

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 (Text with EEA relevance)

### [<sup>F1</sup>CHAPTER III

### STATIONARY INSTALLATIONS]

#### *[<sup>F1</sup>Article 10a*

#### **Transitional [<sup>F2</sup>Union]-wide rules for harmonised free allocation**

[<sup>F2</sup>1 The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the Union-wide and fully harmonised rules for the allocation of allowances referred to in paragraphs 4, 5, 7 and 19 of this Article.]

The measures referred to in the first subparagraph shall, to the extent feasible, determine [<sup>F2</sup>Union]-wide ex-ante benchmarks so as to ensure that allocation takes place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques, by taking account of the most efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass and capture and storage of CO<sub>2</sub>, where such facilities are available, and shall not provide incentives to increase emissions. No free allocation shall be made in respect of any electricity production, except for cases falling within Article 10c and electricity produced from waste gases.

For each sector and subsector, in principle, the benchmark shall be calculated for products rather than for inputs, in order to maximise greenhouse gas emissions reductions and energy efficiency savings throughout each production process of the sector or the subsector concerned.

In defining the principles for setting ex-ante benchmarks in individual sectors and subsectors, the Commission shall consult the relevant stakeholders, including the sectors and subsectors concerned.

The Commission shall, upon the approval by the [<sup>F2</sup>Union of an international agreement on climate change leading to mandatory reductions of greenhouse gas emissions comparable to those of the Union], review those measures to provide that free allocation is only to take place where this is fully justified in the light of that agreement.

2 In defining the principles for setting ex-ante benchmarks in individual sectors or subsectors, the starting point shall be the average performance of the 10 % most efficient installations in a sector or subsector in the [<sup>F2</sup>Union] in the years 2007-2008. The Commission shall consult the relevant stakeholders, including the sectors and subsectors concerned.

The [<sup>F2</sup>acts] pursuant to Articles 14 and 15 shall provide for harmonised rules on monitoring, reporting and verification of production-related greenhouse gas emissions with a view to determining the ex-ante benchmarks.

[<sup>F3</sup>The Commission shall adopt implementing acts for the purpose of determining the revised benchmark values for free allocation. Those acts shall be in accordance with the

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delegated acts adopted pursuant to paragraph 1 of this Article and shall comply with the following:

- a For the period from 2021 to 2025, the benchmark values shall be determined on the basis of information submitted pursuant to Article 11 for the years 2016 and 2017. On the basis of a comparison of those benchmark values with the benchmark values contained in Commission Decision 2011/278/EU<sup>(4)</sup>, as adopted on 27 April 2011, the Commission shall determine the annual reduction rate for each benchmark, and shall apply it to the benchmark values applicable in the period from 2013 to 2020 in respect of each year between 2008 and 2023 to determine the benchmark values for the period from 2021 to 2025.
- b Where the annual reduction rate exceeds 1,6 % or is below 0,2 %, the benchmark values for the period from 2021 to 2025 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 2023.
- 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 (b) 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.

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

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

In order to promote efficient energy recovery from waste gases, for the period referred to in point (b) of the third subparagraph, the benchmark value for hot metal, which predominantly relates to waste gases, shall be updated with an annual reduction rate of 0,2 %.]

3 Subject to paragraphs 4 and 8, and notwithstanding Article 10c, no free allocation shall be given to electricity generators, to installations for the capture of CO<sub>2</sub>, to pipelines for transport of CO<sub>2</sub> or to CO<sub>2</sub> storage sites.

[<sup>F24</sup> Free allocation shall be given to district heating as well as to high efficiency cogeneration, as defined by Directive 2012/27/EU of the European Parliament and of the Council<sup>(2)</sup>, for economically justifiable demand, in respect of the production of heating or cooling. In each year subsequent to 2013, the total allocation to such installations in respect of the production of that heat shall be adjusted by the linear factor referred to in Article 9 of this Directive, except for any year in which those allocations are adjusted in a uniform manner pursuant to paragraph 5 of this Article.]

[<sup>F25</sup> 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.]

[<sup>F35</sup> By way of derogation from paragraph 5, an additional amount of up to 3 % of the total quantity of allowances shall, to the extent necessary, be used to increase the maximum amount available under paragraph 5.

5b Where less than 3 % of the total quantity of allowances is needed to increase the maximum amount available under paragraph 5:

- a maximum of 50 million allowances shall be used to increase the amount of allowances available to support innovation in accordance with Article 10a(8); and
- a maximum of 0,5 % of the total quantity of allowances shall be used to increase the amount of allowances available to modernise the energy systems of certain Member States in accordance with Article 10d.]

[<sup>F26</sup> 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. Where the amount available for such financial measures exceeds 25 % of the revenues generated from the auctioning of allowances, the Member State concerned shall set out the reasons for exceeding that amount.

Member States shall also seek to use no more than 25 % of the revenues generated from the auctioning of allowances for the financial measures referred to in the first subparagraph. Within three months of the end of each year, Member States that have such financial measures in place shall make available to the public, in an easily accessible form, the total amount of compensation provided per benefitting sector and subsector. As from 2018, in any year in which a Member State uses more than 25 % of the revenues generated from the auctioning of allowances for such purposes, it shall publish a report setting out the reasons for exceeding that amount. The report shall include relevant information on electricity prices for large industrial consumers benefiting from such financial measures, without prejudice to requirements regarding the protection of confidential information. The report shall also include information on whether due consideration has been given to other measures to sustainably lower indirect carbon costs in the medium to long term.

The Commission shall include in the report provided for in Article 10(5), *inter alia*, an assessment of the effects of such financial measures on the internal market and, where appropriate, recommend any measures that may be necessary pursuant to that assessment.

Those measures shall be such as to ensure that there is adequate protection against the risk of carbon leakage, based on *ex-ante* benchmarks for the indirect emissions of CO<sub>2</sub> per unit of production. Those *ex-ante* benchmarks shall be calculated for a given sector or subsector as the product of the electricity consumption per unit of production corresponding to the most efficient available technologies and of the CO<sub>2</sub> emissions of the relevant European electricity production mix.]

7 [<sup>F2</sup> Allowances from the maximum amount referred to in paragraph 5 of this Article which were not allocated for free by 2020 shall be set aside for new entrants, together with 200 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/1814. Of the allowances set aside, up to 200 million shall be returned to the market stability reserve at the end of the period from 2021 to 2030 if not allocated for that period.

From 2021, allowances that pursuant to paragraphs 19 and 20 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.]

Allocations shall be adjusted by the linear factor referred to in Article 9.

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No free allocation shall be made in respect of any electricity production by new entrants.

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<sup>F4</sup> . . . . .]

8 [<sup>F2</sup>325 million allowances from the quantity which could otherwise be allocated for free pursuant to this Article, and 75 million allowances from the quantity which could otherwise be auctioned pursuant to Article 10, shall be made available to support innovation in low-carbon technologies and processes in sectors listed in Annex I, including environmentally safe carbon capture and utilisation ('CCU') that contributes substantially to mitigating climate change, as well as products substituting carbon intensive ones produced in sectors listed in Annex I, and to help stimulate the construction and operation of projects that aim at the environmentally safe capture and geological storage ('CCS') of CO<sub>2</sub>, as well as of innovative renewable energy and energy storage technologies; in geographically balanced locations within the territory of the Union (the 'innovation fund'). Projects in all Member States, including small-scale projects, shall be eligible.

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<sup>(3)</sup>, and shall be used in a timely manner for innovation support as referred to in the first subparagraph.

Projects shall be selected on the basis of objective and transparent criteria, taking into account, where relevant, the extent to which projects contribute to achieving emission reductions well below the benchmarks referred to in paragraph 2. Projects shall have the potential for widespread application or to significantly lower the costs of transitioning towards a low-carbon economy in the sectors concerned. Projects involving CCU shall deliver a net reduction in emissions and ensure avoidance or permanent storage of CO<sub>2</sub>. Technologies receiving support shall not yet be commercially available but shall represent breakthrough solutions or be sufficiently mature to be ready for demonstration at pre-commercial scale. Up to 60 % of the relevant costs of projects may be supported, out of which up to 40 % need not be dependent on verified avoidance of greenhouse gas emissions, provided that pre-determined milestones, taking into account the technology deployed, are attained.

The Commission 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.]

Allowances shall be set aside for the projects that meet the criteria referred to in the third subparagraph. Support for these projects shall be given via Member States and shall be complementary to substantial co-financing by the operator of the installation. They could also be co-financed by the Member State concerned, as well as by other instruments. 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.

[<sup>F29</sup> Greece, which had a gross domestic product (GDP) per capita at market prices below 60 % of the Union average in 2014, may claim, prior to the application of paragraph 7 of this Article, up to 25 million allowances from the maximum amount referred to in paragraph 5 of this Article which are not allocated for free by 31 December 2020, for the co-financing of up to 60 % of the decarbonisation of the electricity supply of islands within its territory. Article 10d(3) shall apply *mutatis mutandis* to such allowances. Allowances may be claimed where, due to restricted access to the international debt markets, a project aiming at the decarbonisation of the electricity

supply of Greece's islands could otherwise not be realised and where the European Investment Bank (EIB) confirms the financial viability and socio-economic benefits of the project.]

F<sup>4</sup>10 .....

11 Subject to Article 10b, the amount of allowances allocated free of charge under paragraphs 4 to 7 of this Article in 2013 shall be 80 % of the quantity determined in accordance with the measures referred to in paragraph 1. Thereafter the free allocation shall decrease each year by equal amounts resulting in 30 % free allocation in 2020 [F<sup>4</sup>, with a view to reaching no free allocation in 2027].

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19 No free allocation shall be given to an installation that has ceased its operations, unless the operator demonstrates to the competent authority that this installation will resume production within a specified and reasonable time. Installations for which the greenhouse gas emissions permit has expired or has been withdrawn and installations for which the operation or resumption of operation is technically impossible shall be considered to have ceased operations.

[F<sup>2</sup>20 The level of free allocations given to installations whose operations have increased or decreased, as assessed on the basis of a rolling average of two years, by more than 15 % compared to the level initially used to determine the free allocation for the relevant period referred to in Article 11(1) shall, as appropriate, be adjusted. Such adjustments 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.]

[ In order to ensure the effective, non-discriminatory and uniform application of the adjustments and threshold referred to in paragraph 20 of this Article, to avoid any undue administrative burden, and to prevent manipulation or abuse of the adjustments to the allocation, the Commission may adopt implementing acts which define further arrangements for the adjustments. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).]]

**Textual Amendments**

- F1 Inserted by [Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community \(Text with EEA relevance\).](#)
- F2 Substituted by [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 \(Text with EEA relevance\).](#)
- F3 Inserted by [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 \(Text with EEA relevance\).](#)

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- F4** Deleted by 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 (Text with EEA relevance).

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- (1) <sup>[F1][F3]</sup>Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1).]]
- (2) <sup>[F1][F2]</sup>Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).]]
- (3) <sup>[F1][F2]</sup>Commission Decision 2010/670/EU of 3 November 2010 laying down criteria and measures for the financing of commercial demonstration projects that aim at the environmentally safe capture and geological storage of CO<sub>2</sub> as well as demonstration projects of innovative renewable energy technologies under the system for greenhouse gas emission allowance trading within the Union established by Directive 2003/87/EC of the European Parliament and of the Council (OJ L 290, 6.11.2010, p. 39).]]

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