meddelats med stöd av denna lag, liksom all annan därmed direkt förknippad verksamhet som är tekniskt knuten till de verksamheter som bedrivs på platsen och som kan påverka utsläpp och föroreningar.	Med anläggning avses i denna lag en fast teknisk enhet där det bedrivs en eller flera verksamheter som kräver tillstånd enligt föreskrifter som har meddelats med stöd av denna lag, liksom all annan därmed direkt förknippad verksamhet som är tekniskt knuten till de verksamheter som bedrivs på platsen och som kan påverka utsläpp och föroreningar.
	Med anläggning avses i denna lag även en anläggning enligt första stycket som inte längre kräver tillstånd men som beviljats bibehållet tillstånd enligt 9 a och b §§.
4 §	
Med flygverksamhet avses i denna lag en eller flera flygningar med luftfartyg som ger upphov till utsläpp av växthusgaser och som 1. avgår från eller ankommer till en flygplats inom Europeiska ekonomiska samarbetsområdet eller i ett sådant annat tredjeland med vilket Europeiska unionen har ett avtal om ömsesidigt erkännande av utsläppsrätter enligt artikel 25 i utsläppshandelsdirektivet, eller	
2. *omfattas av kommissionens delegerade förordning (EU)*	2. *utförs mellan flygplatser belägna i två olika tredjeländer.*

2019/1603 av den 18 juli 2019 om komplettering av Europaparlamentets och rådets direktiv 2003/87/EG vad gäller åtgärder som antagits av Internationella civila luftfartsorganisationen för övervakning, rapportering och verifiering av utsläpp för att genomföra en global marknadsbaserad åtgärd.

4 a §

Med sjötransportverksamhet avses i denna lag en eller flera sjötransporter som ger upphov till utsläpp av växthusgaser och som omfattas av EU MRV-förordningen.

5 §

Med verksamhetsutövare avses i denna lag varje fysisk eller juridisk person som

1. driver *en verksamhet* eller innehar *en anläggning* eller som på annat sätt har rätt att fatta avgörande ekonomiska beslut om verksamhetens eller anläggningens tekniska drift, eller

2. äger ett luftfartyg som ingår i en flygverksamhet, om den som bedriver flygverksamheten inte kan identifieras.

1.i fråga om en anläggning eller flygverksamhet

a. driver *verksamheten* eller innehar *anläggningen* eller som på annat sätt har rätt at fatta avgörande ekonomiska beslut om verksamhetens eller anläggningens tekniska drift, eller

b. äger ett luftfartyg som ingår i flygverksamheten, om den som bedriver flygverksamheten inte kan identifieras, *eller*

2. i fråga om sjötransportverksamhet

a. äger ett fartyg som ingår i sjötransportverksamheten, eller

b. någon annan organisation eller person, såsom den driftsansvarige eller den som hyr fartyget utan besättning, som har övertagit fartygsägarens ansvar för

fartygets drift och som genom att ta på sig detta ansvar har gått med på att överta alla skyldigheter och allt ansvar som följer av de internationella organisationsreglerna för säker drift av fartyg och för förhindrande av förorening i enlighet med i bilaga I i Europaparlamentets och rådets förordning (EG) nr 336/2006 av den 15 februari 2006 om genomförande av Internationella säkerhetsorganisationskoden i gemenskapen och upphävande av rådets förordning (EG) nr 3051/95.

6 §

I denna lag avses med

utsläppsrapport: en sådan skriftlig rapport som

avses i artikel 68 i kommissionens genomförandeförordning (EU) 2018/2066 av den 19 december 2018 om övervakning och rapportering av växthusgasutsläpp i enlighet med Europaparlamentets och rådets direktiv 2003/87/EG och om ändring av kommissionens förordning (EU) nr 601/2012 (övervaknings- och rapporteringsförordningen),	*1.* avses i artikel 68 i kommissionens genomförandeförordning (EU) 2018/2066 av den 19 december 2018 om övervakning och rapportering av växthusgasutsläpp i enlighet med Europaparlamentets och rådets direktiv 2003/87/EG och om ändring av kommissionens förordning (EU) nr 601/2012 (övervaknings- och rapporteringsförordningen), *eller* *2. avses i artikel 11 och artikel 11a i EU MRV-förordningen,*

övervakningsplan: en sådan skriftlig redogörelse som

avses i artikel 12 i övervaknings- och rapporteringsförordningen, och	*1. avses i artikel 12 i övervaknings- och rapporteringsförordningen, eller* *2. avses i artikel 6 i EU MRV-förordningen, och*

rapport om verksamhetsnivå: en sådan skriftlig rapport som avses i artikel 3 i kommissionens genomförandeförordning (EU) 2019/1842 av den 31 oktober 2019 om tillämpningsföreskrifter för Europaparlamentets och rådets direktiv

2003/87/EG vad gäller ytterligare åtgärder i samband med justeringar av gratis tilldelning av utsläppsrätter på grund av förändringar av verksamhetsnivå.

7 §

Regeringen får meddela föreskrifter om att det ska krävas tillstånd för att släppa ut växthusgaser från en anläggning och vad en ansökan om tillstånd ska innehålla.

Regeringen får meddela föreskrifter om att det ska krävas tillstånd även för sådana anläggningar utan utsläpp av växthusgaser som avses i bilaga I utsläppshandelsdirektivet och vad ansökan om tillstånd för sådana anläggningar ska innehålla.

9 §

Tillståndsmyndigheten får återkalla ett tillstånd för att släppa ut växthusgaser, om

1. verksamhetsutövaren inte har följt ett tillståndsvillkor och avvikelsen är av allvarlig art,
2. verksamhetsutövaren allvarligt åsidosätter det som är föreskrivet om rapportering eller överlämnande av utsläppsrätter,
3. de tillstånd som behövs enligt miljöbalken eller äldre miljölagstiftning saknas,
4. tillståndet ersätts med ett nytt tillstånd, eller
5. verksamheten inte kräver tillstånd för att släppa ut växthusgaser.

Första stycket 5 gäller inte anläggningar som beviljats bibehållet tillstånd enligt 9 a och b §§.

9 a §

Tillståndsmyndigheten får besluta om att en verksamhetsutövare får behålla sitt tillstånd även när verksamhet inte längre kräver tillstånd enligt 7 § på grund av ändring av verksamheten eller verksamheterna.

Regeringen får meddela föreskrifter om förutsättningarna för att en verksamhetsutövare ska få bibehålla sitt tillstånd.

9 b §

En verksamhetsutövare för en anläggning som innehar tillstånd och vars verksamhet inte längre kräver tillstånd enligt 7 § får ansöka om att behålla tillståndet till utsläpp av växthusgaser till tillstånds-myndigheten. Regeringen får meddela föreskrifter om vad en sådan ansökan ska innehålla.

11 a §

Regeringen får meddela föreskrifter om att utsläpp av växthusgaser från flygverksamhet ska kompenseras med reduktionsenheter.

11 b §

Verksamhetsutövaren för en flygverksamhet ska överlämna det antal reduktionsenheter som fastställts enligt föreskrifter som meddelats med stöd av denna lag.

11 c §

Regeringen får meddela föreskrifter om

1. fastställande av antalet reduktionsenheter som ska överlämnas enligt 11 b §,

2. undantag från skyldigheten att överlämna reduktionsenheter, och

3. villkor för vilka reduktionsenheter som får användas med avseende på skyldigheter enligt 11 b §.

Regeringen eller den myndighet som regeringen bestämmer får meddela ytterligare föreskrifter om skyldigheten att överlämna reduktionsenheter

Sjötransportverksamhet

11 d §

Regeringen får meddela föreskrifter om att det ska krävas en övervakningsplan för att bedriva sjötransportverksamhet.

11 e §

För det fall en annan aktör än verksamhetsutövaren till en sjötransportverksamhet genom avtal har övertagit ansvaret för driften av ett fartyg eller inköp av drivmedel, har verksamhetsutövaren rätt till ersättning av den aktören för de kostnader verksamhetsutövaren har haft till följd av skyldigheten i 16 §.

Med övertagande av ansvaret för driften av fartyget i första stycket menas befogenhet att bestämma vilken last fartyget ska transportera eller fartygets färdplan och hastighet.

11 f §

Första domstol i tvistemål rörande ett förhållande som avses i 11 e § är den tingsrätt som regeringen utser (sjörättsdomstol).

Bestämmelser om behörigheten för en sjörättsdomstol att ta upp ett tvistemål som avses i första stycket finns i 21 kap. 2 § sjölagen (1994:1009).

13 §

Regeringen får meddela föreskrifter om att följande utsläpp ska täckas av utsläppsrätter:

1. utsläpp av växthusgaser från anläggningar med stöd av ett tillstånd, eller
2. utsläpp av *koldioxid* från flygverksamhet.

2. utsläpp av *växthusgaser* från flygverksamhet, *eller*

3. utsläpp av växthusgaser från sjötransportverksamhet.

16 §

Verksamhetsutövaren för en anläggning ska överlämna det antal utsläppsrätter som motsvarar de sammanlagda utsläppen från verksamheten. Detsamma gäller en verksamhetsutövare för en sådan flygverksamhet som avses i 4 § 1 och som ska omfattas av en övervakningsplan.

Verksamhetsutövaren för en anläggning *eller en sjötransportverksamhet* ska överlämna det antal utsläppsrätter som motsvarar de sammanlagda utsläppen från verksamheten. Detsamma gäller en verksamhetsutövare för en sådan flygverksamhet som avses i 4 § 1 och som ska omfattas av en övervakningsplan.

26 §

Regeringen eller den myndighet som regeringen bestämmer får meddela föreskrifter om avgifter för myndigheters kostnader för prövning, kontoföring och tillsyn enligt

1. denna lag eller föreskrifter som har meddelats med stöd av lagen, eller
2. EU-förordningar som har antagits med stöd av utsläppshandelsdirektivet.

2. EU-förordningar som har antagits med stöd av utsläppshandelsdirektivet, *eller*

3. EU MRV-förordningen och EU-förordningar som har antagits med stöd av EU MRV-förordningen.

27 §

Den myndighet som regeringen bestämmer (tillsynsmyndigheten) utövar tillsyn över att denna lag, EU-förordningar som har antagits med

Den myndighet som regeringen bestämmer (tillsynsmyndigheten) utövar tillsyn över att denna lag, *EU MRV-förordningen och* EU-

stöd av utsläppshandelsdirektivet och föreskrifter som har meddelats i anslutning till lagen och EU-förordningarna följs.	förordningar som har antagits med stöd av utsläppshandelsdirektivet *och EU MRV-förordningen* och föreskrifter som meddelats i anslutning till lagen och EU-förordningarna följs.

31 §

Tillsynsmyndigheten har, om det behövs för tillsynen, rätt att få tillträde till

1. anläggningar,	1. anläggningar,
2. luftfartyg som ingår i en flygverksamhet, *och*	2. luftfartyg som ingår i en flygverksamhet,
3. områden som hör till sådana anläggningar eller luftfartyg, dock inte bostäder.	*3. fartyg som ingår i en sjötransportverksamhet, och*
	4. områden som hör till sådana anläggningar, luftfartyg eller *fartyg*, dock inte bostäder.

Polismyndigheten ska ge tillsynsmyndigheten den hjälp som behövs för tillträdet.

Hjälp får begäras endast om

1. det på grund av särskilda omständigheter kan befaras att åtgärden inte kan utföras utan att en polismans särskilda befogenheter enligt 10 § polislagen (1984:387) behöver användas, eller
2. det annars finns synnerliga skäl.

33 §

Den som med uppsåt eller av oaktsamhet utan tillstånd driver en verksamhet som medför utsläpp av växthusgaser från en anläggning och därmed bryter mot föreskrifter som regeringen har meddelat med stöd av 7 §, ska dömas för otillåtet utsläpp av växthusgaser till böter eller fängelse i högst två år.

För otillåtet utsläpp av växthusgaser döms även den verksamhetsutövare för en flygverksamhet som med uppsåt eller av oaktsamhet bryter mot föreskrifter som regeringen har meddelat med stöd av 11 *§* om krav på en övervakningsplan.	För otillåtet utsläpp av växthusgaser döms även den verksamhetsutövare för en flygverksamhet *eller en sjötransportverksamhet* som med uppsåt eller av oaktsamhet bryter mot föreskrifter som regeringen har meddelat med stöd av 11 *eller 11 d §§* om krav på en övervakningsplan.

35 §

Den som med uppsåt eller av oaktsamhet lämnar en oriktig eller vilseledande uppgift i en utsläppsrapport ska dömas för försvårande av kontroll av växthusgasutsläpp till böter eller fängelse i högst två år.	Den som med uppsåt eller av oaktsamhet lämnar en oriktig eller vilseledande uppgift i en utsläppsrapport ska, *om åtgärden innebär risk för att ett för litet antal utsläppsrätter eller reduktionsenheter överlämnas*, dömas för försvårande av kontroll av växthusgasutsläpp till böter eller fängelse i högst två år.

41 §

Regeringen får meddela föreskrifter om att en förseningsavgift eller sanktionsavgift ska betalas av den som åsidosätter bestämmelser i

1. denna lag eller föreskrifter som har meddelats med stöd av lagen, eller
2. EU-förordningar som har antagits med stöd av utsläppshandelsdirektivet.

2. EU-förordningar som har antagits med stöd av utsläppshandelsdirektivet*, eller*

3. EU MRV-förordningen eller EU-förordningar som har antagits med stöd av EU MRV-förordningen.

Avvisning och kvarhållande av fartyg

42 a §

Regeringen får meddela föreskrifter om sådana avvisnings- och kvarhållandebeslut som avses i artikel 16.11a i utsläppshandelsdirektivet och i artikel 20.3 i EU MRV-förordningen.

44 §

Beslut enligt denna lag, enligt föreskrifter som har meddelats med stöd av lagen eller enligt de EU-förordningar som har antagits med stöd av utsläppshandelsdirektivet får	Beslut enligt denna lag, enligt föreskrifter som har meddelats med stöd av lagen*, enligt EU MRV-förordningen,* eller enligt de EU-förordningar som har antagits med stöd av utsläppshandelsdirektivet

överklagas till mark- och miljödomstolen.	*eller EU MRV-förordningen* får överklagas till mark- och miljödomstolen.

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1. Denna lag träder i kraft den 1 januari 2024.

2. Uppdraget och dess genomförande

Regeringen uppdrog den 12 januari 2023 åt Naturvårdsverket att analysera och föreslå nödvändiga författningsändringar för att genomföra de ändringar av direktiv (2003/87/EG) om ett system för handel med utsläppsrätter som förväntas antas under april 2023. I uppdraget ingår att Naturvårdsverket ska:

- Föreslå de författningsändringar som behöver träda i kraft den 1 januari 2024 för att uppfylla det reviderade direktivets krav.
- Genomföra en konsekvensanalys av de föreslagna författningsändringarna.

Uppdraget ska slutredovisas senast den 31 maj 2023, men redovisas i två delar med hänsyn till att lagändringarna behöver träda i kraft den 1 januari 2024 och de remisstider som krävs för lagändringar. Förslag på lagändringar redovisas i denna skrivelse och förslag på förordningsändringar redovisas i slutredovisningen senast den 31 maj 2023.

Naturvårdsverket har inhämtat synpunkter och underlag från och Energimyndigheten och Transportstyrelsen.

3. EU:s system för handel med utsläppsrätter och EU MRV-regelverket

3.1. EU:s system för handel med utsläppsrätter – ett styrmedel för att uppfylla utsläppsminskningsmålen

Genom Kyotoprotokollet från 1997 fastställdes för första gången rättsligt bindande utsläppsminskningsmål för 37 utvecklade länder. Detta ledde till behov av styrmedel för att uppfylla målen. I syfte att genomföra Kyotoprotokollet antog Europaparlamentet och rådet det så kallade utsläppshandelsdirektivet, dvs. Europaparlamentets och rådets direktiv 2003/87/EG av den 13 oktober 2003 om ett system för handel med utsläppsrätter för växthusgaser inom unionen och om ändring av rådets direktiv 96/61/EG. Genom direktivet inrättades ett system för handel med utsläppsrätter inom Europeiska unionen, EU ETS (European Emission Trading System). I direktivet anges bland annat att systemet syftar till att på ett kostnadseffektivt och samhällsekonomiskt effektivt sätt minska utsläppen av växthusgaser inom unionen. Där anges också vilka verksamheter som omfattas. Vilka verksamheter, produktionssätt och bränslen som omfattas av utsläppshandelsdirektivet har varierat i takt med att utsläppshandelssystemet utvecklats och kraven skärpts. Utsläppshandeln har delats in i handelsperioder. De tre första handelsperioderna, 2005–2007, 2008–2012 och 2013–2020 har avslutats och den fjärde handelsperioden, 2021–2030, pågår. Gemensamt för handelsperioderna är att utsläppskraven successivt har skärpts, i huvudsak genom att det totala antalet utsläppsrätter inom systemet har minskats.

3.1.1. Genomförandet av utsläppshandelsdirektivet

Utsläppshandelsdirektivet har till största delen genomförts i svensk rätt genom lagen (2020:1173) om vissa utsläpp av växthusgaser och förordningen (2020:1180) om vissa utsläpp av växthusgaser. De föregående författningarna som genomförde utsläppshandelsdirektivet hade över tid kommit att bli svåröverblickbara, svårlästa och innehöll onödig dubbelreglering i förhållande till de många EU-förordningar som tillkommit i anslutning till direktivet. I samband med genomförandet av ändringsdirektivet inför den fjärde handelsperioden (2021–2030), Europarlamentets och rådets direktiv (EU) 2018/410 av den 14 mars 2018 om ändring av direktiv 2003/87/EG för att främja kostnadseffektiva utsläppsminskningar och koldioxidsnåla investeringar, och beslut (EU) 2015/1814, gjordes därför en total omarbetning av de svenska författningarna som resulterade i nu gällande lag och förordning (se prop. 2020/21:27).

En avsikt med omarbetningen var enligt prop. 2020/21:27 att göra författningarna mer flexibla för framtida ändringar. EU:s miljölagstiftning är ett rörligt och föränderligt rättsområde under ständig utveckling och föremål för ökad harmonisering. Detta gäller inte minst EU:s utsläppshandelssystem, vilket innebär att det återkommande finns behov att ändra de svenska författningarna som genomför utsläppshandelsdirektivet. Lagen (2020:1173) om vissa utsläpp av växthusgaser renodlades till det primära lagstiftningsområdet (8 kap. 2 § regeringsformen). Lagen innehåller framför allt definitioner av tillämpningsområdet, centrala begrepp, bestämmelser om grundläggande skyldigheter och rättigheter för de aktörer som träffas av regleringen, tillsyn, kontoföring och om straff och sanktioner. Lagen innehåller vidare ett flertal bemyndiganden till regeringen bl.a. om att meddela föreskrifter om

tillämpningen av lagen. Detta innebär att huvuddelen av regleringen återfinns i förordningen (2020:1180) om vissa utsläpp av växthusgaser.

Utöver lagen respektive förordningen om vissa utsläpp av växthusgaser gäller ett flertal EU-förordningar som svensk lag:

- Kommissionens delegerade förordning (EU) 2019/331 av den 19 december 2018 om fastställande av unionstäckande övergångsbestämmelser för harmoniserad gratis tilldelning av utsläppsrätter enligt artikel 10a i Europaparlamentets och rådets direktiv 2003/87/EG (tilldelningsförordningen),
- Kommissionens genomförandeförordning (EU) 2018/2067 av den 19 december 2018 om verifiering av uppgifter och ackreditering av kontrollörer i enlighet med Europaparlamentets och rådets direktiv 2003/87/EG (verifieringsförordningen),
- Kommissionens genomförandeförordning (EU) 2018/2066 av den 19 december 2018 om övervakning och rapportering av växthusgasutsläpp i enlighet med Europaparlamentets och rådets direktiv 2003/87/EG och om ändring av kommissionens förordning (EU) nr 601/2012 (övervaknings- och rapporteringsförordningen),
- Kommissionens delegerade förordning (EU) 2019/1122 av den 12 mars 2019 om komplettering av Europaparlamentets och rådets direktiv 2003/87/EG vad gäller unionsregistrets funktion (registerförordningen),
- Kommissionens genomförandeförordning (EU) 2019/1842 av den 31 oktober 2019 om tillämpningsföreskrifter för Europaparlamentets och rådets direktiv 2003/87/EG vad gäller ytterligare åtgärder i samband med justeringar av gratis tilldelning av utsläppsrätter på grund av förändringar av verksamhetsnivå (verksamhetsändringsförordningen),
- Kommissionens delegerade förordning (EU) 2019/1603 av den 18 juli 2019 om komplettering av Europaparlamentets och rådets direktiv 2003/87/EG vad gäller åtgärder som antagits av Internationella civila luftfartsorganisationen för övervakning, rapportering och verifiering av utsläpp för att genomföra en global marknadsbaserad åtgärd,
- Kommissionens förordning (EU) nr 1031/2010 av den 12 november 2010 om tidsschema, administration och andra aspekter av auktionering av utsläppsrätter för växthusgaser i enlighet med Europaparlamentets och rådets direktiv 2003/87/EG om ett system för handel med utsläppsrätter för växthusgaser inom unionen (auktioneringsförordningen).

3.2. EU:s regelverk för övervakning och rapportering av koldioxidutsläpp från sjötransporter – EU MRV-förordningen

Europaparlamentets och rådets förordning (EU) 2015/757 om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter och om ändring av direktiv 2009/16/EG (EU MRV-förordningen) innebär krav på övervakning, rapportering och verifiering av koldioxidutsläpp från kommersiella

sjötransporter av passagerare eller last som trafikerar hamnar i EES.[5] EU MRV-förordningen omfattar fartyg med en bruttodräktighet över 5 000 och tillämpas från och med den 1 januari 2018.

Kraven i förordningen gäller per specifikt fartyg och den aktör som träffas av skyldigheterna är företagen såsom definierade i artikel 3.d: fartygsägaren eller någon annan organisation eller person, såsom den driftsansvarige eller den som hyr fartyget utan besättning, som har övertagit fartygsägarens ansvar för fartygets drift.

Företagen ska rapportera mängden koldioxid som släpps ut på resor till, från och mellan hamnar inom EES (artikel 4). Övervakningen och rapporteringen ska omfatta koldioxidutsläpp från förbränning av bränsle, när fartygen är till sjöss såväl som i hamn (artikel 4.1). Andra växthusgaser och luftföroreningar togs inte med i förordningen för att begränsa den administrativa bördan för företagen (se skälssats 20 i EU MRV-förordningen). Fartygsägarna är dock skyldiga att lämna vissa andra uppgifter som inte relaterar till bestämningen av utsläppen, till exempel uppgifter för att fastställa fartygens energieffektivitet såsom tillryggalagd sträcka, tid till sjöss och last (artikel 10 och 11).

3.2.1. Övervakning och rapportering av koldioxidutsläpp och relaterade uppgifter

Kraven på övervakning, rapportering och verifiering regleras i EU MRV-förordningen. Reglerna för övervakning har ändrats och kompletterats genom följande EU-förordningar som antagits med stöd av EU MRV-förordningen:

- Kommissionens delegerade förordning (EU) 2016/2071 av den 22 september 2016 om ändring av Europaparlamentets och rådets förordning (EU) 2015/757 vad gäller metoderna för övervakning av koldioxidutsläpp och reglerna för övervakning av annan relevant information,
- Kommissionens delegerade förordning (EU) 2016/2072 om verifieringsverksamhet och ackreditering av kontrollörer i enlighet med Europaparlamentets och rådets förordning (EU) 2015/757 om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter,
- Kommissionens genomförandeförordning (EU) 2016/1927 av den 4 november 2016 om mallar för övervakningsplaner, utsläppsrapporter och dokument om överensstämmelse i enlighet med Europaparlamentets och rådets förordning (EU) 2015/757 om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter,
- Kommissionens genomförandeförordning (EU) 2016/1928 av den 4 november 2016 om fastställande av transporterad last för andra fartygskategorier än passagerarfartyg, ro-ro-fartyg och containerfartyg i enlighet med Europaparlamentets och rådets förordning (EU) 2015/757 om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter.

[5] EU MRV-förordningen träffar utöver EU:s medlemsstater även EES-länderna i enlighet med den gemensamma EES-kommitténs beslut nr 215/2016 av den 28 oktober 2016 om ändring av bilaga III (transport) och XX (miljö) till EES-avtalet.

Övervakningen ska omfatta ett antal olika parametrar, dels per resa och dels på årsbasis enligt Tabell 1 nedan. Fartyg vars avrese- eller ankomsthamn alltid är inom en medlemsstats jurisdiktion, och där fartyget gör över 300 resor under rapporteringsperioden, undantas från kraven på övervakning per resa.

Tabell 1 - Parametrar som ska övervakas per resa respektive på årsbasis

Parametrar som övervakas per resa	**Parametrar som övervakas på årsbasis**
Avresehamn och ankomsthamn samt datum och klockslag för avresa och ankomst.	
Mängd och emissionsfaktor för varje typ av bränsle som förbrukas totalt.	Mängd och emissionsfaktor för varje typ av bränsle som förbrukas totalt.
Utsläppt koldioxid.	Total aggregerad mängd koldioxidutsläpp inom denna förordnings tillämpningsområde.
	Aggregerade koldioxidutsläpp från alla resor mellan hamnar inom en medlemsstats jurisdiktion.
	Aggregerade koldioxidutsläpp från alla resor med avgång från hamnar inom en medlemsstats jurisdiktion.
	Samlade koldioxidutsläpp från alla resor till hamnar inom en medlemsstats jurisdiktion.
	Koldioxidutsläpp som uppstått inom hamnar inom en medlemsstats jurisdiktion då fartygen legat i hamn.
Tillryggalagd sträcka.	Totalt tillryggalagd sträcka.
Tidsåtgång till sjöss.	Total tidsåtgång till sjöss.
Transporterad last.	
Transportarbete.	Totalt transportarbete.
	Genomsnittlig energieffektivitet.
Isklass och framförande genom is (frivilligt)	Isklass och framförande genom is (frivilligt)

För varje fartyg ska det finnas en övervakningsplan från vilken övervakningen ska utgå ifrån (artikel 6). I övervakningsplanen ska det bl.a. framgå beskrivningar av vilka utsläppskällor som finns ombord, de förfaranden som används för övervakningen och rapporteringen, hur bränsleförbrukningen bestäms samt vilka emissionsfaktorer som används.

Beräkningen av koldioxidutsläpp görs genom att multiplicera den förbrukade mängden bränsle med bränslets emissionsfaktor enligt bilaga I i EU MRV-förordningen. Bränsleförbrukningen ska omfatta det bränsle som förbrukas i huvudmotorer, hjälpmotorer, gasturbiner, pannor och inertgasgeneratorer. Bränsleförbrukning i hamnområden ska också övervakas, men de associerade utsläppen ska beräknas separat från de som sker vid drift. Bilagan anger vilka emissionsfaktorer som ska användas. De värden som anges är desamma som

gäller enligt IMO:s regelverk om index för energieffektiv konstruktion och drift av fartyg, enligt resolution MEPC.213(63) som antogs av IMO:s miljöskyddskommitté den 2 mars 2012 (EEDI). Lämpliga emissionsfaktorer ska tillämpas för biobränslen, alternativa icke-fossila bränslen och andra bränslen som saknar standardiserade emissionsfaktorer.

Företagen får välja mellan fyra metoder för att fastställa bränsleförbrukningen enligt bilaga I i EU MRV-förordningen. Alla kombinationer av dessa metoder som godkänns av kontrollören (se avsnittet om verifiering nedan) får också användas, om det ökar den totala noggrannheten. Metoderna är följande:

- Metod A: Leveranssedel för bunkerbränsle (bunker delivery note, BDN) och periodiska avstämningar av bränsletankar.
- Metod B: Övervakning av tank för bunkerbränsle ombord.
- Metod C: Flödesmätare för tillämpliga förbränningsprocesser.
- Metod D: Direkta koldioxidutsläppsmätningar.

Metod A innebär att bränsleförbrukningen bestäms utifrån leveranssedlar, dvs. en specifikation av bränsleinköp, i kombination med periodiska avstämningar av fartygens bränsletankar. För varje period (d.v.s. tidsåtgången mellan två anlöp eller tidsåtgången inom en hamn) ska den samlade bränsleförbrukningen och bränsletypen anges. Den samlade förbrukningen är skillnaden mellan bränslemängd vid periodens början och slut, med hänsyn till eventuellt avlägsnat bränsle. Metoden får inte användas om fartyget inte har leveranssedlarna ombord, eller om last används som bränsle (t.ex. flytande naturgas, LNG). Den periodiska avstämningen av bränsletankarna ombord baseras på avläsningen av bränsletanken. Vid genomgången används tanktabeller för varje bränsletank för att fastställa volymen vid tidpunkten för avläsningen av bränsletanken.

Metod B innebär att bränsleförbrukningen bestäms utifrån avläsningar av fartygens bränsletankar. Avläsningarna ska göras dagligen när fartyget är till sjöss och varje gång bränsle fylls på eller avlägsnas. Skillnaden i bränsletanknivån mellan två avläsningar utgör det bränsle som förbrukats under en specifik period. Avläsningar av bränsletankarna ska utföras med lämpliga metoder, såsom automatiserade system, pejling och mätstickor.

Metod C innebär att bränsleförbrukningen bestäms genom en flödesmätning, dvs. en mätning av hur mycket bränsle som kontinuerligt förbrukas. Data från alla flödesmätare kopplade till relevanta koldioxidutsläppskällor ska sammanställas för att fastställa all bränsleförbrukning för en specifik period.

Metod D innebär att koldioxidutsläppen mäts direkt vid den punkt koldioxidutsläppen släpps ut till atmosfären. För fartyg som använder denna övervakningsmetod ska bränsleförbrukningen beräknas genom att dividera den uppmätta koldioxidmängden med den tillämpliga emissionsfaktorn för den bränsletyp som används.

Senast den 30 april varje år ska företagen lämna en utsläppsrapport till kommissionen och myndigheterna i de berörda flaggstaterna avseende koldioxidutsläpp och övrig relevant information. Rapporten ska vara verifierad av en kontrollör (se avsnittet nedan). Utsläppsrapporterna lämnas via unionens automatiserade informationssystem, det s.k. Thetis MRV, som förvaltas av Europeiska sjösäkerhetsbyrån EMSA. Flera av uppgifterna i utsläppsrapporterna

ska offentliggöras av kommissionen i enlighet med artikel 21 i förordningen, vilket rent tekniskt sker via Thetis MRV. Detta innebär att det i Thetis MRV för varje fartyg finns offentliga uppgifter om bl.a. årliga koldioxidutsläpp, total bränsleförbrukning per år, genomsnittlig bränsleförbrukning och koldioxidutsläpp per sträcka, genomsnittlig bränsleförbrukning och koldioxidutsläpp per sträcka och transporterad last, samt vilka övervakningsmetoder som tillämpas.

3.2.2. Verifiering inom EU MRV-regelverket

I MRV-förordningen definieras kontrollör som en rättslig enhet, även kallat verifieringsorgan, som utför verifieringsverksamhet och är ackrediterad av ett nationellt ackrediteringsorgan enligt reglerna i förordning (EG) 765/2008). Företagen får anlita vilket verifieringsorgan de vill, så länge de är ackrediterade, och oberoende av vilket land som utfärdat den ackrediteringen.

De ackrediterade kontrollörerna har en central funktion inom EU MRV och har en uppgift att verifiera både övervakningsplanerna och utsläppsrapporterna. Bestämmelserna finns i EU MRV-förordningen samt i förordning (EU) 2016/2072.

Övervakningsplanen ska lämnas till en kontrollör som enligt artikel 13 i EU MRV-förordningen ska göra en bedömning av överensstämmelsen med kraven på övervakningsplaner i förordningen. Företagen har en skyldighet att korrigera de eventuella avvikelser som kontrollören identifierat.

Kontrollören ska också göra en verifiering av utsläppsrapporten och i samband med det göra ett platsbesök, ombord på fartyget eller på land beroende på vad kontrollören bedömer är lämpligt. Undantag från platsbesök är möjligt under vissa omständigheter. Efter genomförd verifiering ska kontrollören utfärda en verifieringsrapport till företaget med en slutsats om utsläppsrapporten verifierats som tillfredsställande eller ej.

Swedac är det svenska nationella ackrediteringsorganet. Swedac har ackrediterat ett svenskt verifieringsorgan som får utföra verifiering inom ramen för EU MRV-regelverket.

3.2.3. Avvisning av fartyg som inte följer reglerna

För att säkerställa efterlevnaden av EU MRV-regelverket finns en möjlighet för medlemsstater att avvisa fartyg enligt artikel 20.3 EU MRV-förordningen. Den berörda myndigheten i ankomsthamnens medlemsstat kan utfärda ett avvisningsbeslut mot ett fartyg om det har underlåtit att uppfylla övervaknings- och rapporteringsskyldigheterna under två eller fler på varandra följande rapporteringsperioder och om andra åtgärder vidtagits utan att det lett till att kraven uppfylls. Ett sådant beslut ska anmälas till kommissionen, EMSA, övriga medlemsstater och den berörda flaggstaten. Om ett sådant avvisningsbeslut utfärdas, ska varje medlemsstat neka det berörda fartyget tillträde till sina hamnar.

3.2.4. Det svenska genomförandet av EU MRV-regelverket

EU MRV-förordningen är direkt tillämplig som svensk lag och kräver inget nationellt genomförande, förutom att peka ut nationella myndigheter och för att reglera sanktionsbestämmelser enligt artikel 20.1 i förordningen. Förordningen

(2017:880) om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter kompletterar EU MRV-förordningen. Här regleras Transportstyrelsens uppgifter som relaterar till MRV-förordningen:

- 2 § reglerar att en utsläppsrapport enligt artikel 11 i MRV-förordningen ska lämnas till Transportstyrelsen.
- 3 § reglerar att Transportstyrelsen ska fullgöra de uppgifter som Sverige har i fråga om informationsutbyte och anmälan enligt artikel 20.2 i MRV-förordningen.
- 4 § reglerar att Transportstyrelsen får besluta om avvisning enligt artikel 20.3 i MRV-förordningen och i övrigt fullgöra de uppgifter som Sverige har enligt artikel 20.3.
- 5 § hänvisar till att tillsynsbestämmelserna finns i 26 kap. miljöbalken (1998:808) och miljötillsynsförordningen (2011:13), den senare i vilken det framgår att Transportstyrelsen är ansvarig för tillsynen över EU MRV-förordningen enligt 2 kap. 27 § 1 d.

När det gäller sanktionsbestämmelser har Sverige infört sanktioner i form av administrativa sanktionsavgifter. I 7 § förordningen (2017:880) om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter hänvisas till bestämmelserna om miljösanktionsavgifter i 30 kap. miljöbalken och förordningen (2012:259) om miljösanktionsavgifter. Enligt 30 kap. 3 § miljöbalken beslutas miljösanktionsavgift av tillsynsmyndigheten, dvs. Transportstyrelsen. Den specifika miljösanktionsavgiftsbestämmelsen som är kopplad till överträdelser av EU MRV-förordningen återfinns i 9 kap. 22 § förordningen (2012:259) om miljösanktionsavgifter. Där framgår att en överträdelse av artikel 8-12 i EU MRV-förordningen genom att inte uppfylla föreskrivna krav på övervakning eller rapportering medför en miljösanktionsavgift om 10 000 kronor.

4. Ett reviderat utsläppshandelssystem för att nå EU:s 2030 mål

Den 14 juli 2021 presenterade kommissionen förslag på revideringar av EU ETS som en del av lagstiftningspaketet för att nå EU:s skärpta klimatmål till 2030, det s.k. Fit for 55-paketet. En preliminär politisk överenskommelse om förändringarna i EU ETS slöts i december 2022 och de relaterade lagstiftningsakterna förväntas bli antagna i april 2023. Överenskommelsen innebär bl.a. att:

- Takten på utsläppsminskningarna inom EU ETS ökas från och med 2024. Utsläppen ska minska med 62 procent till 2030 jämfört med 2005, vilket är en ökning från det tidigare minskningsmålet om 43 procent till samma år. Skärpningen sker dels genom två engångssänkningar av utsläppstaket, 2024 (90 miljoner utsläppsrätter) och 2026 (27 miljoner utsläppsrätter), dels genom att den så kallade linjära reduktionsfaktorn som styr den årliga minskningen av utsläppstaket skärps i två steg från nuvarande 2,2 procent, till 4,3 procent 2024–2027 och till 4,4 procent 2028–2030.
- De så kallade riktmärkena som ligger till grund för gratis tilldelning av utsläppsrätter till anläggningar ska ses över och göras mer teknikneutrala. Gratis tilldelning villkoras med att vissa energieffektiviseringsåtgärder ska genomföras, och i vissa fall med att anläggningarna ska ta fram och följa klimatomställningsplaner.
- För de sektorer som omfattas av gränsjusteringsmekanismen CBAM (järn och stål, aluminium, cement, konstgödsel, vätgas) fasas den fria tilldelningen av utsläppsrätter gradvis ut under perioden 2026–2034.
- Det befintliga EU ETS utvidgas genom att sjöfart inkluderas.
- Reglerna för flyg inom EU ETS förändras och nya krav på utsläppskompensation inom ramen Icaos globala marknadsbaserade styrmedel för internationellt flyg (Corsia) genomförs.
- Anläggningar vars utsläpp till mer än 95 procent härstammar från biomassa ska inte längre ingå i EU ETS.
- Innovationsfonden, som finansieras av auktionsintäkter, utökas så att stöd kan ges via flera verktyg och till fler sektorer och tekniker. Upp till 30 procent av innovationsfondens intäkter ska till exempel kunna användas till produktionsstöd där aktörer får ansöka om stöd genom konkurrensutsatta budgivningar, så kallade klimatkontrakt (Carbon Contracts for Difference).
- Ett nytt utsläppshandelssystem för byggnader, transport och viss industri etableras (EU ETS 2).

För det befintliga EU ETS, inklusive dess föreslagna utvidgning till sjöfartssektorn berörs följande lagstiftningsakter: utsläppshandelsdirektivet, EU MRV-förordningen samt Europaparlamentets och rådets beslut (EU) 2015/1814 av den 6 oktober 2015 om upprättande och användning av en reserv för marknadsstabilitet för unionens utsläppshandelssystem och om ändring av direktiv 2003/87/EG. Ändringarna avseende EU ETS görs via följande lagstiftningsakter som ändrar de ursprungliga akterna. Eftersom akterna vid framtagandet av denna skrivelse inte har antagits och publicerats i EU:s officiella tidning saknar de nummer och titlarna är preliminära:

- Europaparlamentet och rådets direktiv (EU) 2023/[nummer] av den [datum] om ändring av direktiv 2003/87/EG om införandet av ett europeiskt system för handel med utsläppsrätter inom unionen, samt om ändring av beslut (EU) 2015/1814 om upprättande och användning av en reserv för marknadsstabilitet för unionens utsläppshandelssystem (ändringsdirektivet),
- Europaparlamentet och rådets direktiv (EU) 2023/[nummer] av den [datum] om ändring av direktiv 2003/87/EG avseende luftfartens bidrag till unionens utsläppsminskningsmål och om införande av marknadsbaserade globala åtgärder (flygändringsdirektivet),
- Europaparlamentet och rådets förordning (EU) 2023/[nummer] av den [datum] om ändring av förordning (EU) 2015/757 för att möjliggöra inkluderandet av sjötransportverksamheter inom EU:s utsläppshandelssystem och av växthusgaser utöver CO2 (EU MRV-ändringsförordningen).

Denna skrivelses artikelhänvisningar, beskrivningar och författningsförslag relaterade till förändringarna av utsläppshandelsdirektivet och EU MRV-förordningen utgår ifrån följande utkast som godkändes av Coreper I och ansvarigt utskott i Europaparlamentet i februari 2023 för slutlig juristlingvistbehandling inför det förväntade antagandet i april 2023:

- ST 6210/23: utkast på direktiv om ändring av utsläppshandelsdirektivet samt på förordning om ändring av EU MRV-ändringsförordningen (bilaga 1).
- ST 6215/23: utkast på direktiv om ändring av utsläppshandelsdirektivet avseende flyg (bilaga 2).

Vissa svenska ord och uttryck som används i denna skrivelse är inte definitiva och kan skilja sig från de ord och uttryck som kommer vara aktuella när de slutliga svenska språkversionerna av utsläppshandelsdirektivet och EU MRV-förordningen antagits.

I det följande sammanfattas de huvudsakliga förändringarna i utsläppshandelsdirektivet och EU MRV-förordningen, med särskilt fokus på de förändringar som har betydelse för det nationella genomförandet.

4.1. Ändrade regler för stationära anläggningar

I det reviderade utsläppshandelsdirektivet finns en uttalad vilja att ge incitament till en omställning inom industrin till produktionssätt som helt eller delvis reducerar utsläppen av växthusgaser (se bl.a. skälssats 8 i ändringsdirektivet). Anläggningar utan utsläpp ska behandlas enligt samma villkor som anläggningar med utsläpp, vilket kommer till uttryck genom att:

- Anläggningar helt utan utsläpp av växthusgaser kommer kunna omfattas av systemet och därmed ha möjlighet att tilldelas gratis utsläppsrätter, se avsnitt 4.1.1.
- De riktmärken som gratis tilldelning av utsläppsrätter grundar sig på ska göras teknikneutrala i större utsträckning, se avsnitt 4.1.5.
- Verksamhetsbeskrivningarna i bilaga I till direktivet har gjorts mer teknikneutrala för att möjliggöra för alternativa produktionsprocesser att delta i EU ETS. Vissa verksamhetsbeskrivningar som tidigare förutsatt

en viss förbränningskapacitet har istället ett tröskelvärde utgående ifrån en produktionskapacitet i enhet ton produkt per dag. Ett exempel är att produktion av vätgas och syntesgas med en kapacitet över 5 ton/dag kommer omfattas, inte som tidigare avgränsat till endast produktion genom reformering och partiell oxidation med en kapacitet över 25 ton/dag. Detta möjliggör att produktion av vätgas genom exempelvis elektrolys ingår i EU ETS.

4.1.1. Anläggningar utan växthusgasutsläpp

Anläggningar som överskrider kapacitetströsklarna i bilaga I utsläppshandelsdirektivet ska omfattas av EU ETS oavsett om de har utsläpp av växthusgaser eller inte. Syftet är att anläggningar utan utsläpp av växthusgaser ska kunna få gratis tilldelning av utsläppsrätter (se skälssats 8 i ändringsdirektivet). Att även verksamheter utan utsläpp omfattas av systemet följer av att *utsläpp från* stryks i den första meningen i artikel 2.1 i utsläppshandelsdirektivet:

- Nuvarande lydelse: *Detta direktiv skall tillämpas på utsläpp från de verksamheter som anges i bilaga I och för de växthusgaser som anges i bilaga II.*
- Ny lydelse: *Detta direktiv ska tillämpas på de verksamheter som förtecknas i bilagorna I och III och på de växthusgaser som förtecknas i bilaga II.*

4.1.2. Möjlighet till frivilligt deltagande för vissa slags anläggningar

Genom ett tillägg i artikel 2.1 i utsläppshandelsdirektivet ska anläggningar som inkluderats i systemet på grund av att de har en installerad tillförd effekt över 20 MW ha möjlighet att fortsätta delta frivilligt i systemet ifall de, i syfte att minska klimatutsläppen, genomför ändringar av produktionsprocessen som medför att den tillförda effekten minskar under 20 MW. En sådan anläggning får välja om den vill delta den innevarande 5-åriga tilldelningsperioden enligt artikel 11.1 ut, eller den innevarande och nästa tilldelningsperiod ut.

4.1.3. Anläggningar med stor andel biomassautsläpp undantas

Enligt punkt 1 i bilaga I i det nuvarande utsläppshandelsdirektivet omfattas inte anläggningar som uteslutande använder biomassa vid förbränning eller som förutom vid start och stopp uteslutande använder biomassa. Denna regel ska fortsätta gälla till och med den 31 december 2025 enligt artikel 4 i ändringsdirektivet, och från den 1 januari 2026 ersättas med en ny undantagsregel enligt följande. Anläggningar vars totala utsläpp till mer än 95 procent har sitt ursprung från förbränning av biomassa undantas, baserat på ett genomsnitt över en 5-årsperiod. Den biomassa som avses är sådan som uppfyller hållbarhetskriterierna enligt artikel 14 i direktivet, dvs. sådan vars utsläpp inte behöver täckas med utsläppsrätter. 5-årsperioden definieras som perioderna enligt andra stycket i artikel 11.1 utsläppshandelsdirektivet.

Som en följdändring justeras även sammanräkningsregeln för hur total installerad tillförd effekt ska beräknas enligt punkt 3 i bilaga I i direktivet (genomförd i anvisning 2 i bilagan till förordningen (2020:1180) om vissa utsläpp av växthusgaser). Enligt tidigare lydelse ska enheter som uteslutande

använder biomassa eller som förutom vid start och stopp uteslutande använder biomassa inte räknas med för att avgöra om en anläggning överskrider ett tröskelvärde i verksamhetsbeskrivningarna i bilagan som är uttryckt i termer av installerad effekt. Enligt den nya lydelsen görs ingen åtskillnad i fråga om vilka slags bränslen som används, dvs. även biomassaenheter ska räknas med. Den tidigare lydelsen ska gälla till och med den 31 december 2025 enligt övergångsbestämmelserna i artikel 4 i ändringsdirektivet, och från den 1 januari 2026 ersättas med den nya lydelsen.

4.1.4. Krav på övervakning, rapportering och verifiering av utsläpp från avfallsförbränning

Från den 1 januari 2024 blir det krav på anläggningar som förbränner hushållsavfall att övervaka och rapportera utsläpp. Kommissionen ska göra en utvärdering 2026 för att eventuellt lägga lagförslag om att inkludera dessa anläggningar fullt ut från 2028. Kravet på övervakning och rapportering från den 1 januari 2024 införs i verksamhetsbeskrivningen för förbränningsanläggningar i bilaga I till direktivet. I Sverige är så kallade avfallsenergianläggningar redan helt inkluderade genom ett tillägg i verksamhetsbeskrivning 1 i bilagan till förordningen (2020:1180) om vissa utsläpp av växthusgaser vilket innebär att de allra flesta, om inte alla, anläggningar som förbränner hushållsavfall i Sverige redan omfattas.

4.1.5. Gratis tilldelning av utsläppsrätter

Ett antal förändringar för gratis tilldelning till stationära anläggningar kommer att genomföras för tilldelningsperioden 2026–2030. I huvudsak kommer dessa förändringar regleras genom att EU-kommissionen får mandat att anta ett antal delegerade akter och genomförandeakter om att ändra tilldelningsförordningen och verksamhetsändringsförordningen.

Reviderade riktmärkesdefinitioner för gratis tilldelning

EU-kommissionen får enligt artikel 10a.1 mandat att via en genomförandeakt se över och eventuellt revidera produktriktmärkenas definitioner och systemgränser för att göra dem mera teknikneutrala. Syftet är att ge ytterligare incitament till att minska utsläppen av växthusgaser och skapa lika villkor för nya produktionstekniker med låga eller inga utsläpp av växthusgaser. Alla riktmärken ska ses över och det är högst sannolikt att åtminstone riktmärket för råjärn och vätgas kommer att ändras.

Uppdaterade riktmärkesvärden

Riktmärkesvärdena ska inför varje tilldelningsperiod uppdateras i enlighet med artikel 10a.2. Den maximala minskningstakten för riktmärkesvärdena höjs från 1,6 procent per år till 2,5 procent per år medan den lägsta minskningstakten höjs från 0,2 procent per år till 0,3 procent per år. Det innebär i praktiken att riktmärkesvärdena för perioden 2026–2030 som mest kan reduceras med 50 procent och som minst med 6 procent jämfört med värdena som tillämpades 2013–2020.

Villkorad gratis tilldelning med energieffektivisering och klimatomställningsplaner

För att anläggningar ska få hela sin berättigade andel tilldelning av gratis utsläppsrätter ställs krav på att de genomför energieffektiviseringsåtgärder som har identifierats utifrån företagens energiledningssystem eller energikartläggning och som har en återbetalningstid kortare än tre år (artikel 10a.1). För de anläggningar där åtgärderna inte genomförs reduceras tilldelningen med 20 procent om inte andra åtgärder vidtagits som minskar växthusgaser i motsvarande grad, alternativt om det kan motiveras att kostnaderna för åtgärderna är oproportionerliga. Bedömningsvillkor, tidsramar och ytterligare regler ska specificeras av EU-kommissionen i en delegerad akt.

För de 20 procent mest utsläppsintensiva anläggningarna inom varje produktriktmärke ställs även krav på att ta fram och följa en omställningsplan mot klimatneutralitet, annars får de 20 procent indragen tilldelning enligt artikel 10a.1. Klimatneutralitetsplanen ska bland annat innehålla åtgärder och investeringsplaner för att anläggningen ska bli klimatneutral 2050 med delmål vart femte år med start 31 december 2025 utifrån specifikationerna i artikel 10b.4. Planen ska vara inlämnad senast den 1 maj 2024. EU-kommissionen ska ta fram en genomförandeakt om format och innehåll för en sådan plan enligt artikel 10b.4.

Anläggningar kan inte drabbas av båda dessa tilldelningsminskningar. Den maximalt möjliga minskningen i tilldelningen på grund av villkoren är således 20 procent.

Den sektorsövergripande korrektionsfaktorn ska inte drabba de mest effektiva anläggningarna

I syfte att främja de mest utsläppseffektiva anläggningarna undantas de från den sektorsövergripande korrektionsfaktorn enligt artikel 10a.5. Anläggningar som har en utsläppsintensitet under genomsnittet av de 10 procent mest effektiva anläggningarna inom ett riktmärke undantas från tillämpning av den sektorsövergripande korrektionsfaktorn.

Utfasning av gratis tilldelning för sektorer där gränsjusteringsmekanismen CBAM tillämpas

Enligt artikel 10a.1a ska ingen gratis tilldelning ges för produktion av produkter som omfattas av bilaga I till förordningen om en gränsjusteringsmekanism, CBAM-förordningen.[6] Under en övergångsperiod ska utsläppsrätter dock tilldelas för sådan produktion i en begränsad omfattning genom att tillämpa en CBAM-faktor. Full tilldelning med en faktor på 100 procent ges fram till och med 2025 varefter en utfasning av gratis tilldelning görs successivt till 0 procent år 2034.

4.1.6. Ändrade tidpunkter för utfärdande av gratis tilldelning och överlämnande av utsläppsrätter

[6] En preliminär överenskommelse om CBAM-förordningen, som ingick i kommissionens fit for 55-förslag av den 14 juli 2021, slöts i december 2022. Förordningen förväntas antas i april 2023.

Tidpunkten för utfärdande av gratis utsläppsrätter senareläggs från den 28 februari till den 30 juni enligt en ändring i artikel 11.2. Tidpunkten för att senast överlämna utsläppsrätter motsvarande föregående års utsläpp senareläggs från den 30 april till den 30 september. Skälet till ändringen framgår av skälssats 38b i ändringsdirektivet och handlar om att underlätta administrationen i relation till gratis tilldelning av utsläppsrätter.

4.2. Flygverksamhet inom Corsia – krav på utsläppskompensation

Det reviderade utsläppshandelsdirektivet enligt flygändringsdirektivet genomför kraven på utsläppskompensation inom ramen för EU:s genomförande av Corsia, det globala marknadsbaserade styrmedlet för att begränsa utsläppen av växthusgaser från internationell civil luftfart till en viss nivå, antaget av FN:s internationella civila luftfartsorganisation Icao genom resolution A39-3. Målsättningen ska åstadkommas genom att eventuella utsläpp som överskrider den s.k. basnivån ska kompenseras genom inköp av utsläppskrediter, i utsläppshandelsdirektivet kallade reduktionsenheter, som minskar utsläppen i andra sektorer. Kraven gällande Corsia i utsläppshandelsdirektivet ska endast tillämpas på flygoperatörer som är registrerade i eller fått sin operativa licens beviljad av ett EES-land enligt artikel 12.6.a.

Verksamhetsbeskrivningen för flygverksamhet i bilaga I utsläppshandelsdirektivet, vilken definierar direktivets tillämpningsområde, utökas genom att flygningar mellan två olika tredjeländer läggs till. Därmed omfattas enligt bilaga I, något förenklat och med vissa undantag, flygningar som avgår eller ankommer en flygplats i EES, samt flygningar mellan två olika tredjeländer. EU-kommissionen ska anta en genomförandeakt enligt artikel 25a.3 som anger vilka tredjeländer som bedöms genomföra Corsia för varje år från och med 2024. Enligt artikel 12.6 ska kompensationskravet beräknas av medlemsstaterna baserat på flygningar som ingår i bilaga I och som går till, från och mellan de länder som listats i genomförandeakten. Flygningar inom EES omfattas således inte av kompensationskrav. Kompensationskrav gäller endast för flygoperatörer som fått sin operativa licens beviljad av en medlemsstat eller är registrerade i en medlemsstat. Vidare ska det årliga utsläppet överstiga 10 000 ton CO_2 från internationella flygningar som ingår i bilaga I. Vissa slags flygningar är undantagna, exempelvis sjuktransporter och flygningar för militära ändamål.

EU-kommissionen ska anta en genomförandeakt senast den 30 juni 2024 med de detaljerade reglerna för hur kompensationskraven ska beräknas enligt artikel 11a.7. Medlemsstaterna ska senast den 30 november varje år underrätta flygoperatörna om kompensationskravet med avseende på föregående kalenderårs utsläpp i enlighet med den akten. Flygoperatörerna ska överlämna reduktionsenheter motsvarande kompensationskrav senast den 31 januari 2025 och den 31 januari 2028 med avseende på utsläpp under perioderna 2021–2023 respektive 2024–2026.

EU-kommissionen har mandat enligt artikel 25a.7 att anta genomförandeakter om att undanta flygoperatörer från skyldigheter att överlämna reduktionsenheter enligt artikel 12.8 om det föreligger en betydande snedvridning av konkurrensen på marknaden.

Artikel 11a anger vilka slags reduktionsenheter flygoperatörerna får använda med avseende på kompensationskraven och kriterier för sådana enheter. EU-kommissionen ska anta genomförandeakter som listar de reduktionsenheter som är godkända i enlighet med kriterierna i artikel 11a. EU-kommissionen får mandat att anta genomförandeakter om att godkänna ytterligare reduktionsenheter, ifall de tredjeländer som listas i genomförandeakten enligt artikel 25a.3 tillåter andra enheter.

Senast 3 månader efter varje rapporteringsperiod ska EU-kommissionen publicera aggregerade utsläppsuppgifter enligt artikel 14.2b, utifrån de uppgifter som rapporterats till medlemsstaterna och kommissionen. Kommissionen ska redovisa:

- Per flygplatspar inom EES: totalt utsläpp, totalt antal flygningar, totalt antal passagerare samt använda flygplanstyper.
- Per flygoperatör: utsläpp per flygplatspar, totalt kompensationskrav, vilka slags och hur många reduktionsenheter som använts för att möta kompensationskravet, samt vilka slags och hur stora mängder hållbara bränslen som 0-räknats eller som berättigat kompensation enligt artikel 3c.5a.

En flygoperatör som bedömer att publicering av uppgifter enligt ovan kan skada dess kommersiella intressen, får under vissa omständigheter framföra en begäran om undantag från publiceringen till medlemsstaten. Medlemsstaten får, ifall kriterierna är uppfyllda, framföra begäran vidare till EU-kommissionen som ska besluta i frågan.

4.3. Flyget inom EU ETS

4.3.1. En ändrad omfattning för flyget inom EU ETS

Flygningar mellan EES och tredjeländer är undantagna från EU ETS till och med den 31 december 2023 i enlighet med artikel 28a.1 utsläppshandelsdirektivet i den nuvarande lydelsen.[7] Enligt samma artikel i nuvarande lydelse är flygningar till eller från en flygplats i ett yttre randområde undantagna till och med den 31 december 2023. Det reviderade utsläppshandelsdirektivet innebär förändringar med avseende på vilka flygningar som ingår i EU ETS från och med 2024.

Flygningar mellan en flygplats inom ett yttre randområde och en annan flygplats tillhörande samma medlemsstat, inklusive inom ett annat randområde, undantas från EU ETS från 2024 till och med 2030 enligt artikel 3c.7. Med andra ord ingår i EU ETS flygningar mellan en flygplats inom ett yttre randområde och en flygplats som inte tillhör samma medlemsstat.

Undantaget från EU ETS för flygningar mellan EES och tredjeländer förlängs enligt följande:

[7] Enligt Europaparlamentets och rådets förordning (EU) 2017/2392 av den 13 december 2017 om ändring av direktiv 2003/87/EG för att förlänga nuvarande begränsningar i tillämpningsområdet för luftfartsverksamhet och förbereda för genomförande av en global marknadsbaserad åtgärd från och med 2021.

- artikel 25a.4 undantar flygningar mellan EES och tredjeländer listade i genomförandeakten enligt artikel 25a.3 – dvs. de länder som bedömts genomföra Corsia – från skyldigheter att överlämna utsläppsrätter till och med den 31 december 2026.
- artikel 25a.5 undantar flygningar mellan EES och tredjeländer som inte är listade i genomförandeakten enligt artikel 25a.3 från skyldigheter att överlämna utsläppsrätter till och med den 31 december 2026.

Flygningar till och från de minst utvecklade länderna och små önationer under utveckling i enlighet med FN:s definitioner, förutom de länder som listats i genomförandeakten enligt artikel 25a.3 eller länder vars BNP per capita är lika med eller överstiger genomsnittet i EU, undantas kravet att överlämna utsläppsrätter tills vidare enligt artikel 25a.6.

EU-kommissionen ska senast den 1 juli 2026 lämna en rapport till Europaparlamentet och rådet med en utvärdering av Corsias miljöintegritet, bl.a. med avseende på systemets ambitionsnivå i förhållande till Parisavtalet, enligt artikel 28b.2. Kommissionen ska om lämpligt låta rapporten åtföljas av ett lagförslag till Europaparlamentet och rådet om att ändra utsläppshandelsdirektivet i linje med Parisavtalets temperaturmål, EU:s klimatmål till 2030 och klimatneutralitetsmålet till 2050. Ifall kommissionens utvärdering visar att något av följande kriterier är uppfyllda ska den, om så är lämpligt, lägga fram ett lagförslag om att från 2027 utöka EU ETS till att omfatta flygningar avgående från EES till tredjeland, och om att undanta inkommande flygningar:

- om mötet i Icaos generalförsamling 2025 inte stärker Corsias ambitionsnivå i linje med Icaos långsiktiga eftersträvansvärda mål för att möta Parisavtalets mål, eller
- om länderna listade i genomförandeakten enligt artikel 25a.3 representerar mindre än 70 procent av de internationella utsläppen från luftfart utifrån senaste tillgängliga data.

Om kommissionen lämnar ett sådant lagförslag ska den, om så är lämpligt, inkludera ett förslag om att flygoperatörer får göra avdrag för kostnader associerade med reduktionsenheter för flygningar på rutter som ingår både i EU ETS och Corsia, för att undvika dubbla kostnader. Om kriterierna ovan inte är uppfyllda ska kommissionen lämna ett lagförslag, om så är lämpligt, om att EU ETS fortsatt ska tillämpas på flygningar inom EES, till Schweiz, till Storbritannien och utökas med flygningar (från EES) till länder som inte listas i genomförandeakten enligt artikel 25a.3.

4.3.2. Övervakning och rapportering av icke-koldioxideffekter

Från och med den 1 januari 2025 gäller krav på övervakning, rapportering och verifiering av s.k. icke-koldioxideffekter i enlighet med artikel 14.2a i utsläppshandelsdirektivet enligt flygändringsdirektivet. Flygoperatörerna behöver däremot inte överlämna utsläppsrätter med avseende på klimatpåverkan som uppstår av effekterna. Icke-koldioxideffekterna inkluderar klimatpåverkan från bl.a. kväveoxider, partikelutsläpp och vattenånga enligt definitionen i artikel 3.ua. Medlemsstaterna ska se till att flygoperatörerna följer reglerna och EU-kommissionen ska senast den 31 augusti 2024 anta en genomförandeakt om

detaljerade krav om hur effekterna ska övervakas, rapporteras och verifieras. Senast den 1 januari 2028 ska EU-kommissionen utvärdera om icke-koldioxideffekterna ska inkluderas med avseende på skyldigheterna att överlämna utsläppsrätter i en rapport till Europaparlamentet och rådet.

4.3.3. Utfasning av gratis tilldelning

Gratis tilldelning av utsläppsrätter till flygoperatörer ska fasas ut under åren 2024–2025 och upphöra helt från 2026. EU-kommissionen kommer fastslå hur stort antal utsläppsrätter som kommer finnas tillgängliga att dela ut gratis till flygsektorn i enlighet med artikel 3d.1. Det antalet kommer därefter fördelas till flygoperatörerna i proportion till deras andel av de totala verifierade utsläppen i sektorn år 2023 i enlighet med samma artikel. De behöriga myndigheterna ska senast den 30 juni utfärda det antal utsläppsrätter som ska delas ut gratis för det innevarande året.

Flygsektorn har fått gratis tilldelning av utsläppsrätter utifrån att varje flygoperatör ansökt om tilldelning i enlighet med den lydelse av artikel 3e och artikel 3f som infördes i utsläppshandelsdirektivet genom Europaparlamentets och rådets direktiv 2008/101/EG av den 19 november 2008 om ändring av direktiv 2003/87/EG så att luftfartsverksamhet införs i systemet för handel med utsläppsrätter för växthusgaser inom gemenskapen. Det fanns möjlighet att ansöka om tilldelning inför starten av den tredje handelsperioden (2013–2020). Därefter kunde även nya eller snabbt växande flygoperatörer ansöka om tilldelning fram till den 30 juni 2015. Tilldelningen baserades på flygoperatörernas transportarbete i enheten tonkilometer, dvs. antal ton som transporteras, multiplicerat med transportsträckan i kilometer. Det reviderade utsläppshandelsdirektivet innebär att fler flygoperatörer kommer få gratis tilldelning av utsläppsrätter, eftersom den tidigare varit begränsad till endast de aktörer som ansökt och beviljats tilldelning, med de begränsningar som nämnts ovan.

4.3.4. En kompensationsmekanism för att ersätta merkostnader för användning av hållbara bränslen

Upp till 20 miljoner utsläppsrätter ska avsättas under perioden 2024–2030 för att inrätta en kompensationsmekanism för att ersätta kommersiella flygoperatörer för prisskillnaden mellan vissa utpekade hållbara bränslen och fossilt jetbränsle enligt artikel 3c.5a i det ändrade utsläppshandelsdirektivet. Ersättningen ges i form av gratis tilldelning av utsläppsrätter. Flygoperatörer får varje år ansöka till medlemsstaterna om tilldelningen utifrån de mängder hållbara bränslen de använt under föregående år på flygningar som ingår i EU ETS. Prisskillnaderna mellan de berättigade hållbara bränsletyperna och fossilt jetbränsle kommer beräknas och publiceras av EU-kommissionen årligen. Hur stor andel av prisskillnaden som ersätts beror bland annat på vilken slags hållbart bränsle som använts, exempelvis ersätts 70 procent av prisskillnaden för avancerade biobränslen i enlighet med artikel 2.34 i Europaparlamentet och rådets direktiv (EU) 2018/2001 av den 11 december 2018 om främjande av användningen av energi från förnybara energikällor.

EU-kommissionen ska utvärdera kompensationsmekanismen och rapportera till Europaparlamentet och rådet senast 2027. I utvärderingen ska kommissionen

överväga om mekanismen ska förlängas till 2035 och i så fall återkomma med ett lagförslag.

Medlemsstaterna ska enligt artikel 3c.5a säkerställa att flygoperatörer som tar del av kompensationen synliggör att de fått stödet i enlighet med de krav som framgår i artikel 30ic.1 punkt a och b i lydelsen som introduceras genom ändringsdirektivet (dvs. inte genom flygändringsdirektivet).

4.4. EU MRV-förordningen anpassas för inkluderandet av sjöfarten i EU ETS

Genom EU MRV-ändringsförordningen justeras EU MRV-förordningen i flera avseenden för att anpassa den till införandet av sjöfarten i EU ETS. I det följande redogörs för de huvudsakliga ändringarna i EU MRV-förordningen.

4.4.1. Utökat tillämpningsområde för förordningen genom fler växthusgaser och fartygstyper

EU MRV-förordningen utökas från och med 2024 med utsläpp från metan och dikväveoxid utöver koldioxid, i enlighet med artikel 2.1c. Vidare utökas tillämpningsområdet med avseende på vilka fartyg som ingår. Fartyg för styckegods[8] under 5 000 bruttodräktighet men över 400 samt offshorefartyg över 5 000 bruttodräktighet inkluderas i EU MRV-förordningen från och med 2025 enligt artikel 2.1a respektive 2.1b.

EU-kommissionen får mandat att ta fram delegerade akter enligt artikel 5.2 om att ändra bilaga I och II EU MRV-förordningen med avseende på utsläpp från metan och dikväveoxid, och om övervakningsmetoder och inkluderandet av ytterligare fartyg i förordningen.

4.4.2. Definitionen av företag i EU MRV-förordningen motsvarar definitionen av rederi i utsläppshandelsdirektivet

Definitionen av företag i artikel 3.d EU MRV-förordningen ändras genom att den hänvisar till definitionen av rederi i enlighet med definitionen i artikel 3.v utsläppshandelsdirektivet. Med andra ord är det en och samma aktör som träffas av EU MRV-förordningens krav och som har skyldigheter inom EU ETS enligt utsläppshandelsdirektivet.

4.4.3. Administrerande myndighet introduceras

Administrerande myndighet introduceras både i EU MRV-förordningen och utsläppshandelsdirektivet och har flera roller, bland annat att godkänna rederiernas övervakningsplaner och att ta emot deras utsläppsrapporter. Genom definitionen i artikel 3.q EU MRV-förordningen är administrerande myndighet för ett specifikt rederi den myndighet som pekats ut i den förteckningen EU-kommissionen ska anta enligt artikel 3gd utsläppshandelsdirektivet (se avsnitt 4.5.6).

4.4.4. Nya regler för övervakning, rapportering och verifiering

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[8] *General cargo* enligt den preliminära engelska språkversionen. Det begreppet har tidigare översatts till *fartyg för styckegods* i EU MRV-förordningen bilaga II A 1.g, men till *fraktfartyg för styckegods* i förordning (EU) 2016/1928 som meddelats i anslutning till EU MRV-förordningen.

Rederierna är skyldiga enligt artikel 6.6 EU MRV-förordningen att senast den 1 april 2024 lämna in en övervakningsplan till den ansvariga administrerande myndigheten för varje av deras fartyg som omfattas av förordningen. En kontrollör ska ha bedömt att övervakningsplanen är i överensstämmelse med förordningens krav innan rederiet lämnar in den till den administrerande myndigheten. För fartyg som omfattas av EU MRV-förordningen först efter den 1 januari 2024 ska rederierna på motsvarande vis lämna in en övervakningsplan utan onödigt dröjsmål och senast tre månader efter respektive fartygs första anlöp till en hamn inom en medlemsstats jurisdiktion.

Rederiernas övervakningsplaner per fartyg ska godkännas av de administrerande myndigheterna enligt artikel 6.8 EU MRV-förordningen. Senast två år efter ikraftträdandet av den reviderade EU MRV-förordningen ska det godkännandet ske. För fartyg som omfattas av EU MRV-förordningen först efter den 1 januari 2024 ska den administrerande myndigheten godkänna inkomna övervakningsplaner inom fyra månader efter respektive fartygs första anlöp till en hamn inom en medlemsstats jurisdiktion.

Rederierna ska hålla övervakningsplanen uppdaterad. En kontrollör ska bedöma att ändringar av en övervakningsplan överensstämmer med förordningens krav enligt artikel 7.4. När redaren fått en bekräftelse från kontrollören ska den ändrade övervakningsplanen lämnas till den administrerande myndigheten. Den administrerande myndigheten ska godkänna ändringar av övervakningsplaner enligt artikel 7.5.

Tidsfristen för att lämna en utsläppsrapport enligt artikel 11.1 EU MRV-förordningen tidigareläggs från den 30 april till den 31 mars från och med 2025, för att harmonisera med tidsfristen inom övriga EU ETS. Rederierna ska från och med 2025 senast den 31 mars varje år lämna in en verifierad utsläppsrapport för varje fartyg till den administrerande myndigheten, till flaggstatens myndigheter samt EU-kommissionen. Den administrerande myndigheten kan kräva att redaren lämnar in utsläppsrapporterna tidigare men som tidigast den 28 februari.

När ett nytt rederi tar över ett fartyg ska det tidigare rederiet enligt artikel 11.2 lämna in en verifierad utsläppsrapport till den administrerande myndigheten, flaggstatens myndigheter, det nya rederiet samt EU-kommissionen, med avseende på den period som det tidigare rederiet varit ansvarigt för fartyget. Rapporten ska lämnas så nära som möjligt dagen för övertagandet och senast inom tre månader. Rapporten ska vara verifierad enligt artikel 13.2.

En ny utsläppsrapport med aggregerade data för rederiets alla fartyg tillkommer enligt artikel 3.r, som avser en rapportering av rederiets totala utsläpp som ingår i EU ETS. Det är enligt denna rapport kravet att överlämna utsläppsrätter baseras på enligt utsläppshandelsdirektivet (se avsnitt 4.5). Rederierna ska enligt artikel 11a från och med 2025 senast den 31 mars varje år lämna in en aggregerad utsläppsrapport som omfattar utsläppen för alla de fartyg som redaren ansvarat för under rapporteringsperioden till den ansvariga administrerande myndigheten enligt artikel 11a.2. Den administrerande myndigheten kan kräva att redaren lämnar in den aggregerade utsläppsrapporten tidigare men som tidigast den 28 februari. Rapporten ska vara verifierad enligt artikel 13.5, och enligt artikel 15.6 ska kontrollören vid den kontrollen inte göra om verifieringen av uppgifterna för

respektive fartyg som redan är verifierade inom ramen för respektive fartygs individuella utsläppsrapport (se fjärde stycket ovan).

EU-kommissionen får mandat att ta fram ett antal genomförandeakter och delegerade akter om att komplettera reglerna kring övervakning, rapportering och verifiering:

- Genomförandeakter enligt artikel 6.5 om att uppdatera mallar för övervakningsplaner.
- Delegerade akter enligt artikel 6.8 om att ändra artiklarna 6–10 i EU MRV-förordningen med avseende på metan och dikväveoxid och regler om godkännandet av övervakningsplaner.
- Delegerade akter enligt artikel 7.5 om att komplettera EU MRV-förordningen med regler om godkännande av ändringar av övervakningsplaner.
- Delegerade akter enligt artikel 11.4 om att ändra reglerna i EU MRV-förordningen om utsläppsrapportering med avseende på inkluderandet av metan, dikväveoxid och utsläpp från fler fartygstyper.
- Delegerade akter enligt artikel 11a.4 om att komplettera EU MRV-förordningen med regler för övervakning, rapportering och inlämnande av aggregerade utsläppsdata på redarnivå.
- Delegerade akter enligt artikel 13.6 och 15.6 om att komplettera EU MRV-förordningen med regler för verifiering av aggregerad utsläppsdata på redarnivå, om utfärdandet av verifieringsrapporter och om metoder och förfaranden för verifiering.

4.4.5. Avvisning och kvarhållande av fartyg som inte följer reglerna

Reglerna för avvisningsbeslut i artikel 20.3 EU MRV-förordningen ändras och en möjlighet till kvarhållandebeslut introduceras. Den berörda myndigheten i ankomsthamnens medlemsstat får utfärda ett avvisningsbeslut för ett fartyg som under två eller fler rapporteringsperioder i följd inte uppfyllt kraven på övervakning och rapportering och när andra åtgärder vidtagits utan att det lett till att kraven uppfylls. Innan ett sådant beslut fattas ska rederiet ha möjlighet att yttra sig. Beslutet ska anmälas till EU-kommissionen, EMSA, övriga medlemsstater och den berörda flaggstaten. Alla medlemsstater förutom flaggstaten ska neka fartyget anlöp till deras hamnar tills fartyget uppfyller kraven i EU MRV-förordningen. Om fartyget anlöper eller påträffas i en hamn som hör till flaggstaten kan den medlemsstaten kvarhålla fartyget tills rederiet uppfyller kraven.

På motsvarande sätt får en medlemsstat besluta att kvarhålla ett fartyg som är flaggade med den medlemsstatens flagga, om fartyget anlöper eller påträffas i en hamn och kriterierna enligt ovan inte är uppfyllda.

4.4.6. Utvärdering av om EU MRV-förordningen ska utökas

EU-kommissionen ska senast den 31 december 2024 utvärdera EU MRV-förordningen enligt artikel 22a och i den utvärderingen särskilt överväga om förordningen ska inkludera fartyg under 5 000 bruttodräktighet men inte under 400, och eventuellt ett efterföljande inkluderande av sådana fartyg i EU ETS genom en ändring av utsläppshandelsdirektivet. Om lämpligt ska utvärderingen åtföljas av ett lagförslag om att ändra EU MRV-förordningen.

4.5. Sjöfarten inkluderas i EU ETS

Kommersiell sjöfart med syfte att transportera gods eller passagerare inkluderas i EU ETS från och med den 1 januari 2024. Den rättsliga konstruktionen för att inkludera sjöfarten i EU ETS bygger på ändringar i utsläppshandelsdirektivet genom ändringsdirektivet tillsammans med ändringar av EU MRV-förordningen genom EU MRV-ändringsförordningen (se avsnitt 4.4).

Artikel 2 i utsläppshandelsdirektivet som definierar tillämpningsområdet för direktivet anger bl.a. att det omfattar verksamheter enligt bilaga I samt de växthusgaser som listas i bilaga II. I bilaga I i utsläppshandelsdirektivet läggs sjötransportverksamheter till och har en definition som hänvisar till att det är sådan verksamhet som omfattas av EU MRV-förordningen. Den sjöfart och de växthusgaser som ingår i EU ETS är med andra ord samma som omfattningen för den reviderade EU MRV-förordningen, med några undantag enligt följande:

- Från 2024 inkluderas i EU ETS endast utsläpp av koldioxid och det är först från den 1 januari 2026 som även metan och dikväveoxid ingår i EU ETS i enlighet med EU MRV-förordningens omfattning.
- Fartyg för styckegods under 5 000 bruttodräktighet men över 400 som är inkluderade i EU MRV-förordningen från och med 2025 enligt artikel 2.1a i den förordningen inkluderas *inte* i EU ETS.
- Offshorefartyg över 5 000 bruttodräktighet som inkluderas i EU MRV-förordningen från och med 2025 enligt artikel 2.1b i den förordningen inkluderas i EU ETS från och med 2027.

EU-kommissionen ska i en konsekvensanalys senast 2026 utvärdera om utsläpp från fartyg under 5 000 men inte under 400 bruttodräktighet ska inkluderas i EU ETS enligt artikel 3ge.3.

I fråga om överlämnande av utsläppsrätter ska rederierna enligt artikel 3g.1 i det ändrade utsläppshandelsdirektivet överlämna utsläppsrätter motsvarande:

- 100 procent av utsläppen för resor med fartyg från senaste anlöpshamn till nästa anlöpshamn där båda hamnarna hör till någon medlemsstats jurisdiktion.
- 50 procent av utsläppen för resor med fartyg från senaste anlöpshamn till nästa anlöpshamn där endast en av hamnarna hör till en medlemsstats jurisdiktion.

Sjöfarten fasas in under åren 2024–2026 enligt artikel 3ga utsläppshandels-direktivet. Aktörerna behöver övervaka och rapportera samtliga utsläpp, men de behöver bara överlämna utsläppsrätter för en andel av utsläppen enligt följande:

- 40 procent av utsläppen 2024,
- 70 procent av utsläppen 2025,
- 100 procent av utsläppen 2026 och framåt.

Det totala utsläppsrättstaket inom EU ETS justeras för att inrymma sjöfarten genom en engångsjustering med 78,4 miljoner utsläppsrätter från 2024 enligt artikel 9 utsläppshandelsdirektivet. Under infasningsperioden när rederierna inte överlämnar utsläppsrätter motsvarande hela deras totala utsläpp görs en justering av det totala antalet tillgängliga utsläppsrätter. Denna justering ska göras genom en annullering av ett antal utsläppsrätter som motsvarar skillnaden mellan det

totala verifierade utsläppet och det totala antalet överlämnade utsläppsrätter för sjöfarten enligt artikel 3ga i det ändrade utsläppshandelsdirektivet.

4.5.1. Rederierna är den aktör som träffas av EU ETS

Det är rederierna som är den aktör som träffas av regleringen i utsläppshandelsdirektivet, vilket kommer till uttryck bl.a. i artikel 12.3 som anger att rederierna ska överlämna utsläppsrätter motsvarande föregående års utsläpp senast den 30 september varje år. Rederierna är även den aktör som träffas av EU MRV-förordningen, i enlighet med artikel 3.d i den förordningen som hänvisar till artikel 3.v i utsläppshandelsdirektivet.

4.5.2. Den geografiska omfattningen

Enligt definitionen av anlöpshamn i artikel 3.wa utsläppshandelsdirektivet ska vissa uppehåll i hamnar inte räknas som att fartyget nått en anlöpshamn, dvs. stoppet utgör inte en slutpunkt för en resa. Det är:

- uppehåll i hamnar bl.a. för att tanka, göra reparationer, för att fartyget behöver assistans eller befinner sig i en nödsituation eller för att ta skydd från dåligt väder,
- stopp med containerfartyg vid angränsande containeromlastningshamnar[9] som är listade i en genomförandeakt antagen med stöd av artikel 3g.2 utsläppshandelsdirektivet ska inte heller räknas som anlöpshamn. Syftet med detta undantag är att undvika ett slags koldioxidläckage där fartyg med gods ämnat att transporteras till/från unionen undviker EU ETS genom att lasta av/på sitt gods i hamnar som ligger strax utanför EU (se skälssats 18a i ETS-ändringsdirektivet). Genomförandeakten som ska lista dessa hamnar ska tas fram av EU-kommissionen senast den 31 december 2023 och uppdateras vartannat år därefter.

4.5.3. Undantagsbestämmelser för viss trafik

Enligt artikel 12 utsläppshandelsdirektivet undantas viss slags trafik, alternativt är möjlig för medlemsstater att frivilligt undanta. Det finns också möjlighet till ett utsläppsavdrag för trafik med vissa slags fartyg.

- Artikel 12.3-b undantar till och med den 31 december 2030 trafik mellan en hamn i ett yttre randområde och en hamn som hör till samma medlemsstat, inklusive en annan hamn i samma yttre randområde eller ett annat yttre randområde som hör till samma medlemsstat.
- Artikel 12.3-c möjliggör för två medlemsstater att gemensamt begära undantag för viss trafik mellan de två länderna, om den ena medlemsstaten saknar landgräns till någon annan medlemsstat och den andra medlemsstaten är den geografiskt närmsta den första medlemsstaten. Den trafik som kan undantas är endast passagerarfartyg och ro-pax-fartyg som bedrivs inom ramen för transnationell allmän trafikplikt.
- Artikel 12.3-d möjliggör för medlemsstater att till och med den 31 december 2030 undanta resor mellan två hamnar som hör till samma

[9] *Neighbouring container transhipment ports* i den preliminära engelska språkversionen.

medlemsstat med ro-pax-fartyg och passagerarfartyg, förutom med kryssningsfartyg, för resor till öar utan väg- eller järnvägsförbindelse till fastlandet och vars invånarantal understiger 200 000. EU-kommissionen ska fastställa ett sådant undantag via en genomförandeakt om en medlemsstat begär det och kommissionen ska publicera en lista över vilka öar som träffas av undantaget.

- Artikel 12.3-e medger att fartyg med isklass typ IA eller IA super, eller motsvarande enligt Helcoms rekommendationer 25/7, får överlämna 5 procent färre utsläppsrätter än det totala verifierade utsläppet. Undantaget gäller till och med den 31 december 2030. I den utsträckning färre utsläppsrätter överlämnas i förhållande till det verifierade utsläppet för dessa fartyg ska ett motsvarande antal utsläppsrätter annulleras istället för att auktioneras enligt artikel 10.

4.5.4. Rederier ska ges förutsättningar att tillvarata rätt till ersättning för utsläppsrättkostnader i vissa fall

Medlemsstaterna ska enligt artikel 3gaa säkerställa att redare kan begära kompensation för utsläppsrättskostnader i det fall någon annan aktör än redaren själv svarar för inköpen av bränsle eller den kommersiella driften av ett fartyg som omfattas av skyldigheter att överlämna utsläppsrätter.

4.5.5. Sanktionsavgift och offentliggörande av namn

Rederier som inte senast den 30 september överlämnat utsläppsrätter som motsvarar det totala utsläppet av växthusgaser ska betala en sanktionsavgift på 100 euro för varje ton koldioxidekvivalenter som inte täckts med utsläppsrätter enligt artikel 16.3a. Avgiften befriar inte rederiet från att överlämna tillräckligt många utsläppsrätter. Medlemsstaten ska därutöver offentliggöra rederiets namn enligt artikel 16.2. Samma regler gäller för anläggningar och flygverksamhet enligt artikel 16.3.

4.5.6. Det administrativa ansvaret för rederier fördelas mellan medlemsstaterna

Det administrativa ansvaret för rederierna fördelas mellan medlemsstaterna och ska förtecknas i en genomförandeakt som EU-kommissionen ska anta enligt artikel 3gd.2 före den 1 februari 2024. Det är de utpekade staterna och deras utpekade myndigheter som bl.a. ska säkerställa regelefterlevnaden, godkänna övervakningsplaner och ta emot utsläppsrapporter för de rederier som de administrerar. EU-kommissionen ska med viss regelbundenhet enligt samma artikel uppdatera förteckningen med avseende på tillkommande rederier eller om rederierna registreras om från en medlemsstat till en annan medlemsstat.

Fördelningen görs utifrån följande principer enligt artikel 3gd.1:

- ett rederi som är registrerat i en medlemsstat administreras av den medlemsstaten,
- ett rederi som är registrerat i ett tredjeland administreras av den medlemsstat som rederiet har flest antal hamnanlöp till under de föregående fyra övervakningsåren med avseende på sådana resor som ingår i EU ETS,
- ett rederi som är registrerat i ett tredjeland och som inte har utfört några resor som ingår i EU ETS under de fyra föregående övervakningsåren

administreras av den medlemsstat till eller från vilken rederiet gör sin första resa som ingår i EU ETS.

5. Naturvårdsverkets förslag

I det följande beskrivs Naturvårdsverkets förslag på ändringar i lagen (2020:1173) om vissa utsläpp av växthusgaser som bedömts vara nödvändiga för att kunna genomföra ändringarna i utsläppshandelsdirektivet och EU MRV-förordningen. I stor utsträckning rör det sig om nya och utökade bemyndiganden till regeringen eller den myndighet regeringen bestämmer om att meddela föreskrifter, och i så fall finns överväganden om den tänkta förordningsregleringen.

En stor del av ändringarna i utsläppshandelsdirektivet och EU MRV-förordningen, delvis beskrivna i avsnitt 4, kan genomföras i förordningen (2020:1180) om vissa utsläpp av växthusgaser med stöd av lagen i nuvarande lydelse, i den utsträckning de alls behöver genomföras. Sådana förordningsändringar behandlas inte i denna delredovisning utan kommer behandlas i slutredovisningen i regeringsuppdraget. Det gäller exempelvis:

- de ändrade tilldelningsreglerna för både anläggningar och flygverksamheter kan regleras i förordningen med stöd av 14 och 15 §§ lagen i nuvarande lydelse (jfr. 5 kap. förordningen om vissa utsläpp av växthusgaser),
- de ändrade verksamhetsbeskrivningarna för anläggningar och undantaget för anläggningar med stor andel biomassautsläpp enligt bilaga I utsläppshandelsdirektivet kan regleras i förordningen med stöd av 7 § lagen i nuvarande lydelse (jfr. 3 kap. och bilagan till förordningen),
- kravet på övervakning, rapportering och verifiering av utsläpp från hushållsavfall kan regleras i förordningen med stöd av 15 § lagen i nuvarande lydelse (jfr. 3 kap. och bilagan till förordningen),
- de ändrade tidpunkterna för utfärdande av gratis utsläppsrätter och överlämnande av utsläppsrätter kan regleras i förordningen med stöd av 17 § lagen i nuvarande lydelse (jfr. 8–9 kap. förordningen).

5.1. En ändrad definition av utsläpp av växthusgaser

5.1.1. Förslaget

De relevanta växthusgaserna för sjötransportverksamheter läggs till i definitionen av *utsläpp av växthusgaser* (2 §). Icke-koldioxideffekter läggs till för flygverksamheter.

Definitionen anger vilka växthusgaser som omfattas för anläggningar, flygverksamheter respektive sjötransportverksamheter.

5.1.2. Skälen för förslaget

En förtydligad definition av utsläpp av växthusgaser som anger vilka växthusgaser som är aktuella för varje verksamhetstyp är lämpligt i samband med att sjötransportverksamheter och ytterligare växthusgaser tillkommer. I den nuvarande definitionen av utsläpp av växthusgaser, som genomför artikel 3.c utsläppshandelsdirektivet, framgår inte vilka växthusgaser som relaterar till anläggningar respektive flygverksamhet, vilket kan ge intrycket av att fler växthusgaser är reglerade för en viss verksamhetstyp än vad som faktiskt är fallet. I och med sjöfartens inkluderande i lagen inkluderas metan som en ny slags växthusgas som regleras endast för den typen av verksamhet. En definition

som inte särskiljer vilka växthusgaser som regleras för respektive verksamhetstyp skulle kunna ge ett felaktigt intryck av att metanutsläpp från anläggningar regleras, vilket är olyckligt med bakgrund i att det finns en uppmärksammad diskussion om klimatpåverkan från läckage av metan från anläggningar och tillhörande gasinfrastruktur.

Se vidare avsnitt 5.4 och 5.5 för överväganden om att inkludera icke-koldioxideffekter och metan i definitionen av utsläpp av växthusgaser.

5.2. Vissa anläggningar får möjlighet att delta frivilligt i EU ETS

5.2.1. Förslag

En verksamhetsutövare för en anläggning som innehar tillstånd och vars verksamhet inte längre kräver tillstånd får ansöka om att behålla tillståndet till utsläpp av växthusgaser till tillståndsmyndigheten. Regeringen eller den myndighet regeringen bestämmer får meddela föreskrifter om vad en sådan ansökan ska innehålla.

Tillståndsmyndigheten får besluta om att en verksamhetsutövare får behålla sitt tillstånd även när verksamheten eller verksamheterna inte längre kräver tillstånd enligt 7 § på grund av ändring av verksamheten eller verksamheterna.

Tillståndsmyndigheten ska inte återkalla tillståndet ifall en verksamhetsutövare beviljats bibehållet tillstånd.

Regeringen eller den myndighet regeringen bestämmer får meddela föreskrifter om förutsättningarna för att en verksamhetsutövare ska få bibehålla sitt tillstånd, och om vad en ansökan om att behålla tillståndet ska innehålla.

Definitionen av *anläggning* vidgas för att inkludera även sådana anläggningar vars verksamheter inte längre kräver tillstånd men som beviljats bibehållet tillstånd.

5.2.2. Skälen för förslaget

Bestämmelserna relaterar till genomförandet av regeln i artikel 2.1 i det reviderade utsläppshandelsdirektivet (se avsnitt 4.1.2) om att vissa anläggningar ska kunna delta i EU ETS på frivillig basis. Anläggningarna som träffas har tidigare omfattats av den obligatoriska tillståndsplikten enligt 7 § lagen och har således ett tillstånd enligt 3 kap. 6 § förordningen om vissa utsläpp av växthusgaser. Tillståndsmyndigheten får enligt nuvarande 9 § 5 lagen återkalla ett tillstånd för en anläggning vars verksamhet inte längre kräver tillstånd. Det är lämpligt att i lagen reglera en möjlighet för verksamhetsutövare för sådana anläggningar att kunna ansöka till tillståndsmyndigheten att behålla sitt tillstånd, trots att verksamheten inte längre kräver tillstånd, och att tillståndsmyndigheten får besluta om sådana bibehållna tillstånd. Detta bör lämpligen göras i anslutning till bestämmelserna om återkallande av tillstånd enligt 9 § lagen, eftersom det rör sig om ett slags undantag från den vanliga ordningen att anläggningar vars tillståndspliktiga verksamhet upphört ska få sitt tillstånd återkallat.

Regeringen bör få bemyndigande att föreskriva om vilka förutsättningar som ska gälla för att en anläggning ska få behålla ett tillstånd och vad en ansökan om att behålla tillståndet ska innehålla. Detta följer nuvarande ordning att förordningen preciserar vilka slags verksamheter som är tillståndspliktiga och vilka villkoren

är för att få tillstånd (3 kap. och bilagan till förordningen). De förutsättningar som avses gäller bland annat preciseringen av vilka slags verksamheter som kan vara i fråga för bibehållet tillstånd, dvs. att det gäller för anläggningar som tidigare varit tillståndspliktiga på grund av den installerade tillförda effekten, samt hur länge en anläggning får behålla tillståndet. Ytterligare en förutsättning för bibehållet tillstånd är att ändringen som gjorts vid anläggningen, och som föranleder att den inte längre är tillståndspliktig, har syftat till att minska växthusgasutsläppen, i enlighet med ordalydelsen i artikel 2.1 utsläppshandelsdirektivet.

Tillståndsmyndigheten bör meddela beviljat tillstånd först efter en prövning av om förutsättningarna är uppfyllda. Den prövningen ryms inom nuvarande 8 § lagen, enligt vilken tillståndsmyndigheten ska pröva frågor om tillstånd.

Begreppet anläggning som definieras i 3 § lagen träffar i nuvarande lydelse endast de tekniska enheter vars verksamheter kräver tillstånd. En anläggning som har tillstånd och vars tillståndspliktiga verksamhet upphör är med andra ord inte längre att betrakta som en anläggning. Begreppet anläggning bör därför, genom ett nytt andra stycke, vidgas för att även träffa de aktuella anläggningarna. Alternativet att införa en separat benämning för dessa slags anläggningar skulle komplicera författningstexterna i onödan. Anläggningsdefinitionen berörs även av ytterligare en ändring, i det första stycket, se avsnitt 5.3.

5.3. Anläggningar utan utsläpp av växthusgaser

5.3.1. Förslag

Definitionen av en *anläggning* (3 §) förutsätter inte längre att verksamheten eller verksamheterna som bedrivs vid den ger upphov till utsläpp av växthusgaser.

Regeringen får meddela föreskrifter om att det ska krävas tillstånd även för sådana anläggningar utan utsläpp av växthusgaser som avses i bilaga I utsläppshandelsdirektivet och vad ansökan om tillstånd för sådana anläggningar ska innehålla.

5.3.2. Skälen för förslaget

Ändringen av artikel 2.1 utsläppshandelsdirektivet innebär att anläggningar som inte har utsläpp av växthusgaser ska omfattas av EU ETS om de överskrider något av tröskelvärdena för kapacitet i bilaga I utsläppshandelsdirektivet, se vidare avsnitt 4.1.1. Definitionen av anläggning i 3 § lagen i nuvarande lydelse har en begränsning genom att den förutsätter att det vid anläggningen sker utsläpp av växthusgaser. Definitionen bör ändras eftersom det inte längre är en förutsättning att det sker utsläpp av växthusgaser vid en anläggning. Motsvarande definition i utsläppshandelsdirektivet återfinns i artikel 3.e. Den definitionen ändras inte av ändringsdirektivet och har redan den betydelse som föreslås för den svenska definitionen i lagen.

Ändringen i utsläppshandelsdirektivet bör förstås som att det ska krävas tillstånd även för anläggningar som inte har utsläpp av växthusgaser. EU-kommissionen har gjort preliminära uttalanden som ger stöd för den tolkningen. Detta förefaller rimligt eftersom stora delar av den harmoniserade EU-lagstiftningen i övrigt förutsätter att anläggningar har tillstånd, bl.a. registerförordningen och

tilldelningsförordningen. Förslaget är därför att anläggningar utan utsläpp av växthusgaser ska vara tillståndspliktiga genom att regeringen får ett utökad bemyndigande i 7 § om att föreskriva att det ska krävas tillstånd även för anläggningar som inte har utsläpp av växthusgaser. Det är lämpligt att det bemyndigandet hänvisar till utsläppshandelsdirektivets bilaga I för att avgränsa vilka verksamheter utan utsläpp av växthusgaser regeringen kan meddela föreskrifter om tillståndskrav för. Det utökade bemyndigandet i 7 § bör även innehålla ett bemyndigande till regeringen att meddela föreskrifter om vad ansökan om tillstånd för anläggningarna i fråga ska innehålla i likhet med det bemyndigande regeringen har i paragrafens nuvarande första stycke.

Eventuella särskilda regler gällande tillstånd för anläggningar utan växthusgasutsläpp kan regleras i förordningen med stöd av den ändrade 7 § i lagen. Eventuella undantag kring övervakning, rapportering och verifiering kan regleras i förordningen med stöd av 25 § lagen i nuvarande lydelse. Sådana undantag är dock beroende av om EU-kommissionen inför någon särreglering för anläggningar utan utsläpp av växthusgaser i exempelvis övervaknings- och rapporteringsförordningen.

33 § lagen innebär en straffsanktion för anläggningar som bedriver tillståndspliktig verksamhet som medför utsläpp av växthusgaser utan att inneha ett tillstånd. Den sanktionen kommer inte träffa anläggningar som inte har några utsläpp av växthusgaser. Det bedöms inte vara motiverat att införa en motsvarande straffsanktion för anläggningar utan utsläpp av växthusgaser som bedriver verksamhet utan att inneha tillstånd, eftersom konsekvenserna i så fall inte är särskilt allvarliga i förhållande till systemets huvudsyfte att reglera utsläpp av växthusgaser.

5.4. Sjöfarten inkluderas i utsläppshandelssystemet

5.4.1. Förslag

Nya definitioner

Revideringen av utsläppshandelsdirektivet genom vilken sjöfarten inkluderas i utsläppshandelssystemet medför en utvidgning av 2 § i lagen om vissa utsläpp av växthusgaser. En *ny punkt (3)* införs av vilken framgår att utsläpp av växthusgaser även innebär *frigörande av koldioxid, metan eller dikväveoxid från ett fartyg.*

I definitionen av *ton koldioxidekvivalenter* inkluderas även *metan*.

En ny 4 a § införs vari definieras att *med sjötransportverksamhet avses i denna lag en eller flera sjötransporter som ger upphov till utsläpp av växthusgaser och som omfattas av EU MRV-förordningen.*

Verksamhetsutövarbegreppet i 5 § utvidgas med *punkt 2* vari anges vem som är verksamhetsutövare i fråga om sjötransportverksamhet.

Definitionerna i 6 § av begreppen *utsläppsrapport* och *övervakningsplan* utvidgas till att även omfatta motsvarande rapporter och planer för sjötransportverksamheter i EU MRV-förordningen.

Bemyndiganden

Följande bemyndiganden till regeringen utvidgas till att även omfatta bemyndiganden att meddela föreskrifter relevanta för sjötransportverksamheter; 13 §, 26 §, 27 § och 41 §. Två nya bemyndiganden, 11 d § och 42 a §, införs.

Straff

I andra stycket i 33 § (otillåtet utsläpp av växthusgaser) införs en mening innebärande att även verksamhetsutövare av sjötransportverksamhet omfattas av bestämmelsen.

Följande ändring föreslås i 35 § (försvårande av kontroll av växthusgasutsläpp):

> Den som med uppsåt eller av oaktsamhet lämnar en oriktig eller vilseledande uppgift i en utsläppsrapport ska*, om åtgärden innebär risk för att ett för litet antal utsläppsrätter överlämnas,* dömas för försvårande av kontroll av växthusgasutsläpp till böter eller fängelse i högst två år.

Överklagande

Även beslut som har sin grund i någon artikel i EU MRV-förordningen omfattas av 44 §.

Övrigt

En *ny rättighet* för verksamhetsutövare av sjötransportverksamhet som överlåtit delar av driften till en annan aktör införs i *11 e §*.

I en ny *11 f §* utpekas *behörig domstol* för de tvister som föranleds av 11 e §.

Nuvarande 16 § utvidgas till att även reglera krav för överlämnande av utsläppsrätter för verksamhetsutövare av sjötransportverksamheter.

I 31 § införs en ny punkt innebärande att tillsmyndigheten vid behov ges *tillträde* till *fartyg som ingår i en sjötransportverksamhet*.

5.4.2. Skälen för förslaget

Lagen om vissa utsläpp av växthusgaser även fortsättningsvis en ramlagstiftning

Utsläppshandelsdirektivet är alltjämt ett mycket föränderligt rättsområde. Sjöfarten inom EU ETS kommer inte utgöra något undantag. Den reglering som nu ska genomföras innehåller i sig viss föränderlighet över tid, bland annat genom olika infasningsregleringar, dels hur stora delar av utsläppen som ska rapporteras varje år (artikel 3ga), dels vilka växthusgaser som ska rapporteras (bilaga I). Det är dessutom sannolikt att utsläppshandelsdirektivet kommer revideras ytterligare i närtid, exempelvis med anledning av de olika utvärderingar som EU-kommissionen instruerats att utföra om bland annat att utöka regleringen med ytterligare fartygstyper.

Det var just med bakgrund i att utsläppshandelsdirektivet är föränderligt som det nationella genomförandet av direktivet nyligen arbetades om i grunden, med avsikt att göra författningarna mer flexibla för framtida ändringar (se vidare avsnitt 3.1.1). Ett viktigt övervägande för lagförslagen som rör sjöfarten har varit att i så stor utsträckning som möjligt bibehålla lagens struktur och göra även sjöfartsregleringen flexibel för framtida ändringar. Lagen utgör således även

fortsättningsvis en typ av ramlagstiftning där detaljregleringar i lagen undviks i så stor utsträckning som möjligt och undantagsregleringar och preciseringar i stället görs i förordningen. I huvudsak innebär de nya lagförslagen rörande sjöfarten att vissa bemyndiganden i lagen till regeringen att utfärda föreskrifter utvidgas, exempelvis 13 §. Även vissa nya bemyndiganden tillkommer, exempelvis 11 d §.

I syfte att underlätta efterlevnaden och tillämpningen av utsläppshandelsdirektivet och EU MRV-förordningen och för att undvika eventuella risker för dubbelsanktionering, föreslås att den svenska kompletterande förordningen (2017:880) om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter upphävs. Kompletterande bestämmelser till EU MRV-förordningen föreslås istället införas i lagen om vissa utsläpp av växthusgaser. I 1 § andra stycket anges därmed att lagen kompletterar EU MRV-förordningen. Se vidare rubriken om tillsyn nedan för överväganden med avseende på tillsyn mm. över EU MRV-förordningen.

Inkluderandet av sjöfarten i lagen föranleder att definitionen av *utsläpp av växthusgaser* (2 §) bör utvidgas med en tredje punkt, för att genomföra artikel 3.b i utsläppshandelsdirektivet samt de relevanta växthusgaserna för sjöfarten. Definitionen föreslås även struktureras om, se avsnitt 5.1 för överväganden rörande det förslaget. De växthusgaser som ingår för sjötransportverksamheter enligt EU MRV-förordningen och utsläppshandelsdirektivet är koldioxid, dikväveoxid och metan. Inom EU MRV ingår alla tre växthusgaser från 2024, medan endast koldioxid ingår i EU ETS från 2024 och de övriga två regleras först från och med 2026 (se avsnitt 4.5). Preciseringen av vilka växthusgaser som ingår vid vilken tidpunkt bör regleras i förordningen. Som en följdändring av att växthusgasen metan tillkommer i definitionen av utsläpp av växthusgaser, bör metan ingå även i uppräkningen av växthusgaser i definitionen av ton koldioxidekvivalenter (2 §).

För att beteckna den slags sjöfart som regleras i lagen föreslås en ny paragraf (4 a §) med en definition av sjötransportverksamhet. Definitionen i lagen utgår ifrån definitionen av vilka sjötransporter som ingår enligt utsläppshandelsdirektivets bilaga I, vilken hänvisar till EU MRV-förordningen. På samma sätt hänvisar den föreslagna definitionen i lagen till att sjötransportverksamhet också till EU MRV-förordningen. Vissa delar av sjötransportverksamheterna som omfattas av EU MRV-regleringen undantas från EU ETS. Det gäller sådan sjötransportverksamhet som omfattas av EU MRV-förordningen enligt artikel 2.1a i den förordningen, och fram till och med 2026 sådan sjötransportverksamhet som omfattas av artikel 2.1b. Dessa undantag bör regleras i förordningen om vissa utsläpp av växthusgaser, lämpligen i ett nytt kapitel 4a som samlar regleringarna avseende sjötransportverksamheter. Förslaget innehåller ett bemyndigande till regeringen att meddela sådana föreskrifter. Av samma anledning bör definitionerna i artikel 3.va (resa) och artikel 3.wa (anlöpshamn) i utsläppshandelsdirektivet genomföras i förordningen.

Rederierna inkluderas i verksamhetsutövarbegreppet

I nuvarande 5 § definieras vilka som är *verksamhetsutövare* och därmed utgör den krets som träffas av skyldigheterna att bl.a. övervaka och rapportera utsläpp

och överlämna utsläppsrätter enligt lagen. Den krets som träffas av motsvarande skyldigheter för sjötransportverksamheter föreslås också inrymmas under begreppet verksamhetsutövare, genom införandet av en ny punkt 2 i 5 §. Utsläppshandelsdirektivet har ett separat begrepp rederi (artikel 3.v) för att benämna kretsen, vilket förvisso skulle vara möjligt att använda även i det svenska genomförandet, men eftersom verksamhetsutövarbegreppet redan inrymmer både anläggningar och flygverksamhet är det lämpligt att nyttja samma begrepp för sjötransportverksamheterna för att undvika att komplicera författningarna. Den föreslagna definitionen motsvarar i övrigt artikel 3.v i utsläppshandelsdirektivet.

Utsläppsrapporter och övervakningsplaner – nya bemyndiganden och straffsanktioner

Begreppet *utsläppsrapport* i 6 § utvidgas till att även omfatta sådana rapporter som avses i artikel 11 (utsläppsrapporter på fartygsnivå) och artikel 11a (aggregerade data på rederinivå) i EU MRV-förordningen. Krav på utsläppsrapporter ställs i såväl utsläppshandelsdirektivet (artikel 3gb och 3gc) och EU MRV-förordningen. Genom utvidgningen av definitionen av utsläppsrapport i 6 § blir straffsanktioneringen enligt 35 § tillämplig även för sjötransportverksamheternas utsläppsrapporter. Enligt artikel 11 EU MRV-förordningen ska utsläppsrapporterna på fartygsnivå innehålla de uppgifter som anges i artikel 11.3. Vissa av de uppgifterna har inte betydelse för rapporteringen av de utsläpp som ingår inom EU ETS och hur många utsläppsrätter som ska överlämnas. Det får anses vara oproportionerligt att 35 §, i dess nuvarande mycket breda utformning, skulle omfatta samtliga uppgifter i artikel 11.3. Två alternativ till utformning av straffbestämmelsen har övervägts. Det första alternativet är att införa ett andra stycke i 35 § genom vilket tillämpningsområdet begränsas vad gäller sådana utsläppsrapporter som avses i artikel 11 i EU MRV-förordningen, och att första stycket bara skulle tillämpas avseende sådana uppgifter som har betydelse för skyldigheterna att överlämna utsläppsrätter enligt förskrifter som meddelats med stöd av lagen. Denna typ av reglering kan dock leda till en viss osäkerhet för verksamhetsutövarna, som måste värdera vilka uppgifter som är relevanta. Ett lämpligare alternativ, och således det rekommenderade förslaget, är att i 35 § lägga till en mening om att det bara är i de fall som agerandet att lämna oriktiga eller vilseledande uppgifter innebär *en risk för att ett för litet antal utsläppsrätter överlämnas* som bestämmelsen är tillämplig. Detta torde även överensstämma med den praktiska tillämpningen av lagrummet idag (för det fall ett fel inte har riskerat att påverka mängden utsläppsrätter som ska överlämnas så bedöms felaktigheten inte som ett brott).

Även begreppet *övervakningsplan* utvidgas till att omfatta en sådan övervakningsplan som avses i artikel 6 i EU MRV-förordningen, eftersom en överträdelse av skyldigheterna kopplade till denna i vissa avseenden kan vara förenad med straffansvar (se mer nedan). Enligt artikel 6.7 EU MRV-förordningen ska verksamhetsutövare för sjötransportverksamheter skicka in en övervakningsplan, men bestämmelsen är inte sanktionerad enligt artikel 20.3 EU MRV-förordningen. Enligt utsläppshandelsdirektivet är inlämnandet och verifieringen av en övervakningsplan dock en förutsättning för att få bedriva en sjötransportverksamhet, vilket följer indirekt av artikel 3gb och 3gc (liknande

reglering som för flygverksamheter). Genomförandet av utsläppshandelsdirektivet förutsätter således att ett nytt bemyndigande införs i 11 d §, enligt vilket regeringen får meddela föreskrifter om att det ska krävas en övervakningsplan för att bedriva sjötransportverksamhet. Detaljregleringen föreslås ske i förordningen, liknande den som finns för flygverksamhet (se 4 kap. 3 §). Förslaget innebär även en utvidgning av straffbestämmelsen i 33 § om otillåtet utsläpp av växthusgaser. I andra stycket inkluderas även en verksamhetsutövare för en sjötransportverksamhet som bryter mot föreskrifter som meddelats med stöd av 11 d §. Förslagen i denna del överensstämmer i stora drag med den som sedan tidigare finns för flygverksamhet och motiveras av de hänsyn som anges i prop. 2020/21:27.

Rätt till ersättning för överlämnande av utsläppsrätter enligt artikel 3gaa och behörig domstol

En ny artikel 3gaa har införts i utsläppshandelsdirektivet, i vilken regleras att medlemsstaterna ska se till att verksamhetsutövaren för en sjötransportverksamhet under vissa förutsättningar kan få ersättning för kostnader som denne har haft till följd av överlämnande av utsläppsrätter. Bestämmelsen synes syfta till att den aktör som i realiteten har möjligheten att besluta om vilka sträckor fartyget färdas (dvs. har möjlighet att göra energisnåla färdval) och vilka typer av bränsle som används, är den aktör som i praktiken också ska bära kostnaderna för utsläppen. Detta är i linje med den miljörättsliga principen om att förorenaren betalar.

Av artikeln följer att för det fall en annan aktör än verksamhetsutövaren till en sjötransportverksamhet genom avtal har övertagit ansvaret för driften av ett fartyg eller inköp av drivmedel, har verksamhetsutövaren rätt till ersättning av den aktören för de kostnader verksamhetsutövaren har haft till följd av skyldigheten att överlämna utsläppsrätter.

Förslaget innebär en ny bestämmelse 11 e § som genomför den rättighet till ersättning som uttrycks i artikel 3gaa utsläppshandelsdirektivet. I det svenska genomförandet föreslås en hänvisning till 16 § för att avgöra vilka kostnader verksamhetsutövaren har rätt till ersättning för. En ny bestämmelse om behörig domstol för tvistemål rörande ersättningen införs i 11 f §. De av regeringen utsedda sjörättsdomstolarna får anses vara mest lämpade för att hantera tvistemål som föranleds av det aktuella partsförhållandet. Mark- och miljödomstolarna hanterar i dagsläget inte några liknande typer av tvister och bör inte betungas av en ny typ av mål.

Bemyndigandet i 13 § utvidgas – grunden för undantagsreglering

Bemyndigandet i 13 § används redan i nuvarande lag för detalj- och undantagsreglering i förordningen om vissa utsläpp av växthusgaser (3 kap. 14 § och 4 kap. 1, 2, 7 och 8 §§). Bemyndigandet utvidgas med punkten 3 (utsläpp av växthusgaser från sjötransportverksamhet) för att möjliggöra motsvarande detalj- och undantagsreglering i förordningen för sjöfarten, bl.a. artiklarna 3g, 3g.1 och 3g.1a i det reviderade utsläppshandelsdirektivet.

Den generella skyldigheten att överlämna utsläppsrätter i 16 § utvidgas – bemyndigandet i 17 § oförändrat

Huvudregeln i 16 § om att verksamhetsutövare som omfattas av utsläppshandelssystemet ska överlämna det antal utsläppsrätter som motsvarar de sammanlagda utsläppen från verksamheten utvidgas till att även gälla för verksamhetsutövare av sjötransportverksamheter. Enligt utsläppshandelsdirektivets nu reviderade utformning görs vissa undantag från detta krav (se artiklar 12.3-b, 12.3-c, 12.3-d, 12.3-e, undantagen i bilaga 1). Dessa undantag bör implementeras i förordningen, med stöd av bemyndigandet i 13 §. Revideringen av föranleder inte någon ändring av bemyndigandet i 17 §.

Tillsyn

Nuvarande tillsynsreglering av lagen om vissa utsläpp av växthusgaser är i huvudsak reglerat i förordningen om vissa utsläpp av växthusgaser. Inkluderingen av kompletterande bestämmelser till EU MRV-förordningen i lagen samt implementeringen av sjöfartsdelen i utsläppshandelsdirektivet föranleder att bemyndigandet i 25 § utvidgas till att även omfatta tillsynsreglering vad gäller EU MRV-förordningen. Transportstyrelsen är för närvarande tillsynsmyndighet för förordning (2017:880) om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter. Tillsynsavgifter för tillsynen över nämnda förordningen regleras för närvarande i 6 kap. 53 § p. 2 förordningen om avgifter för prövning och tillsyn enligt miljöbalken. Bestämmelser om miljösanktionsavgifter finns i 9 kap. 22 § förordningen om miljösanktionsavgifter. Samtliga dessa bestämmelser föreslås upphävas och istället regleras i förordningen om vissa utsläpp av växthusgaser. Vilka myndigheter som ska vara tillsynsmyndigheter samt förhållandet mellan dessa, bl.a. avseende avvisnings- och kvarhållandebeslut, bör regleras i förordningen. Det är lämpligt att en och samma myndighet har ansvar över tillsyn över både EU MRV-förordningen och över efterlevnaden av sjötransportverksamheter enligt lagen om vissa utsläpp av växthusgaser.

Nuvarande 31 § reglerar tillsynsmyndighetens rätt till tillträde till anläggningar, luftfartyg och områden som hör till anläggningar och luftfartyg, dock ej bostäder. För att möjliggöra för tillsynsmyndigheten att fullgöra sitt uppdrag kompletteras bestämmelsen med en möjlighet för myndigheten att på begäran få tillträde också till fartyg som avses i lagen och till områden som hör till sådana fartyg.

Avgifter för myndigheters verksamhet

I nuvarande 26 § lagen finns ett bemyndigande för regeringen att meddela föreskrifter om avgifter för kontoföringsmyndighets verksamhet samt avgifter för tillsyn. Förslaget är att bemyndigandet bör utvidgas till att även omfatta EU MRV-förordningen och EU-förordningar som har antagits med stöd av den förordningen. Förordningen om vissa utsläpp av växthusgaser innehåller visserligen inga föreskrifter om avgifter för tillsyn i dag, men genom bemyndigandet finns dock förutsättningar för att införa sådana bestämmelser om regeringen efter ytterligare utredning skulle finna att det är lämpligt.

Förseningsavgift och sanktionsavgift

Paragrafen innehåller ett bemyndigande för regeringen att meddela föreskrifter om att en förseningsavgift eller sanktionsavgift ska betalas om en verksamhetsutövare åsidosätter bestämmelser i lagen eller föreskrifter som har meddelats med stöd av lagen eller EU-förordningar som har antagits med stöd av utsläppshandelsdirektivet. Förslaget innebär att nuvarande reglering utvidgas till att även omfatta EU MRV-förordningen, och motsvarar således artikel 16.3a i utsläppshandelsdirektivet.

Avvisning och kvarhållande av fartyg

Enligt artikel 20.3 EU MRV-förordningen har sedan tidigare funnits en möjlighet för den berörda myndigheten i ankomsthamnens medlemsstat att utfärda ett avvisningsbeslut, om anlöpande fartyg har underlåtit att uppfylla övervaknings- och rapporteringsskyldigheterna under två eller fler på varandra följande rapporteringsperioder. En motsvarande bestämmelse har införts i artikel 16.11a i utsläppshandelsdirektivet. I båda artiklarna har även införts ett andra stycke vari framgår att flaggstaten till ett fartyg som inte uppfyllt skyldigheterna enligt EU MRV-förordningen eller utsläppshandelsdirektivet under vissa omständigheter kan besluta om kvarhållande av fartyget. Enligt förslaget bör ett nytt bemyndigande införas i lagen genom 42 a §, enligt vilket framgår att regeringen får meddela föreskrifter om sådana beslut som nämns i artiklarna. Regleringen om ansvariga myndigheter föreslås ske i förordningen.

Överklagande

Beslut rörande sjötransportverksamheters skyldigheter enligt lagen bör kunna överklagas till mark- och miljödomstolarna, på samma sätt som beslut som rör anläggningar och flygverksamheter kan det.

5.5. Flyget inom EU ETS och Corsia

5.5.1. Förslag

En ny ordförklaring *reduktionsenhet* ska införas i lagen som avser en enhet som får användas med avseende på skyldigheter att kompensera utsläpp av växthusgaser från flygverksamhet i enlighet med denna lag och föreskrifter som har meddelats med stöd av lagen.

En ny ordförklaring *icke-koldioxideffekter* ska införas i lagen som avser klimatpåverkan från utsläpp av kväveoxider, sotpartiklar, eller oxiderade svavelföreningar som uppstår vid förbränning av bränsle i ett luftfartyg, och klimatpåverkan av vattenånga, inklusive kondensstrimmor, som uppstår från sådan förbränning.

Ordförklaringen *flygverksamhet* ska ändras och avse en eller flera flygningar med luftfartyg som ger upphov till utsläpp av växthusgaser och som

- avgår från eller ankommer till en flygplats inom Europeiska ekonomiska samarbetsområdet eller i ett sådant annat tredjeland med vilket Europeiska unionen har ett avtal om ömsesidigt erkännande av utsläppsrätter enligt artikel 25 i utsläppshandelsdirektivet, eller
- utförs mellan flygplatser belägna i två olika tredjeländer.

Regeringen får meddela föreskrifter om att utsläpp av växthusgaser från flygverksamhet ska kompenseras med reduktionsenheter.

Verksamhetsutövaren för en flygverksamhet ska överlämna det antal reduktionsenheter som fastställts enligt föreskrifter som meddelats med stöd av lagen.

Regeringen får meddela föreskrifter om
1. fastställande av antalet reduktionsenheter som ska överlämnas,
2. undantag från skyldigheten att överlämna reduktionsenheter, och
3. villkor för vilka reduktionsenheter som får användas.

Regeringen eller den myndighet som regeringen bestämmer får meddela ytterligare föreskrifter om skyldigheten att överlämna reduktionsenheter.

Den som med uppsåt eller av oaktsamhet lämnar en oriktig eller vilseledande uppgift i en utsläppsrapport för flygverksamhet om dömas för försvårande av utsläppsrättstilldelning till böter eller fängelse i högst två år om åtgärden innebär risk för att ett för litet antal reduktionsenheter överlämnas.

5.5.2. Skälen för förslaget

En ändrad definition av flygverksamhet

4 § i nuvarande lagen definierar vad som avses med flygverksamhet. Enligt punkt 2 ingår i det begreppet flygningar som omfattas av kommissionens delegerade förordning (EU) 2019/1603 av den 18 juli 2019 om komplettering av Europaparlamentets och rådets direktiv 2003/87/EG vad gäller åtgärder som antagits av Internationella civila luftfartsorganisationen för övervakning, rapportering och verifiering av utsläpp för att genomföra en global marknadsbaserad åtgärd. Den delegerade förordningen antogs för att komplettera utsläppshandelsdirektivet med regler om övervakning, rapportering och verifiering av utsläpp för Corsia, i enlighet med kravet enligt FN-regelverket om att sådana regler skulle börja gälla från och med 2019 års utsläpp. För att kunna säkerställa efterlevnaden av de reglerna infördes i lagen en hänvisning till den delegerade förordningen i 4 § 2, vilket bl.a. innebär att kravet om övervakningsplan blir tillämpligt enligt 11 § lagen och att regeringen är bemyndigad att föreskriva om förseningsavgifter enligt 41 § lagen, se avsnitt 6.2 i prop. 2020/21:27.

I och med utökningen av bilaga I i det reviderade utsläppshandelsdirektivet) med avseende på flygverksamhet, för att genomföra Corsias regler för utsläppskompensation (se avsnitt 4.2), bör hänvisningen till den delegerade förordningen utgå. Istället bör det framgå i punkt 2 att flygningar mellan två olika tredjeländer ingår i begreppet flygverksamhet i enlighet med definitionen i direktivet. Definitionen i det reviderade utsläppshandelsdirektivet är inte så bred att den omfattar alla flygningar mellan två olika tredjeländer, utan har avgränsningar bl.a. i fråga om vilka tredjeländer som omfattas, vilka flygoperatörer som träffas och genom att flygningar med vissa ändamål är undantagna, t.ex. militära. Sådana slags avgränsningar bör regleras i förordningen med med stöd av 13 § lagen. Så är det nuvarande regelverket utformat, där flera avgränsningar och undantag i förhållande till 4 § lagen görs med stöd av 13 § lagen i förordningen, se bl.a. 4 kap. 1 och 7 §§ förordningen.

Definitionen av flygverksamhet avser flygningar som innebär olika skyldigheter beroende på om de ingår i EU ETS eller Corsia. Den föreslagna 4 § 2 är relevant endast för Corsia-flygningar, medan 4 § 1 omfattar flygningar både inom EU ETS och inom Corsia. Enligt omfattningen i det reviderade utsläppshandelsdirektivet kan en och samma flygning inte träffas av båda system, men beroende på översynen enligt artikel 28b.2 utsläppshandelsdirektivet (se avsnitt 4.2) är det möjligt att flygningar mellan EES och ett tredjeland kan komma att omfattas av båda system. För att särskilja att olika slags flygningar som ingår i flygverksamhet enligt 4 § lagen innebär olika skyldigheter är det lämpligt att i förordningen införa ytterligare begreppsförklaringar för att särskilja dem. I den nuvarande förordningen används begreppet EES-flygningar, definierat i 1 kap. 4 § som de flygningar som avses i 4 § 1 lagen. EES-flygningar används sedan bl.a. i 4 kap. 2 § förordningen för att avgränsa vilka flygningar som är relevanta i förhållande till kravet att överlämna utsläppsrätter. Denna definition bör ses över eftersom det i 4 § 1 lagen även ingår flygningar som är relevanta i förhållande till kravet att överlämna reduktionsenheter inom Corsia. Därutöver är det lämpligt att i förordningen införa ett separat begrepp för att särskilja de flygningar som är relevanta för Corsia.

Krav på överlämnande av reduktionsenheter inom Corsia

Det är lämpligt att i lagen införa en definition av reduktionsenheter för att möjliggöra bestämmelser som avser skyldigheter i fråga om överlämnandet av desamma enheterna inom ramen för Corsia. Enheterna som avses är de enheter som får användas för att kompensera utsläpp av växthusgaser inom ramen för Corsia enligt utsläppshandelsdirektivet (se avsnitt 4.2). Dessa Corsia-enheter kallas i vissa sammanhang även utsläppskrediter, men eftersom de i utsläppshandelsdirektivet kallas reduktionsenheter är det lämpligt att använda samma uttryck i lagen.

Skyldigheten för flygoperatörer att överlämna reduktionsenheter för att kompensera för utsläpp av växthusgaser i enlighet med det reviderade utsläppshandelsdirektivet (se avsnitt 4.2) hör till det primära lagstiftningsområdet (8 kap. 2 § regeringsformen) och bör lagregleras. Skyldigheterna att överlämna reduktionsenheter är snarlik skyldigheterna att överlämna utsläppsrätter och bör därför regleras på motsvarande sätt. Utgångspunkten för den regleringen har varit att i så stor utsträckning som möjligt placera regelverket i förordningen, se prop. 2020/21:27. Det bör gälla även för denna nya skyldighet.

Skyldigheten att överlämna utsläppsrätter är reglerad genom 16 § som anger att verksamhetsutövare ska överlämna det antal utsläppsrätter som motsvarar de sammanlagda utsläppen från verksamheten (det s.k. täckningskravet). Regeringen får enligt 13 § meddela föreskrifter om att utsläpp av växthusgaser ska täckas av utsläppsrätter, vilket regeringen gjort med avseende på flygverksamhet framför allt i förordningens fjärde kapitel. Tillämpningsföreskrifterna i 4 kap. förordningen anger bl.a. vilken slags flygverksamhet som omfattas av skyldigheterna att överlämna utsläppsrätter (4 kap. 1 §), hur utsläppen ska bestämmas (4 kap. 3–5 §§) och vilka undantag som är tillämpliga (4 kap. 7 §). Skyldigheterna gällande reduktionsenheter bör i lagen

regleras på ett motsvarande sätt. Dels genom en bestämmelse om att verksamhetsutövare för flygverksamhet ska överlämna det antal reduktionsenheter som fastställts enligt föreskrifter som meddelats med stöd av lagen, dels en bestämmelse om att regeringen får meddela föreskrifter om att utsläpp av växthusgaser från flygverksamhet ska kompenseras med reduktionsenheter. Utsläppshandelsdirektivet innehåller regler om fastställandet av hur många reduktionsenheter som ska överlämnas av flygoperatörerna ska göras och kriterier för vilka reduktionsenheter som får användas. Det finns också vissa undantag från skyldigheten att överlämna reduktionsenheter. Se vidare avsnitt 4.2. Det är lämpligt att placera den regleringen i förordningen.

Den nuvarande straffsanktionen enligt 35 § innebär att den som med uppsåt eller av oaktsamhet lämnar en oriktig eller vilseledande uppgift i en utsläppsrapport ska dömas för försvårande av kontroll av växthusgasutsläpp till böter eller fängelse i högst två år. Denna straffsanktion blir tillämplig även med avseende på Corsia och reduktionsenheterna, eftersom det är utsläppsrapporten som ligger till grund för hur många reduktionsenheter som ska överlämnas. Av samma skäl som redogörs för i avsnitt 5.4 bör 35 § avgränsas till att det endast är oriktiga eller vilseledande uppgifter som innebär *en risk för att ett för litet antal reduktionsenheter överlämnas* som bör vara straffsanktionerade.

En definition av icke-koldioxideffekter införs

Det bör införas en definition av icke-koldioxideffekter i lagen för att genomföra utsläppshandelsdirektivets bestämmelser om att sådana effekter ska övervakas, rapporteras och verifieras av flygoperatörer från och med 2025 (se avsnitt 4.3.2). Definitionen av utsläpp av växthusgaser bör därmed också inkludera icke-koldioxideffekter (2 §, se avsnitt 5.1). Med dessa ändringar är det möjligt att med stöd av 25 § lagen i nuvarande lydelse att i förordningen reglera krav på att icke-koldioxideffekterna ska övervakas, rapporteras och verifieras.

Det är vidare lämpligt att i 13 § ange att regeringen får meddela föreskrifter om att utsläpp av växthusgaser ska täckas av utsläppsrätter, istället för endast koldioxid. Icke-koldioxideffekterna ska inte räknas mot skyldigheterna att överlämna utsläppsrätter, dvs. det är de facto bara koldioxid som ska ingå, vilket är en precisering som kan regleras i förordningen med stöd av 13 § lagen. Men genom att ta höjd för icke-koldioxideffekter i 13 § finns möjlighet att, utan ytterligare lagändringar, inkludera dem i skyldigheterna att överlämna utsläppsrätter via förordningen vid ett senare tillfälle. Senast den 1 januari 2028 ska EU-kommissionen utvärdera om icke-koldioxideffekterna ska inkluderas med avseende på skyldigheterna att överlämna utsläppsrätter i en rapport till Europaparlamentet och rådet.

5.6. Ikraftträdande- och övergångsbestämmelser

5.6.1. Förslag

Lagändringarna ska träda i kraft den 1 januari 2024.

5.6.2. Skälen för förslaget

Lagändringarna bör träda i kraft den 1 januari 2024, i enlighet med ikraftträdandebestämmelserna i ändringsdirektivet och flygändringsdirektivet, enligt vilka de ändringar som föreslås genomföras i lagen ska sättas i kraft senast

från och med den 1 januari 2024. Delar av ändringsdirektivets bestämmelser ska sättas i kraft senare, det gäller exempelvis undantagsreglerna för anläggningar med stor andel biomassa (se avsnitt 4.1.3) men eftersom de bestämmelserna föreslås regleras i förordningen kan eventuella övergångsbestämmelser relaterade till dessa regleras där.

6. Konsekvenser

Förslagen utgår ifrån utsläppshandelsdirektivets och EU MRV-förordningens krav. Direktivet ger i stora delar litet utrymme för alternativa lösningar, och EU MRV-förordningen i ännu mindre utsträckning, men i några avseenden finns utrymmen att ge de nationella bestämmelserna den utformning som medlemsstaterna finner lämpligt, t.ex. avseende tillsyn och sanktioner. Den föreslagna regleringen överensstämmer med Sveriges skyldigheter att arbeta för att utsläppshandelssystemet inom EU genomförs och upprätthålls på ett konsekvent sätt.

Konsekvenser som beskrivs i detta avsnitt följer huvudsakligen av de ändringar som har gjorts av utsläppshandelsdirektivet och EU MRV-förordningen. I avsnitt 4 finns en beskrivning av ändringarna i utsläppshandelsdirektivet och EU MRV-förordningen. Endast de ändringar som rör det nuvarande och utökade utsläppshandelssystemet EU ETS berörs, inte det nya utsläppshandelssystemet EU ETS 2.

6.1. Miljön

Ändringarna av utsläppshandelsdirektivet syftar till att EU ska kunna uppnå sitt klimatmål till år 2030 om att minska utsläppen av växthusgaser med minst 55 procent jämfört med 1990. För att nå det målet ska de sektorer som omfattas av EU ETS minska sina utsläpp med 62 procent jämfört med 2005 års nivåer. Detta innebär att det totala antalet utsläppsrätter kommer att minska i snabbare takt än tidigare. Detta sker dels genom två engångssänkningar av den totala årliga nyutgivningen av utsläppsrätter, år 2024 (90 miljoner utsläppsrätter) och år 2026 (27 miljoner utsläppsrätter), dels genom att den årliga minskningen ökar från nuvarande 2,2 procent (43 miljoner utsläppsrätter) till 4,3 procent (84 miljoner utsläppsrätter) under åren 2024–2027 och därefter till 4,4 procent. Ändringarna av utsläppshandelsdirektivet förväntas också minska utsläppen från verksamheter i Sverige och från sjötransporter till och från Sverige. Det går dock inte att säga hur stor del av den totala utsläppsminskningen inom utsläppshandelssystemet som kommer att ske genom minskade utsläpp från verksamheter i Sverige.

Viss risk för så kallat koldioxidläckage föreligger för sjötransportverksamheterna vilket negativt påverkar miljöintegriteten i systemet. Det finns en risk att gods som ska transporteras till eller från EU lastas om utanför EU innan det skeppas vidare för att på så vis komma undan en del av regleringen. I utsläppshandelsdirektivet finns dock en regel som tillkommit för att i viss utsträckning adressera den risken (se avsnitt 4.5.2). Det finns också en risk för överflyttning till andra transportslag med högre utsläpp eller till mindre fartyg under 5 000 bruttodräktighet som inte träffas av regleringen, eller att fartyg klassas om till andra typer av fartyg som inte träffas av regleringen. I en nylig studie genomförd av Statens väg- och transportforskningsinstitut (VTI) om effekterna av att inkludera sjöfarten i EU ETS, bedöms dock att de ökade kostnaderna för sjötransporter enbart leder till små överflyttningar till de landbaserade trafikslagen.[10] Däremot visar VTI att det finns en större risk för

[10] Effekter av Fit for 55 på sjötransporter : kostnader för svensk godstrafik (diva-portal.org) 2023-02-10

överflyttning till mindre fartyg för att kringgå EU ETS, vilket leder till att utsläpp flyttas utanför systemet och minskad utsläppseffektivitet eftersom fartygs energi- och utsläppseffektivitet i regel ökar med fartygens storlek.

6.2. Företagen

Ändringarna av utsläppshandelsdirektivet förväntas sammantaget innebära att priset på utsläppsrätter höjs, vilket innebär ökade kostnader för de företag som omfattas av EU ETS. Detta återspeglas redan genom att priset på utsläppsrätter har ökat markant, från ca 50 euro per utsläppsrätt i mitten av juli 2021 när EU-kommissionen presenterade sitt lagförslag som en del av Fit for 55-paketet, till omkring 100 euro i slutet av februari 2023.

Konsekvenserna för enskilda företag beror på vilken sektor de verkar i och på reglerna för gratis tilldelning av utsläppsrätter. Utfasningen av den fria tilldelningen av utsläppsrätter för de sektorer som träffas av gränsjusteringsmekanismen CBAM innebär ökade kostnader för företag i de sektorerna. Samtidigt är CBAM avsedd att säkerställa likvärdiga villkor med avseende på koldioxidprissättning inom unionen, dvs. konkurrensförhållandena för svenska företag bedöms inte negativt påverkas med avseende på produkter som säljs inom unionen. Däremot innebär utfasningen en negativ påverkan för företag som producerar produkter som exporteras utanför unionen.

Samtidigt introducerar ändringarna av utsläppshandelsdirektivet ekonomiska incitament som kan gynna företag som på olika sätt investerar i minskade utsläpp av växthusgaser. Det kan vara företag som producerar produkter som används av aktörer inom EU ETS och vars lönsamhet ökar med ökade ekonomiska incitament för utsläppsminskningar inom EU ETS, exempelvis producenter av hållbara flyg- och sjöfartsbränslen. Det gäller också företag som verkar inom EU ETS, särskilt anläggningar som inte har några växthusgasutsläpp och som kommer inkluderas i EU ETS, exempelvis fossilfri vätgas- eller stålproduktion, förutsatt att de får möjlighet att ansöka om gratis tilldelning av utsläppsrätter. Hur stort det incitamentet blir beror på översynen av tilldelningsreglerna, särskilt hur riktmärkesdefinitionerna ändras.

Det reviderade utsläppshandelsdirektivet medför vissa ökade administrativa kostnader för företag, det gäller exempelvis de nya villkoren för gratis tilldelning av utsläppsrätter för stationära anläggningar, dvs. energieffektiviseringskrav och klimatomställningsplaner.

För företag som bedriver flygverksamhet ökar kostnaderna på grund av att gratistilldelningen av utsläppsrätter fasas ut till 2026, att omfattningen för EU ETS utökas något och på grund av Corsia. Revideringarna av utsläppshandelsdirektivet medför även viss ökning av de administrativa kostnaderna, bl.a. på grund av den utökade omfattningen i EU ETS, att icke-koldioxideffekter ska övervakas och på grund av införandet av Corsia. Hur stora dessa kostnader blir är i stor utsträckning beroende av utformningen av de detaljerade regler som EU-kommissionen ska ta fram i delegerade akter och genomförandeakter.

Inkluderandet av sjöfarten i EU ETS medför ökade kostnader för de företag som direkt träffas av regleringen, samt för företag som nyttjar sjötransporter genom att deras transportkostnader ökar. När det gäller sjöfartsföretagen föranleds de

ökade kostnaderna framför allt av kostnaderna för utsläppsrätter och i viss utsträckning av administrativa kostnader associerade med deltagandet i EU MRV respektive EU ETS.

VTI och Lighthouse har studerat de ekonomiska konsekvenserna av inkluderandet av sjöfarten i EU ETS ur ett svenskt perspektiv, med avseende på kostnaderna för utsläppsrätter. VTI har utgått ifrån EU-kommissionens ursprungliga förslag på revidering av utsläppshandelsdirektivet och uppskattar att bränslekostnaderna ökar med 11–42 procent för fartygen som anlöper Sverige vid ett antaget utsläppsrättspris om 80 euro per ton CO_2. VTI:s modelleringar visar att kostnadsökningarna är beroende av fartygssegment, exempelvis att de är högre för Ro-ro-fartyg och containerfartyg än med torrlastfartyg. Lighthouse bedömer att bränslekostnaderna för bunkring av bränsle i Sverige ökar med ca 70–80 procent vid ett antaget utsläppsrättspris om 100 euro per ton CO_2. [11]

VTI bedömer i sin rapport att de ökade bränslekostnaderna för sjötransporter inte påverkar företagens samlade logistikkostnader i stor utsträckning eftersom bränslekostnadsökningarna är små relativt andra kostnadskomponenter och att anpassningar till högre kostnader leder till att kostnadseffekten dämpas.

Införandet av sjöfarten i EU ETS medför en ökad administration för rederierna. Eftersom inkluderandet av sjöfarten i EU ETS bygger på EU MRV-förordningen är de administrativa kostnaderna i stor utsträckning befintliga. Men eftersom EU MRV-förordningen ändras och vissa krav tillkommer på grund av EU ETS förväntas kostnaderna öka i viss utsträckning, bland annat på grund av att rederierna ska tillhandahålla nya slags utsläppsrapporter, för att datumet för utsläppsrapportering tidigareläggs och för att EU MRV-förordningens tillämpningsområde utökas, exempelvis med fler växthusgaser och fartygstyper.

Totalt sett berördes 26 svenska rederier år 2021 av kraven i nuvarande EU MRV-förordningen med avseende på 79 unika svenskflaggade fartyg, enligt Transportstyrelsens uppgifter hämtade från EU:s övervaknings- och informationssystem för sjötrafik, SafeSeaNet. Av dessa har 19 rederier rapporterat utsläpp i Thetis MRV med avseende på 65 svenskflaggade fartyg. Därutöver tillkommer troligen ett fåtal fartyg och rederier på grund av utvidgningen av EU MRV-förordningen.

6.3. Staten

Ändringarna av utsläppshandelsdirektivet och EU MRV-förordningen får vissa konsekvenser för staten. Naturvårdsverket är tillsynsmyndighet, tillståndsmyndighet och den myndighet som prövar gratis tilldelning av utsläppsrätter i förhållande till anläggningar och flygverksamheter. Ändringarna i direktivet föranleder utökade uppgifter för Naturvårdsverket. Ändringarna i tilldelningsreglerna för anläggningar innebär sannolikt en mer omfattande prövning av tilldelningsfrågor, med avseende på de nya villkoren med energieffektiviseringskrav och omställningsplaner. Samtidigt innebär undantaget för anläggningar med hög andel biomassautsläpp att antalet anläggningar i systemet sannolikt minskar, vilket bidrar med en minskning av den administrativa bördan. För flygverksamheter tillkommer utökade uppgifter med

[11] Costs for decarbonising shipping - Lighthouse 2023-02-10

avseende på tillsyn mm. för Corsia och prövning av ansökningar om gratis tilldelning av utsläppsrätter för att kompensera användning av hållbara bränslen.

Transportstyrelsen ska ges tillfälle att yttra sig innan Naturvårdsverket beslutar i frågor om flygverksamhet. Detta föranleder vissa utökade uppgifter för Transportstyrelsen, med anledning av att Naturvårdsverkets flygrelaterade beslut sannolikt blir fler. Den påverkan bör dock vara begränsad med anledning av att det endast rör sig om ett 10-tal verksamhetsutövare för flygverksamheter som har skyldigheter inom EU ETS eller Corsia och som administreras av Naturvårdsverket.

För Energimyndigheten, som kontoföringsmyndighet, bedöms ändringarna innebära vissa utökade uppgifter framför allt på grund av att sjöfarten inkluderas i systemet. Därutöver innebär de ändrade tidsfristerna för utfärdande av gratis utsläppsrätter från den 28 februari till den 30 juni och överlämnandet av utsläppsrätter från den 30 april till den 30 september att arbetsbördan i viss utsträckning kommer fördelas annorlunda över året.

Sjöfartverksamheternas inkluderande i EU ETS och ändringarna i EU MRV-förordningen föranleder ökade uppgifter för den eller de myndigheter som pekas ut i förordningen om vissa utsläpp av växthusgaser. Uppgifterna handlar bl.a. om att godkänna övervakningsplaner, att utöva tillsyn över regelverken och att vägleda och informera berörda aktörer om regelverken. Enligt den nuvarande EU MRV-förordningens omfattning omfattas ca 25 svenska rederier och ca 80 svenska fartyg. Därutöver tillkommer med ändringarna i EU MRV-förordningen ytterligare ett antal fartyg med avseende på den utökade omfattningen, samt de tredjelandsfartyg som Sverige tilldelas. Hur många tredjelandsrederier och tillhörande fartyg som ska administreras av Sverige är inte känt. Det antalet bör dock vara begränsat, med tanke på att huvudregeln är att de rederierna ska fördelas till det land de har flest hamnanlöp till och det bedöms som osannolikt att Sverige i någon större utsträckning är det landet.

När det gäller domstolarna innebär förslaget om att inkludera sjötransportverksamheter i lagen och förordningen om vissa utsläpp av växthusgaser att antalet mål till mark- och miljödomstolarna kan öka. Att utsläppshandelssystemet utökas till att omfatta en ny typ av verksamhetsutövare, som sedan tidigare omfattas av förordning (2017:880) om övervakning, rapportering och verifiering av koldioxidutsläpp från sjötransporter (som kompletterar EU MRV-förordningen), bedöms dock inte föranleda någon betydande ökad arbetsbörda för mark- och miljödomstolarna.

Förslaget innebär vidare att de av regeringen utnämnda sjörättsdomstolarna (Luleå, Sundsvall, Stockholms, Kalmar, Malmö, Göteborgs och Värmlands tingsrätter) är behöriga och första instans i sådana tvister som avses i artikel 3gaa utsläppshandelsdirektivet (genomförd i förslaget på ny 11 e § i lagen om vissa utsläpp av växthusgaser). Denna typ av tvister i domstol bedöms bli ovanliga och bör således inte vara särskilt betungande för sjörättsdomstolarna.

6.4. Kommuner

Ändringarna av utsläppshandelsdirektivet och lagändringarna bedöms huvudsakligen innebära konsekvenser för kommuner i de fall där kommunerna

är företag som berörs av samma ändringar. I dessa fall beskrivs konsekvenserna i avsnittet om konsekvenser för företag ovan (avsnitt 6.2).

I de fall kommuner bedriver utsläppshandelsrelaterad verksamhet i förvaltningsform kan ändringsdirektivet innebära ökade kostnader för dessa kommuner i form av höjda priser på utsläppsrätter och ökad administration. Eftersom kommuner har möjlighet att finansiera eventuella ökade kostnader genom avgiftshöjningar föranleder förslagen inte någon ekonomisk reglering i enlighet med finansieringsprincipen.

7. Författningskommentarer

1 §

I paragrafen anges lagens syfte och innehåll.

Det *andra stycket* som klargör vilka EU-förordningar lagen kompletterar görs om till en strecksatsuppställning. *Den första strecksatsen* motsvarar det nuvarande andra stycket om att lagen kompletterar EU-förordningar som antagits med stöd av utsläppshandelsdirektivet. Till följd av att utsläppshandelsdirektivet ändras anges att den lydelse av direktivet som avses är den enligt de två ändringsdirektiven (se avsnitt 4). I förslaget anges inte ändringsdirektivens nummer eftersom de vid framtagandet av denna skrivelse inte har antagits.

Det *andra styckets andra strecksats* klargör att lagen *kompletterar EU MRV-förordningen och EU-förordningar som antagits med stöd av EU MRV-förordningen*. Ändringen är en följd av att genomförandet av EU MRV-förordningen i förordning (2017:880) förs över till lagen.

Övervägandena finns i avsnitt 5.4.

2 §

Paragrafen innehåller förklaringar av termer och uttryck som används i lagen.

Förklaringen av *utsläpp av växthusgaser* ändras till en punktuppställning som anger vilka växthusgaser som är aktuella för respektive typ av verksamhet inom lagen (anläggningar, flygverksamhet, sjötransportverksamhet). Övervägandena för ändringen till en punktuppställning finns i avsnitt 5.1.

- I den *första punkten* anges de växthusgaser som är aktuella för anläggningar. Förslaget innebär ingen ändring i sak med avseende på omfattningen av växthusgaser för anläggningar.
- I den *andra punkten* anges att det med utsläpp av växthusgaser menas frigörande av koldioxid från ett luftfartyg *eller icke-koldioxideffekter som uppstår på grund av förbränning i ett luftfartyg*. Icke-koldioxideffekter tillkommer på grund av att det i utsläppshandelsdirektivet anges att flygverksamheter ska övervaka och rapportera sådana effekter från och med 2025. 2 § innehåller en separat ordförklaring för begreppet icke-koldioxideffekter, se nedan. Övervägandena finns i avsnitt 5.5.
- I den *tredje punkten* anges att det med utsläpp av växthusgaser menas *frigörande av koldioxid, metan eller dikväveoxid från ett fartyg.* Ändringen möjliggör ett genomförande av att sjötransportverksamheter inkluderas i utsläppshandelsdirektivet. Övervägandena finns i avsnitt 5.4.

Förklaringen av *ton koldioxidekvivalenter* utökas med avseende på att utsläpp av *metan* tillkommer som en ny typ av växthusgas vid inkluderandet av sjötransportverksamheter i lagen. Övervägandena finns i avsnitt 5.4.

En ny ordförklaring *reduktionsenhet* läggs till som avser *en enhet som får användas med avseende på skyldigheter att kompensera utsläpp av växthusgaser från flygverksamhet i enlighet med denna lag och föreskrifter som har meddelats med stöd av lagen.* Ändringen möjliggör ett genomförande av att Corsia

inkluderas i utsläppshandelsdirektivet, vilket innebär en ny skyldighet för verksamhetsutövare för flygverksamhet att överlämna reduktionsenheter, se avsnitt 4.2. Övervägandena finns i avsnitt 5.5.

En ny ordförklaring *icke-koldioxideffekter* läggs till som avser *klimatpåverkan från utsläpp av kväveoxider, sotpartiklar, eller oxiderade svavelföreningar som uppstår vid förbränning av bränsle i ett luftfartyg, och klimatpåverkan av vattenånga, inklusive kondensstrimmor, som uppstår från sådan förbränning.* Uttrycket används i ordförklaringen utsläpp av växthusgaser (se ovan) och motsvarar definitionen i utsläppshandelsdirektivet (artikel 3.ua), se avsnitt 4.3.2. Övervägandena finns i avsnitt 5.5.

3 §

I paragrafen förklaras vad som avses med en anläggning.

Definitionen i *första stycket* ändras så att det inte förutsätts att verksamheten eller verksamheterna som bedrivs *ger upphov till utsläpp av växthusgaser*. Ändringen föranleds av ändringen i utsläppshandelsdirektivet om att vissa verksamheter som inte ger upphov till några utsläpp av växthusgaser ska ingå i EU ETS, se avsnitt 4.1.1. Förslaget innebär att sådana verksamheter faller in under begreppet anläggning. Övervägandena finns i avsnitt 5.3.

Ett nytt *andra stycke* anger att det med en anläggning även avses *en anläggning enligt första stycket som inte längre kräver tillstånd men som beviljats bibehållet tillstånd enligt 9 a och b §§.* Genom ändringen möjliggörs ett genomförande av ändringen i artikel 2.1 utsläppshandelsdirektivet om att vissa slags verksamheter som tidigare varit tillståndspliktiga ska ha möjlighet att delta frivilligt i EU ETS (se avsnitt 4.1.2). Förslaget innebär att sådana verksamheter faller in under begreppet anläggning. Övervägandena finns i avsnitt 5.2.

4 §

I paragrafen förklaras vad som avses med en flygverksamhet.

Punkt 2 ändras så att en eller flera flygningar med luftfartyg, som ger upphov till utsläpp av växthusgaser och som *utförs mellan flygplatser belägna i två olika tredjeländer* ingår i begreppet flygverksamhet. Förslaget föranleds av ändringen i utsläppshandelsdirektivets bilaga I som definierar vilka verksamheter som träffas av direktivets reglering och avser flygningar som ingår i Corsia, se avsnitt 4.2.

Övervägandena finns i avsnitt 5.5.

4 a §

Paragrafen är ny och förklarar att det med *sjötransportverksamhet avses en eller flera sjötransporter som ger upphov till utsläpp av växthusgaser och som omfattas av EU MRV-förordningen.* Definitionen är i huvudsak densamma som i utsläppshandelsdirektivets bilaga I.

Övervägandena finns i avsnitt 5.4.

5 §

I paragrafen förklaras vad som avses med verksamhetsutövare.

Uppställningen i paragrafen görs om, där *den första punkten* anger vem som är verksamhetsutövare i fråga om en anläggning eller flygverksamhet och motsvarar den första och andra punkten i den nuvarande ordförklaringen.

En ny *andra punkt* anger att verksamhetsutövaren i fråga om sjötransportverksamhet är varje fysisk eller juridisk person som

a. äger ett fartyg som ingår i sjötransportverksamheten, eller

b. någon annan organisation eller person, såsom den driftsansvarige eller den som hyr fartyget utan besättning, som har övertagit fartygsägarens ansvar för fartygets drift och som genom att ta på sig detta ansvar har gått med på att överta alla skyldigheter och allt ansvar som följer av de internationella organisationsreglerna för säker drift av fartyg och för förhindrande av förorening i enlighet med i bilaga I i Europaparlamentets och rådets förordning (EG) nr 336/2006 av den 15 februari 2006 om genomförande av Internationella säkerhetsorganisationskoden i gemenskapen och upphävande av rådets förordning (EG) nr 3051/95.

Definitionen är i huvudsak densamma som i artikel 3.v utsläppshandelsdirektivet.

Övervägandena finns i avsnitt 5.4.

6 §

I paragrafen förklaras vad som avses med utsläppsrapport, övervakningsplan och rapport om verksamhetsnivå.

Förklaringen *utsläppsrapport* ändras till en punktuppställning där den *första punkten* motsvarar den nuvarande ordförklaringen. En ny *andra punkt* läggs till som anger att det med en utsläppsrapport avses en *sådan skriftlig rapport som avses i artikel 11 och artikel 11a i EU MRV-förordningen*. Förklaringen har betydelse för straffansvaret enligt 35 §. Övervägandena finns i avsnitt 5.4.

Förklaringen *övervakningsplan* ändras till en punktuppställning där den *första punkten* motsvarar den nuvarande ordförklaringen. En ny *andra punkt* läggs till som anger att det med övervakningsplan även menas *en sådan skriftlig redogörelse som avses i artikel 6 i EU MRV-förordningen*. Förklaringen har betydelse bl.a. för bemyndigandet för regeringen i 11 d § att meddela föreskrifter om att det ska krävas en övervakningsplan för att bedriva sjötransportverksamhet. Övervägandena finns i avsnitt 5.4.

7 §

Paragrafen innehåller bemyndigande för regeringen att meddela föreskrifter om tillstånd att släppa ut växthusgaser.

Ett *nytt andra stycke* ger ett nytt bemyndigande för regeringen *att meddela föreskrifter om att det ska krävas tillstånd även för sådana anläggningar utan*

utsläpp av växthusgaser som avses i bilaga I utsläppshandelsdirektivet och vad ansökan om tillstånd för sådana anläggningar ska innehålla. Genom det nya bemyndigandet möjliggörs ett genomförande av ändringen i utsläppshandelsdirektivet om att anläggningar utan utsläpp av växthusgaser ingår i EU ETS, se avsnitt 4.1.1. Föreskrifter om vilka sådana slags anläggningar som omfattas av ett tillståndskrav och vad ansökan om tillstånd för en sådan anläggning ska innehålla kan med stöd av bemyndigandet meddelas på förordningsnivå.

Övervägandena finns i avsnitt 5.3.

9 §

Paragrafen anger grunderna för återkallelse av tillstånd till utsläpp av växthusgaser.

Ett nytt *andra stycke* anger att *första stycket 5 inte gäller anläggningar som beviljats bibehållet tillstånd enligt 9 a och b §§.* Genom ändringen möjliggörs ett genomförande av artikel 2.1 utsläppshandelsdirektivet om att vissa slags verksamheter som tidigare varit tillståndspliktiga ska ha möjlighet att delta frivilligt i EU ETS (se avsnitt 4.1.2). Den femte punkten anger att tillståndsmyndigheten får återkalla ett tillstånd för att släppa ut växthusgaser om verksamheten inte kräver tillstånd för att släppa ut växthusgaser. Enligt det nya andra stycket ska detta inte gälla för anläggningar som valt att fortsätta delta frivilligt.

Övervägandena finns i avsnitt 5.2.

9 a §

Paragrafen är ny och anger i det *första stycket* att *tillståndsmyndigheten får besluta om att en verksamhetsutövare får behålla sitt tillstånd även när verksamhet inte längre kräver tillstånd enligt 7 § på grund av ändring av verksamheten eller verksamheterna.*

Det *andra stycket* innehåller ett bemyndigande till regeringen att *meddela föreskrifter om förutsättningarna för att en verksamhetsutövare ska få bibehålla sitt tillstånd.*

Paragrafen möjliggör ett genomförande av artikel 2.1 utsläppshandelsdirektivet om att vissa slags verksamheter som tidigare varit tillståndspliktiga ska ha möjlighet att delta frivilligt i EU ETS (se avsnitt 4.1.2). Tillståndsmyndigheten får möjlighet att besluta om att en verksamhetsutövare får behålla sitt tillstånd. Regeringen får ett bemyndigande att meddela föreskrifter om förutsättningarna för sådana tillstånd. Tillståndsmyndighetens prövning i förhållande till de förutsättningarna ryms inom 8 §. Den relaterade paragraf 9 b § reglerar verksamhetsutövarens rättighet att ansöka om bibehållet tillstånd och vad ansökan ska innehålla.

Övervägandena finns i avsnitt 5.2.

9 b §

Paragrafen är ny och anger att e*n verksamhetsutövare för en anläggning som innehar tillstånd och vars verksamhet inte längre kräver tillstånd enligt 7 § får ansöka om att behålla tillståndet till utsläpp av växthusgaser till tillstånds-myndigheten.* Paragrafen innehåller även ett bemyndigande till regeringen *att meddela föreskrifter om vad en ansökan att behålla tillstånd ska innehålla*.

Paragrafen möjliggör ett genomförande av ändringen i artikel 2.1 utsläppshandelsdirektivet om att vissa slags verksamheter som tidigare varit tillståndspliktiga ska ha möjlighet att delta frivilligt i EU ETS (se avsnitt 4.1.2). Paragrafen uttrycker verksamhetsutövares rättighet att under vissa förutsättningar ansöka om att behålla tillståndet ifall verksamheten inte lägre kräver tillstånd. Föreskrifter om vad en sådan ansökan ska innehålla kan med stöd av bemyndigandet meddelas på förordningsnivå. Den relaterade 9 a § föreskriver att tillståndsmyndigheten får fatta beslut om bibehållna tillstånd och innehåller ett bemyndigande till regeringen att föreskriva om förutsättningarna för att en verksamhetsutövare ska få bibehålla sitt tillstånd.

Övervägandena finns i avsnitt 5.2.

11 a §

Paragrafen är ny och innehåller ett bemyndigande för regeringen att *meddela föreskrifter om att utsläpp av växthusgaser från flygverksamhet ska kompenseras med reduktionsenheter.* Ändringen möjliggör ett genomförande av att Corsia inkluderats i utsläppshandelsdirektivet, vilket innebär en ny skyldighet för verksamhetsutövare för flygverksamhet att överlämna reduktionsenheter, se avsnitt 4.2. Närmare föreskrifter om bl.a. vilka flygverksamheter som ska kompenseras med reduktionsenheter kan med stöd av bemyndigandet meddelas på förordningsnivå.

Övervägandena finns i avsnitt 5.5.

11 b §

Paragrafen är ny och innehåller grundläggande skyldigheter för flygverksamheter att överlämna reduktionsenheter. Paragrafen möjliggör ett genomförande av att Corsia inkluderas i utsläppshandelsdirektivet, vilket innebär en ny skyldighet för verksamhetsutövare för flygverksamhet att överlämna reduktionsenheter, se avsnitt 4.2. Paragrafen anger att v*erksamhetsutövaren för en flygverksamhet ska överlämna det antal reduktionsenheter som fastställts enligt föreskrifter som meddelats med stöd av lagen.* Förslaget innehåller ett bemyndiganden för regeringen i 11 a § att meddela föreskrifter om fastställandet av antalet reduktionsenheter.

Paragrafen är snarlik motsvarande skyldighet att överlämna utsläppsrätter i 16 §.

Övervägandena finns i avsnitt 5.5.

11 c §

Paragrafen är ny och innehåller i det *första stycket* ett bemyndigande för regeringen att meddela föreskrifter om

1. fastställande av antalet reduktionsenheter som ska överlämnas enligt 11b §,

2. undantag från skyldigheten att överlämna reduktionsenheter, och

3. villkor för vilka reduktionsenheter som får användas med avseende på skyldigheter enligt 11 b §.

Det *andra stycket* innehåller ett bemyndigande för regeringen eller den myndighet som regeringen bestämmer att *meddela ytterligare föreskrifter om skyldigheten att överlämna reduktionsenheter*.

Paragrafen möjliggör ett genomförande av att Corsia inkluderats i utsläppshandelsdirektivet, vilket innebär en ny skyldighet för verksamhetsutövare för flygverksamhet att överlämna reduktionsenheter, se avsnitt 4.2. Förslaget relaterar till 11 a och 11 b §§ som anger en skyldighet för verksamhetsutövare för flygverksamheter att överlämna reduktionsenheter respektive att överlämna det antal reduktionsenheter som fastställts enligt föreskrifter som meddelats med stöd av lagen. Närmare föreskrifter om fastställandet av reduktionsenheter, eventuella undantag och villkor för vilka reduktionsenheter som användas med avseende på skyldigheterna kan regleras i förordningen med stöd av bemyndigandet.

Övervägandena finns i avsnitt 5.4.

11 d §

Paragrafen är ny och innehåller ett bemyndigande till regeringen att *meddela föreskrifter om att det ska krävas en övervakningsplan för att bedriva sjötransportverksamhet.* Utsläppshandelsdirektivet och EU MRV-förordningen innebär krav på vissa sjötransportverksamheter att ha en övervakningsplan. Enligt utsläppshandelsdirektivet är inlämnandet och verifieringen av en övervakningsplan en förutsättning för att få bedriva en sjötransportverksamhet, vilket följer indirekt av artikel 3gb och 3gc. Närmare föreskrifter kan regleras i förordningen med stöd av bemyndigandet, snarlikt som det är gjort för flygverksamhet i förordningens fjärde kapitel med stöd av 11 §. Förslaget har betydelse för straffansvaret enligt 33 §.

Övervägandena finns i avsnitt 5.4.

11 e §

Paragrafen är ny och innehåller i det *första stycket* en rättighet för verksamhetsutövare: *för det fall en annan aktör än verksamhetsutövaren till en sjötransportverksamhet genom avtal har övertagit ansvaret för driften av ett fartyg eller inköp av drivmedel, har verksamhetsutövaren rätt till ersättning av den aktören för de kostnader verksamhetsutövaren har haft till följd av skyldigheten i 16 §.*

Det *andra stycket* innehåller en precisering av att det *med övertagande av ansvaret för driften av fartyget i första stycket menas befogenhet att bestämma vilken last fartyget ska transportera eller fartygets färdplan och hastighet.*

Förslaget möjliggör ett genomförande av artikel 3gaa, se avsnitt 4.5.4.

Övervägandena finns i avsnitt 5.4.

11 f §

Paragrafen är ny och anger i *första stycket* vilken domstol som är *första domstol i tvistemål rörande ett förhållande som avses i 11 e § är den tingsrätt som regeringen utser (sjörättsdomstol).*

I det *andra stycket* anges att bestämmelser om *behörigheten för en sjörättsdomstol att ta upp ett tvistemål som avses i första stycket finns i 21 kap. 2 § sjölagen (1994:1009).*

Förslaget relaterar till 11 e § och möjliggör ett genomförande av artikel 3gaa, se avsnitt 4.5.4.

Övervägandena finns i avsnitt 5.4.

13 §

Paragrafen innehåller ett bemyndigande för regeringen att meddela föreskrifter om att utsläpp från en verksamhet som omfattas av EU ETS ska täckas av motsvarande mängd utsläppsrätter.

Den *andra punkten* ändras så att utsläpp av *växthusgaser* från flygverksamhet ska täckas med utsläppsrätter. Ändringen relaterar till ordförklaringen i 2 § för utsläpp av växthusgaser utökats med att icke-koldioxideffekter ingår i begreppet. Icke-koldioxideffekter ska övervakas, rapporteras och verifieras med avseende på flygverksamhet enligt artikel 14.2a utsläppshandelsdirektivet, dvs. det finns ännu ingen skyldighet att överlämna utsläppsrätter för effekterna, se avsnitt 4.3.2. Ändringen möjliggör ett eventuellt framtida inkluderande av icke-koldioxideffekter även med avseende på skyldigheter att överlämna utsläppsrätter, vilket är en fråga EU-kommissionen fått i uppgift i utsläppshandelsdirektivet att utvärdera. Bestämmelser om att det för tillfället endast är utsläpp av koldioxid för flygverksamheter som behöver täckas av utsläppsrätter kan regleras i förordningen med stöd av 13 §.

Övervägandena finns i avsnitt 5.5.

16 §

Paragrafen innehåller grundläggande bestämmelser om överlämnande av utsläppsrätter. Ändringen innebär att även sjötransportverksamheter ska överlämna det antal utsläppsrätter som motsvarar de sammanlagda utsläppen från verksamheten. Ändringen möjliggör ett genomförande av att sjöfarten inkluderas i EU ETS enligt utsläppshandelsdirektivet.

Övervägandena finns i avsnitt 5.4.

26 §

Paragrafen innehåller ett bemyndigande för regeringen att meddela föreskrifter om avgifter för prövning, kontoföring och tillsyn.

En ny *tredje punkt* läggs till för att ge bemyndigande till regeringen eller den myndighet som regeringen bestämmer att meddela föreskrifter om avgifter myndigheters kostnader för prövning, kontoföring och tillsyn enligt EU MRV-förordningen och EU-förordningar som har antagits med stöd av EU MRV-förordningen.

Övervägandena finns i avsnitt 5.4.

27 §

Paragrafen innehåller en bestämmelse om vad en tillsynsmyndighet ska göra.

Ändringen innebär att den myndighet som regeringen bestämmer utövar tillsyn över EU MRV-förordningen och EU-förordningar som antagits med stöd av EU MRV-förordningen. Ändringen möjliggör ett genomförande av att sjöfarten inkluderas i EU ETS enligt utsläppshandelsdirektivet och är en följd av att det nuvarande genomförandet av EU MRV-förordningen i förordning (2017:880) förs över till lagen.

Övervägandena finns i avsnitt 5.4.

31 §

Paragrafen reglerar tillsynsmyndighetens rätt till tillträde till anläggningar, luftfartyg och områden som hör till anläggningar och luftfartyg.

En ny *tredje punkt i det första stycket* läggs till som ger rätt till tillsynsmyndigheten, om det behövs för tillsynen, att få tillträde till *fartyg som ingår i en sjötransportverksamhet*.

Den *fjärde punkten i det första stycket* motsvarar den nuvarande tredje punkten, med ett tillägg som innebär att tillsynsmyndigheten, om det behövs för tillsynen, *har rätt att få tillträde till områden som hör till sådana fartyg, dock inte bostäder*.

Ändringen möjliggör ett genomförande av att sjöfarten inkluderas i EU ETS enligt utsläppshandelsdirektivet och är en följd av att det nuvarande genomförandet av EU MRV-förordningen i förordning (2017:880) förs över till lagen.

Övervägandena finns i avsnitt 5.4.

33 §

Paragrafen innehåller straffbestämmelser med avseende på otillåtet utsläpp av växthusgaser.

Det *andra stycket* ändras på ett sätt som innebär straffskyldighet för den verksamhetsutövare för en sjötransportverksamhet som med uppsåt eller oaktsamhet bryter mot föreskrifter som regeringen har meddelat med stöd av 11 d § om krav på en övervakningsplan. Ändringen möjliggör ett genomförande av utsläppshandelsdirektivets krav om att inlämnandet och verifieringen av en övervakningsplan är en förutsättning för att få bedriva en sjötransportverksamhet, vilket följer indirekt av artikel 3gb och 3gc. 11 d § innehåller ett bemyndigande till regeringen att föreskriva att det ska krävas en övervakningsplan för att bedriva sjötransportverksamhet.

Övervägandena finns i avsnitt 5.4.

35 §

Paragrafen innehåller en straffbestämmelse om att den som med uppsåt eller av oaktsamhet lämnar en oriktig eller vilseledande uppgift i en utsläppsrapport ska dömas för försvårande av kontroll av växthusgasutsläpp till böter eller fängelse i högst två år. Vad som avses med en utsläppsrapport framgår av 11 §, och enligt ändringen som föreslås i den paragrafen gäller straffbestämmelsen även för sjötransportveksamheter.

Ändringen innebär en precisering att det endast är om *åtgärden innebär risk för att ett för litet antal utsläppsrätter överlämnas* gärningen är straffbar. Paragrafen är därmed snarlik straffbestämmelsen enligt 37 § för försvårande av utsläppsrättstilldelning, i vilken det framgår att det endast är en gärningar som innebär risk för att ett för stort antal utsläppsrätter tilldelas som är straffbart. Ändringen innebär en mer ändamålsenlig straffsanktion, eftersom den allvarligaste konsekvensen av en oriktig eller vilseledande uppgift i en utsläppsrapport är om den föranleder att ett för litet antal utsläppsrätter överlämnas. Ändringen relaterar också till att det i sjötransportverksamheters utsläppsrapporter förekommer uppgifter som inte har betydelse för EU ETS, utan endast uppfyller syften inom ramen för EU MRV-förordningen. Fel som rör sådana uppgifter ska inte vara straffbart enligt 35 §, vilket de inte blir genom den föreslagna ändringen. Övervägandena finns i avsnitt 5.4.

Ändringen innebär även en kriminalisering för den som med uppsåt eller av oaktsamhet lämnar en oriktig eller vilseledande uppgift i en utsläppsrapport för flygverksamhet om *åtgärden innebär risk för att ett för litet antal reduktionsenheter överlämnas*. Ändringen relaterar till skyldigheten för flygverksamheter att överlämna reduktionsenheter (11 a – 11 c §§) med avseende på utsläppshandelsdirektivets genomförande av Corsia, se avsnitt 5.5. Av samma skäl som för överlämnandet av utsläppsrätter enligt stycket ovan ska endast åtgärder som innebär risk för att för litet antal reduktionsenheter överlämnas vara straffbart. Övervägandena finns i avsnitt 5.5.

41 §

Paragrafen innehåller ett bemyndigande för regeringen att meddela föreskrifter om förseningsavgifter och sanktionsavgifter.

En ny *tredje punkt* innehåller ett bemyndigande för regeringen att meddela föreskrifter om att en förseningsavgift eller sanktionsavgift ska betalas av den som åsidosätter bestämmelser i *EU MRV-förordningen eller EU-förordningar som har antagits med stöd av EU MRV-förordningen*. Ändringen möjliggör ett genomförande av att sjöfarten inkluderas i EU ETS enligt utsläppshandelsdirektivet och är en följd av att det nuvarande genomförandet av EU MRV-förordningen i förordning (2017:880) förs över till lagen.

Övervägandena finns i avsnitt 5.4.

Avvisning och kvarhållande av fartyg

42 a §

Paragrafen är ny och innehåller ett bemyndigande för regeringen att *meddela föreskrifter om sådana avvisnings- och kvarhållandebeslut som avses i artikel 16.11a i utsläppshandelsdirektivet och i artikel 20.3 i EU MRV-förordningen.*

Ändringen föranleds dels av att sjötransportverksamheter inkluderas i EU ETS genom utsläppshandelsdirektivet, dels av att genomförandet av EU MRV-förordningen i förordning (2017:880) förs över till lagen. Förslaget möjliggör ett genomförande av artikel 16.11a utsläppshandelsdirektivet om att vissa fartyg ska avvisas eller kvarhållas, samt motsvarande bestämmelser i artikel 20.3 i EU MRV-förordningen. Föreskrifter om sådana beslut kan regleras i förordningen med stöd av bemyndigandet.

Övervägandena finns i avsnitt 5.4.

44 §

Paragrafen reglerar överklaganden.

Ändringen innebär att beslut enligt EU MRV-förordningen eller enligt de EU-förordningar som antagits med stöd av EU MRV-förordningen får överklagas till mark- och miljödomstolen. Ändringen föranleds av genomförandet av EU MRV-förordningen i förordning (2017:880) förs över till lagen.

Övervägandena finns i avsnitt 5.4.

Council of the European Union

Brussels, 8 February 2023
(OR. en)

6210/23

Interinstitutional Files:
2021/0211(COD)
2021/0202(COD)

CLIMA 62
ENV 113
ENER 68
TRANS 49
COMPET 91
ECOFIN 129
CODEC 148

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	5768/23 ADD1 - 3
No. Cion doc.:	10875/21 COM (2021) 551; 10902/21 COM (2021) 571
Subject:	a) 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 b) Proposal for a Decision of the European Parliament and of the Council amending Decision (EU) 2015/1814 as regards the amount of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading scheme until 2030 - Letter sent to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI)

Following the Permanent Representatives Committee meeting of 8 February 2023 which endorsed the final compromise texts on the abovementioned proposals with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annexes, to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI).

Council of
the European Union

SGS 23 / 00489

Brussels, 08 February 2023

Mr Pascal CANFIN
Chair, European Parliament Committee for Environment, Public Health and Food Safety
European Parliament
Bât.WILLY BRANDT 04M099
60, rue Wiertz / Wiertzstraat 60
B-1047 Bruxelles/Brussel

Subject:

a) ***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 (2021/0211 (COD))***
b) ***Proposal for a Decision of the European Parliament and of the Council amending Decision (EU) 2015/1814 as regards the amount of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading scheme until 2030(2021/0202 (COD))***

Dear Mr CANFIN,

Following the informal meeting between the representatives of the three institutions, draft overall compromise texts on the above-mentioned proposals were agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its positions at first reading on the above-mentioned proposals, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise texts contained in the Annexes to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's positions and the acts shall be adopted in the wording which corresponds to the European Parliament's positions.

On behalf of the Council I also wish to thank you for your close and swift cooperation which should enable us to reach agreement on these dossiers at first reading.

Yours sincerely,

Torbjörn HAAK

Chairman of the Permanent Representatives
Committee (Part 1)

copy to: Frans Timmermans, European Commission Executive Vice-President,
Peter LIESE, Rapporteur (ETS) and Cyrus ENGERER (MSR)

2021/0211(COD)

DIRECTIVE (EU) 2023/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

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

(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[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure[3],

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1 OJ C ***152***, ***6.4.2022***, p. ***175***.
2 OJ C ***301***, ***5.8.2022***, p. ***116***.
3 ***Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...***

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’)[4]. 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. ***This has been reinforced with the adoption of the Glasgow Climate Pact in November 2021, in which the Conference of the Parties recognises that the impacts of climate change will be much lower at the temperature increase of 1,5 ºC, compared with 2 ºC, and resolve to pursue efforts to limit the temperature increase to 1,5 ºC.***

(1a) The urgency of the need to keep the Paris Agreement goal of 1,5 °C alive has become more significant following the findings of the IPCC Sixth Assessment Report, that global warming can only be limited to 1,5 °C, if strong and sustained reductions in global greenhouse gas (GHG) emissions within this decade are immediately undertaken.

(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[5].

[4] Paris Agreement (OJ L 282, 19.10.2016, p. 4).
[5] COM(2019)640 final.

(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. ***This transition affects workers from various sectors differently.*** At the same time, ***that*** transition ***has gender equality aspects as well as*** a particular impact on some disadvantaged ***and vulnerable*** groups, such as older people, persons with disabilities***,*** persons with a minority racial or ethnic background ***and low and lower-middle income individuals and households. It also imposes greater challenges on certain regions, in particular structurally disadvantaged and peripheral regions, as well as islands***. It must therefore be ensured that the transition is just and inclusive, leaving no one behind.

(3a) On 17 December 2020, the Union submitted its nationally determined contribution (NDC) to the UNFCCC, following their approval by the Council. Directive (EU) 2003/87/EC as last amended by Directive 2018/410 is one of the instruments cited, subject to revision in light of the enhanced target, in the general description of the target in the Annex to that submission. The Council stated in its conclusions of 24 October 2022 that it stands ready, as soon as possible after the conclusions of the negotiations on the essential elements of 'Fit for 55' package, to update, as appropriate, the NDC of the EU and its Member States, in line with § 29 of the Glasgow Climate Pact to reflect how the final outcome of the essential elements of 'Fit for 55' package implements the EU headline target as agreed by the European Council in December 2020. As the EU ETS is a cornerstone of the Union's climate policy and constitutes its key tool for reducing greenhouse gas emissions in a cost-effective way, the amendments to Directive 2003/87, including with regard to the scope thereof, adopted through this Directive are part of the essential elements of the "Fit for 55" package.

(4) The necessity and value of ***delivering on*** 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 ***in a manner that is just and results in no one being left behind, including those at risk of energy poverty***. European citizens continue to express strong views that this applies in particular to climate change[6].

(5) The Union committed 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[7].

(6) In Regulation (EU) 2021/1119 of the European Parliament and of the Council[8] the Union has enshrined ***in legislation*** the target of economy-wide climate neutrality by 2050***, at the latest, and the aim to achieve negative emissions thereafter***. 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. ***That Regulation also establishes that the Commission should endeavour to align all future legislative and budgetary proposals with the objectives and targets set out in that Regulation and, in any case of non-alignment, provide the reasons as part of the impact assessment accompanying those proposals.***

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6 Special Eurobarometer 513 on Climate Change, 2021 (https://ec.europa.eu/clima/citizens/support_en).

7 https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European%20Union%20First/EU_NDC_Submission_December%202020.pdf

8 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).

(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[9]***, should be adjusted to be in line with the economy-wide net*** greenhouse gas emissions ***reduction commitment for 2030, and be in line with the objective of achieving climate neutrality by 2050 at the latest, and the aim to achieve negative*** emissions ***thereafter, as laid down in Article 2(1) of Regulation (EU) 2021/1119***.

(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 ***take into account the circular use potential of materials and*** be independent of the ***feedstock or the type of*** production process***, where the production processes have the same purpose***. 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 ***installations using*** new ***technologies that partly or fully reduce greenhouse gas emissions*** and existing technologies. ***Notwithstanding the guiding principles, the revised benchmarks for 2026 to 2030 should continue to distinguish between primary and secondary production of steel and aluminium.*** 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***, including green hydrogen,*** outside the refineries sector.

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9 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 definitions 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[10] was repealed by Directive 2010/75/EU of the European Parliament and of the Council[11]. 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'[12], 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.

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

11 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).

12 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).

(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.

(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 ***level the playing field for*** 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[13] 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] 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).

(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[14], or they are permanently chemically bound in a product so that they do not enter the atmosphere under normal use ***and any normal activity taking place after the end of the life of the product***. The Commission should be empowered to adopt ***delegated*** 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 ***and any normal activity after the end of life***, including obtaining a carbon removal certificate, where appropriate, in view of regulatory developments with regard to the certification of carbon removals. ***The normal activity after the end of life of the product should be understood broadly, covering all the activities taking place after the end of life of the product, including disposal, reuse, remanufacturing, recycling, incineration, and landfill.***

14 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 ***and therefore to achieve the economy-wide net greenhouse gas emissions reduction target for 2030, the Union's climate-neutrality objective by 2050, at the latest, and the aim of achieving negative emissions thereafter as laid down in Article 2(1) of Regulation (EU) 2021/1119 and the goal of the Paris Agreement***.

(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[15], 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[16], 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.

(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, which also refers to possible market-based measures to incentivise greenhouse gas emission reductions from international shipping***. However, while ***there recently has been*** progress ***in*** the IMO***, this has so far not been*** sufficient to achieve the objectives of the Paris Agreement. ***Given the international character of shipping, it is important that the Member States and the Union within their respective competences work with third countries to step up diplomatic efforts to strengthen global measures and make progress on the development of a global market-based measure at the IMO level.***

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15 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).

16 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).

(17) ***CO_2 emissions from the maritime sector account for around three to four percent of Union emissions.*** 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 ***its fair share*** 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[17]. 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 from a port under the jurisdiction of a Member State, and emissions ***within*** 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 transhipment activities outside the Union. To ensure a smooth inclusion of the sector in the EU ETS, the

17 Paris Agreement, Article 4(4).

surrendering of allowances by shipping companies should be gradually increased with respect to verified emissions reported for the period ***2024*** to ***2025***. 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 2026, shipping companies should surrender the number of allowances corresponding to all of their verified emissions. ***While the climate impact of maritime transport is mainly due to carbon dioxide emissions, non-CO_2 emissions represent a significant share of shipping emissions. According to the Fourth IMO Greenhouse Gas Study[18], methane emissions increased significantly over the period 2012-2018. Methane and nitrous oxide emissions will likely grow over time, notably with the development of vessels powered by liquefied natural gases or other energy sources. The inclusion of methane and nitrous oxide emissions would be beneficial for environmental integrity and incentivising good practices. These emissions should first be included in Regulation (EU) 2015/757 as from 2024 and they should be included in the EU ETS as from 2026.***

18 ***International Maritime Organization, Fourth IMO Greenhouse Gas Study 2020, p. 110.***

(17a) The extension of the scope of Directive 2003/87/EC to maritime transport will lead to changes in the cost of shipping. All parts of the Union will be affected by this as the goods transported to and from ports within the Union by maritime transport have their origin or destination in the different Member States, including in landlocked Member States. The allocation of allowances to be auctioned by the Member States should therefore, in principle, not change as a consequence of the inclusion of maritime activities and include all Member States. However, Member States will be affected to different extents. Notably Member States with a high reliance on shipping will be most exposed to the effect of the extension. Member States with a large maritime sector compared to their relative size will be more affected by the extension of the EU ETS to maritime transport. It is therefore appropriate to provide additional time-limited assistance to those Member States in the form of additional allowances to support decarbonisation of maritime activities and for the administrative costs incurred. The assistance should be gradually introduced in parallel with the introduction of surrender obligations and thus with the increased effect on those Member States. Within the context of the review of Directive 2003/87/EC, the Commission should consider the relevance of this additional assistance in light, notably, of the development in the shipping companies under the responsibility of different Member States.

(17b) The EU ETS should contribute significantly to reducing greenhouse gas emissions from maritime activities and to increasing efficiency. The use of EU ETS revenues pursuant to Article 10(3) of the Directive should include, inter alia, the promotion of climate friendly transport and public transport in all sectors.

(17c) Renewing fleets of ice-class ships and developing innovative technology that reduces the emissions of such ships will take time and require financial support. Currently, the design enabling ice-class ships to sail in ice conditions, leads to such ships consuming more fuel and emitting more than ships of similar size designed for sailing only in open water. Therefore, a flag-neutral method should be implemented under this Directive allowing for a reduction of allowances to be surrendered by shipping companies on the basis of their ships' ice class until 31 December 2030.

(17d) Islands with no road or rail link with the mainland are more dependent on maritime transport than the other regions and depend on maritime links for their connectivity. In order to assist islands with a smaller population to remain connected following the inclusion of maritime activities in the scope of Directive 2003/87/EC it is appropriate to provide for the possibility to provide for a temporary derogation from the surrender obligations under that Directive for certain maritime transport activities with islands with a population lower than 200 000 inhabitants.

(17e) It should be possible for Member States to request that transnational public service contract or a transnational public service obligation between two Member States should be temporarily exempted from certain obligations under Directive 2003/87/EC. The possibility should be limited to connections between a Member State without a land-border with another Member State and the geographically closest Member State, such as the maritime connection between Cyprus and Greece, which has been absent for over two decades. This temporary derogation contributes to the compelling need to provide a service of general interest and ensure connectivity as well as economic, social and territorial cohesion.

(17f) Taking into account the special characteristics and permanent constraints of the outermost regions of the Union as recognised in Article 349 of the Treaty, and given their heavy dependence on maritime transport, special consideration should be given to preserving their accessibility and efficient connectivity by maritime transport. Therefore, a temporary derogation from certain obligations pursuant to Directive 2003/87/EC should be provided for emissions from maritime transport activities between a port located in an outermost region of a Member State and a port located in the same Member State, including ports located in the same outermost region and in another outermost region of the same Member State.

(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 subsequent global stocktakes every five years thereafter, intended to inform successive nationally determined contributions***, and in the event of the adoption by the IMO of a global market-based measure to reduce greenhouse gas emissions from maritime transport***. ***To this end***, the Commission should ***present a*** report ***to the European Parliament and to the Council within 18 months of the adoption of such a measure and*** before ***it becomes operational. The Commission should in that report examine that*** global ***market-based measure as regards its ambition in light of the objectives of the Paris Agreement, its overall environmental integrity, including compared*** to the ***provisions of this Directive covering maritime transport, and any issue related*** to the ***coherence of the EU ETS and that measure, in particular taking into account the level of participation in that*** global market-based measure***, its enforceability, transparency, penalties for non-compliance, the processes for public input, monitoring, reporting and verification of emissions, registries and accountability. Where appropriate, the report should be accompanied by a legislative proposal to amend this Directive in a manner that is consistent with the*** Union ***2030 climate target and the climate-neutrality objective as set out in Regulation (EU) 2021/1119 and with the aim of preserving the environmental integrity and effectiveness of Union climate action, to ensure coherence between the implementation of a global market-based measure adopted by the IMO, while avoiding any significant double burden, and thereby recalling the Union's competence to regulate its share of emissions from international shipping voyages, in line with the obligations of the Paris Agreement***.

(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 and relocation of transhipment activities 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 from a port under the jurisdiction of a Member State 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 stops by containerships at certain non-Union ports, where the transhipment of containers accounts for most container traffic. 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. ***Such measure could include increased surrender requirements for voyages where the evasion risk is higher, such as to and from a port that is located in the Union's vicinity, in a third country that has not adopted measures similar to Directive 2003/87/EC.***

(19a) Shipping emissions from vessels below 5 000 gross tonnage represent less than 15 % of shipping emissions, taking into account the scope of application of this Directive, but are emitted by a large number of ships. The inclusion of these vessels from the start of the inclusion of maritime transport in the EU 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 behaviour with the use of vessels below the 5 000 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 economic, environmental and social impacts of the inclusion in this Directive of emissions from ships below 5 000 gross tonnage, including offshore ships.

(20) The person or organisation responsible for the compliance with the EU ETS should be the shipping company, defined as the ***ship owner*** 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 ***ship owner*** 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. The responsibilities for purchasing fuel or taking operational decisions that affect the greenhouse gas emissions of the ship may be assumed by an entity other than the shipping company under a contractual arrangement. 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 and to encourage the adoption of efficiency measures and the uptake of cleaner fuels, 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 greenhouse gas 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 2003/87/EC. At the same time, as the purpose served by the provision concerning the entitlement to reimbursement is closely connected with the Union, in particular in relation to the compliance with obligations under this Directive by a shipping company vis-a-vis a given Member State, it is important that this entitlement is observed throughout the Union, in all contractual relations that allow another entity than the ship owner to determine the cargo carried and/or the route and the speed of the ship, in a manner that safeguards undistorted competition in the internal market, which can include provisions preventing parties to such contractual agreements from circumventing the entitlement to reimbursement by a choice of law clause.

(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 ***regularly and*** 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 ▌ 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 ***should*** 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.***

(24a) In parallel to the adoption of this Directive, Regulation (EU) 2015/757 is being amended to provide for monitoring, reporting and verification rules that are necessary for an extension of the EU ETS to maritime transport activities and to provide for the monitoring, reporting and verification of emissions of additional greenhouse gases and ship types.

(25) Regulation (EU) 2017/2392 of the European Parliament and of the Council[19] 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.

(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 ***62*** % 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. ***The total quantity of allowances should be reduced in 2024 and 2026 to bring it more in line with the actual emissions. Moreover,*** the linear reduction factor should be increased ***in 2024 and in 2028***, also taking into account the inclusion of emissions from maritime transport. ***The steeper cap trajectory resulting from these changes will lead to significantly greater levels of cumulative emission reductions up to 2030 than would have occurred pursuant to Directive (EU) 2018/410 of the European Parliament and of the Council.*** The ***figures relating to the maritime inclusion*** should be derived from the emissions from maritime transport activities ***that are addressed in Article 3g of Directive 2003/87/EC and*** reported in accordance with Regulation (EU) 2015/757 for 2018 and 2019 in the Union ***and the EEA-EFTA States***, adjusted, from ▌ 2021 ***until 2024***, by the linear reduction factor ***for the year 2024. The linear reduction factor will be applied in 2024 to the increase of the Union-wide quantity of allowances in that year***.

▌

[19] 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).

(28) Achieving the increased climate ambition will require substantial public ***and private*** resources in the EU as well as ***in Member States*** to be dedicated to the climate transition. To complement and reinforce the substantial climate-related spending in the EU budget, all auction revenues ***or the equivalent financial value*** that are not attributed to the Union budget ***in the form of own resources*** should be used for climate-related purposes***, with the exception of the revenues used for the compensation of indirect carbon costs***. ***The list of climate-related purposes in Article 10(3) of Directive 2003/87/EC should be expanded to cover additional purposes with a positive environmental impact.*** This includes the use for financial support to address social aspects in lower- and middle-income households by reducing distortive taxes ***and targeted reductions of duties and charges for renewable electricity. Member States should report annually on the use of auctioning revenues in accordance with Article 19 of Regulation (EU) 2018/1999 of the European Parliament and of the Council, specifying, as appropriate, if revenues are used to implement their integrated national energy and climate plans and their territorial just transition plans***.

(28a) Member States' auctioning revenue will increase as a result of the inclusion of the maritime sector under the EU ETS. Therefore, Member States are encouraged to increase the use of EU ETS revenues pursuant to Article 10(3) of Directive 2003/87/EC to contribute to the protection, restoration and better management of marine-based ecosystems, in particular marine protected areas.

(28b) Significant financial resources are needed to implement the goals of the Paris Agreement in developing countries and the Glasgow Climate Pact urges developed country Parties to urgently and significantly scale up their provision of climate finance. The Council conclusions on the Preparations for the 27th Conference of the Parties (COP 27) of the UNFCCC recall that the EU and its Member States are the largest contributor to international public climate finance and have more than doubled their contribution to climate finance to support developing countries since 2013. It also renews the strong commitment made by the EU and its Member States to continue scaling up their international climate finance towards the developed countries' goal of mobilising at least USD 100 billion per year as soon as possible and through to 2025 from a wide variety of sources, expecting the goal to be met in 2023.

(28c) 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 2024 to 2030 should be used to fund the energy transition of the Member States with a gross domestic product (GDP) per capita below 75 % of the Union average in 2016-2018, through the Modernisation Fund referred to in Article 10d of Directive 2003/87/EC.

(28d) The beneficiary Member States should be able to use the resources allocated to the Modernisation Fund to finance investments involving the adjacent EU border regions when this is relevant to the energy transition of beneficiary Member States.

(29) Further incentives to reduce greenhouse gas emissions by using cost-efficient techniques should be provided. To that end, the free allocation of emission allowances to stationary installations from 2026 onwards should be conditional on investments in techniques to increase energy efficiency and reduce emissions***, in particular for large energy users***. ***The Commission should ensure that the application of the conditionality does not jeopardise a level playing field, environmental integrity and equal treatment between installations across the Union. The Commission should therefore without prejudice to the rules applicable under Directive 2012/27/EU of the European Parliament and of the Council[20], adopt delegated acts supplementing this Directive to address any issue identified in particular on the above mentioned principles and provide for administratively simple rules for the application of the conditionality. These rules should be part of the general rules for free allocation, using the established procedure for national implementing measures, and provide timelines, criteria for the recognition of implemented energy efficiency measures as well as for alternative measures reducing GHG emissions. In addition, incentives to reduce greenhouse gas emissions should be further reinforced for installations with high greenhouse gas emission intensities. To that end, from 2026 onwards, the free allocation of emission allowances to the 20 % stationary installations with the highest emission intensities under a given product benchmark should also be conditional on the set-up and implementation of climate neutrality plans.***

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[20] ***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).***

(30) The Carbon Border Adjustment Mechanism (CBAM), established under Regulation (EU) ***20…/nn*** of the European Parliament and of the Council[21] ***[CBAM Regulation]***, is ***set*** to ***replace the mechanisms established under Directive 2003/87/EC*** to ***prevent*** 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. ***The*** CBAM factor should be equal to 100 % ***for*** the period between the entry into force of ***that*** Regulation and ***the end of*** 2025, ***and subject to the application of provisions referred to in Article 36(3), point (b), of that Regulation, should be equal to 97,5 %*** in 2026***, 95 % in 2027, 90 % in 2028, 77,5 % in 2029, 51,5 % in 2030, 39 % in 2031, 26,5 % in 2032 and 14 % in 2033. From 2034, no CBAM factor should apply.*** 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) ***will*** be ***added*** 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. ***In this context,*** 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 ***be deducted*** from the free allocation and ***made available under the Innovation Fund*** 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.

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21 [*please insert full OJ reference*]

(30a) In order to mitigate potential carbon leakage risks related to goods subject to CBAM and produced in the Union for export to third countries which do not apply the EU ETS or a similar carbon pricing mechanism, an assessment should be carried out before the end of the transitional period under Regulation (EU) 20…/nn [CBAM Regulation]. Where the report concludes that there is such a carbon leakage risk, the Commission should, where appropriate, present a legislative proposal to address that carbon leakage risk in a manner that is compliant with WTO rules. Moreover, Member States should be allowed to use auction revenues to address any residual risk of carbon leakage in CBAM sectors and in accordance with State aid rules. Where allowances due to a reduction of free allocation in application of the conditionality rules are not fully used to exempt the installations with the lowest greenhouse gas emission intensity from the cross-sectoral correction, 50 % of these residual allowances should be added to the Innovation Fund, while the other 50 % should be auctioned on behalf of Member States, which they should be able to use to address any residual risk of carbon leakage in CBAM sectors.

(31) In order to better reflect technological progress ▌ while ensuring emission reduction incentives and properly rewarding innovation, ***the minimum adjustment of the benchmark values should be increased from 0,2 % to 0,3 % per year, and*** the maximum adjustment ▌ 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 ***6*** % to 50 % compared to the value applicable in the period from 2013 to 2020. ***In order to provide predictability to installations, the Commission should adopt the implementing acts determining the revised benchmark values for free allocation as soon as possible before the start of the period from 2026 to 2030.***

(31a) To incentivise new breakthrough technologies in the steel industry and to avoid a significantly disproportionate reduction of the benchmark value and in light of the particular situation of the steel industry such as the high emission intensity and the international and Union market structure, it is necessary to exclude from the calculation of the hot metal benchmark value for the period 2026-2030 installations that were operational during the reference period 2021-2022 and that would otherwise be included in that calculation due to the review of its definition.

(31b) To reward best performers and innovation, installations whose greenhouse gas emission levels are below the average of the 10 % most efficient installations under a given benchmark should be excluded from the application of the cross-sectoral correction factor. Allowances that are not allocated due to a reduction of free allocation in application of the conditionality rules should be used to cover the deficit in the reduction of free allocation resulting from excluding best performers from the application of the cross-sectoral correction factor.

(31c) In order to speed up the decarbonisation of the economy while strengthening EU industrial competitiveness, an additional 20 million allowances from the quantity which could otherwise be allocated for free and an additional 5 million allowances from the quantity which could otherwise be auctioned should be made available to the Innovation Fund. When reviewing the timing and sequencing of the auctioning of the Innovation Fund established in Commission Regulation (EU) No 1031/2010 in view of the changes introduced by this Directive, the Commission should consider making available larger amounts of resources in the first years of implementation of the revised Directive 2003/87/EC to boost the decarbonisation of relevant sectors.

(32) A comprehensive approach to innovation is essential for achieving the objectives ***of Regulation (EU) 2021/1119***. 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. ***Consequently, the Commission should seek synergies with Horizon Europe and, where relevant, with other Union funding programmes***.

(32a) The Innovation Fund should support innovative techniques, processes and technologies, including the scaling up of such techniques, processes and technologies, with a view to their broad roll-out across the EU. Breakthrough innovation should be prioritized in the selection of projects supported through grants.

(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 ***zero- and*** low-carbon technologies and processes that concern the consumption of fuels in the sectors of buildings and road transport***, including collective forms of transport such as public transport and coach services***. In addition, the Innovation Fund should serve to support investments to decarbonise the maritime transport sector, including investments in ***energy efficiency of ships, ports, short-sea shipping, in electrification of the sector, in*** sustainable alternative fuels, such as hydrogen and ammonia that are produced from renewables, as well as zero-emission propulsion technologies like wind technologies***, and innovations in regard to ice-class ships. Special attention*** should ***be*** given to innovative projects ***contributing to decarbonize the maritime sector and reduce all of its climate impacts, including black carbon emissions. In that respect, the Commission*** should ***foresee dedicated topics in Innovation Fund calls for proposals. The calls should take biodiversity protection***, ***noise and water pollution issues into account. As far as maritime transport is concerned, projects with clear EU added value should be eligible***.

(34) Pursuant to Article 10 of Commission Regulation (EU) No 2019/1122[22], 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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22 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. The Commission should also provide the report to the Council and the European Parliament and make it public. Subject to the agreement of applicants, following the closure of a call for proposals, the Commission should inform Member States of the applications for funding of projects in their respective territories and should provide them with detailed information of those applications in order to facilitate the Member States' coordination of the support to projects. In addition, the Commission should inform the Member States about the list of pre-selected projects prior to the award of the support. Member States should ensure that the national transposition provisions do not hamper innovations and are technologically neutral, while the Commission should provide technical assistance, in particular to Member States with low effective participation, in order to improve the effective geographical participation in the Innovation Fund and increase the overall quality of submitted projects. The Commission should also ensure comprehensive monitoring and reporting, including information on progress towards effective, quality-based geographical coverage across the Union and appropriate follow up.

(34c) In order to align with the comprehensive nature of the European Green Deal, the selection process of projects supported through grants should give priority to projects addressing multiple environmental impacts. In order to support the replication and the faster market penetration of the supported technologies or solutions, projects funded by the Innovation Fund should share knowledge with other relevant projects as well as with Union-based researchers having a legitimate interest.

(35) ***Contracts for Difference (CDs),*** Carbon Contracts for Difference (CCDs) ***and fixed premium contracts*** are ▌ important ***elements*** to trigger emission reductions in industry ***by up-scaling new technologies***, offering the opportunity to guarantee investors in innovative climate-friendly technologies a price that rewards CO_2 emission reductions above those induced by the ***prevailing carbon*** price ***level*** 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 ***bidding, leading to the award of CDs,*** CCDs ***or fixed premium contracts. Competitive bidding would be an important mechanism for supporting the development of decarbonisation technologies and optimising the use of available resources. It would also offer certainty to investors in these technologies. In view of minimising any contingent liability for the Union budget, risk mitigation should be ensured in the design of CDs and CCDs and appropriate coverage by a budgetary commitment should be provided with full coverage at least for the first two rounds with appropriations resulting from the proceeds of auctioning of allowances allocated pursuant to Article 10a(8) of Directive 2003/87/EC. No such risks exist for fixed premium contracts, because the legal commitment will be covered by a matching budgetary commitment. In addition, the Commission should conduct, after concluding the first two rounds of CDs and CCDs, and each time it is necessary afterwards, a qualitative and quantitative assessment of the financial risks arising from their implementation. By a delegated act based on the results of that assessment, the Commission should be allowed to decide to use an appropriate provisioning rate rather than full coverage for further rounds of CDs or CCDs. Such an approach should take into account any elements that may reduce the financial risks for the Union budget, in addition to the allowances available in the Innovation Fund, such as possible sharing of liability with Member States, on a voluntary basis, or a possible re-insurance mechanism***

from the private sector. It is therefore necessary to allow for derogations from parts of Title X of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council[23]. The provisioning rate for the first two rounds of bidding should be 100 %. However, derogating from Article 210(1), 211(1), 211(2) and 218(1) of that Regulation, a minimum provisioning rate of 50 % as well as a maximum share of revenue from the Innovation Fund to be used for provisioning of 30 % should be set in this Directive for later rounds and the Commission should be able to specify the provisioning rate necessary on the basis of the experience from the first two calls and the amount of revenue to be used for provisioning. The total financial liability borne by the Union budget should thus not exceed 60 % of the proceeds from auctioning for the Innovation Fund. Moreover, as provisioning will come, in general, from the Innovation Fund, derogations should be made from rules in Article 212 to 214 of that Regulation relating to the common provisioning fund established by Article 212 of that Regulation. The novel nature of CDs and CCDs might also necessitate derogations from Articles 209(2)(d) and (h) of that Regulation, given that they do not rely on leverage/multipliers nor depend entirely on an ex ante assessment, from Article 219(3), due to the link to Article 209(2)(d), and from Article 219(6) thereof as implementing partners will not have credit/equity exposures under a guarantee. The use of any derogation from that Regulation should be limited to what is necessary. The Commission should be empowered to ***amend*** the ***maximum share of revenue from the Innovation Fund to be used*** for ***provisioning by no more than a total of 20 percentage points above what is provided for in*** this ***Directive.***

(35a) The Innovation Fund is subject to the general regime of conditionality for the protection of the Union budget established by Regulation (EU, Euratom) 2020/2092.

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[23] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

(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.

(37a) Since 2013, electricity producers have been obliged to purchase all the allowances they need to generate electricity. Nevertheless, in accordance with Article 10c of Directive 2003/87/EC, some Member States have the option to provide transitional free allocation for the modernisation of the energy sector for the period 2021 to 2030. Three Member States have chosen to use this option. Given the need for rapid decarbonisation, especially in the energy sector, the Member States concerned should only be able to provide this transitional free allocation for investments carried out until 31 December 2024. They should be able to add any remaining allowances for the period 2021 to 2030 that are not used for such investments, in the proportion they determine, to the total quantity of allowances that the Member State concerned receives for auctioning, or use them to support investments within the framework of the Modernisation Fund. With the exception of the deadline for notification thereof, allowances transferred to the Modernisation Fund should be subject to the same rules concerning investments that are applicable to the allowances already transferred pursuant to Article 10d(4) of Directive 2003/87/EC. To ensure predictability and transparency with regard to the volumes of allowances either available for auctioning or for the transitional free allocation, and with regard to the assets managed by the Modernisation Fund, Member States should inform the Commission of the respective amounts of remaining allowances to be used for each purpose by 15 May 2024.

(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 ***energy-generation based on*** fossil fuels, ***except as regards the support for such investments with revenue from allowances voluntarily transferred to the Modernisation Fund in accordance with Article 10d(4) of the ETS Directive. In addition, limited support for such investments should continue to be possible with revenue from the allocations referred to in the third subparagraph of Article 10(1) of the ETS Directive under certain conditions, in particular where the activity qualifies as environmentally sustainable under Regulation (EU) 2020/852 and as regards the allowances auctioned until 2027. For the latter category of allowances the downstream uses of non-solid fossil fuels should, in addition, not be supported with revenue from allowances auctioned after 2028. Furthermore***, the percentage of the Modernisation Fund that needs to be devoted to priority investments should be increased to 80 % ***for the Modernisation Fund allowances transferred in accordance with Article 10d(4) of the ETS Directive and referred to in the third subparagraph of Article 10(1) thereof, and to 90 % for the additional amount of 2,5 % from the Union-wide quantity of allowances.*** Energy efficiency ***including in industry, transport, buildings, agriculture and waste; 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 emission reductions and abatement costs.***

(38a) Directive (EU) 2018/410 introduced provisions relating to the cancellation by Member States of allowances from their auction volume in respect of closures of electricity-generation capacity in their territory. In view of the increased climate ambition of the Union and the resulting accelerated decarbonisation of the electricity sector, this cancellation has become increasingly relevant. Therefore, the Commission should assess whether the use by Member States of cancellation can be facilitated by amending the relevant delegated acts adopted pursuant to Article 10(4).

(38b) Adjustments to free 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 historical date of issuance of free allocation of 28 February not operational. In order to better take into account the adjustments to free allocation, it is relevant to make adjustments to the compliance cycle. The deadline for competent authorities to grant free allocation should therefore be postponed from 28 February to 30 June and the deadline for operators to surrender allowances should be postponed from 30 April to 30 September.

(39) Commission Implementing Regulation (EU) 2018/2066[24] 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[25], 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.

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24 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).

25 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).

(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***, in a way that ensures that all emissions are accounted for, including where such fuels are produced from captured carbon dioxide outside the Union, while avoiding*** double counting ***and ensuring*** appropriate incentives are in place ***for capturing emissions***, taking also into account the treatment of these fuels under Directive (EU) 2018/2001.

(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 incentivise the uptake of zero- and low-carbon technologies, Member States should provide operators the option to remain in the scope of the EU ETS until the end of the current and next 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) The European Securities and Markets Authority (ESMA) published its final report on emission allowances and associated derivatives on 28 March 2022. The report is a comprehensive analysis of the integrity of the European carbon market and has provided expertise and recommendations in relation to upholding the proper functioning of the carbon market. In order to continuously monitor market integrity and transparency, the reporting by ESMA should be conducted on a regular basis. ESMA is already assessing market developments and, where necessary, providing recommendations in the area of its competence in their report on trends, risks and vulnerabilities in accordance with Article 32 (3) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council[26]. Analysis of the European carbon market, which includes the auctions of emission allowances, on- venue and over-the-counter trading in emission allowances and derivatives thereof, should be part of this annual reporting. This obligation will streamline the reporting done by ESMA and allow for cross-market comparisons, in particular due to strong linkages between the ETS and commodity derivative markets. This regular analysis should in particular monitor any market volatility and price evolution, the operation of the auctions and trading operations on the markets, liquidity and the volumes traded, and the categories and trading behaviour of market participants, including speculative activity significantly impacting on prices. The assessment should, where relevant, include recommendations to improve market integrity and transparency as well as reporting obligations, and to enhance the prevention and detection of market abuse and help in maintaining orderly markets for emission allowances and derivatives thereof. The Commission should take due account of the assessments and recommendations in the context of the annual carbon market report and, where necessary, in the reports to ensure the better functioning of the carbon market.

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[26] ***Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010).***

(42c) In order to further incentivise investments required for the decarbonisation of district heating and to address social aspects related to high energy prices and the high greenhouse gas emission intensity of district heating installations, in Member States with a very high share of emissions from district heating in comparison with the size of the economy, operators should be able to apply for additional transitional free allocation to district heating installations in such Member States and the additional value of the free allocation be invested to significantly reduce emissions before 2030. To ensure these reductions take place, the additional transitional free allocation should be conditional to investments made and to emissions reductions achieved as laid down in climate neutrality plans to be drawn up by operators for their relevant installations.

(42d) Unexpected or sudden excessive price increases in the carbon market can negatively affect market predictability, which is essential for the planning of decarbonisation investments. Therefore, the measure which applies in the event of excessive price fluctuations in the market for emissions covered under Chapters II and III of Directive 2003/87/EC, should be strengthened in a careful manner to improve its reactivity to unwarranted price evolutions. If the concrete triggering conditions based on the increase in the average allowance price are met, this rule-based safeguard measure should be triggered automatically, whereby a predetermined number of allowances will be released from the Market Stability Reserve. The triggering conditions should be closely monitored by the Commission and published monthly in order to improve transparency. To ensure the orderly auctioning of the allowances released from the Market Stability Reserve pursuant to this safeguard measure and to improve market predictability, this measure should not apply again until at least twelve months after the end of the previous release of allowances in the market under the measure.

(43) The Communication of the Commission on Stepping up Europe's 2030 climate ambition[27], 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 ***while indicating that covering all emissions of fuel combustion would present important benefits***. Emissions trading ***should be applied to fuels used for combustion in buildings, road transport and industrial activities not covered by Annex I of Directive 2003/87/EC, such as heating of industrial facilities. For*** these ▌ sectors***, a separate but adjacent emissions trading system should*** be established ***to avoid any disturbance of the well-functioning*** emissions trading ***system for*** stationary installations and aviation. The new system is accompanied by complementary policies ▌ shaping expectations of market participants and aiming for a carbon price signal for the whole economy ***while providing measures to avoid undue price impacts***. Previous experience has shown that the development of the new ***system*** 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▌ , it is appropriate to set up emissions trading for the road transport***,*** buildings ***and additional*** sectors via an amendment to Directive 2003/87/EC.

(44) In order to establish the necessary implementation framework and to provide a reasonable timeframe for reaching the 2030 target, emissions trading in the ▌ new sectors should start in 2025. During the first ***years***, the regulated entities should be required to hold a greenhouse gas emissions permit and to report their emissions for the years 2024 ***to 2026***. The issuance of allowances and compliance obligations for these entities should be applicable as from ***2027***. This sequencing will allow starting emissions trading in the sectors in an orderly and efficient manner. It would also allow the ▌ measures to be in place to ensure a socially fair introduction of the EU emissions trading into the ***new*** sectors so as to mitigate the impact of the carbon price on vulnerable households and transport users.

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27 COM(2020)562 final.

(45) Due to the very large number of small emitters in the ***new*** sectors▌, 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***, as well as in the additional sectors, which correspond to industrial activities not covered by Annex I of Directive 2003/87/EC***. To avoid double coverage, the release for consumption of fuels which are used in▌activities under Annex I to ***that*** Directive▌should not be covered.

(46) The regulated entities in the▌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[28], 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.

(47) The regulated entities falling within the scope of the emissions trading in the ***new*** sectors ▌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.

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28 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).

(48) The total quantity of allowances for the new emissions trading ***system*** 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 ***and of the additional sectors, a combined cost-efficient contribution of 42 % emission reductions by 2030 compared to 2005***. The total quantity of allowances should be established for the first time in ***2027***, to follow a trajectory starting in 2024 from the value of the 2024 emissions limits , calculated in accordance with Article 4(2) of Regulation (EU) 2018/842 of the European Parliament and of the Council[29] on the basis of the reference emissions for ***the covered*** sectors for ***2005 and*** the period from 2016 to 2018 ***as determined under Article 4(3) of that Regulation***. Accordingly, the linear reduction factor should be set at ***5,10*** %. 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 ***5,38*** % 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.

(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.

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29 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).

(50) In order to ensure a smooth start ***of the new*** emissions trading ***system*** 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 ***2027***, the auction volumes should therefore be 30 % higher than the total quantity of allowances for ***2027***. 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 ***new*** 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 ***road transportation, commercial and institutional buildings and residential buildings,*** 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***, nearly*** 6,9 % of the Union population***,*** have said that they cannot afford to heat their home sufficiently in a ***2021*** EU-wide survey▌. To achieve an effective social and distributional compensation, Member States should be required to spend the auction revenues ***from emissions trading for the buildings, road transport and additional sectors*** on the climate and energy-related purposes already specified for the existing emissions trading, ***giving priority to activities that can contribute to address social aspects of the emission trading in the new sectors, or*** for measures added specifically to address related concerns for the new sectors▌, including related policy measures under Directive 2012/27/EU▌. A new Social Climate Fund will provide dedicated funding to Member States to support the▌most affected ***vulnerable groups, especially households in*** energy or ***transport*** poverty. This Fund will promote fairness and solidarity between and within Member States while mitigating the risk of energy and ***transport*** poverty during the transition. It will build on and complement existing solidarity mechanisms***, in synergy with other EU spending programmes and Funds***. ***50 million allowances of the EU ETS pursuant to Article 10a(8b) and 150 million allowances from emissions trading in the buildings, road transport and additional sectors, and revenue generated from the auctioning of allowances concerning the new sectors, up to EUR 65 000 000 000 altogether, should be used for the financing of the Social Climate Fund in the form of external assigned revenue on a temporary and exceptional basis, pending the discussions and deliberations*** on the ***Commission's proposal 2021/0430 for a Council Decision amending Decision (EU, Euratom) 2020/2053 on the system of own resources of the European Union of 22 December 2021 concerning the establishment of a new own resource based on ETS in accordance with Article 311(3) TFEU***. ***It is necessary to provide that in case a decision is adopted in accordance with Article 311(3) TFEU establishing that new own resource, the same revenue should cease to be externally assigned when such a decision enters into force. With regard to the SCF, the Commission is in case of adoption of such a decision, to present, as appropriate, the necessary proposals in accordance with Article 24(5a) of the SCF Regulation. This is without prejudice to the outcome of the post 2027 Multiannual Financial Framework negotiations.***

(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[30].

▌

(55) Regulated entities covered by the ***new*** 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 ***2027***. 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 ***the new*** emissions trading for buildings***,*** road transport ***and additional sectors***, 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.

(55a) Certain Member States already have national carbon taxes that apply to the buildings, road transport and additional sectors covered by Annex III to Directive 2003/87/EC. Therefore, a temporary derogation should be introduced until the end of 2030. To ensure the objectives of Directive 2003/87/EC and the coherence of the new emissions trading system, the option to apply that derogation should only be available where the national tax rate is higher than the average auctioning price for the relevant year and only apply to the surrender obligation of the regulated entities paying such a tax. To ensure stability and transparency of the system, the national tax, including the relevant tax rates, should be notified to the Commission at the end of the transposition period of this Directive. The derogation should not affect the externally assigned revenue for the Social Climate Fund or, if established in accordance with Article 311(3) TFEU, an own resource based on the auctioning revenue from the ETS in the buildings, road transport and additional sectors.

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30 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).

(56) For emissions trading in the buildings***,*** road transport ***and additional*** 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. ***In the small number of cases where double counting between emissions in the existing ETS and the new system for the road transport, buildings and additional sectors cannot be excluded, or where costs arise due to surrender of allowances for emissions outside activities included in this Directive, Member States should use such revenue to compensate for the unavoidable double counting or other such costs outside the road transport, building and additional sectors in accordance with Union law and implementing powers should therefore be conferred on the Commission to ensure uniform conditions. To further mitigate any issues of double counting, the deadlines for monitoring and surrendering in the new emission trading system should come one month after the deadlines in the existing system for stationary installations and aviation.*** 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.

(56a) Transparency on carbon costs and to which extent they are passed on to consumers is of key importance for enabling swift and cost-efficient emission reductions in all sectors of the economy. This is of particular importance in an emission trading system which is based on upstream obligations. The new emissions trading is meant to incentivise regulated entities to reduce the carbon content of the fuels and they should not make undue profits by passing on more carbon costs to consumers than they incur. While full auctioning of emissions allowances under the emissions trading system for buildings, road transport and additional sectors already limits the occurrence of such undue profits, the Commission should monitor the extent to which regulated entities pass through carbon costs so that windfall profits are avoided. In relation to Chapter IVa, the Commission should report annually where possible by type of fuel on the average level of the carbon costs which have been passed on to European consumers.

(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 ***new*** 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[31] 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.

(57a) In order to increase certainty for citizens that the carbon price in the initial years of the new emissions trading system does not go above EUR 45, it is appropriate to include an additional price stability mechanism to release allowances from the Market Stability Reserve in case the carbon price exceeds that level. In principle, the measure should apply once during a period of 12 months. However, it should also be able to apply again during the same period of 12 months in case the Commission, assisted by the Climate Change Committee, considers that the evolution of the price justifies another release of allowances. In view of the aim of this mechanism to ensure stability in the initial years, the Commission should assess its functioning and whether it should be continued after 2029.

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31 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).

(57b) As an additional safeguard mechanism ahead of the start of emissions trading in buildings, road transport and additional sectors, it should be possible to delay the application of the cap and the surrendering obligations in case gas or oil wholesale prices are exceptionally high compared to historical trends. The mechanism should be automatic, whereby the application of the cap and the surrendering obligations should be delayed by one year if concrete energy price triggers are met. The reference prices should be determined on the basis of benchmark contracts in the gas and oil wholesale markets which are immediately available and the most relevant for end consumers. Separate trigger conditions for gas and oil prices should be envisaged, as their price developments follow different historical trends. In order to ensure market certainty, the Commission should provide clarity on the application of the delay sufficiently in advance through a notice in the Official Journal.

(58) The application of emissions trading in the buildings***,*** road transport ***and additional*** 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.

(59) In order to ensure uniform conditions for the implementation of Articles ***3g(1a), 3gd(2),*** 3gd(3), ***10b(4), 12(3-d), 12(3-c),*** 14(1)***, 30f(2a), 30f(4) and 30h(4)*** 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 ▌ road transport***,*** buildings ***and additional sectors***. Those implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[32].

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32 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).

(59a) In order to achieve the objectives laid down in this Directive and other Union legislation, particularly those in Regulation (EU) 2021/1119, the Union and its Member States should make use of the latest scientific evidence while implementing policies. Therefore, when the Scientific Advisory Board on Climate Change provides scientific advice and issues reports regarding the EU ETS, the Commission should take those into account, in particular, as regards the need for additional Union policies and measures to ensure compliance with the objectives and targets of Regulation (EU) 2021/1119, and additional Union policies and measures in view of the ambition and environmental integrity of global market-based measures for aviation and maritime transport.

(59b) To acknowledge the contribution of EU ETS revenues to the climate transition, an EU ETS label should be introduced. Among other measures to ensure the visibility of funding from the EU ETS, Member States and the Commission should ensure that projects and activities supported through the Modernisation Fund and the Innovation Fund are clearly indicated as coming from EU ETS revenues by displaying an appropriate label.

(59c) With a view to achieving the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119, a Union-wide climate target for 2040 should be set, based on a proposal from the Commission. The EU ETS should be reviewed to align it with the Union 2040 climate target. As a result, by July 2026 the Commission should report on several aspects of the EU ETS to the European Parliament and to the Council, accompanying the report, where appropriate, by a legislative proposal and impact assessment. In line with Regulation (EU) 2021/1119, priority should be given to direct emissions reductions, which will have to be complemented by increased CO_2 removals in order to achieve climate neutrality. Therefore, among other aspects, by July 2026 the Commission should report to the European Parliament and to the Council on how emissions removed from the atmosphere and safely and permanently stored, for example through direct air capture, could potentially be covered by emissions trading, without offsetting necessary emissions reductions. For as long as not all stages of the life of a product in which captured carbon is used are subject to carbon pricing, in particular at the stage of waste incineration, reliance on accounting of emissions at the point of their release from products into the atmosphere would result in emissions being undercounted. In order to regulate the capture of carbon in a way that reduces net emissions, ensures that all emissions are accounted for and that double counting is avoided, while generating economic incentives, the Commission should assess by July 2026, whether all greenhouse gas emissions covered by Directive 2003/87/EC are effectively accounted for, and whether double counting is effectively avoided. In particular, it should assess the accounting of the greenhouse gas emissions which are considered to have been captured and utilised in a product in a way other than that referred to in paragraph 3b of Article 12 and take into account the downstream stages, including disposal and waste incineration. Finally, the Commission should also report on to the Council and the European Parliament on the feasibility of lowering the 20 MW total rated thermal input thresholds for the activities in Annex I of Directive 2003/87/EC, taking into account the environmental benefit and administrative burden.

(59d) By July 2026, the Commission should also assess and report to the European Parliament and to the Council on the feasibility of including municipal waste incineration installations in the EU ETS, including with a view to their inclusion from 2028 and with an assessment of the potential need for a possibility for a Member State to opt out until the end of 2030, taking into account the importance of all sectors contributing to emission reductions. Inclusion of municipal waste incineration installations in the EU ETS would contribute to the circular economy by encouraging recycling, reuse and repair of products, while also contributing to economy-wide decarbonisation. The inclusion of municipal waste incineration installations would reinforce incentives for sustainable management of waste in line with the waste hierarchy and would create a level playing field between the regions that have included municipal waste incineration under the scope of the EU ETS. To avoid deviation of waste from municipal waste incineration installations towards landfills in the Union, which create methane emissions, and exports of waste to third countries, with a potentially negative impact on the environment, in its report the Commission should take into account the potential diverting towards disposal of waste by landfilling in the Union and waste exports to third countries. The Commission should also take into account the effects on the internal market, potential distortions of competition, environmental integrity, alignment with the objectives of the Waste Framework Directive and robustness and accuracy with respect to the monitoring and calculation of emissions. Considering the methane emissions from landfilling and to avoid creating an uneven playing field, the Commission should also assess the possibility of including other waste management processes, such as landfilling, fermentation, composting and mechanical-biological treatment, in the EU ETS, when assessing the feasibility of including municipal waste incineration installations.

(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)***,*** 10a(8)***, 10a(8a), 12(3b), and 30j*** of that Directive. Moreover, to ensure synergies with the existing regulatory framework, the delegation in ***Article*** 10(4) ▌ 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.

(60a) The provisions relating to the existing EU ETS and its extension to maritime transport should apply from 2024 in line with the need for urgent climate action and for all sectors to contribute to emission reductions in a cost-effective manner. Consequently, Member States should transpose the provisions relating to those sectors by 31 December 2023 at the latest. However, the deadline for transposing the provisions relating to the emissions trading system for buildings, road transport and additional sectors should be 30 June 2024, as the rules on monitoring, reporting, verification and permitting for those sectors apply from 1 January 2025, and require sufficient lead time for orderly implementation. As an exception, to guarantee transparency and robust reporting, Member States should transpose the obligation to report on historical emissions for those sectors by 31 December 2023, as this obligation relates to the emissions of the year 2024. In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[33], 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.

[33] 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 ***achieve the economy-wide net greenhouse gas emissions reduction target for 2030, the Union's climate-neutrality objective by 2050, at the latest, and the aim of achieving negative emissions thereafter as laid down in Article 2(1) of Regulation (EU) 2021/1119 and the goal of*** 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. ***The current threshold determining the placing of allowances in the Market Stability Reserve was established in 2018, with the last review of the EU ETS, while the linear reduction factor is being increased with this Directive. Therefore, as part of the regular review of the functioning of the Market Stability Reserve, the Commission should also assess the need for a potential adjustment of this threshold, in line with the linear factor referred to in Article 9 of Directive 2003/87/EC.***

(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**,** road transport ***and additional*** 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**,** buildings ***and additional*** 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.

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(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.

(68) Directive 2003/87/EC ***and*** Decision (EU) 2015/1814 ▌ 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 1, the second paragraph is replaced by the following:

"This Directive also provides for the reductions of greenhouse gas emissions to be increased so as to contribute to the levels of reductions that are considered scientifically necessary to avoid dangerous climate change. It contributes to the achievement of the Union's climate-neutrality objective and its climate targets as laid down in Regulation (EU) 2021/1119 and thereby to the objectives of the Paris Agreement.";

(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 options to*** remain in the scope of the EU ETS until the end of the ***current and next*** five year period referred to in Article 11(1), second subparagraph, following the change to its production process. ***The operator of that installation may decide that the installation remains in the scope of the EU ETS until the end of that current five year period only or also in the next five year period, 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).***

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(*);

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(*) 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).

(va) 'voyage' means a voyage as defined in Article 3, point (c), of Regulation (EU) 2015/757 of the European Parliament and of the Council(*);

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(*) 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).

(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, or the port where an offshore ship stops to relieve the crew, considering that stops for the sole purposes of refuelling, obtaining supplies, relieving the crew of a ship other than an offshore ship, 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 transhipment port listed in the implementing act adopted pursuant to Article 3g(1a) are excluded;

(wb) 'cruise passenger ship' means a passenger ship not having a cargo deck, designed exclusively for commercial transportation of passengers in overnight accommodation on a sea voyage;

(wc) 'Contract for Difference (CD)' means a contract between the Commission and the producer of a low- or zero-carbon product who has been selected through a competitive bidding mechanism such as an auction, whereby the contract provides the producer with support from the Innovation Fund covering the difference between the winning price (the strike price) on the one hand and a reference price, as derived from the price of the produced low- or zero-carbon product, the market price of a close substitute or a combination of those two on the other hand;

(wd) 'Carbon Contract for Difference (CCD)' means a contract between the Commission and the producer of a low- or zero-carbon product who has been selected through a competitive bidding mechanism such as an auction, whereby the contract provides the producer with support from the Innovation Fund covering the difference between the winning price (the strike price) on the one hand and a reference price, as derived from an average price of the allowances on the other hand;

(we) 'fixed premium contract' means a contract between the Commission and the producer of a low- or zero-carbon product who has been selected through a competitive bidding mechanism such as an auction, whereby the contract provides the producer with support in the form of a fixed amount per unit of the produced product;

(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 ***or Article 21(5), first subparagraph, of Council Directive 2003/96/EC*** 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 ***energy product referred to in Article 2(1) of Directive 2003/96/EC, including the fuels*** listed in Table-A and Table C of Annex I to ***that*** Directive ▌, as well as any other product ***intended for use,*** offered for sale ***or used*** as motor fuel or heating fuel as specified in Article 2(3) of that Directive***, including for the production of electricity***;

(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;

(za) 'TTF gas price' for the purposes of Chapter IV shall mean the price of the gas futures month-ahead contract traded at the Title Transfer Facility (TTF) Virtual Trading Point, operated by Gasunie Transport Services B.V.;

(zb) 'Brent crude oil price' for the purposes of Chapter IV shall mean the futures month-ahead price for crude oil used as a benchmark price for the purchases of oil.";

(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 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 ***within a port of call under the jurisdiction of a Member State***.

1a. The Commission shall by 31 December 2023 by means of implementing acts establish a list of the neighbouring container transhipment ports and update this list before 31 December every two years thereafter.

Those implementing acts shall list neighbouring container transhipment ports where the share of transhipment 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 located outside the Union but less than 300 nautical miles of a port under the jurisdiction of a Member State. ***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 ***with the following exception with regard to the application of Article 10.***

Until 31 December 2030, a share of allowances shall be attributed to Member States with a ratio of shipping companies that would have been under their responsibility according to Article 3gd compared to population in 2020 and based on data available for the period 2018-2020, above 15 shipping companies per million inhabitants. The quantity of allowances shall correspond to 3,5 % of the additional quantity of allowances due to the increase in the cap for maritime transport referred to in Article 9, third sub-paragraph in the relevant year. For the years 2024 to 2026, the quantity of allowances shall in addition be multiplied by the percentages applicable to the relevant year pursuant to Article 3ga, points (a) to (c). The revenue from the auctioning of this share of allowances should be used for the purposes referred to in Article 10(3) point (g), with regard to the maritime sector, and points (f) and (i). 50 % of the quantity of allowances shall be distributed among the relevant Member States based on the share of shipping companies under their responsibility and the remainder distributed in equal shares between them.”

(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) ***40*** % of verified emissions reported for ***2024 that would be subject to surrender requirements in accordance with Article 12***;

(b) ***70*** % of verified emissions reported for ***2025 that would be subject to surrender requirements in accordance with Article 12***;

(c) ***100*** % of verified emissions reported for ***2026 and each year thereafter in accordance with Article 12.***

▌

To the extent that fewer allowances are surrendered compared to the verified emissions from maritime transport for the years ▌ 2024 and 2025, once the difference between verified emissions and allowances surrendered has been established in respect of each year, a corresponding quantity of allowances shall be cancelled rather than auctioned pursuant to Article 10.

Article 3gaa
Provisions for transfer of the costs of the ETS from the shipping company to another entity

Member States shall take the necessary measures 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 pursuant to a contractual arrangement, 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 and/or 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 costs 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 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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(*) 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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(*) 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, ▌ 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***, specifying the administering authority for each shipping company in accordance with paragraph 1;

(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 ***(IMO)*** of a global market-based measure to reduce greenhouse gas emissions from maritime transport***, the Commission shall review this Directive in light of that adopted measure***.

To this end, the Commission shall present a report to the European Parliament and to the Council within 18 months of the adoption of such a measure ***and before it becomes operational. In that report the Commission shall examine the global market-based measure as regards:***

(a) its ambition in light of the objectives of the Paris Agreement;

(b) its overall environmental integrity, including compared to the provisions of this Directive covering maritime transport; and

(c) any issue related to the coherence between the EU ETS and that measure.

Where appropriate, the Commission may accompany that report with a legislative proposal to amend this Directive in a manner that is consistent with the Union 2030 climate target and the climate-neutrality objective as set out in Regulation (EU) 2021/1119 and with the aim of preserving the environmental integrity and effectiveness of Union climate action, to ensure coherence between the implementation of a global market-based measure adopted by the IMO and the EU ETS, while avoiding any significant double burden.

1a. ***In the*** event ***that the International Maritime Organization does not adopt by 2028 a*** global ***market-based measure to reduce greenhouse gas emissions from maritime transport in line with the objectives of the Paris Agreement and at least to a level comparable to that resulting from the Union measures taken under this Directive***, the Commission shall present a report to the European Parliament and to the Council in which it shall examine ***the need to apply the allocation of allowances and surrender requirements in respect of more than fifty percent (50 %) of the emissions from ships performing voyages between a port of call under the jurisdiction of a Member State and a port of call outside the jurisdiction of a Member State, in light of the objectives of the Paris Agreement. In that report***, the Commission ***shall in particular consider progress at IMO level and examine whether any third country has a market-based measure equivalent to this Directive and assess the risk of an increase in evasive practices, including through a shift to other modes of transport or a shift of port hubs to ports outside the Union.***

Where appropriate, the report shall be accompanied by a legislative proposal to amend this Directive .

2. The Commission shall monitor the implementation of this Chapter ***in relation to maritime transport, in particular to detect evasive behaviour in order to prevent this at an early stage, including consideration of outermost regions, and report biennially from [the year following the entry into force of this amending Directive] on the implementation of this Chapter*** and possible trends as regards companies seeking to avoid being bound by the requirements of this Directive. ***The Commission shall also monitor impacts as regards, inter alia, possible transport cost increases, market distortions and changes in port traffic such as port evasion and shifts of transhipment hubs, the overall competitiveness of the maritime sector in the Member States, and in particular impacts on those shipping services that provide essential services of territorial continuity.*** If appropriate, the Commission shall propose measures to ***ensure the effective implementation of this Chapter, in particular measures to address these trends as regards companies seeking to evade the requirements of this Directive***.

2a. No later than 30 September 2028, the Commission shall assess the appropriateness of extending the application of the second subparagraph of Article 3g(2) beyond 31 December 2030 and, if appropriate, submit a legislative proposal to that effect.

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 economic, environmental and social impacts of the inclusion in this Directive of emissions from ships, including offshore ships, below 5000 gross tonnage but not below 400 gross tonnage building notably on the analysis accompanying the review of Regulation (EU) 2015/757 due by end of 2024.

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 account for 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 ***and in accordance with the deadline provided in Article 12(3)***.";

(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:

“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 ***paragraphs are*** added:

“In ***2024,*** the Union-wide quantity of allowances shall be decreased by ***90*** million allowances ▌. In ***2026,*** the Union-wide quantity of allowances shall be ***decreased*** by ***27*** million allowances ▌. In ***2024, the Union-wide quantity of allowances shall be increased by 78,4 million allowances for maritime transport.*** The linear factor shall be ***4,3 % from 2024 to 2027 and 4,4 % from 2028. 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].’

From 1 January 2026 and 1 January 2027 respectively, the quantity of allowances shall be increased to take into account the coverage of other greenhouse gas emissions than CO_2 emissions from maritime and the coverage of emissions of offshore ships, based on their emissions for the most recent year for which data is available. Notwithstanding Article 10(1), the allowances resulting from that increase shall be made available to support innovation in accordance with Article 10a(8).”;

(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 ***2024*** 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 ***75*** % 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 shall use ***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:";

(ba) in paragraph 3, first subparagraph, points (b) to (f) are replaced by the following:

(b) to develop renewable energies and grids for electricity transmission to meet the commitment of the Union to renewable energies and the Union targets on interconnectivity, as well as to develop other technologies that contribute to the transition to a safe and sustainable low-carbon economy, and to help to meet the commitment of the Union to increase energy efficiency, at the levels agreed in relevant legislative acts, including the production of electricity from renewables self-consumers and renewable energy communities;

(c) measures to avoid deforestation and support the protection and restoration of peatland, forests and other land or marine based ecosystems, including measures that contribute to the protection, restoration and better management thereof, in particular as regards marine protected areas, and increase biodiversity-friendly afforestation and reforestation, including in developing countries that have ratified the international agreement on climate change, and measures to transfer technologies and to facilitate adaptation to the adverse effects of climate change in those countries;

(d) forestry and soil sequestration in the Union;

(e) the environmentally safe capture and geological storage of CO_2, in particular from solid fossil fuel power stations and a range of industrial sectors and subsectors, including in third countries, and innovative technological carbon removal methods, such as Direct Air Capture ('DAC') and its storage;

(f) to invest in and accelerate the shift to forms of transport which contribute significantly to the decarbonisation of the sector , including the development of climate-friendly passenger and freight rail transport and bus services and technologies, measures to decarbonise the maritime sector, including the improvement of the energy efficiency of ships, ports, innovative technologies and infrastructure, and sustainable alternative fuels, such as hydrogen and ammonia that are produced from renewables, and zero-emission propulsion technologies, and to finance measures to support airports' decarbonisation in accordance with Regulation (EU) .../... [deployment of alternative fuels infrastructure], and Regulation (EU) .../... [ensuring a level playing field for sustainable air transport];";

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

"(h) measures intended to improve energy efficiency, district heating systems and insulation, ***efficient and renewable heating and cooling systems,*** or to ***support the deep and staged deep renovation of buildings in accordance with Article 2, points (19) and (20), of Directive (EU) .../... [Recast EPBD], starting with the renovation of the worst-performing buildings***;";

(ca) in paragraph 3, first subparagraph, the following points are inserted:

"(ha) to provide financial support in order to address social aspects in lower- and middle-income households, including by reducing distortive taxes, and targeted reductions of duties and charges for renewable electricity;

(hb) to finance national climate dividend schemes with a proven positive environmental impact as documented in the annual report referred to in Article 19(2) of Regulation (EU) 2018/1999 of the European Parliament and of the Council;";

(cb) in paragraph 3, first subparagraph, point (k) is replaced by the following:

"(k) to promote skill formation and reallocation of labour in order to contribute to a just transition to a climate-neutral economy, in particular in regions most affected by the transition of jobs, in close coordination with the social partners and invest in upskilling and re-skilling of workers potentially affected by the transition, including workers in the maritime transport sector;

(l) to address any residual risk of carbon leakage in the sectors covered by Annex I of Regulation (EU) 20…/nn [CBAM Regulation], supporting the transition and promoting their decarbonisation in accordance with State aid rules.";

(cc) in paragraph 3, the following subparagraph is inserted after the first subparagraph:

"When determining the use of revenues generated from the auctioning of the allowances, Member States shall take into account the need to continue scaling-up international climate finance in vulnerable third countries referred to in point (j) of the first subparagraph.";

(cd) in paragraph 3, the second subparagraph 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.";

(ce) in paragraph 3, the third subparagraph is replaced by the following:

"Member States shall inform the Commission as to the use of revenues and the actions taken pursuant to this paragraph in their reports submitted under Article 19(2) of Regulation (EU) 2018/1999, specifying where relevant and as appropriate, which revenues and the actions are undertaken to implement their integrated national energy and climate plan submitted in accordance with Regulation (EU) 2018/1999, and their territorial just transition plan prepared in accordance with Article 11 of Regulation (EU) 2021/1056 of the European Parliament and of the Council.

The reporting shall be sufficiently detailed to enable the Commission to assess the Member States compliance with Article 10(3), first paragraph.";

(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 externally assigned revenue in accordance with Article 30d(3a) or 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."

(*da) paragraph 5 is replaced by the following:*

"5. The Commission shall monitor the functioning of the European carbon market. Each year, it shall submit a report to the European Parliament and to the Council on the functioning of the carbon market and on other relevant climate and energy policies, including the operation of the auctions, liquidity and the volumes traded, and summarising the information provided by the European Securities and Markets Authority (ESMA) in accordance with paragraph 6 of this Article and the information provided by Member States on the financial measures referred to in Article 10a(6). If necessary, Member States shall ensure that any relevant information is submitted to the Commission at least two months before the Commission adopts the report.";

(db) the following paragraph is added:

"6. ESMA shall regularly monitor the integrity and transparency of the European carbon market, in particular with respect to market volatility and price evolution, the operation of the auctions and trading operations on the market of emission allowances and derivatives thereof, including over-the-counter trading, liquidity and the volumes traded, and the categories and trading behaviour of market participants, including positions of financial intermediaries. ESMA shall include the relevant findings and, where necessary, make recommendations in its assessments to the European Parliament, to the Council, to the Commission and to the European Systemic Risk Board in accordance with Article 32(3) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council (*). For the purposes of the tasks referred to in the first sentence, ESMA and the relevant competent authorities shall cooperate and exchange information on details of all types of transactions in accordance with Article 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council (**).

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(*) Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331 15.12.2010, p. 84).

(**) *Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173 12.6.2014, p. 1).";*

(12) Article 10a is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following ▌ subparagraphs are inserted after the second subparagraph:

"***If an installation is*** covered by the obligation to conduct an energy audit ***or to implement a certified energy management system*** under Article ***8*** of Directive 2012/27/EU of the European Parliament and of the Council(*) ***and*** if the recommendations of the audit report ***or of the certified energy management system*** are ***not*** implemented, ***unless*** the pay-back time for the relevant investments ***exceeds three*****e** years ***or unless*** the costs of those investments are ***disproportionate, then*** the amount of free allocation shall be reduced by ***20*** %. The amount of free allocation shall not be reduced if an operator demonstrates that it has implemented other measures which lead to greenhouse gas emission reductions equivalent to those recommended by the audit report ***or the certified energy management system for the installation concerned***.

The Commission shall supplement this Directive by providing, in the acts adopted pursuant to Article 10a(1) and without prejudice to the rules applicable under the [Energy Efficiency Directive [2012/27/EU], for administratively simple harmonised rules for the application of the third subparagraph that ensures that the application of the conditionality does not jeopardise a level playing field, environmental integrity or equal treatment between installations across the Union. Those harmonized rules shall in particular provide timelines, criteria for the recognition of implemented energy efficiency measures as well as for alternative measures reducing GHG emissions, using the procedure for national implementing measures in accordance with Article 11(1).

In addition to the requirements set out in the third subparagraph of this paragraph, the reduction by 20 % referred to in that subparagraph shall be applied where, by 1 May 2024, operators of installations whose greenhouse gas emission levels are higher than the 80 percentile of emission levels for the relevant product benchmarks have not established a climate neutrality plan for each of those installations for its activities covered by this Directive. That plan shall contain the elements specified in Article 10b(4) and be established in accordance with the implementing act provided for in Article 10b(4). Article 10b(4) shall be read as only referring to installation level. The attainment of the targets and milestones referred to in the third subparagraph of Article 10b(4), point (b) shall be verified with respect to the period until 31 December 2025 and with respect to each period ending 31 December of each fifth year thereafter, in accordance with the verification and accreditation procedures provided for in Article 15. No free allowances beyond 80 % shall be allocated if achievement of the intermediate targets and milestones has not been verified with respect to the period up to the end of 2025 or with respect to the period 2026 to 2030.

Allowances that are not allocated due to a reduction of free allocation in accordance with the third and fifth subparagraphs of this Article shall be used to exempt installations from the adjustment in accordance with the first subparagraph of Article 10a(5). Where any such allowances remain, 50 % of these allowances shall be made available to support innovation in accordance with Article 10a(8). The other 50 % of these allowances shall be auctioned in accordance with Article 10(1) and Member States should use the respective revenues to address any residual risk of carbon leakage in the sectors covered by Annex I of Regulation (EU) 20…/nn [CBAM Regulation], supporting the transition and promoting their decarbonisation in accordance with State aid rules.

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) ***20../nn*** [▌CBAM ***Regulation***] ▌. 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).";

▌

(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 ***and to ensure a level playing field for installations using new technologies that partly or fully reduce greenhouse gas emissions and existing technologies***, the determined Union-wide ex-ante benchmarks shall be reviewed ***for their application in*** the period from 2026 to 2030***,*** in view of potentially modifying the definitions and system boundaries of existing product benchmarks***, considering as guiding principles the circular use potential of materials and that the benchmarks should be independent of the feedstock and the type of production process, where the production processes have the same purpose***. ***The Commission shall endeavour to adopt the implementing acts for the purpose of determining the revised benchmark values for free allocation in accordance with the third subparagraph of paragraph 2 as soon as possible and before the start of the period from 2026 to 2030***.";

(b) the following paragraph 1a is inserted:

"1a. ***Subject to the application of Regulation (EU) 20…/nn [CBAM Regulation],*** no free allocation shall be given in relation to the production of products listed in Annex I of ***that*** Regulation ▌.

By way of derogation from the ***first*** subparagraph, for the first years of ***application*** of Regulation ***(EU) 20…/nn*** [CBAM ***Regulation***], the production of ▌ products ***listed in Annex I to that Regulation*** shall benefit from free allocation in reduced amounts. A factor reducing the free allocation for the production of ***those*** products shall be applied (CBAM factor). The CBAM factor shall be equal to 100 % for the period ***between*** the entry into force of ***that*** Regulation ▌ and the end of 2025 ***and, subject to the application of provisions referred to in Article 36(3), point (b), of that Regulation, shall be equal to 97,5 %*** in 2026***, 95 % in 2027, 90 % in 2028, 77,5 % in 2029, 51,5 % in 2030, 39 % in 2031, 26,5 % in 2032 and 14 % in 2033. From 2034, no CBAM factor shall apply***.

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 ***(EU) 20…/nn*** [CBAM ***Regulation***] 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).

One year before the end of the transitional period defined in Article 32 of Regulation (EU) 20…/nn [CBAM Regulation] as part of its annual report to the European Parliament and to the Council pursuant to Article 10(5) of Directive 2003/87/EC, the Commission shall assess the carbon leakage risk for goods subject to CBAM and produced in the Union for export to third countries which do not apply the EU ETS or a similar carbon pricing mechanism. The report shall in particular assess the carbon leakage risk in sectors to which CBAM will apply, in particular the role and accelerated uptake of hydrogen, and the developments as regards trade flows and the embedded emissions of goods produced by those sectors on the global market. Where the report concludes that there is a carbon leakage risk for goods produced in the Union for export to third countries which do not apply the EU ETS or an equivalent carbon pricing mechanism, the Commission shall, where appropriate, present a legislative proposal to address that carbon leakage risk in a manner that is compliant with WTO rules including Article XX of the GATT, and takes into account the decarbonisation of installations in the Union.";

(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)***, taking into account point (e),*** 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 ***points are*** added:

"(d) Where the annual reduction rate exceeds 2,5 % or is below ***0,3*** %, 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;

(e) For the period from 2026 to 2030, the annual reduction rate of the product benchmark hot metal shall not be affected by the change of benchmark definitions and system boundaries applicable pursuant to the fifth subparagraph of Article 10a(1).";

(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;

(da) paragraph 5 is replaced by the following:

"In order to respect the auctioning share set out in Article 10, for every year in which the sum of free allocations does not reach the maximum amount that respects the auctioning share, the remaining allowances up to that amount shall be used to prevent or limit reduction of free allocations to respect the auctioning share in later years. Where, nonetheless, the maximum amount is reached, free allocations shall be adjusted accordingly. Any such adjustment shall be done in a uniform manner. However, installations whose greenhouse gas emission levels are below the average of the 10 % most efficient installations in a sector or subsector in the Union for the relevant benchmarks in a year when the adjustment applies shall be exempted from that adjustment.";

(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(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. ***345*** million allowances from the quantity which could otherwise be allocated for free pursuant to this Article, and ***80*** 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- and zero carbon techniques, processes and*** technologies ***that contribute significantly to the decarbonisation of the sectors covered by this Directive*** and contribute to zero pollution ***and circularity*** objectives ***including projects aimed at scaling up such techniques, processes and technologies with a view to their broad roll-out across the EU. Such projects shall possess a significant greenhouse gas emissions abatement potential and contribute to energy and resource savings in line with the Union's climate and energy targets for 2030.***

The Commission shall frontload Innovation Fund allowances to ensure an adequate amount of resources is available to foster innovation, including upscaling.

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.

Moreover, 5 million allowances from the quantity referred to in Article 3c(5) and (6) relating to aviation allocations for 2026 shall be made available for such innovation support.

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. [34]

The Innovation Fund shall cover the sectors listed in Annex I and Annex III, as well as products ***and processes*** substituting carbon intensive ones produced in sectors listed in Annex I, ***including innovative renewable energy and energy storage technologies and environmentally safe carbon capture and utilisation ("CCU") that contributes substantially to mitigating climate change, in particular for unavoidable process emissions*** and to help stimulate the construction and operation of projects aimed at the environmentally safe capture***, transport*** and geological storage ("CCS") of CO_2, ***in particular for unavoidable industrial process emissions, and the direct capture of CO_2 from the atmosphere with safe, sustainable and permanent*** storage ***('DACS'),*** in geographically balanced locations. The Innovation Fund may also support break-through innovative technologies and infrastructure***, including production of low- and zero-carbon fuels,*** to decarbonise the maritime***,*** aviation, rail and road transport ***sectors, including collective forms of transport such as public transport and coach service.***

For aviation, it may also support electrification and actions to reduce the overall climate impacts of aviation.

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34 ***[Without prejudice to the outcome of negotiations on FuelEU Maritime: "Furthermore, the external assigned revenues referred to in Article 21(2) of Regulation (EU) [FuelEU Maritime] shall be allocated to the Innovation Fund and implemented in line with this paragraph."].***

The Commission shall give special attention ▌ to projects in sectors covered by ***Regulation (EU) 20…/nn*** [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 that Regulation.***

The Commission shall give special attention to projects contributing to decarbonize the maritime sector and shall include topics dedicated to the decarbonisation of the maritime sector in the Innovation Fund calls for proposals, as appropriate, including to electrify maritime transport, and to address its full climate impact, including black carbon emissions. These calls shall also take particular account of the potential for also increasing biodiversity protection and for reducing noise and water pollution of projects and investments in the criteria used for the selection of projects.

The Innovation Fund may in accordance with paragraph 8a support projects through competitive bidding, such as CDs, CCDs or fixed premium contracts to support decarbonisation technologies for which the carbon price might not be a sufficient incentive.

The Commission shall seek synergies between the Innovation Fund and Horizon Europe, in particular in relation to European partnerships, and shall, where relevant, seek synergies between the Innovation Fund and other Union programmes.

Projects in the territory of all Member States, including small-scale ***and medium-scale*** projects, shall be eligible***, and, for maritime activities, projects with clear EU added value***. 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 ▌ Regulation ***(EU, Euratom) 2018/1046 of the European Parliament and of the Council***(**). Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments.

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 State to support the efforts of project proponents in their respective territories to submit applications for funding from the Innovation Fund, in order to improve the effective geographical participation in the Innovation Fund and increase the overall quality of submitted projects. 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' 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 be selected ***by way of a transparent selection procedure, in a technology-neutral manner in accordance with the objectives of the Innovation Fund as set out in the first subparagraph of this paragraph and*** on the basis of objective and transparent criteria, taking into account ***the extent to which projects provide a significant contribution to the Union's climate and energy targets while contributing to the zero pollution and circularity objectives in accordance with the first subparagraph of this paragraph, and***, where relevant, the extent to which projects contribute to achieving emission reductions well below the benchmarks referred to in paragraph 2. Projects shall have the potential for widespread application or to significantly lower the costs of transitioning towards a ***climate neutral*** economy in the sectors concerned. ***Priority shall be given to innovative technologies and processes addressing multiple environmental impacts.*** Projects involving CCU shall deliver a net reduction in emissions and ensure avoidance or permanent storage of CO_2. 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 potential for emission reductions in multiple sectors offered by combined projects, including in nearby areas, shall be taken into account in the criteria used for the selection of projects.***

Projects funded by the Innovation Fund shall be required to share knowledge with other relevant projects as well as with Union-based researchers having a legitimate interest. The terms of knowledge-sharing shall be defined by the Commission in calls for proposals.

The calls for proposal shall be open and transparent. In preparing the calls for proposal, the Commission shall strive to ensure that all sectors are duly covered. The Commission shall take measures to ensure that the calls are communicated as widely as possible, and especially to small and medium-sized enterprises ('SMEs').

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.

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, and the expected contribution of the awarded projects towards the objective of climate neutrality in the Union as set out in Regulation (EU) 2021/1119. The Commission shall provide the report to the Council and the European Parliament and the report shall be made public.

(*) 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 2 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).

(**) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).";

(ga) the following paragraphs are inserted:

"8a. For CDs and CCDs awarded upon conclusion of a competitive bidding procedure, appropriate coverage by budgetary commitments resulting from the proceeds of auctioning of allowances available in the Innovation Fund shall be provided and those budgetary commitments may be broken down over several years into annual instalments. For the first two rounds of the competitive bidding mechanism, coverage of the financial liability related to CDs and CCDs shall be fully ensured with appropriations resulting from the proceeds of auctioning of allowances allocated to the Innovation Fund pursuant to paragraph 8.

On the basis of a qualitative and quantitative assessment by the Commission of the financial risks arising from the implementation of CDs and CCDs, to be made after the conclusion of the first two rounds of competitive bidding mechanism and each time it is necessary afterwards in accordance with the principle of prudence whereby assets and profits shall not be overestimated and liabilities and losses shall not be underestimated, the Commission may, in accordance with the empowerment in the eighth subparagraph decide to cover only part of the financial liability related to CDs and CCDs and the remaining part by other means. The Commission shall aim to limit the use of other means of coverage.

Where the assessment leads to the conclusion that other means of coverage are necessary to realize the full potential of the CDs and CCDs, the Commission shall aim for a balanced mix of other means of coverage. By derogating from Article 210(1), the Commission shall determine the extent of the use of other means of coverage pursuant to the delegated act provided for in the eighth subparagraph.

The remaining financial liability shall be sufficiently covered, having regard to the principles of Title X of Regulation (EU, Euratom) 2018/1046, if necessary, adapted to the specificities of CDs and CCDs, by derogating from Articles 209(2) points d) and h), 210(1), 211(1), (2), (4), and (6), 212 to 214, 218(1) and 219(3) and (6). Where applicable, other means of coverage, the provisioning rate and the necessary derogations shall be established in a delegated act provided for in the eighth subparagraph.

The Commission shall not use more than 30 % of the proceeds of auctioning of allowances allocated to the Innovation Fund pursuant to paragraph 8 for provisioning for CDs and CCDs.

The provisioning rate shall be no lower than 50 % of the total financial liability borne by the Union budget for CDs and CCDs and when setting it out, the Commission shall take into account elements that may reduce the financial risks for the EU budget, beyond the appropriations available in the Innovation Fund, such as possible sharing of liability with Member States on a voluntary basis, or a possible re-insurance mechanism from the private sector. The Commission shall review the provisioning rate at least every 3 years from the date of application of the delegated act setting it out for the first time.

In order to avoid speculative applications, access to competitive bidding may be made conditional on the payment by applicants of a deposit to be forfeited in case of non-fulfilment of the contract. Such forfeited deposits shall accrue to the Innovation Fund as external assigned revenue pursuant to Article 21(5) of Regulation (EU, Euratom) 2018/1046. Any contribution paid to the granting authority by a beneficiary in accordance with the terms of the CD or CCD where the reference price is higher than the strike price (reflows) shall accrue to the Innovation Fund as external assigned revenue pursuant to Article 21(5) of Regulation (EU, Euratom) 2018/1046.

The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive in order to provide for and detail other means of coverage, if any, and, where applicable, the provisioning rate and the necessary additional derogations to Title X of Regulation (EU, Euratom) 2018/1046 as set out in the fourth subparagraph, and in addition the rules on the operation of competitive bidding mechanisms, in particular in relation to deposits and reflows.

The Commission is empowered to adopt delegated acts in accordance with Article 23 to amend the fifth subparagraph by raising the limit of 30 % referred in that subparagraph by no more than a total of 20 percentage points where necessary to respond to a demand for CDs and CCDs taking into account the experience of the first rounds of competitive bidding and considering the need to find an appropriate balance in the support from the Innovation Fund between such contracts and grants.

Financial support from the Innovation Fund shall be proportionate to the policy objectives set out in this Article and shall not lead to undue distortions of the internal market. To this end, support shall only be granted to cover additional costs or investment risks that cannot be borne by investors under normal market conditions.

8b. 40 million allowances from the quantity which could otherwise be allocated for free pursuant to this Article, and 10 million allowances from the quantity which could otherwise be auctioned pursuant to Article 10 shall be made available for the Social Climate Fund established by Regulation (EU) 20…/nn of the European Parliament and of the Council [Social Climate Fund Regulation](*). The Commission shall ensure that the allowances destined for the Social Climate Fund are auctioned in 2025 in accordance with the principles and modalities of Article 10(4) and the delegated act adopted in accordance with that provision. The revenues from this auctioning shall constitute external assigned revenue in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/1046, and shall be implemented in accordance with the rules applicable to the Social Climate Fund.";

(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.";

(12a) in Article 10b(4), the following subparagraphs are added:

"In Member States where, on average in the years 2014-2018, the share of emissions from district heating of the EU total of such emissions divided by the Member States' share of GDP of the EU total GDP is greater than 5 for district heating for the period from 2026 to 2030, additional free allocation of 30 % of the quantity determined pursuant to Article 10a shall be given to district heating provided that an investment volume equivalent to the value of that additional free allocation received is invested to significantly reduce emissions before 2030 in accordance with climate-neutrality plans in accordance with the third sub-paragraph and that the attainment of the targets and milestones referred to in point (b) of the third subparagraph are confirmed by the verification carried out in accordance with the fourth subparagraph.

By 1 May 2024, operators of district heating shall establish a climate-neutrality plan for the installations for which they apply for additional free allocation in accordance with the second subparagraph. That plan shall be consistent with the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119 and shall set out:

(a) measures and investments to reach climate-neutrality by 2050 at installation or company-level, excluding the use of carbon offset credits;

(b) intermediate targets and milestones to measure, by 31 December 2025 and by 31 December of each fifth year thereafter, progress made towards reaching climate - neutrality as set out in point (a);

(c) an estimate of the impact of each of the measures and investments referred to in point (a) as regards the reduction of greenhouse gas emissions.

The attainment of the targets and milestones referred to in the third subparagraph, point (b), shall be verified with respect to the period until 31 December 2025 and with respect to each period ending 31 December of each fifth year thereafter, in accordance with the verification and accreditation procedures provided for in Article 15. No free allowances beyond what is referred to in the first subparagraph shall be allocated if achievement of the intermediate targets and milestones has not been verified with respect to the period up to the end of 2025 or with respect to the period 2026 to 2030.

The Commission shall adopt implementing acts in accordance with the procedure set out in Article 22a(2) to specify the minimal content of the information referred to in points a) to c) and the format of the climate-neutrality plans referred to in the third subparagraph of this paragraph and in the fifth subparagraph of Article 10a(1). The Commission shall seek synergies with similar plans as provided for in Union law.";

(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.";

(13a) the following article is inserted:

"Article 10ca
Earlier deadline for transitional free allocation for the modernisation of the energy sector

By way of derogation from Article 10c, the Member States concerned may only give transitional free allocation to installations in accordance with that Article for investments carried out until 31 December 2024. Any allowances available to the Member States concerned in accordance with Article 10c for the period 2021 to 2030 that are not used for such investments shall, in the proportion determined by the respective Member State:

(i) be added to the total quantity of allowances that the Member State concerned is to auction pursuant to Article 10(2); or

(ii) be used to support investments within the framework of the Modernisation Fund referred to in Article 10d in accordance with the rules applicable to the revenue from allowances referred to in Article 10d(4).

By 15 May 2024, the Member State concerned shall notify the Commission of the respective amounts of allowances to be used under Article 10(2)(a) and, by way of derogation from the second sentence of Article 10d(4), Article 10(d)."

(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. ***The beneficiary Member States may, where appropriate, use the resources of the Modernisation Fund to finance investments involving the adjacent EU border regions.*** No support from the Modernisation Fund shall be provided to energy generation facilities that use fossil fuels. ***Notwithstanding the preceding sentence, revenue from allowances covered by a notification pursuant to Article 10d(4) may be used for investments involving gaseous fossil fuels. Notwithstanding the same sentence, revenue from allowances referred to in the third subparagraph of Article 10(1) may, where the activity qualifies as environmentally sustainable under Regulation (EU) 2020/852 and is duly justified for reasons of ensuring energy security, be used for investments involving gaseous fossil fuels provided that, for energy generation, the allowances are auctioned before 31 December 2027 and, for investments involving downstream uses of gas, the allowances are auctioned before 31 December 2028.***

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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 ***revenue from allowances referred to in the third subparagraph of Article 10(1) and from allowances covered by a notification pursuant to Article 10d(4), and at least 90 % of the revenue from allowances referred to in the fourth subparagraph of Article 10(1)*** shall be used to support investments in the following:

(a) the generation and use of electricity from renewable sources***, including renewable hydrogen***;

(b) heating and cooling from renewable sources;

(c) the ***reduction of overall energy use through*** energy efficiency, including in ***industry,*** transport, buildings, agriculture and waste;

(d) energy storage and the modernisation of energy networks, including ***demand-side management,*** district heating pipelines, grids for electricity transmission***,*** the increase of interconnections between Member States ***and infrastructure for zero-emission mobility***;

(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 ***civil society and*** social partners***, consistent with and contributing to the relevant actions included by the Member States in their territorial just transition plans in accordance with Article 8(2), point (k), of Regulation (EU) 2021/1056, where relevant***.";

(ba) paragraph 11 is replaced by the following:

"11. The investment committee shall report annually to the Commission 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.

The investment committee shall arrange for the publication of the annual report. The Commission shall provide this publication to the Council and the European Parliament.";

(14a) the following Article is inserted:

"Article 10e
Do no significant harm principle

From January 2025, the beneficiary Member States and the Commission shall use the revenues from auctioning of allowances destined for the Innovation Fund pursuant to Article 10a(8), and of the allowances referred to in the third and fourth subparagraph of Article 10(1), in accordance with the 'do no significant harm' criteria set out in Article 17 of Regulation (EU) 2020/852(*), where they are used for an economic activity for which technical screening criteria for determining whether an economic activity causes significant harm to one or more of the relevant environmental objective has been established pursuant to Article 10(3)(b) of that Regulation."

(14b) 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) After paragraph 3, the following paragraphs are inserted:

"3-e. By way of derogation from paragraph 3, first subparagraph, point (c), shipping companies may surrender 5 % fewer allowances than their verified emissions taking place until 31 December 2030 from ice class ships, provided that these ships have the ice-class IA or IA Super or an equivalent ice class, established based on the HELCOM Recommendation 25/7.

To the extent that fewer allowances are surrendered compared to the verified emissions, 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.

3-d. By way of derogation from paragraph 3, first subparagraph point (c) and Article 16, the Commission, shall, at the request of a Member State, provide by means of an implementing act that Member States shall consider the requirements set out in those provisions to be satisfied and that they shall take no action against shipping companies in respect of emissions taking place until 31 December 2030 from voyages performed by passenger ships, other than cruise passenger ships, and by ro-pax ships, between a port of an island under the jurisdiction of that requesting Member State with no road or rail link with the mainland and a port under the jurisdiction of that same Member State and from the activities within a port from those ships in relation to those voyages. The island shall have a permanent population of less than 200 000 permanent residents according to the latest best data available in 2022.

The Commission shall publish a list of islands referred to in the first subparagraph and the concerned ports and keep that list up to date.

3-c. By way of derogation from paragraph 3, first subparagraph point (c) and Article 16, the Commission shall, at the joint request of two Member States, one of which having no land border with another Member State and the other Member State being the geographically closest Member State to the first, provide by means of an implementing act that Member States shall consider the requirements set out in those provisions to be satisfied and that they shall take no action against shipping companies in respect of emissions taking place until 31 December 2030 from voyages by passenger or ro-pax ships performed in the framework of a transnational public service contract or a transnational public service obligation, set out in the joint request, connecting the two Member States and from the activities within a port from those ships in relation to those voyages.

3-b. An obligation to surrender allowances shall not arise in respect of emissions taking place until 31 December 2030 from voyages between a port located in an outermost region of a Member State and a port located in the same Member State, including ports within and between the Outermost Regions of the same Member State, and from the activities within a port from those ships in relation to those voyages."

(***e***) 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.";

(*f*) 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***, including any normal activity taking place after the end of life of the product***.

The Commission shall adopt ***delegated*** acts ***in accordance with Article 23 to supplement this Directive*** 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***, including any normal activity taking place after the end of the life of the product***.";

(g) paragraph 4 is replaced by the following:

"4. Member States shall take the necessary steps to ensure that allowances will be cancelled at any time at the request of the person holding them. In the event of closure of electricity generation capacity in their territory due to additional national measures, Member States may cancel allowances, and are strongly encouraged to do so, from the total quantity of allowances to be auctioned by them referred to in Article 10(2) up to an amount corresponding to the average verified emissions of the installation concerned over a period of five years preceding the closure. The Member State concerned shall inform the Commission of such intended cancellation, or the reasons for not cancelling, in accordance with the delegated acts adopted pursuant to Article 10(4).";

(16) in Article 14(1)*, the* first subparagraph ▌ is ***replaced by the following***:

"***The Commission shall adopt implementing acts concerning the detailed arrangements for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, and non-CO_2 aviation effects on routes for which emissions are reported under this Directive, which shall be based on the principles for monitoring and reporting set out in Annex IV and the requirements set out in paragraph 2 and paragraph 2a of this Article. Those implementing acts shall also specify the global warming potential of each greenhouse gas and take into account up-to-date scientific knowledge on the effects of non-CO_2 aviation emissions in the requirements for monitoring and reporting of these emissions and their effects, including non-CO_2 aviation effects.*** 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";

(*) 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.";

(ab) in paragraph 3, the date "30 April" is replaced by "30 September";

(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.";

(19a) Article 23 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

"2. The power to adopt delegated acts referred to in Articles 3d(3), 10(4), 10a(1), (8) and (8a), 10b(5), 12(3b), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Articles 28c and 30j shall be conferred on the Commission for an indeterminate period of time from 8 April 2018.

3. The delegation of power referred to in Articles 3d(3), 10(4), 10a(1), (8) and (8a), 10b(5), 12(3b), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Articles 28c and 30j 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."

(b) paragraph 6 is replaced by the following:

"6. A delegated act adopted pursuant to Articles 3d(3), 10(4), 10a(1), (8) and (8a), 10b(5), 12(3b), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Articles 28c and 30j shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.";

(19b) Article 29 is replaced by the following:

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

If the regular reports on the carbon market referred to in Article 10(5) and Article 10(6) contain evidence that the carbon market is not functioning properly, the Commission shall within a period of 3 months submit a report to the European Parliament and to the Council. The report may be accompanied, if appropriate, by legislative proposals aiming at increasing transparency and integrity of the carbon market including related derivative markets and addressing the corrective measures to improve its functioning as well as to enhance the prevention and detection of market abuse activities."

(19c) Article 29a is replaced by the following:

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

1. If the average allowance price of the six preceding calendar months is more than 2,4 times the average allowance price of the preceding two years reference period, 75 million allowances shall be released from the Market Stability Reserve in accordance with paragraph 7 of Article 1 of Decision (EU) 2015/1814.

The allowance price referred to in the first subparagraph shall be the price of auctions carried out in accordance with the act adopted under Article 10(4) for allowances covered by Chapters II and III.

The preceding two years reference period referred to in the first sub-paragraph shall be the two-year period that ends before the first month of the period of six calendar months referred to in that sub-paragraph.

Where the condition in the first subparagraph is met and paragraph 2 is not applicable, the Commission shall publish a notice to that effect in the Official Journal indicating the date on which the condition were fulfilled.

The Commission shall publish within the first three working days of each month the average allowance price of the preceding six calendar months and the average allowance price of the preceding two years reference period. If the condition of paragraph 1 of this Article is not met, the Commission shall also publish the level of price that the average allowance price should reach in the next month in order to meet the condition in that paragraph.

2. When the condition for release of allowances from the Market Stability Reserve pursuant to paragraph 1 of this Article has been met, the condition in paragraph 1 shall not be considered to have been fulfilled again until at least twelve months after the end of the previous release.

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

(19d) in Article 30, paragraph 1 is replaced by the following:

“1. This Directive shall be kept under review in the light of international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement, and any relevant commitments resulting from the Conferences of the Parties to the United Nations Framework Convention on Climate Change.";

(20) in Article 30, paragraph 2, the following sentence is added:

“The measures applicable to CBAM sectors shall be kept under review in light of the application of Regulation ***(EU) 20…/nn*** [▌CBAM ***Regulation***]. ***Before 1 January 2028, as well as every two years thereafter as part of its reports to the European Parliament and the Council pursuant to Article 30(6) of that 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.***”;

(20a) in Article 30, paragraph 3 is replaced by the following:

"3. The Commission shall report to the European Parliament and to the Council in the context of each global stocktake agreed under the Paris Agreement, in particular with regard to the need for additional Union policies and measures in view of necessary greenhouse gas reductions by the Union and its Member States, including in relation to the linear factor referred to in Article 9. The Commission may make proposals to the European Parliament and to the Council to amend this Directive where appropriate, in particular in order to ensure compliance with the climate-neutrality objective as laid down in Article 2(1) of Regulation (EU) 2021/1119 and the Union climate targets as laid down in Article 4 of that Regulation. In making its proposal the Commission shall, to that end inter alia consider the projected indicative Union greenhouse gas budget for the 2030-2050 period as referred to in Article 4(4) of that Regulation.";

(20b) in Article 30, the following paragraphs are added:

"4a. By 31 July 2026, the Commission shall report to the European Parliament and to the Council on the following, accompanied, where appropriate, by a legislative proposal and impact assessment:

(a) how negative emissions resulting from greenhouse gases that are removed from the atmosphere and safely and permanently stored could be accounted for and how these negative emissions could be covered by emissions trading, if appropriate, including a clear scope and strict criteria and safeguards to ensure that such removals are not offsetting necessary emissions reductions in accordance with Union climate targets as laid down in Regulation (EU) 2021/1119;

(b) the feasibility of lowering the 20 MW total rated thermal input thresholds for the activities in Annex I of this Directive from 2031;

(c) whether all greenhouse gas emissions covered by this Directive are effectively accounted for, and whether double counting is effectively avoided. In particular, it shall assess the accounting of the greenhouse gas emissions which are considered to have been captured and utilised in a product in a way other than that referred to in paragraph 3b of Article 12.

4b. When reviewing this Directive, in accordance with paragraphs 1, 2 and 3 of this Article, the Commission shall analyse how linkages between the EU ETS and other carbon markets can be established, without impeding the achievement of the climate-neutrality objective and the Union climate targets as laid down in Regulation (EU) 2021/1119.

4c. By 31 July 2026, the Commission shall present a report to the European Parliament and to the Council in which it shall assess the feasibility of including municipal waste incineration installations in the EU ETS, including with a view to their inclusion from 2028 and with an assessment of the potential need for a possibility for a Member State to opt out until 31 December 2030. In that regard, the Commission shall take into account the importance of all sectors contributing to emission reductions and the potential diverting towards disposal of waste by landfilling in the Union and waste exports to third countries. The Commission shall in addition take 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[35] and robustness and accuracy with respect to the monitoring and calculation of emissions. The Commission shall, where appropriate and without prejudice to the provisions laid down in Article 4 of Directive 2008/98/EC, present a legislative proposal accompanying the report to apply the provisions of this Chapter to greenhouse gas emissions permits and the allocation and issue of additional allowances in respect of municipal waste incineration installations and to prevent potential diverting.

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35 ***Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312, 22.11.2008, p. 3).***

In the report referred to in the first subparagraph, the Commission shall also assess the possibility of including in the EU ETS other waste management processes, in particular landfills which create methane and nitrous oxide emissions in the Union. The Commission may, where appropriate, also accompany that report with a legislative proposal to include such other waste management processes in the EU ETS.";

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

"CHAPTER IVa

EMISSIONS TRADING SYSTEM FOR BUILDINGS**,** ROAD TRANSPORT ***AND ADDITIONAL SECTORS***

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:

   (a) the regulated entity;

(b) the type of fuels it releases for consumption and which are used for combustion in the ▌ sectors ▌ 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, ***in accordance with the deadline provided in Article 30e(2)***.

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 ***5,10*** %. By 1 January ***2025***, 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 ***5,38*** %, 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.

3. The Union-wide quantity of allowances issued under this Chapter shall be adjusted for each year from the year after the start of auctioning to compensate for the quantity of allowances surrendered in cases where it was not possible to avoid double counting of emissions or where allowances have been surrendered for emissions not covered by this Chapter as referred to in Article 30f(4). The adjustment shall correspond to the total amount of allowances covered by this Chapter which were compensated for in the relevant reporting year pursuant to the acts referred to in Article 30f(4).

4. A Member State having unilaterally included a regulated entity pursuant to Article 30j in the emissions trading established under this Chapter shall ensure that the regulated entity concerned submits by 30 April of the relevant year to the relevant competent authority a duly substantiated report in accordance with the provisions of Article 30f. If the data submitted are duly substantiated, the competent authority shall notify the Commission thereof by 30 June of the relevant year. The quantity of allowances to be issued under paragraph 1 shall be adjusted taking into account the duly substantiated submitted report.

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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. 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 ***paragraphs*** 3 ***to 5***. The additional volumes to be auctioned shall only be used for surrendering allowances pursuant to Article 30e(2) and ***may be auctioned until 31 May 2028. The additional volumes shall*** be deducted from the auction volumes for the period from ***2029*** to ***2031***. 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 ***Social Climate*** Fund established ***by Regulation (EU) 20…/nn [Social Climate Fund Regulation] until 2032.***

3a. From the remaining amount of allowances and in order to generate, together with the revenue from the allowances referred to in paragraph 3 and Article 10a(8b), a maximum amount of EUR 65 000 000 000, the Commission shall ensure the auctioning of an additional volume of allowances covered by this Chapter that shall be made available for the Social Climate Fund established by Regulation (EU) 20…/nn [Social Climate Fund Regulation] until 2032.

The Commission shall ensure that the allowances destined for the Social Climate Fund referred to in paragraph 3 and in this paragraph are auctioned in accordance with the principles and modalities of Article 10(4) and the delegated act adopted in accordance with that provision.

The revenues from the auctioning of the allowances referred to in paragraph 3 and in this paragraph shall constitute external assigned revenue in accordance with Article 21(5) of Regulation (EU, Euratom) 2018/1046, and shall be implemented in accordance with the rules applicable to the Social Climate Fund.

The annual amount allocated to the Social Climate Fund in accordance with Article 10a(8b), paragraph 3 and this paragraph shall not exceed:

(a) for 2026, EUR 4 000 000 000;

(b) for 2027, EUR 10 900 000 000;

(c) for 2028, EUR 10 500 000 000;

(d) for 2029, EUR 10 300 000 000;

(e) for 2030, EUR 10 100 000 000;

(f) for 2031, EUR 9 800 000 000;

(g) for 2032, EUR 9 400 000 000.

Where the emissions trading established in accordance with this Chapter is postponed until 2028 pursuant to Article 30k, the maximum amount to be made available to the Social Climate Fund in accordance with the first subparagraph shall be EUR 54 600 000 000. In such a case, the annual amounts allocated to the Fund shall not exceed cumulatively for 2026-2027, EUR 4 000 000 000, and for the period from 1 January 2028 until 31 December 2032, the relevant annual amount shall not exceed:

(a) for 2028, EUR 11 400 000 000;

(b) for 2029, EUR 10 300 000 000;

(c) for 2030, EUR 10 100 000 000;

(d) for 2031, EUR 9 800 000 000;

(e) for 2032, EUR 9 000 000 000.

In case revenue generated from the auctioning referred to in paragraph 4 is established as an own resource in accordance with Article 311(3) TFEU, Article 10a(8b), paragraph 3 and this paragraph shall cease to apply.

4. The total quantity of allowances covered by this Chapter after deducting the quantities set out in ***paragraphs*** 3 ***and 3a***, 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 ***categories of emission sources referred to in paragraph 2 point (b) to (d) of Annex III*** for the average of the period from 2016 to 2018, of the Member State concerned***, as comprehensively reviewed pursuant to Article 4(3) of that Regulation.***

5. Member States shall determine the use of revenues generated from the auctioning of allowances referred to in paragraph 4, except for the revenues ***constituting externally assigned revenue in accordance with paragraph 3a or the revenues*** established as own resources in accordance with Article 311(3) TFEU and entered in the Union budget. Member States shall use their revenues ***or the equivalent in financial value of these revenues*** for one or more of the ***purposes*** referred to in Article 10(3), ***giving priority to activities that can contribute to address social aspects of the emission trading under this Chapter,*** 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***;***

(c) to finance their Social Climate Plan in accordance with Article 14 of Regulation (EU) 20…/nn [Social Climate Fund Regulation];

(d) to provide financial compensation to the final consumers of the fuels in cases where it was not possible to avoid double counting of emissions or where allowances have been surrendered for emissions not covered by this Chapter as referred to in Article 30f(4).

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), ***second*** and ***third*** 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 ***31 May*** 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.

3. Until 31 December 2030, by way of derogation from the first and second paragraphs, where a regulated entity established in a given Member State is subject to a national carbon tax in force for the years 2027 to 2030, covering an activity referred to in Annex III, the competent authority of the Member State concerned may exempt that regulated entity from the obligation to surrender allowances under paragraph 2 for a given reference year, provided that:

(a) the Member State concerned notifies the Commission of its national carbon tax, covering an activity referred to in Annex III by 31 December 2023 and the national law setting the tax rates applicable for the years 2027 to 2030 has, at that point in time, entered into force. The Member State concerned shall notify the Commission of any subsequent change to the national carbon tax;

(b) for the reference year, the national carbon tax of the Member State concerned effectively paid by that regulated entity is higher than the average auction clearing price of the emissions trading system established under this Chapter;

(c) the regulated entity fully complies with the obligations under Article 30b on the greenhouse emissions permits and Article 30f on the monitoring, reporting and verification of its emissions;

(d) the Member State concerned notifies the Commission of the application of any such exemption and the corresponding volume of allowances to be cancelled in accordance with point (g) and the delegated acts adopted pursuant to Article 10(4) by 31 May of the year after the reference year;

(e) the Commission does not raise an objection to the application of the derogation on the ground that the measure notified is not in conformity with the conditions set out in this paragraph, within three months from a notification under point (a) or within one month after the notification for the relevant year under point (d);

(f) the Member State concerned does not auction the volume of allowances referred to in Article 30d(4) for a particular reference year until the quantity of volume of allowances to be cancelled under this paragraph is determined in accordance with point (g). The Member State concerned shall not auction any of the additional volume of allowances pursuant to Article 30d(2), first subparagraph.

(g) the Member State concerned cancels a volume of allowances from the total quantity of allowances to be auctioned by it referred to in Article 30d(4) for the reference year equal to the verified emissions of that regulated entity under this Chapter for the reference year. Where the volume of allowance that remains to be auctioned in the reference year following application of point f) is below the volume of allowances to be cancelled under this paragraph, the Member State concerned shall ensure that it cancels the volume of allowances corresponding to the difference by the end of the year after the reference year; and

(h) the Member State concerned commits, at the time of the first notification under point (a), to use for one or more of the measures listed or referred to in Article 30d(5), first subparagraph, an amount equivalent to the revenues to which Article 30d(5) would have applied in the absence of this derogation. The second and third subparagraph of Article 30d(5) shall apply and the Commission shall ensure that the information received pursuant thereto is in conformity with the commitment made.

The volume of allowances to be cancelled under point (g) shall not affect the externally assigned revenue established pursuant to Article 30d(3a) or, where it has been established pursuant to Article 311(3) TFEU, the own resources of the Union budget pursuant to Council Decision (EU, Euratom) 2020/2053 from the revenues generated from auctioning of allowances in accordance with Article 30d.

4. Hospitals which are not covered by Chapter III of this Directive may be provided financial compensation for the cost passed on to them due to the surrender of allowances under this Chapter. For this purpose, the provisions of this Chapter applicable to the cases of double counting shall apply mutatis mutandis.

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).

2a. From 1 January 2028, Member States shall ensure that, by 30 April each year until 2030, the regulated entity reports the average share of costs related to the surrender of allowances under Chapter IVa of Directive 2003/87/EC which they passed on to consumers for the preceding year. The Commission shall adopt implementing acts concerning the requirements and templates for these reports. These implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2). The Commission shall assess the submitted reports and annually report its findings to the European Parliament and the Council. In the case the Commission finds that improper practices exist with regard to the pass through of carbon costs, the report may be accompanied, if appropriate, by legislative proposals aimed at addressing such improper practices.

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 ***April*** 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 ▌sectors ▌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 ***limit the*** risk of double counting of emissions covered under this Chapter and the emissions under Chapters II ▌ and III, ***as well as the risk of allowances being surrendered for emissions not covered by this Chapter***.

The Commission shall adopt implementing acts concerning the detailed rules for avoiding double counting and allowances being surrendered for emissions not covered by this Chapter, as well as for providing financial compensation to the final consumers of the fuels in cases where such double counting or surrender may not be avoided. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).The calculation of the financial compensation to the final consumers of the fuels shall be based on the average price of allowances in the auctions carried out in accordance with the act adopted under Article 10(4) in the relevant reporting year.

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.

7. Member States may allow simplified monitoring, reporting and verification measures for regulated entities whose annual emissions corresponding to the quantities of fuels released for consumption are less than 1000 tonnes of carbon dioxide equivalent, in accordance with the acts referred to in Article 14(1).

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 ***operators*** shall be read as if it were a reference to regulated entities covered by this Chapter;

(c) any reference to allowances shall be read as if it were a reference to the allowances covered by this Chapter.

Article 30h

Measures in the event of excessive price increase

1. Where, for more than three consecutive months, the average price of ***allowances*** in the auctions carried out in accordance with the act adopted under Article 10(4) is more than twice the average price of ***allowances*** 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.

1a. Where the average price of allowances referred to in paragraph 1 exceeds a price of EUR 45 during a period of two consecutive months, 20 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. The indexation to the European index of consumer prices of 2020 shall apply. The mechanism under this paragraph shall release allowances up to 31 December 2029.

2. Where ▌ the average price of ***allowances referred to in paragraph 1*** is more than three times the average price of allowance during the six preceding consecutive months***,*** 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.

2a. Where a condition referred to in paragraph 1a has been met on the same day as the condition in paragraphs 1 or 2, additional allowances shall be released only pursuant to paragraphs 1 or 2.

2b. Before paragraph 1a ceases to apply, the Commission shall present a report to the European Parliament and to the Council in which it assesses whether the mechanism referred to in paragraph 1a has been effective and whether it should be continued. The Commission shall, where appropriate, accompany that report with a legislative proposal to the European Parliament and to the Council to amend this Directive to adjust that mechanism.

3. Where a condition referred to in paragraph 1, 1a or 2 has been met and resulted in a release of allowances, additional allowances shall not be released pursuant to this Article earlier than 12 months thereafter.

4. Where, within the second half of the period of 12 months referred to in paragraph 3, the condition in paragraph 1a has been met again, the Commission shall, assisted by the Committee, established by Article 44 of Regulation (EU) 2018/1999, assess the effectiveness of the measure and may by means of an implementing act decide that paragraph 3 shall not apply. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

5. Where a condition in paragraph 1, 1a 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 paragraph 1, 1a or 2 was met.

6. Member States that are subject to the obligation to provide a corrective action plan in accordance with Article 8 of Regulation (EU) 2018/842 shall take due account of the effects of the release of additional allowances pursuant to paragraph 1a during the previous two years when considering additional actions to be implemented as referred to in Article 8(1)(c) in order to meet their obligations under that Regulation.

Article 30i

Review of this Chapter

By 1 January 2028, the Commission shall report to the European Parliament and to the Council on the implementation of the provisions of this Chapter with regard to their effectiveness, administration and practical application, including on the application of the rules under Decision (EU) 2015/1814. Where appropriate, the Commission shall accompany this report with a proposal to the European Parliament and to the Council to amend this Chapter. By 31 October 2031 the Commission should assess the feasibility of integrating the sectors covered by Annex III in the Emissions Trading System covering the sectors listed in Annex 1 of Directive 2003/87/EC.

Article 30j

Procedures for unilateral extension of the activity referred to in Annex III to other sectors not subject to Chapter II and III

1. From 2027 Member States may apply emission trading in accordance with this Chapter in sectors not listed in Annex III, taking into account all relevant criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the emission trading system established pursuant to this Chapter and the reliability of the planned monitoring and reporting system, provided that the extension of the activity is approved by the Commission.

The Commission is empowered to adopt delegated acts in accordance with Article 23 concerning the approval of an extension, authorisation for the issue of additional allowances and authorisation of other Member States to extend the activity. The Commission may also, when adopting such delegated acts, supplement the extension with further rules governing measures to address possible instances of double counting, including for the issue of additional allowances to compensate for allowances surrendered for use of fuels in activities listed in Annex I. Any financial measures by the Member States in favour of companies in sectors and 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 fuel prices due to the unilateral extension shall be in accordance with State aid rules, and shall not cause undue distortions of competition in the internal market.

2. Additional allowances issued pursuant to an authorisation under this Article shall be auctioned in line with the requirements laid down in Article 30d. Notwithstanding Article 30d (1) to (5) the Member States having unilaterally extended the activities shall determine the use of revenues generated from the auctioning of those additional allowances.

Article 30k

Postponement of emissions trading for buildings, road transport and additional sectors until 2028 in the event of exceptionally high energy prices

1. By 15 July 2026, the Commission shall publish in the Official Journal whether one or both of the following conditions were met:

(a) the average TTF gas price of the six calendar months ending 30 June 2026 is higher than the average TTF gas price in February and March 2022;

(b) the average Brent crude oil price of the six calendar months ending 30 June 2026 is more than 2 times the average Brent crude oil price during the five preceding years. The five years reference period shall be the five-year period that ends before the first month of the period of the six calendar months.

2. Where one or both of the conditions referred to in paragraph (1) are met, the following rules shall apply:

(a) by way of derogation from Article 30c(1), the first year for which the Union-wide quantity of allowances is established shall be 2028;

(b) by way of derogation from Articles 30d(1) and Article 30d(2), the start of auctioning of allowances under this Chapter shall be postponed to 2028;

(c) by way of derogation from Article 30d(2), the additional volumes of allowances for the first year of auctions shall be deducted from the auction volumes for the period from 2030 to 2032 and the initial holdings in the market stability reserve shall be created in 2028;

(d) by way of derogation from Article 30e(2), the deadline for initial surrendering of allowances shall be postponed to 30 April 2029 for the total emissions of the year 2028;

(e) by way of derogation from Article 30i, the deadline for the Commission to report to the European Parliament and to the Council shall be postponed to 1 January 2029.";

(21b) the following article is inserted:

"Article 30ib
Scientific advice

The European Scientific Advisory Board on Climate Change established under Article 10a of Regulation (EC) No 401/2009 may, on its own initiative, provide scientific advice and issue reports regarding this Directive. The Commission shall take into account the relevant advice and reports of the Advisory Board, in particular as regards:

- *the need for additional Union policies and measures to ensure compliance with the objectives and targets referred to in Article 30(3);*

- *the need for additional Union policies and measures in view of agreements on global measures within ICAO to reduce climate impact from aviation and the ambition and environmental integrity of the global market-based measure from the IMO referred to in Article 3ge.";*

(21c) the following Article is inserted after Article 30ib:

"Article 30ic
Information, communication and publicity

1. The Commission shall ensure the visibility of funding from EU ETS auctioning revenues referred to in Article 10a(8) (Innovation Fund) of this Directive by:

(a) ensuring that the beneficiaries of such funding acknowledge the origin of those funds and ensure the visibility of the Union funding, in particular when promoting the projects and their results, by providing coherent, effective and proportionate targeted information to multiple audiences, including the media and the public; and

(b) ensuring that the recipients of such funding use an appropriate label that reads '(co-) funded from by the EU Emissions Trading System (the Innovation Fund)', as well as the emblem of the Union and the amount of funding. Where the use of this label is not feasible, the Innovation Fund shall be mentioned in all communication activities, including on notice boards at strategic places visible to the public.

The Commission shall in the delegated act referred to in Article 10a(8) set the necessary requirements to ensure the visibility of funding from the Innovation Fund, including the mentioning of that Fund.

2. Member States shall ensure the visibility of funding from EU ETS auctioning revenues referred to in Article 10d (Modernisation Fund) corresponding to what is referred to in paragraph 1, points a) and b), including the mentioning of the Modernisation Fund.

3. Taking into account national circumstances, the Member States shall endeavour to ensure the visibility of the source of the funding of actions or projects funded from the EU ETS auctioning revenues for which they determine the use as referred to in Articles 3d(4), 10(3) and Article 30d (5).";

(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 ***and*** IIIa ▌ 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 ***first and*** second ***sentences are*** replaced by the following:

"***The Commission shall publish the total number of allowances in circulation each year by 1 June of the subsequent year.*** The total number of allowances in circulation in a given year shall be the cumulative number of allowances issued ***in respect of installations and shipping companies*** and not 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.";

(d) paragraph 7 replaced by the following:

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

(2) the following Article 1a is inserted:

"Article 1a
Operation of the Market Stability Reserve for the buildings***,*** road transport ***and additional*** sectors

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

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

3. In ***2027***, the section referred to in paragraph 1 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 ***1 June*** 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 ***2027***, minus the cumulative tonnes of verified emissions covered by Chapter IVa of Directive 2003/87/EC for the period between 1 January ***2027*** 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 ***1 June 2028***.

5. In any given year, if the total number of allowances in circulation, as set out in the most recent publication as referred to in paragraph 4 of this Article, is above 440 million allowances, 100 million allowances shall be deducted from the 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. ***The volumes to be released from the reserve shall be evenly distributed during*** a period of three months***, starting no later than two months 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.

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

(2a) Article 3 is replaced by the following:

"Article 3
Review

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

▌

Article ***3***
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ***Article*** 1 ▌ of this Directive by 31 December 2023***. They shall apply those provisions from 1 January 2024***.

However, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the following articles by 30 June 2024:

(i) Article 1(2), points (x) to (zb), of this Directive;

(ii) Article 1(21) of this Directive with the exception of Article 30f(3) of Directive 2003/87/EC as inserted by that Article; and

(iii) Article 1(22) of this Directive regarding Annexes III and IIIa of Directive 2003/87/EC as inserted by that Article.

They shall ***immediately inform*** the Commission ***thereof.***

When Member States adopt those ***measures***, they shall contain a reference to this Directive or ***shall*** be accompanied by such ▌ reference on the occasion of their official publication. ***The methods of making such reference shall be laid down by*** Member States▌ .

2. Member States shall communicate to the Commission the text of the main ***measures*** of national law which they adopt in the field covered by this Directive.

Article ***4***

Transitional provisions

1. When complying with their obligation set out in Article ***3(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, ***points*** 1 ***and 3***, 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. ***By way of derogation from the last sentence of the first subparagraph of Article 3(1), they shall apply their national measures transposing amendments to those provisions from 1 January 2026.***

▌

Article ***5***

Entry into force ***and application***

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

Article ***6***

Addressees

This Directive is addressed to the Member States. ▌

Done at Brussels ..., ...

For the European Parliament *For the Council*

The President *The President*

ANNEX

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

▌ 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.";

▌ The table is amended as follows:

(-i) The first row is replaced by the following:

Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste) ***From 1 January 2024, combustion of fuels in installations for the incineration of municipal waste with a total rated thermal input exceeding 20 MW, for the purposes of Articles 14 and 15.***	***Carbon dioxide***

(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";

(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";

(iii) The seventh row is replaced by the following:

"Production of primary aluminium or alumina	Carbon dioxide ***and perfluorocarbons***";

(***iv***) The fifteenth row of categories of activities is replaced by the following:

"Drying or calcination of gypsum or production of plaster boards and other gypsum products, with a production capacity of calcined gypsum or dried secondary gypsum exceeding a total of 20 tonnes per day	Carbon dioxide";

(***v***) 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";

(***vi***) The twenty-fourth row is replaced by the following:

"Production of hydrogen (***H_2***) and synthesis gas with a production capacity exceeding **5** tonnes per day	Carbon dioxide";

(***vii***) 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";

(***viii***) the following row is added after the last new row, with a separation line in between:

"Maritime transport Maritime transport activities ▌ covered by Regulation (EU) 2015/757 of the European Parliament and of the Council ▌ with the ***exception of the maritime transport activities covered by Article 2(1a) and, until 31 December 2026, Article 2(1b) of that Regulation***	***Carbon dioxide;*** ***From 1 January 2026: methane and nitrous oxide***";

(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	***4,9*** %
Czechia	***12,6*** %
Estonia	***2,1*** %
Greece	***10,1*** %
Croatia	2,3 %
Latvia	***1,0*** %
Lithuania	1,9 %
Hungary	***5,8*** %
Poland	***34,2*** %
Portugal	***8,6*** %
Romania	***9,7*** %
Slovakia	***4,8*** %
Slovenia	***2,0 %***

(2) The following Annexes are inserted as Annexes III ***and*** IIIa ▌ 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 ***and additional sectors***. 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) ***or if used for combustion in installations excluded under Article 27a of this Directive***; (b) the release for consumption of fuels for which the emission factor is zero***;*** ***(c) the release for consumption of hazardous or municipal waste used as fuel.*** 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).	Carbon dioxide (CO_2)

3. Additional sectors shall correspond to the following sources of emissions, defined in 2006 IPCC Guidelines for National Greenhouse Gas Inventories: ***(a) Energy industries (source category code 1A1), excluding the categories defined under paragraph 2 point (a) of this Annex;*** ***(b) Manufacturing Industries and Construction (source category code 1A2).***	

_____

ANNEX IIIa

ADJUSTMENT OF LINEAR REDUCTION FACTOR IN ACCORDANCE WITH ARTICLE 30c(2)

1. If the average emissions reported under Chapter IVa for the years 2024 to 2026 are more than 2% higher compared to the value of the 2025 quantity defined in accordance with Article 30c(1), and if these differences are not due to the difference of less than 5% between the emissions reported under Chapter IVa and the inventory data of 2025 Union greenhouse gas emissions from UNFCCC source categories for the sectors covered under Chapter IVa, the linear reduction factor shall be calculated by adjusting the linear reduction factor referred to in Article 30c(1).

2. The adjusted linear reduction factor in accordance with point 1 shall be determined as follows:

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

LRF_{adj} is the adjusted linear reduction factor;

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

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

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

_____

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

(a) 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.”;

(c) 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 ▌ sectors ▌ 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.”.

ANNEX II

2021/0211(COD) – MRV

REGULATION (EU) 2023/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending ▌ Regulation (EU) 2015/757 ***in order to provide for the inclusion of maritime transport activities in the EU Emissions Trading System and of other greenhouse gases than CO_2***

(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[36],

Having regard to the opinion of the Committee of the Regions[37],

Acting in accordance with the ordinary legislative procedure[38],

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[36] OJ C ***152***, ***6.4.2022***, p. ***175***.
[37] OJ C ***301***, ***5.8.2022***, p. ***116***.
[38] ***Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...***

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')[39]. 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. ***This has been reinforced with the adoption of the Glasgow Climate Pact in November 2021, in which the Conference of the Parties recognises that the impacts of climate change will be much lower at the temperature increase of 1,5 ºC, compared with 2 ºC, and resolve to pursue efforts to limit the temperature increase to 1,5 ºC.***

(1a) The urgency of the need to keep the Paris Agreement goal of 1,5 °C alive has become more significant following the findings of the IPCC Sixth Assessment Report, that global warming can only be limited to 1.5 °C, if strong and sustained reductions in global greenhouse gas (GHG) emissions within this decade are immediately undertaken.

(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[40].

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39 Paris Agreement (OJ L 282, 19.10.2016, p. 4).

40 COM(2019)640 final.

(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. ***This transition affects workers from various sectors differently.*** At the same time, ***that*** transition ***has gender equality aspects as well as*** has a particular impact on some disadvantaged ***and vulnerable*** groups, such as older people, persons with disabilities***,*** persons with a minority racial or ethnic background ***and low and lower-middle income individuals and households. It also imposes greater challenges on certain regions, in particular structurally disadvantaged and peripheral regions, as well as islands***. It must therefore be ensured that the transition is just and inclusive, leaving no one behind.

(4) The necessity and value of ***delivering on*** 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 ***in a manner that is just and results in no one being left behind, including those at risk of energy poverty***. European citizens continue to express strong views that this applies in particular to climate change ▌.

(5) The Union committed 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[41].

[41] 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[42] the Union has enshrined ***in legislation*** the target of economy-wide climate neutrality by 2050***, at the latest, and the aim to achieve negative emissions thereafter***. 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. ***That Regulation also establishes that the Commission should endeavour to align all future legislative and budgetary proposals with the objectives and targets set out in that Regulation and, in any case of non-alignment, provide the reasons as part of the impact assessment accompanying those proposals.***

(7) All sectors of the economy need to contribute to achieving those emission reductions. Directive 2003/87/EC ***is therefore being amended to include the maritime transport sector in the EU ETS in order to ensure that that sector contributes to the increased climate objectives of the Union as well as to the objectives of the Paris Agreement.*** It is ***therefore also*** necessary to amend Regulation (EU) 2015/757 to take into account the inclusion of the maritime transport sector in the EU ETS. *(recital 7 and ex. recital 67)*

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42 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).

(8) ***Furthermore, to take into account the increased climate objectives of the Union as well as the objectives of the Paris Agreement, the scope of Regulation (EU) 2015/757 should be amended. A robust monitoring, reporting and verification system is a prerequisite for any market-based measure, efficiency standard or other measure, whether applied at Union level or globally. While CO_2 emissions represent the large majority of shipping emissions, methane and nitrous oxide emissions represent a relevant share of shipping emissions. The inclusion of methane and nitrous oxide emissions in Regulation (EU) 2015/757 would be beneficial for environmental integrity and incentivising good practices, and should be implemented as from 2024. General cargo ships below 5 000 gross tonnage but not below 400 gross tonnage represent a significant share of emissions of all general cargo ships. To increase the environmental effectiveness of the MRV system, ensure a level-playing field and reduce the risk of circumvention, general cargo ships below 5 000 gross tonnage but not below 400 gross tonnage should be included in Regulation (EU) 2015/757 as from 2025. Offshore ships emit a relevant share of emissions. Therefore, Regulation (EU) 2015/757 should also apply to offshore ships above 400 gross tonnage as from 2025. The Commission should assess before 31 December 2024 whether additional ship types below 5 000 gross tonnage but not below 400 gross tonnage should be included in that Regulation.***

(9) 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 ***to the responsible administering authority*** and ***submit*** aggregated emissions data at company level to the responsible administering authority. ***When performing the verifications at company level, the verifier should not verify the emissions report at ship level and the reports referred to in Article 11(2) of that Regulation, as those reports at ship level would have been already verified. To ensure coherence in administration and enforcement, the entity responsible for compliance with Regulation (EU) 2015/757 should be the same as the entity responsible for compliance with Directive 2003/87/EC.*** *(ex. recital 67)*

(10) In order to ***ensure the effective functioning of the EU ETS at administrative level and to take into account the inclusion of methane and nitrous oxide emissions in the scope of Regulation (EU) 2015/757, as well as the emissions from offshore ships***, 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 ***the monitoring methods and rules and the reporting rules for emissions covered by Regulation (EU) 2015/757, as well as any other relevant information set out in that Regulation, the rules for the approval of monitoring plans and changes thereof by administering authorities, the rules for the monitoring, reporting and submission of aggregated emissions data at company level and the rules for verification of aggregated emissions data at company level and for the issuance of verification reports in respect of aggregated emissions data at company level.*** 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 of 13 April 2016 ***on Better Law-Making***[43]. 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. *(ex. recital 60)*

(11) ***Since the objectives of this Regulation, namely to provide for monitoring, reporting and verification rules that are necessary for an extension of the EU ETS to maritime transport activities and to provide for the monitoring, reporting and verification of emissions of additional greenhouse gases and ship types, 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 Regulation does not go beyond what is necessary in order to achieve those objectives.***

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[43] ***OJ L 123, 12.5.2016, p. 1.***

(12) Regulation (EU) 2015/757 should therefore be amended accordingly, *(ex. recital 68)*

HAVE ADOPTED THIS ***REGULATION:***

Article ***1***

Amendments to Regulation (EU) 2015/757

Regulation (EU) 2015/757 is amended as follows:

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

'Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of greenhouse gas emissions from maritime transport, and amending Directive 2009/16/EC';

***(-1a) throughout the Regulation, except in Articles 1 and 2, Article 3, point (a), and Article 21(5) and Annexes I and II, the term 'CO_2' is replaced by 'greenhouse gas' and any necessary grammatical changes are made*;**

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

'Article 1
Subject matter

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.';

(-1c) 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 for transporting, for commercial purposes, cargo or passengers 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. From 1 January 2025, this Regulation shall also apply to general cargo ships below 5 000 gross tonnage but not below 400 gross tonnage in respect of the greenhouse gas emissions released during their voyages for transporting cargo for commercial purposes 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 and to offshore ships below 5 000 gross tonnage but not below 400 gross tonnage 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.

1b. From 1 January 2025, this Regulation shall apply to offshore 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.

1c. The greenhouse gases covered by this Regulation are:

(a) carbon dioxide (CO_2);

(b) with regard to emissions from 2024 onwards, methane (CH_4); and

(c) with regard to emissions from 2024 onwards, nitrous oxide (N_2O).

Where this Regulation refers to total aggregated emissions of greenhouse gases or total aggregated greenhouse gas emitted, it shall be understood as referring to the total aggregated amounts of each gas separately.';

(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 gases covered by this Regulation in accordance with Article 2(1c) by ships;';

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

'(b) "port of call" means a port of call as defined in Article 3, point (wa), of Directive 2003/87/EC of the European Parliament and of the Council;

(c) "voyage" means any movement of a ship that originates from or terminates in a port of call;

(d) "company" means the shipping company as defined in Article 3, point (v), of Directive 2003/87/EC;

(m) "reporting period" means the period from 1 January until 31 December of any given calendar year; 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(*);

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

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(*) 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 to this Regulation***, in order to take into account ***the inclusion of methane and nitrous oxide emissions, as well as the inclusion of emissions from offshore ships, in the scope of this Regulation, amendments*** of Directive 2003/87/EC***, as well as to align those Annexes with the implementing acts adopted under Article 14(1) of that Directive***, 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 ***to this Regulation*** 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 the delegated acts to take into account the inclusion of methane and nitrous oxide emissions in the scope of this Regulation, as referred to in the first subparagraph of this paragraph, by 1 October 2023. The methods for monitoring such emissions shall be based on the same principles as the methods for monitoring CO_2 emissions as set out in Annex I, with any adjustments necessary to reflect the nature of the relevant greenhouse gas emissions. 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 set out in 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 oxide 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 ... [***two years ***after*** the date of 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.

By 1 October 2023, the Commission shall adopt delegated acts in accordance with Article 23 to amend Articles 6, 7, 8, 9 and 10 of this Regulation concerning the rules for monitoring plans to take account of the inclusion of methane and nitrous oxide emissions, as well as emissions from offshore ships, 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:

'(k) total aggregated ▌ emissions ***of greenhouse gases covered by Directive 2003/87/EC in relation to maritime transport activities in accordance with Annex I to that Directive*** to be reported under ***that*** Directive ▌ in relation to maritime transport activities***, together with the necessary information to justify the application of any relevant derogation from Article 12(3) of that Directive provided for in Article 12, paragraphs 3-e, 3-d, 3-c and 3-b thereof***.';

(6a) in Article-11, paragraph 1 the following subparagraph is added:

'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 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.';

(6b) 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 verified report covering the same elements as the emissions report referred to in paragraph 1, but limited to the period corresponding to the activities carried out under its responsibility.';

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

'4. By 1 October 2023, the Commission shall adopt delegated acts in accordance with Article 23 to amend the provisions of this Regulation concerning the rules for reporting as laid down in Articles 11, 11a and 12 to take account of the inclusion of methane and nitrous oxide emissions, as well as emissions from offshore ships, in the scope of this Regulation.';

(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.

2. 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 gas*** 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 to 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 ***reports*** 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:

‘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 until the company fulfils its obligations.

Where a ship that flies the flag of a Member State is found to have failed to comply with the monitoring and reporting requirements 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, EMSA and the other Member States thereof.

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(2), point (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-CO_2-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 2024, review this Regulation, taking into account in particular further experience gained in its implementation notably in view 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 ***a*** period of ***five years*** from the entry into force of [revised MRV Regulation]. ***The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period***.’;

(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 Article 5(2), second subparagraph, Article 6(8), second subparagraph, 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 (1), point (b), shall apply from 1 January 2024.

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

Done at ▌ ..., ...

For the European Parliament	*For the Council*
The President	*The President*

2021/0202(COD) - MSR

DECISION (EU) 2023/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Decision (EU) 2015/1814 as regards the amount of allowances to be placed in the market stability reserve for the Union greenhouse gas emission trading scheme until 2030

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[44],

Having regard to the opinion of the Committee of the Regions[45],

Acting in accordance with the ordinary legislative procedure,

[44] OJ C , , p. .
[45] OJ C , , p. .

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")[46]. ***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. ***This has been reinforced with the adoption of the Glasgow Climate Pact in November 2021, in which the Conference of the Parties recognises that the impacts of climate change will be much lower at the temperature increase of 1,5 ºC, compared with 2 ºC, and resolve to pursue efforts to limit the temperature increase to 1,5 ºC.***

(1a) The urgency of the need to keep the Paris Agreement goal of 1,5 °C alive has become more significant following the findings of the IPCC Sixth Assessment Report, that global warming can only be limited to 1.5 °C, if strong and sustained reductions in global greenhouse gas (GHG) emissions within this decade are immediately undertaken.

(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[47].

[46] Paris Agreement (OJ L 282, 19.10.2016, p. 4).
[47] COM(2019)640 final.

(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, ***that*** transition ***has gender equality aspects as well as*** a particular impact on some disadvantaged ***and vulnerable*** groups, such as older people, persons with disabilities**,** persons with a minority racial or ethnic background ***and low and lower-middle income individuals and households. It also imposes greater challenges on certain regions, in particular structurally disadvantaged and peripheral regions, as well as islands***. It must therefore be ensured that the transition is just and inclusive, leaving no one behind.

(4) The necessity and value of ***delivering on*** 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 ***in a manner that is just and results in no one being left behind, including those at risk of energy poverty***. European citizens continue to express strong views that this applies in particular to climate change[48].

(5) The Union committed 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[49].

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[48] Special Eurobarometer 513 on Climate Change, 2021, https://ec.europa.eu/clima/citizens/support_en.

[49] https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/European %20Union %20First/EU_NDC_Submission_December %202020.pdf

(6) In Regulation (EU) 2021/1119 ▌ the Union has enshrined ***in legislation*** the target of economy-wide climate neutrality by 2050***, at the latest, and the aim to achieve negative emissions thereafter***. 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. ***That Regulation also establishes that the Commission should endeavour to align all future legislative and budgetary proposals with the objectives and targets set out in that Regulation and, in any case of non-alignment, provide the reasons as part of the impact assessment accompanying those proposals.***

(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[50], should be adjusted to be in line with the economy-wide net greenhouse gas emissions reduction commitment for 2030***, and be in line with the objective of achieving climate neutrality by 2050 at the latest, and the aim to achieve negative emissions thereafter, as laid down in Article 2(1) of Regulation (EU) 2021/1119.***

[50] 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).

(8) In order to address the structural imbalance between supply and demand of allowances in the market, Decision (EU) 2015/1814 of the European Parliament and of the Council[51] established a market stability reserve (the 'reserve') in 2018, which has been operational since 2019. ***Without prejudice to further revisions of the reserve as part of the general revision of Directive 2003/87/EC and Decision (EU) 2015/1814 taking place in 2022, the Commission should continuously monitor the functioning of the reserve and ensure that the reserve is kept fit for purpose in case of future unforeseeable external shocks. A robust and forward-looking reserve is essential to ensure the integrity of and effectively steer the EU ETS in order for it to contribute, as a policy tool, to achieving the Union's climate-neutrality objective by 2050, at the latest, and the aim to achieve negative emissions thereafter as laid down in Article 2(1) of Regulation (EU) 2021/1119.***

(9) The reserve functions by triggering adjustments to the annual volumes of allowances to be auctioned. In order to preserve a maximum degree of predictability, Decision (EU) 2015/1814 established clear rules for placing and releasing allowances in the reserve.

(10) Where the number of allowances in circulation is above the established upper threshold, an amount of allowances corresponding to a given percentage of these allowances is deducted from the volumes of allowances to be auctioned and placed in the reserve. Meanwhile, a corresponding number of allowances is released from the reserve to Member States, and added to the volumes of the allowances to be auctioned, if the total number of allowances in circulation falls below the established lower threshold.

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51 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).

(11) Directive (EU) 2018/410 of the European Parliament and of the Council[52] amended Decision (EU) 2015/1814 by doubling the percentage rate to be used for determining the number of allowances to be placed each year in the reserve from 12 % to 24 % until 31 December 2023 ***to deliver a credible investment signal to reduce CO_2 emissions in a cost-efficient manner. That decision was taken in the context of the former Union 2030 climate target of reducing economy-wide greenhouse gas emissions by at least 40 % compared to 1990 levels***.

(12) In accordance with Decision (EU) 2015/1814, within three years of the start of the operation of the reserve, the Commission is to carry out its first review on the basis of an analysis of the orderly functioning of the European carbon market and, where appropriate, submit a proposal to the European Parliament and to the Council.

(13) The review paid particular attention to the percentage figure for the determination of the number of allowances to be placed in the reserve, as well as to the numerical value of the threshold for the total number of allowances in circulation and the number of allowances to be released from the reserve.

(14) The analysis carried out in the context of the reserve's review and the expected developments relevant to the carbon market demonstrate that a rate of 12 % of the total number of allowances in circulation to be placed in the reserve each year after 2023 is insufficient to prevent a significant increase of the surplus of allowances in the EU ETS. ***Maintaining the rate of 24 % in this Decision should be without prejudice to further revisions of the reserve, including, if appropriate, revision of the rate of allowances to be placed in the reserve, as part of the general revision of Directive 2003/87/EC and Decision (EU) 2015/1814 taking place in 2022.***

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52 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).

(15b) Since the objective of this Decision, namely the continuation of the current parameters of the market stability reserve as established pursuant to Directive (EU) 2018/410, 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 Decision does not go beyond what is necessary in order to achieve that objective.

(16) Decision (EU) 2015/1814 should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

Article 1

Amendments to Decision (EU) 2015/1814

In Article 1(5), first subparagraph, of Decision (EU) 2015/1814, the last sentence is replaced by the following:

'By way of derogation from the first and second sentences, until 31 December 2030, the percentages and the 100 million allowances referred to in those sentences shall be doubled.'

Article 2

Entry into force

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

Done at ..., ...

For the European Parliament	*For the Council*
The President	*The President*

Council of the European Union

Brussels, 8 February 2023
(OR. en)

6215/23

Interinstitutional File: 2021/0207(COD)

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ENV 114
AVIATION 23
MI 93
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CODEC 149
ICAO 5
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NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	5440/23 + ADD1
No. Cion doc.:	10917/21 - COM (2021) 552
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure - Letter to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI)

Following the Permanent Representatives Committee meeting of 8 February 2023 which endorsed the final compromise text with a view to agreement, delegations are informed that the Presidency sent the attached letter, together with its Annex, to the Chair of the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI).

SGS 23 / 00490

Council of
the European Union

Brussels, 8 February 2023

Mr Pascal CANFIN
Chair, European Parliament Committee on the Environment, Public Health and Food Safety
European Parliament
60, rue Wiertz
1047 BRUSSELS

Subject: ***Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure (2021/0207 (COD))***

Dear Mr Canfin,

Following the informal meeting between the representatives of the three institutions, a draft overall compromise text was agreed today by the Permanent Representatives' Committee.

I am therefore now in a position to confirm that, should the European Parliament adopt its position at first reading, in accordance with Article 294 paragraph 3 of the Treaty, in the form set out in the compromise text contained in the Annex to this letter (subject to revision by the legal linguists of both institutions), the Council would, in accordance with Article 294, paragraph 4 of the Treaty, approve the European Parliament's position and the act shall be adopted in the wording which corresponds to the European Parliament's position.

On behalf of the Council I also wish to thank you for your close cooperation which should enable us to reach agreement on this file at first reading.

Yours sincerely,

Torbjörn Haak
Chairman of the Permanent Representatives
Committee (Part 1)

copy to: Frans Timmermans, Commissioner,
Sunčana GLAVAK, Jan-Christoph OETJEN, Rapporteurs

PE-CONS No/YY - 2021/0207(COD)

DIRECTIVE (EU) .../...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Directive 2003/87/EC as regards aviation's contribution to the Union's economy-wide emission reduction target and appropriately implementing a global market-based measure

(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[1],

Having regard to the opinion of the Committee of the Regions[2],

Acting in accordance with the ordinary legislative procedure,

[1] OJ C,, p..
[2] OJ C,, p..

Whereas:

(1) Directive 2003/87/EC of the European Parliament and of the Council[3] established a system for greenhouse gas emission allowance trading within the Union, in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner. Aviation activities were included in the EU emissions trading system by Directive 2008/101/EC of the European Parliament and of the Council[4]. ***The European Union has competence to extend the allowance trading system by the European Union Emissions Trading System to all flights which arrive at or depart from an aerodrome located in a Member State.***

(2) ***Protection of the environment is one of the most important challenges facing the Union and the rest of the world.*** 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")[5]. The parties to the Paris Agreement 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. ***By adopting the Glasgow Climate Pact in November 2021, its Parties recognised that keeping the increase in the global average temperature to 1,5°C above pre-industrial levels would significantly reduce the risks and impacts of climate change, and committed to strengthen their 2030 targets by the end of 2022 in order to accelerate climate action in this critical decade and to close the ambition gap with the 1,5°C target.*** In order to achieve the objectives of the Paris Agreement, all sectors of the economy need to contribute to achieving emission reductions, including international aviation.

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[3] 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).

[4] Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (*OJ L 8, 13.1.2009, p. 3).*

[5] Paris Agreement (OJ L 282, 19.10.2016, p. 4).

(2a) ***Aviation accounts for 2-3°% of global CO_2 emissions and aviation's total climate impact is at least twice higher than that of CO_2 alone. Aviation is the second biggest source of transport climate impacts after road transport. In 2022, Eurocontrol projected an increase in European aviation activity of 44°% by 2050 compared to 2019. The need for action to reduce emissions is becoming increasingly urgent, as stated by the Intergovernmental Panel on Climate Change (IPCC) in its latest reports of 7 August 2021 entitled 'Climate change 2021: The Physical Science Basis', of 28 February 2022 entitled 'Climate Change 2022: Impacts, Adaptation and Vulnerability', and of 4 April 2022 entitled 'Climate Change 2022: Mitigation of Climate Change'. The report of 4 April 2022 entitled 'Climate Change 2022: Mitigation of Climate Change' identifies international aviation as a sector where 'sectoral agreements have adopted climate mitigation goals that fall far short of what would be required to achieve the long-term temperature goal of the Paris Agreement'. The Union should therefore address this urgency by stepping up its efforts and establishing itself as an international leader in the fight against climate change.***

(3) The International Civil Aviation Organization (ICAO) Council adopted the First Edition of the International Standards and Recommended Practices on Environmental Protection - Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) (Annex 16, Volume IV to the Chicago Convention) at the tenth meeting of its 214th session on 27 June 2018. The Union and its Member States ▌ implement ***CORSIA*** from the start of the pilot phase 2021-2023[6].

[6] Council Decision (EU) 2020/954 of 25 June 2020 on the position to be taken on behalf of the European Union within the International Civil Aviation Organization as regards the notification of voluntary participation in the Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) from 1 January 2021 and the option selected for calculating aeroplane operators' offsetting requirements during the 2021-2023 period (OJ L 212, 3.7.2020, p. 14).

(4) In line with Council Decision (EU) 2018/2027[7], Member States notified the ICAO Secretariat of differences between CORSIA and the EU ETS. The objective was to preserve the Union *acquis* and future policy space, as well as the Union level of climate ambition and the exclusive roles of the European Parliament and Council in deciding the contents of Union legislation. Following the adoption of this amendment to Directive 2003/87/EC, the notification of differences between CORSIA and the EU ETS to the ICAO Secretariat should be updated ***by a second notification of differences consistent with Union law*** to reflect the revisions made to Union law.

(5) 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[8].

(6) The Union undertook to reduce its economy-wide net greenhouse gas emissions by at least 55 % below 1990 levels by 2030 in the updated nationally determined ***contribution*** of the Union and its Member States submitted to the UNFCCC Secretariat on 17 December 2020[9].

(7) ▌In Regulation (EU) 2021/1119 of the European Parliament and of the Council[10], ***the Union has enshrined the target of reducing emissions to net zero at the latest by 2050 and the aim to achieve negative emissions thereafter in legislation***. That Regulation also establishes a binding ***domestic*** Union ***intermediate climate target*** of ***at least a 55 %*** net greenhouse gas emissions ***reduction*** (***i.e.*** emissions after deduction of removals) ▌below 1990 levels by 2030.

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7 Council Decision (EU) 2018/2027 of 29 November 2018 on the position to be taken on behalf of the European Union within the International Civil Aviation Organization in respect of the First Edition of the International Standards and Recommended Practices on Environmental Protection — Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) (OJ L 325, 20.12.2018, p. 25).

8 COM(2019)640 final.

9 ***https://unfccc.int/sites/default/files/NDC/2022-06/EU_NDC_Submission_December%202020.pdf***

10 Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality (European Climate Law) (OJ L 243, 9.7.2021, p. 1).

(8) This amendment to Directive 2003/87/EC ***is essential to ensure the integrity of and effectively steer the EU ETS in order for it to contribute, as a policy tool, to achieving the Union's objectives to reduce by 55 % net greenhouse gas emissions by 2030 and to become climate-neutral by 2050, at the latest, and the aim to achieve negative emissions thereafter as laid down in Article 2(1) of Regulation (EU) 2021/1119 and it thereby also*** aims at the implementation for aviation of the Union's contributions under the Paris Agreement***. Therefore, the total quantity of allowances for aviation should be consolidated and subject to the linear reduction factor***.

(8a) In addition to CO_2, aviation affects the climate through non-CO_2 emissions such as water vapour (H_2O), oxides of nitrogen (NOx), sulphur dioxide (SO_2) and soot particles, as well as through atmospheric processes caused by such emissions, for example the formation of ozone and contrail cirrus. The climate impact of such non-CO_2 emissions depends on the type of fuel and engines used, on the location of the emissions, in particular the cruise altitude of the aircraft, and its position in terms of latitude and longitude, as well as the time of the emissions and the weather conditions at that time. The Commission's Impact Assessment of 2006 on the inclusion of aviation in the EU greenhouse gas Emissions Trading Scheme (EU ETS), Directive 2008/101/EC recognised that aviation has an impact on the global climate through the release of non-CO_2 emissions. Article 30(4) of Directive 2003/87/EC, as amended by Directive (EU) 2018/410 of the European Parliament and of the Council, required the Commission to present an updated analysis of the non-CO_2 effects of aviation, accompanied, where appropriate, by a proposal on how best to address those effects, before 1 January 2020. To fulfil that requirement, the European Union Aviation Safety Agency (EASA) conducted an updated analysis of the non-CO_2 effects of aviation on climate change and published its study on 23 November 2020. The findings of the study confirmed what had been previously estimated, namely that the significance of non-CO_2 climate impacts from aviation activities are at least as important in total as those of CO_2 alone.

(8b) It follows from the findings of the EASA's study of 23 November 2020 that non-CO_2 aviation emissions, in line with the precautionary principle, can no longer be ignored. Union regulatory measures are needed to achieve reductions of emissions in line with the Paris Agreement. Therefore, the Commission should set up a monitoring, reporting and verification scheme for non-CO_2 aviation emissions. Building on the results of this scheme the Commission should submit a report, by 1 January 2028, and where appropriate and based on an impact assessment, submit a legislative proposal containing mitigation measures for non-CO_2 emissions, by expanding the scope of the EU ETS to cover such effects.

(9) Aviation should contribute to the emission reduction efforts necessary for the Union's ***climate neutrality objective and the Union's climate targets as laid down in Regulation (EU) 2021/1119 and the objectives of the Paris Agreement***. Therefore, the total quantity of allowances for aviation should be consolidated and subject to the linear reduction factor.

(10) Achieving the increased climate ambition will require channelling as many resources as possible to the climate transition***, which should also be part of the just transition***. As a result, all auction revenues that are not attributed to the Union budget should be used for climate-related purposes.

(10a) The transition of the aviation sector towards sustainable aviation should take into account the social dimension of the sector and its competitiveness, to ensure that this transition is socially just and provides training, re-skilling and up-skilling for workers. The Commission should present a report to the European Parliament and the Council on the application of this Directive and its social impacts on the aviation sector.

(10b) Flights spanning 1 000 kilometers and less account for 6-9 % of total aviation CO_2 emissions. The Commission should submit a report on measures to promote a modal shift towards alternative, more sustainable modes of transport, pending the technological breakthroughs and availability of zero-emission aviation fuels and aircrafts.

(11) ***The Commission should report on the implementation of the*** ICAO's CORSIA scheme and ***of the ICAO's basket of measures to meet the Long-term global aspirational goal, adopted by ICAO Assembly in October 2022***.

(11a) In order to facilitate progress at ICAO, the Union has three times adopted time-bound derogations to the EU ETS so as to limit compliance obligations to emissions from flights between aerodromes situated in the European Economic Area, with equal treatment on routes of aircraft operators wherever they are based. The most recent derogation from the EU ETS, laid down in Regulation (EU) 2017/2392, limited compliance obligations to intra-EEA flight emissions taking place up to 2023, and envisaged potential changes to the scope of the system as regards activity to and from aerodromes situated outside the EEA from 1 January 2024 onwards following the review set out in that Regulation. In order to assess the implementation of the now existing ICAO CORSIA scheme, and how it is applied in practice, the current derogation from EU ETS obligations should be extended for surrender obligations until 31 December 2026 from flights operated by aeroplane operators not covered by CORSIA to and from relevant third countries, in respect of which EU ETS reporting and surrender obligations would otherwise apply by 31 March and 30 September 2027. This should be the last time-bound derogation to the EU ETS. A review should take place by 1 July 2026. If the ICAO Assembly by 2025 did not strengthen the CORSIA scheme in line with achieving its long-term aspirational goal, towards meeting the Paris Agreement objectives or if countries listed in the Implementing Act referred to in Article 25a(3), represent less than 70 % of international aviation emissions using the most recent available data, then the Commission should propose as appropriate that EU ETS apply to emissions from departing flights from 2027, and that airlines should be able to deduct any costs incurred from CORSIA offsetting on those routes, to avoid double charging. In parallel, if a third country does not apply the CORSIA scheme from 2027, EU ETS should apply to emissions from flights departing to that State.

(12) The total quantity of allowances for aviation should be consolidated at the level of allocation for flights ***or which allowances have to be surrendered in accordance with Directive 2003/87***. The allocation for the year 2024 should be based on the total allocation to active aircraft operators in year 2023, reduced by the linear reduction factor as specified in Article 9 of Directive 2003/87/EC. The level of allocation should be increased to take into account the routes that were not covered by the EU ETS in the year 2023 but are covered by the EU ETS from year 2024 onwards.

(13) Increased auctioning from the year after the entry into force of this amendment to Directive 2003/87/EC should be the rule for the aviation sector allocation of allowances, taking into account the sector's ability to pass on the increased cost of CO_2. ***A gradual phase out of free allocation in 2024 and 2025 and full auctioning from 2026 should be implemented.***

(13a) The EU ETS Directive should contribute to incentivising the decarbonisation of commercial air transport. The transition from the use of fossil fuels would play a role in achieving such decarbonisation. However, considering the high level of competition between aircraft operators, the developing EU market for sustainable aviation fuels, and the important price differential between fossil kerosene and sustainable aviation fuels, that transition should be supported by incentivising early movers. Therefore, during the period from 1 January 2024 until 31 December 2030, 20 million allowances should be reserved to be allocated to cover part of the remaining price differential between fossil kerosene and the eligible aviation fuels for individual aircraft operators. Those allowances should come from the pool of total allowances available and should be used only for flights covered by the surrender requirement of Directive 2003/87/EC and in a non-discriminatory manner. Following an evaluation the Commission could decide to present a legislative proposal to allocate a capped and time-limited amount of allowances, which should not go beyond 31 December 2034.

(13b) Supersonic commercial flights ceased to be offered, inter alia, due to the disproportionally elevated environmental damage. Nevertheless, current trends show intensive research into renewed introduction of supersonic aviation. The positive correlation between the speed of travel and the level of emissions due to fuel burn justify the different treatment between subsonic and supersonic flights. Therefore, it is appropriate to exclude possible future supersonic flights from the support for non-fossil fuels.

(13c) While the EU ETS applies to flights since 2012, the 'Fit for 55' package includes additional measures, which, together with the EU ETS, could have a cumulative impact on the sector. In order to safeguard air connectivity for flights serving island regions or small airports, this Directive's mechanism to bridge the remaining price difference between conventional aviation fuel and alternatives thereto should limit adverse impacts on air connectivity and mitigate the risk of carbon leakage. By 2026, the Commission should report on possible effects on connectivity.

(14) Directive 2003/87/EC should also be amended with regard to acceptable compliance units, to take into account the Unit Eligibility Criteria adopted by the ICAO Council at its 216th session in March 2019 as an essential element of CORSIA. Airlines based in the Union should be able to use ***units*** for compliance ***with CORSIA*** for flights to or from third countries that are considered to be participating in CORSIA. To ensure that the Union's CORSIA implementation supports the Paris Agreement goals and gives incentives for broad participation to CORSIA, the ***units*** should originate from states that are parties to the Paris Agreement and that participate in CORSIA, and double counting of ***units*** should be avoided.

(15) In order to ensure uniform conditions for the use of ***units*** in accordance with Article 11a of Directive 2003/87/EC, implementing powers should be conferred on the Commission to adopt a list of ***units*** which have been considered acceptable by the ICAO Council to use for compliance of CORSIA, and that fulfil the eligibility conditions above. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[11].

(15a) Information on the use of carbon credits to comply with offsetting under the CORSIA scheme should be made publicly available in a no less transparent manner than how it is made available on the use of international credits under this Directive up to 2020 pursuant to Annex XIV of Commission Regulation (EU) No 389/2013.

(16) To ensure that the necessary arrangements are in place for authorisation by the participating parties, timely adjustments to the reporting of anthropogenic emissions by sources and removals by sinks covered by the nationally determined contributions of the participating parties, and avoiding double counting and a net increase in global emissions, implementing powers should be conferred on the Commission to lay down detailed requirements for such arrangements. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[12].

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[11] Regulation (EU) No 182/2011 of the European Parliament and of the Council 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, 28.2.2011, p. 13).

[12] Regulation (EU) No 182/2011 of the European Parliament and of the Council 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, 28.2.2011, p. 13).

(17) ***The calculation of offsetting requirements for*** CORSIA ▌ for Union-based aircraft operators ▌ should be ***made in accordance with implementing acts to be adopted by the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.***

(17a) In October 2022 and in the context of the Covid pandemic, the 41st ICAO Assembly decided to change the previous baseline of ICAO's CORSIA scheme for the years 2024-35 from the average of 2019 and 2020 carbon dioxide emissions to 85 % of 2019 emissions. The average of all reported 2019-20 emissions was 435 859 594 tonnes. 2019 emissions were 608 076 604 tonnes, and 85 % of this figure is 516 865 113 tonnes. However, the actual baseline that ICAO determines to calculate the sector's growth factor is calculated by ICAO using a subset of emissions taking into account only emissions on routes that are subject to offsetting requirements. For the subset of all state pairs subject to offsetting requirements in the year 2021, the average of 2019 and 2020 emissions is not published by ICAO but is estimated to be 245 million tonnes, and the 2019 emissions were 341 380 188 tonnes, 85 % of which is 290 173 160 tonnes. For all state pairs expected to be subject to offsetting requirements in the year 2027, the average of 2019-20 emissions is estimated to be around 373 million tonnes, while 85 % of the corresponding 2019 emissions is estimated to be around 439 million tonnes.

(18) In order to ensure uniform conditions for listing countries which are considered to be applying CORSIA for the purposes of Directive 2003/87/EC pursuant to Article 25a(3) of that Directive, implementing powers should be conferred on the Commission to adopt and maintain the list of states other than EEA countries, Switzerland and the United Kingdom, which are considered to be participating in CORSIA for the purposes of Union law. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(19) As CORSIA implementation and enforcement for aircraft operators based outside the Union is meant to belong solely to the home country of these aircraft operators, ***aircraft operators based outside the Union should not be required to cancel units for*** CORSIA ***compliance under this Directive***.

(19a) As CORSIA implementation and enforcement for aircraft operators based outside the Union is meant to belong solely to the home country of these aircraft operators, where an aircraft operator based outside the Union has significant emissions from flights within the EEA, or departing from an aerodrome in the EEA to Switzerland or to the United Kingdom, the country in which that aircraft operator is based may also notify differences regarding application of CORSIA in respect of intra-European flights. Directive 2003/87/EC should be kept under review in light of developments in this regard.

(20) To ensure equal treatment on routes, flights to and from countries that are not implementing CORSIA ***for the purpose of Union law other than flights departing from an aerodrome located in the EEA and arriving at an aerodrome located in the EEA, in Switzerland or in the United Kingdom*** should be exempt from ***allowances surrendering or units cancelling*** obligations. To incentivise full implementation of CORSIA starting in 2027, the exemption should only apply to emissions up to 31 December 2026 ***for allowances surrendering***.

(20a) Article 191 of the Treaty on the Functioning of the European Union (TFEU) provides that the Union policy on the environment is to contribute to promoting measures at international level combating climate change and sets out that, within their respective spheres of competence, the Union and the Member States are to cooperate with third countries and with the competent international organisations. Those objectives are also relevant for ICAO and the further development of CORSIA.

(20b) Data transparency and public access to information are essential to improve accountability and enforceability. Therefore, the Commission should publish in a user-friendly manner aircraft operators' emissions and offsetting which will facilitate assessing the impact of CORSIA on the global reduction of CO_2 emissions and its role in achieving the goals of the Paris Agreement.

(21) Flights to and from Least Developed Countries and Small Island Developing States, as defined by the United Nations, not implementing CORSIA, ***for the purpose of Union law,*** other than those states whose GDP per capita equals or exceeds the Union average, should be exempt from ***allowances surrendering*** or ***units cancelling*** obligations without an end date for the exemption.

(22) In order to ensure uniform conditions for exempting aircraft operators from ***offsetting*** requirements as laid down in Article 12(8) of Directive 2003/87/EC in respect of emissions from flights to and from countries applying CORSIA in a less stringent manner in its domestic law, or failing to enforce CORSIA provisions in a manner equal to all aircraft operators pursuant to Article 25a(7) of that Directive, implementing powers should be conferred on the Commission to exempt airlines based in the Union from ***offsetting*** requirements in respect of emissions from flights where a significant distortion of competition to the detriment of airlines based in the Union occurs due to a less stringent implementation or enforcement of CORSIA in the third country. The distortion of competition could be caused by a less stringent approach to eligible ***units*** or double counting provisions. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(23) In order to ensure uniform conditions for the establishment of a level playing field on routes between two different countries applying CORSIA where those countries allow aircraft operators to use other units than those on the list adopted pursuant to Article 11a(8) of Directive 2003/87/EC, pursuant to Article 25a(8) of that Directive, implementing powers should be conferred on the Commission to allow aircraft operators based in a Member State to use unit types additional to the list adopted pursuant to Article 11a(8) or not to be bound by the conditions of Article 11a(2) and (3). Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(23a) The emissions factor of Jet Kerosene (Jet A1 or Jet A) under the EU ETS should be aligned with the emissions factor for that fuel established in Annex 16, Volume IV to the Convention on International Civil Aviation signed on 7 December 1944 (Chicago Convention). No change in allocation levels is made as a result of the increase in the emissions factor of Jet Kerosene because free allocations to aviation are being discontinued in favour of auctioning to deliver greater emission reductions.

(23b) Renewable fuels of non-biological origin using hydrogen from renewable sources, compliant with Article 25 of Directive (EU) 2018/2001, should be rated as producing zero emissions for the aircraft operators using them until the detailed rules for the appropriate accounting are set.

(24) In order to ensure a level playing field on routes between two third countries implementing CORSIA, the power to adopt acts in accordance with Article 290 ***TFEU*** should be delegated to the Commission in respect of accepting other ***units*** on those routes. 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 of 13 April 2016 on Better Law-Making[13]. 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.

[13] OJ L 123, 12.5.2016, p. 1.

(25) Special consideration should be given to promoting accessibility for the outermost regions of the Union. Therefore, a ***temporary*** derogation from the EU ETS should be provided ***until 2030*** for emissions from flights between an aerodrome located in an outermost region of a Member State and an aerodrome located in the same Member State ***outside that outermost region in order to respond to the most important needs of residents in terms of employment, education and other opportunities***. ***This derogation should, for the same reasons, cover flights between aerodromes that are both located in the same outermost region or in different outermost regions in the same Member State.***

(26) A comprehensive approach to innovation is important to achieving the European Green Deal objectives and for the competitiveness of the European industry. This is of particular importance for hard to decarbonise sectors such as aviation and shipping where a combination of operational improvements, alternative climate-neutral fuels and technological solutions need to be deployed. Therefore, Member States should ensure that the national transposition provisions do not hamper innovations and are technologically neutral. At EU level, the necessary R&I efforts, are supported among others, through the Horizon Europe Framework Programme, which includes significant funding and new instruments for the sectors coming under the ETS.

(26a) In accordance with Article 12(7) of Directive 2003/87/EC as amended by Decision (EU) 2023/136 of the European Parliament and of the Council[14], that paragraph will apply to the notification to aircraft operators to be made by Member States by 30 November 2023 provided that the transposition date of this Directive has not expired by that date and that the Sector Growth Factor (SGF) for 2022 emissions, to be published by ICAO, equals zero. Therefore, Article 12(7) of Directive 2003/87/EC will apply to the calculation and notification of operators' offsetting requirements in respect of the year 2022 in its version prior to the amendments introduced by this Directive, provided that the Sector Growth Factor (SGF) for 2022 emissions, to be published by ICAO, equals zero.

(26b) The Innovation Fund should support research, the development and deployment of decarbonisation solutions, including zero emission technologies and reduce the climate and environmental impacts of the aviation sector. It should also support electrification and actions to reduce overall impacts of aviation.

(27) Since the objectives of this Directive 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.

(27a) Simplifications and adaptation of administrative procedures to best practice would keep administrative burdens to a minimum.

(28) Directive 2003/87/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

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14 Decision (EU) 2023/136 of the European Parliament and of the Council of 18 January 2023 amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union (OJ L 19, 20.01.2023, p. 1).

Article 1

Directive 2003/87/EC is amended as follows:

(-1) In Article 3, the following point is added:

'(ua) 'non-CO_2 aviation effects' means the effects on climate of the release during fuel combustion of oxides of nitrogen (NOx), soot particles, oxidised sulphur species, and effects from water vapour including contrails, from an aircraft performing an aviation activity listed in Annex I.';

(1) Article 3c is amended as follows:

(a) paragraph 2 is deleted;

(b) the following paragraphs are added:

'5. The Commission shall determine the total quantity of allowances to be allocated in respect of aircraft operators for the year 2024 on the basis of the total allocation of allowances in respect of aircraft operators that were performing aviation activities falling within Annex I in the year 2023, reduced by the linear reduction factor specified in Article 9, and shall publish that quantity, as well as the quantity of free allocation which would have taken place in 2024 ***under*** the rules for free allocation ***in force prior to the amendments introduced by this amending Directive***.

5a. For the period from 1 January 2024 until 31 December 2030, a maximum of 20 million of the total quantity of allowances referred to in paragraph 5, shall be reserved in respect of commercial aircraft operators, on a transparent, equal treatment and non-discriminatory basis for the uplifting of sustainable aviation fuels, and other aviation fuels identified in Article 4(1) of the [RefuelEU Aviation Regulation] that are not derived from fossil fuels, for subsonic flights for which allowances have to be surrendered in accordance with Article 12(3). In case in an airport eligible aviation fuel cannot be physically attributed to a specific flight, those allowances shall be available for eligible aviation fuels uplifted at that airport proportionate to the emissions from flights of the aircraft operator from that airport for which allowances have to be surrendered in accordance with Article 12(3).

Those allowances shall be allocated by the Member States to cover part of or all the price differential between the use of fossil kerosene and the price of the relevant eligible aviation fuels, taking into account incentives from the price of carbon and from harmonised minimum levels of taxation on fossil fuels. When calculating the price differences, the Commission shall take into account the report published under Article 12 of the [ReFuelEU Aviation Regulation] published by the European Union Aviation Safety Agency. Member States shall ensure the visibility of funding under these provisions corresponding to what is referred to in Article 30ic paragraph 1, points (a) and (b).

The allowances allocated under this paragraph shall cover:

(i) 70 % of the remaining price differential between the use of fossil kerosene and hydrogen from renewable energy sources, and advanced biofuels as defined in Article 2, second paragraph, point (34) of Directive (EU) 2018/2001, which have a zero-emission factor under Annex IV or under the implementing act pursuant to Article 14;

(ii) 95 % of the remaining price differential between the use of fossil kerosene and renewable fuels of non-biological origin compliant with Article 25 of Directive (EU) 2018/2001, used in aviation, which have a zero-emission factor under Annex IV or under the implementing act pursuant to Article 14;

(iii) 100 % of the remaining price difference between the use of fossil kerosene and any eligible aviation fuel that are not derived from fossil fuels covered in the first subparagraph of paragraph 5a, at airports situated on islands smaller than 10 000 km^2 and not interconnected to mainland, at airports which are insufficiently large to be defined as Union airports according to Article 3 of the [Refuel aviation Regulation] and at airports located in an outermost region;

(iv) In other cases than (i) to (iii), 50 % of the remaining price differential between the use of fossil kerosene and the eligible aviation fuels that are not derived from fossil fuels covered in the first subparagraph paragraph 5a.

The allocation may take into account possible support from other schemes at national level.

On a yearly basis, commercial aircraft operators may apply for an allocation of allowances based on the volume of eligible aviation fuels referred to in this paragraph, uplifted on flights for which allowance has to be surrendered in accordance with Article 12(3) between 1 January 2024 and 31 December 2030, excluding flights for which that requirement are considered satisfied pursuant to Article 28a(1). If for a given year the demand of allowances for the uplifting of such fuels is higher than the availability of allowances, they shall be reduced in a uniform manner for all aircraft operators concerned by the allocation of that year.

The Commission shall publish in the Official Journal details of the average cost difference between fossil kerosene, taking into account incentives from the price of carbon and from harmonised minimum levels of taxation on fossil fuels, and the relevant eligible aviation fuels on a yearly basis for the previous year.

The Commission shall adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the establishment of the detailed rules for the yearly calculation of the cost difference and for the allocation of allowances for uplifting of the fuels identified in the first subparagraph of this paragraph and the establishment of the detailed rules for the calculation of the greenhouse gas emissions saved in accordance with the use of fuels as reported under Commission Implementing Regulation (EU) 2018/2066 and the arrangements for taking into account incentives from the price of carbon and from harmonised minimum levels of taxation on fossil fuels.

From 1 January 2028, the Commission shall evaluate the application of this paragraph in its reports pursuant to Article 10(5) and provide this report to the European Parliament and the Council in a timely manner.

By 1 January 2028, the Commission shall carry out an evaluation regarding the application of this paragraph and submit its results in a report to the European Parliament and the Council in a timely manner. The report may, if appropriate, be accompanied by a legislative proposal to allocate a capped and time-limited amount of allowances until 1 January 2035 to further incentivise the uplifting of the fuels identified in the first subparagraph, in particular the uplifting of renewable fuels of non-biological origin compliant with Article 25 of Directive (EU) 2018/2001, used in aviation, which have a zero emission factor under Annex IV or under the implementing act pursuant to Article 14.

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

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

(2) Article 3d is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. ***In the years 2024 and 2025, 15 % of the allowances referred to in Article 3c(5) and (6), as well as a share of the remaining 85 % of those allowances, in respect of which free allocation would have taken place, shall be auctioned except for the quantities of allowances referred to in Article 3c(5a) and 10a(8), first subparagraph. The remainder of allowances those years shall be allocated for free. The share of allowances in respect of which free allocation would have taken place to be auctioned shall for the respective years increase as set out below.***

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

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

As from 1 January 2026, all of the quantity of allowances in respect of which free allocation would have taken place in that year shall be auctioned, except for the quantity of allowances referred to in Article 3c(5a) and 10a(8), first subparagraph.’;

(b) the following paragraph ***is*** added:

'***1a***. Allowances which are allocated for free shall be allocated to aircraft operators proportionately to their share of verified emissions from aviation activities reported in 2023. This calculation shall also take into account verified emissions from aviation activities reported in respect of flights that are only covered by the EU ETS from 1 January ***2024***. ***By 30 June of the relevant year, the competent authorities shall issue the allowances which are allocated for free for that year.***';

(c) paragraph 2 is deleted;

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

'The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the detailed arrangements for the auctioning by Member States of aviation allowances in accordance with paragraphs 1 ***and*** 1a ▌ of this Article, including the modalities ▌ of ***the*** auctioning ***which are made necessary for the transfer of a share of revenue from such auctioning*** to the general budget of the Union ***as own resources in accordance with Article 311(3) TFEU***.

da) in paragraph 3, in the third sentence, the words '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' are replaced by 'For each period referred to in Article 13.';

(e) paragraph 4 is replaced by the following:

‘4. Member States shall determine the use of revenues generated from the auctioning of allowances covered by this Chapter, except for the revenues established as own resources in accordance with Article 311(3) ***TFEU*** and entered in the general budget of the Union. Member States shall use the revenues generated from the auctioning of allowances ***or the equivalent in financial value of these revenues*** in accordance with Article 10(3).’;

(3) Articles 3e and 3f are deleted;

▌

(5) Article 11a is amended as follows:

(a) paragraphs 1 to 3 are replaced by the following:

‘1. Subject to paragraphs 2 and 3 of this Article, aircraft operators that hold an air operator certificate issued by a Member State or ***are*** registered in a Member State, including in the outermost regions, dependencies and territories of that Member State shall be able to use the following units to comply with their obligations ***to cancel units in respect of the quantity notified*** as laid down in Article 12***(8)***:

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

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

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

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

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

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

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

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

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

(***b***) paragraph (4) is deleted;

(*c*) the following paragraph 8 is added:

‘8. The Commission shall adopt ▌ implementing ***acts*** listing ***units*** which have been considered eligible by the ICAO Council, and that fulfil the conditions laid down in paragraphs 2 and 3. The Commission shall amend that list as appropriate. ***Those*** implementing ***acts*** shall be adopted in accordance with the examination procedure referred to in Article 22a(2).’;

(6) Article 12 is amended as follows:

(a) paragraph 6 is replaced by the following:

‘6. In accordance with the methodology laid down in the ***implementing*** act referred to in paragraph 7, Member States shall calculate the offsetting each year for the preceding calendar year ***in respect of flights to, from and between the countries that are listed in the implementing act adopted pursuant to Article 25a(3) and of flights between*** Switzerland or ▌ the United Kingdom ***and countries that are listed in the implementing act adopted pursuant to Article 25a(3)***, and by 30 November each year inform the aircraft operators **.**

In accordance with the methodology laid down in the implementing act referred to in paragraph 7, Member States shall also calculate the total final offsetting requirements for a given CORSIA compliance period and inform the aircraft operators by 30 November of the year following the last year of the relevant CORSIA compliance period.

Member States shall inform aircraft operators that fulfil all of the following conditions of the level of offsetting:

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

(b) they produce annual CO_2 emissions greater than 10 000 tonnes from the use of ***aeroplanes*** with a maximum certified take-off mass greater than 5 700 kg conducting flights covered by Annex I, other than those departing and arriving in the same Member State (including outermost regions of the same Member State), from 1 January ***2021***.

For the purposes of the first subparagraph, point (b), CO_2 emissions from the following types of flights shall not be taken into account:

(i) state flights;

(ii) humanitarian flights;

(iii) medical flights;

(iv) military flights;

(v) firefighting flights***;***

(vi) flights preceding or following a humanitarian, medical or firefighting flight provided that such flights were conducted with the same aircraft and were required to accomplish the related humanitarian, medical or firefighting activities or to reposition the aircraft after those activities for its next activity.'***;***

(b) the following paragraphs are added:

'7. ***The calculation of offsetting responsibilities referred to in paragraph 6 for the purpose of ICAO's Carbon Offsetting and Reduction Scheme for International Aviation shall be made in accordance with a methodology to be specified by the Commission in respect of flights to, from and between the countries that are listed in the implementing act adopted pursuant to Article 25a(3), and of flights between Switzerland or the United Kingdom and countries that are listed in the implementing act adopted pursuant to Article 25a(3).***

The Commission ***shall*** adopt ***implementing*** acts in accordance with Article ***22a(2) specifying the methodology for the calculation of offsetting requirements for aircraft operators referred to in the first subparagraph.***

The implementing acts shall in particular detail further the application of the requirements following from the relevant provisions of this Directive***, in particular Articles 3c, 11a, 12 and 25a, and, to the extent possible in light of the relevant provisions of this Directive, from the International Standards and Recommended Practices on Environmental Protection for Carbon Offsetting and Reduction Scheme for International Aviation***.

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

The first such implementing act shall be adopted by 30 June 2024.

8. ▌Aircraft operators that hold an air operator certificate issued by a Member State or ***are*** registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, shall cancel units referred to in Article 11a only in respect of the quantity notified by that Member State***, in accordance with paragraph 6,*** in respect of the relevant ***CORSIA compliance period***. The cancelation shall take place by 31 January 2025 for emissions in the period 2021 to 2023 ***and*** by 31 January 2028 for emissions in the period 2024 to 2026.';

(6a) In Article 14, the following paragraphs are added:

'2a. Aircraft operators shall report once a year on the non-CO_2 aviation effects occurring from the 1 January 2025 onwards. For this purpose the Commission shall adopt by 31 August 2024 an implementing act pursuant to the first paragraph in order to include non-CO_2 aviation effects in a MRV framework. This MRV framework shall contain, at a minimum, the three-dimensional aircraft trajectory data available, and ambient humidity and temperature to allow to produce a CO2 equivalent per flight. The Commission shall ensure, subject to available resources, the availability of tools to facilitate and to the extent possible automatise the MRV in order to minimise any administrative burden. From 2025, Member States shall ensure that each aircraft operator monitors and reports the non-CO2 effects from each aircraft that it operates during each calendar year to the competent authority after the end of each year in accordance with the acts referred to in paragraph 1.

The Commission shall submit annually from 2026, as part of the report referred to in Article 10(5), a report to the European Parliament and the Council on the results of the application of the MRV framework referred to in the first subparagraph.

By 1 January 2028, based on the results of the application of the MRV framework of non-CO_2 aviation effects, the Commission shall submit a report and, where appropriate, a legislative proposal after having first carried out an impact assessment to mitigate such effects by expanding the scope of the EU ETS to include non-CO_2 aviation effects.

2b. The Commission shall publish at least the following aggregated annual emissions related data from aviation activities reported to Member States or transmitted to the Commission in accordance with Implementing Regulation (EU) 2018/2066 and Article 7 of Commission Delegated Regulation (EU) 2019/1603 at the latest 3 months after the respective reporting deadline in a user-friendly manner:

(a)per aerodrome pair within the EEA:

(i) emissions from all flights;

(ii) total number of flights;

(iii) total number of passengers;

(iv) types of aircraft.

(b) per aircraft operator:

(i) data on emissions from flights within the EEA, from flights departing the EEA, flights incoming to the EEA and flights between two third countries, broken down by state pair and data on emissions subject to obligation to cancel CORSIA eligible emission units;

(ii) the amount of offsetting, calculated in accordance with Article 12(7); the amount and category of fuels used that have zero emission factor under this Directive or entitle the aircraft operator to receive allowances pursuant to Article 3c(5a);

(iii) the amount and type of credits pursuant to Article 11a used to comply with their offsetting referred to in point (b).

For both paragraphs (a) and (b), in specific circumstances where the aircraft operator operates on a very limited number of aerodrome pairs or on a very limited number of State pairs that are subject to offsetting requirements or on a very limited number of State pairs that are not subject to offsetting requirements, it may request that such data not be published at the aircraft operator level, explaining why disclosure would be considered to harm its commercial interests. Based on this, the administering State may request the Commission that publication include this data at a higher level of aggregation. The Commission shall decide on the request.';

(7) Article 18a ***is amended as follows***:

'***(a) in the first sentence of paragraph 2, the words 'period referred to in Article 3c' are replaced by 'period referred to in Article 13.';***

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

(b) as from 2024, at least every two years, update the list to include aircraft operators which have subsequently performed an aviation activity listed in Annex I. ***Where an aircraft operator has not performed an aviation activity listed in Annex I during the four consecutive calendar years preceding the update of the list, that aircraft operator shall not be included in the updated list.***';

(8) Article 23 is amended as follows:

(a) paragraphs 2 and 3 are replaced by the following:

'2. The power to adopt delegated acts referred to in Articles ***3c(5a)***, 3d(3), 10(4), 10a(1) and (8), 10b(5), ▌19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall be conferred on the Commission for an indeterminate period of time from 8 April 2018.

3. The delegation of power referred to in Articles ***3c(5a),*** 3d(3), 10(4), 10a(1) and (8), 10b(5), ▌19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *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.';

(b) paragraph 6 is replaced by the following:

'6. A delegated act adopted pursuant to Articles ***3c(5a),*** 3d(3), 10(4), 10a(1) and (8), 10b(5), ▌19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.';

(9) Article 25a ***is amended as follows:***

(a) paragraph 2 is replaced by the following:

'2. The Union and its Member States shall continue to seek agreements on global measures to reduce greenhouse gas emissions from aviation aligned with the objectives of Regulation (EU) 2021/1119 and of the Paris Agreement. In the light of any such agreements, the Commission shall consider whether amendments to this Directive as it applies to aircraft operators are necessary.';

(b) the following paragraphs are added:

‘3. The Commission shall adopt an implementing act listing countries other than EEA countries, Switzerland and the United Kingdom, which are considered to be applying CORSIA for the purposes of this Directive, with a baseline of 2019 for 2021 to 2023 and a baseline ***of 85 % of 2019 emissions*** for each year ***from 2024***. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

4. In respect of emissions ***occurring until 31 December 2026*** from flights to or from countries that are listed in the implementing act adopted pursuant to paragraph 3, aircraft operators ▌ shall not be required to ***surrender allowances according to article 12(3)*** in respect of those emissions.

5. In respect of emissions occurring until 31 December 2026 from flights between the EEA and countries that are not listed in the implementing act adopted pursuant to paragraph 3, other than flights to Switzerland and the United Kingdom, aircraft operators shall not be required to ***surrender allowances according to article 12(3) in respect of those emissions***.

6. In respect of emissions from flights to and from Least Developed Countries and Small Island Developing States as defined by the United Nations, other than those listed in the implementing act adopted pursuant to paragraph 3 ***and those states whose GDP per capita equals or exceeds the Union average***, aircraft operators shall not be required to ***surrender allowances according to article 12(3) in respect of those emissions***.

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

8. Where aircraft ***operators*** that ***hold*** an air operator certificate issued by a Member State or ***are*** registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, operates flights between two different countries listed in the implementing act adopted pursuant to paragraph 3, including flights that take place between Switzerland, the United Kingdom and countries listed in the implementing act adopted pursuant to paragraph 3, and those countries allow aircraft operators to use other units than those on the list adopted pursuant to Article 11a(8), the Commission shall be empowered to adopt implementing acts allowing those aircraft operators to use unit types additional to that list or not to be bound by the conditions of Article 11a(2) and (3) in respect of emissions from such flights. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).';

(9a) Article 28a is replaced by the following:

'Article 28a

Derogations applicable in advance of the mandatory implementation of the ICAO's global market-based measure

1. By way of derogation from Articles 12(3), 14(3) and Article 16, Member States shall consider the requirements set out in those provisions to be satisfied and shall take no action against aircraft operators in respect of:

(a) all emissions from flights to and from aerodromes located in countries outside the EEA, with the exception of flights to aerodromes located in the UK and Switzerland, in each calendar year from 1 January 2021 to 31 December 2026, subject to the review referred to in Article 28b;

(b) all emissions from flights between an aerodrome located in an outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union and an aerodrome located in another region of the EEA in each calendar year from 1 January 2013 to 31 December 2023, subject to the review referred to in Article 28b.

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

2. By way of derogation from Article 3d(3), the number of allowances to be auctioned by each Member State in respect of the period from 1 January 2013 to 31 December 2026 shall be reduced to correspond to its share of attributed aviation emissions from flights which are not subject to the derogations provided for in points (a) and (b) of paragraph 1 of this Article.

3. By way of derogation from Article 3f, aircraft operators shall not be required to submit monitoring plans setting out measures to monitor and report emissions in respect of flights which are subject to the derogations provided for in points (a) and (b) of paragraph 1 of this Article.

4. By way of derogation from Articles 3f, 12, 15 and 18a, where an aircraft operator has total annual emissions lower than 25 000 tonnes of CO_2 , or where an aircraft operator has total annual emissions lower than 3 000 tonnes of CO_2 from flights other than those referred to in points (a) and (b) of paragraph 1 of this Article, its emissions shall be considered to be verified emissions if determined by using the small emitters tool approved under Commission Regulation (EU) No 606/2010 and populated by Eurocontrol with data from its ETS support facility. Member States may implement simplified procedures for non-commercial aircraft operators as long as such procedures provide no less accuracy than the small emitters tool provides.

5. Paragraph 1 of this Article shall apply to countries with whom an agreement pursuant to Article 25 or 25a has been reached only in line with the terms of such agreement.';

(9b) Article 28b is replaced by the following:

'Article 28b

1. Before 1 January 2027 and every three years thereafter, the Commission shall report to the European Parliament and to the Council on progress in the ICAO negotiations to implement the global market-based measure to be applied to emissions from 2021, in particular with regard to:

(i) the relevant ICAO instruments, including standards and recommended practices, as well as the progress in the implementation of all elements of ICAO basket of measures towards the achievement of the Long term aspirational goal adopted at ICAO 41st Assembly.

(ii) ICAO Council-approved recommendations relevant to the global market-based measure including any possible changes to baselines;

(iii) the establishment of a global registry;

(iv) domestic measures taken by third countries to implement the global market-based measure to be applied to emissions from 2021;

(v) the level of participation in offsetting by third countries, including the implications of their reservations as regards such participation; and

(vi) other relevant international developments and applicable instruments, as well as progress to reduce aviation's total climate change impacts.

In line with the global stocktake of the Paris Agreement, the Commission shall also report on efforts to meet the aviation sector's aspirational long-term emissions reduction goal of reducing aviation CO_2 emissions to net zero by 2050, assessed in line with criteria (i)-(vi) above.

2. By 1 July 2026, the Commission shall present a report to the European Parliament and to the Council in which it shall assess the environmental integrity of ICAO's global market-based measure, including its general ambition in relation to targets under the Paris Agreement, the level of participation in offsetting, its enforceability, transparency, the penalties for non-compliance, the processes for public input, the quality of offset credits, monitoring, reporting and verification of emissions, registries, accountability as well as rules on the use of biofuels.

3. The Commission shall accompany the report referred to in paragraph 2 with a legislative proposal for changes to this Directive, as appropriate, that are consistent with the Paris Agreement temperature goals, the Union's economy-wide greenhouse gas emission reduction commitment for 2030 and the objective of achieving climate neutrality by 2050 at the latest, with the aim of preserving the environmental integrity and effectiveness of Union climate action. In case the report referred to in paragraph 2 of this Article, to be published by 1 July 2026 shows that:

(a) the ICAO Assembly by 2025 did not strengthen the CORSIA scheme in line with achieving its long-term aspirational goal, towards meeting the Paris Agreement objectives; or

(b) countries listed in the Implementing Act referred to in Article 25a(3), represent less than 70 % of international aviation emissions using the most recent available data,

then an accompanying proposal shall, as appropriate, include the application of the ETS to departing flights from aerodromes located in countries in the EEA to aerodromes located outside the EEA from January 2027 and exclude incoming flights from aerodromes located outside the EEA. The proposal shall also, as appropriate, allow the possibility for airlines to deduct any costs incurred from CORSIA offsetting on those routes, to avoid double charging. If the conditions in paragraphs (a) and (b) are not met, the proposal shall amend this Directive, as appropriate, to continue applying the EU ETS only to flights within the EEA, to flights to Switzerland and to the United Kingdom and to flights to countries not listed in the implementing act referred to in Article 25a(3).';

(9c) In Article 30, the following paragraph is added :

'5. In 2026, the Commission shall include the following elements in the report provided for in Article 10(5):

(i) an evaluation of the environmental and climate impacts of flights of less than 1 000 km and considerations of options to reduce those impacts, including an examination of alternative modes of public transport available and the increased use of sustainable aviation fuels;

(ii) an evaluation of the environmental and climate impacts of flights performed by operators exempted pursuant to points (h) or (k) of the entry 'Aviation' of the column 'Activities' in the table of Annex I, and considerations of options to reduce those impacts;

(iii) an evaluation of the social impacts of this Directive in the aviation sector, including on its work force and air travel cost;

(iv) an evaluation of connectivity of islands and remote territories, including considerations of competitiveness and carbon leakage, as well as environmental and climate impacts.

The report provided for in Article 10(5) shall also, where appropriate, contribute to the future revision of this Directive.';

(10) In Annex I, in the table, the following text is inserted after the first paragraph of the entry 'Aviation' of the column 'Activities':

(a) 'Flights between aerodromes that are located in two different countries that are listed in the implementing act adopted pursuant to Article 25a(3) ***and flights between Switzerland or the United Kingdom and countries that are listed in the implementing act adopted pursuant to Article 25a(3) and, for the purpose of Article 12(6), 12(7) and 28c, any other flight between aerodromes that are located in two different third countries*** by aircraft operators that fulfil all of the following conditions:

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

(b) they produce annual CO_2 emissions greater than 10 000 tonnes from the use of ***aeroplanes*** with a maximum certified take-off mass greater than 5 700 kg conducting flights covered by Annex I, other than those departing and arriving in the same Member State (including outermost regions of the same Member State), from 1 January ***2021***. For the purposes of this point, emissions from the following types of flights shall not be taken into account:

(i) state flights;

(ii) humanitarian flights;

(iii) medical flights;

(iv) military flights;

(v) firefighting flights;

(vi) flights preceding or following a humanitarian, medical or firefighting flight provided that such flights were conducted with the same aircraft and were required to accomplish the related humanitarian, medical or firefighting activities or to reposition the aircraft after those activities for its next activity.'***;***

(10a) In Annex I, in the table, in the column 'Activities' in the entry 'Aviation', in point (i), the word '30 000' is replaced by '50 000.';

(11) In Annex IV, Part B, the following is inserted at the end of the fifth paragraph:

'The emissions factor for Jet kerosene (Jet A1 or Jet A) shall be 3,16 (t CO_2/t fuel).

Emissions from renewable fuels of non-biological origin using hydrogen from renewable sources compliant with Article 25 of Directive (EU) 2018/2001 shall be rated with zero emissions for the aircraft operators using them until the implementing act referred to in Article 14 (1) is adopted.'.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2023. They shall immediately communicate the text of those measures to the Commission.

   When Member States adopt those measures, they shall contain a reference to this Directive or shall 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

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

Article 4

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament	*For the Council*
The President	*The President*