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370 MI 498 ECOFIN 621 CODEC 1059 - COM(2015) 337 FINAL

Subject: Proposal for a Directive of the European Parliament and of the Council
amending Directive 2003/87/EC to enhance cost-effective emission
reductions and low-carbon investments

- General approach
- = Delegations' contributions

With a view to the Council (Environment) on 28 February 2017, delegations will find in the Annex contributions from Portugal and Poland.

PORTUGAL

Non-paper on opt-out provisions for small emitters – Article 27 of the ETS Directive

The ETS Directive provides Member States with the option to exclude small installations from the EU Emissions Trading System under Article 27, subject to measures that will achieve an equivalent contribution to emission reductions.

PT is concerned about the application of this provision, since we believe that the lack of harmonisation in the application of it across Member States is currently causing distortions of competition under the ETS.

According to the Commission non-paper on opt-out (*Reply to questions from delegations on available information on existing opt-outs of small installations, July 2016*), seven Member States have opted out around 640 installations under Article 27 of the ETS Directive for the period 2013-2020. From this, 2 installations were reintroduced into the ETS in 2013 and 3 in 2014, because they exceeded the threshold of 25.000 tonnes of emissions. As noticed by the Commission, besides the information it possesses regarding the reintroduced emissions **there are no reporting obligations in place at European level that would allow a better understanding of the experience collected with opted out installations.** In addition, the Commission states that it **possesses very limited information on the actual implementation of the exclusion in the Member States,** having just some data derived from Article 21 reporting from concerned Member States.

Considering the above state of play, the definition of a single measure in the Directive text seems to be the only way to really avoid the risk of distortion of competition in the internal market. Thus, we would propose that the equivalent measure to consist on a carbon tax, with an equivalent value to the price of the emission allowances traded on the ETS market.

It should also be included in the Directive text, the obligation for the Commission to produce guidelines and for Member States to report every year to the Commission the results of the implementation of this provision. These reports should be made public, granting more transparency to this process.

Finally we would like to support the thresholds presented in the Commission's Directive Proposal meaning that we would prefer to opt out installations which have *less than 25 000 tonnes of carbon dioxide equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW.*

PT proposal

(Changes are marked as **bold and underlined** and deletions as [...])

Article 27

Exclusion of small installations subject to equivalent measures

1. Following consultation with the operator, Member States may exclude from the Community scheme installations which have reported to the competent authority emissions of less than 25 000 tonnes of carbon dioxide equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW, excluding emissions from biomass, in each of the three years preceding the notification under point (a), and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:

*(a) it notifies the Commission of each such installation, specifying the equivalent measures applying to that installation that will achieve an equivalent contribution to emission reductions that are in place, **including in particular any measures based on the carbon price such as a carbon tax or requiring surrendering allowances directly**, before the list of installations pursuant to Article 11(1) has to be submitted and at the latest when this list is submitted to the Commission;*

*(b) it confirms that monitoring arrangements are in place to assess whether any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, **and on the implementation of the equivalent measures**, in any one calendar year. Member States may allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between **2013 and 2020** which are below 5 000 tonnes a year, in accordance with Article 14;*

(c) it confirms that if any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures applying to that installation that will achieve an equivalent contribution to emission reductions are no longer in place, the installation will be reintroduced into the Community scheme;

(d) it publishes the information referred to in points (a), (b) and (c) for public comment.

Hospitals may also be excluded if they undertake equivalent measures.

Ibis. The Commission shall produce guidelines for Member States in particular regarding what could be considered an equivalent measure.

2. [...] **The Commission [...] shall assess the application put forward by Member States** within a [...] period of six months **from the notification and determine if the exclusion shall be deemed approved or rejected considering in particular the equivalent measures proposed. The Commission shall publish the results of its assessment. On the basis of the reporting by Member States, the Commission shall assess annually the implementation of the equivalent measures by Member States and publish the results of its assessment.** Following the surrender of allowances in respect of the period during which the installation is in the Community scheme, the installation shall be excluded and the Member State shall no longer issue free allowances to the installation pursuant to Article 10a.

3. When an installation is reintroduced into the Community scheme pursuant to paragraph 1(c), any allowances issued pursuant to Article 10a shall be granted starting with the year of the reintroduction. Allowances issued to these installations shall be deducted from the quantity to be auctioned pursuant to Article 10(2) by the Member State in which the installation is situated.

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

4. For installations which have not been included in the Community scheme during the period from **2013 to 2020**, simplified requirements for monitoring, reporting and verification may be applied for determining emissions in the three years preceding the notification under paragraph 1 point (a).

POLAND

Text proposed

Amendment

Recital 11

<p>(11) A Modernisation Fund should be established from 2% of the total EU ETS allowances, and auctioned in accordance with the rules and modalities for auctions taking place on the Common Auction Platform set out in <u>Commission Regulation 1031/2010</u>. Member States who in 2013 had a GDP per capita at market exchange rates of below 60% below the Union average should be eligible for funding from the Modernisation Fund and <u>be able to derogate up to 2030</u> from the principle of full auctioning for electricity generation by using the option of free allocation in order to transparently promote real investments modernising their energy sector while avoiding distortions of the internal energy market. <u>Investments under the Modernisation Fund aiming at improving energy efficiency could include investments in high efficiency cogeneration and district heating.</u> The rules for governing the Modernisation Fund should provide a coherent, comprehensive and transparent framework to ensure the most efficient implementation possible, taking into account the need for easy access by all participants. The function of the governance structure should be commensurate with the purpose of ensuring the appropriate use of the funds. That governance structure should <u>include an investment committee</u> [...] and due account should be taken of the expertise of the EIB in the decision-making process unless support is provided to small projects through loans from a national promotional banks or through grants via a national programme sharing the objectives of the Modernisation Fund. [...] To ensure that the investment needs in low income Member States are adequately addressed, the <u>funds for the Modernisation Fund should be distributed amongst the Member States based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria.</u> The financial assistance from the Modernisation Fund could be provided through different forms.</p>	<p>(11) A Modernisation Fund should be established from 2% of the total EU ETS allowances, and auctioned in accordance with the rules and modalities for auctions taking place on the Common Auction Platform set out in Regulation 1031/2010. Member States who in 2013 had a GDP per capita at market exchange rates of below 60% below the Union average should be eligible for funding from the Modernisation Fund and derogate up to 2030 from the principle of full auctioning for electricity generation by using the option of free allocation in order to transparently promote real investments modernising their energy sector while avoiding distortions of the internal energy market. Investments under the Modernisation Fund aiming at improving energy efficiency could include investments in high efficiency cogeneration and district heating <u>and also electrification of transport, renewable energy, geothermal heat and air quality improvement.</u> The rules for governing the Modernisation Fund should provide a coherent, comprehensive and transparent framework to ensure the most efficient implementation possible, taking into account the need for easy access by all participants. The function of the governance structure should be commensurate with the purpose of ensuring the appropriate use of the funds. That governance structure should be composed of <u>the beneficiary Member States assisted by an advisory board</u> where the expertise of the EIB include an investment committee [...] and due account should be taken of the expertise of the EIB in the decision-making process unless support is provided to small projects through loans from a national promotional banks or through grants via a national programme sharing the objectives of the Modernisation Fund. [...] Investments financed from the fund should be proposed by the Member States. To ensure that the investment needs in low income Member States are adequately addressed, the funds for the Modernisation Fund should be distributed amongst the Member States based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria. The financial assistance from the Modernisation Fund could be provided through different forms.</p>
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Justification

The governance of the Modernisation Fund should be consisted with European Council Conclusions.

Recital 12

<p>(12) The <u>October 2014</u> European Council confirmed that the modalities, including transparency, of the optional free allocation to modernise the energy sector in certain Member States should be improved. Investments with a value of <u>€15</u> million or more should be selected by the Member State concerned through a competitive bidding process on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments modernising the energy sector in line with the Energy Union objectives. Investments with a value of less than <u>€15</u> million should also be eligible for funding from the free allocation. The Member State concerned should select such investments based on clear and transparent criteria. The results of this selection process should be subject to public consultation. The public should be duly kept informed at the stage of the selection of investment projects as well as of their implementation.</p>	<p>(12) The <u>October 2014</u> European Council confirmed <u>Member States with a GDP per capita below 60% of the EU average may opt to continue to give free allowances to the energy sector up to 2030</u> that the modalities, including transparency, of the optional free allocation to modernise the energy sector in certain Member States should be improved. It is at the decision of the Member State to decide on allocation method which may be investments with a value of €15 million or more should be selected by the Member State concerned through a competitive bidding process, National Investment Plan or mix of these two instruments on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments modernising the energy sector in line with the Energy Union objectives. Investments with a value of less than €15 million should also be eligible for funding from the free allocation. The Member State concerned should select such investments based on clear and transparent criteria. The results of this selection process should be subject to public consultation. The public should be duly kept informed at the stage of the selection of investment projects as well as of their implementation.</p>
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Justification

The competitive bidding-process should be allowed or alternatively the option of preparing the National Investment Plan (NIP) or mix of these two (where part of the free allowances would be distributed by the MS within the NIP, and part in the bidding-process. This approach gives the necessary flexibility for MS to choose the optimal method(s) of projects selection in a way that this selection takes into account the national circumstances and stays as least bureaucratic as possible.

In the directive thresholds for investment's values which differentiate forms of project's selection should not be imposed. This limits the flexibility of the solution and possibility of its adjustment to the priority areas.

We should strive to include in the draft directive a flexible approach to the selection procedure for the investment projects support for the derogation objectives. Considering the experience of Member States in proceeding, implementing and accounting of investment projects included in the NIP, keeping the NIP as a form of the selection of the investment projects with the current conditions improvement (including the transparency of the process relating to the derogatory mechanism) seems to be a better solution.

Text proposed

Amendment

Recital 12a (new)

	<p><u>(12a) Enhancing the carbon dioxide sequestration capacity of forests constitutes a key element of climate change mitigation. The recently negotiated Paris Agreement refers to the spirit of the Convention and encourages Parties to initiate adequate actions to enhance the sequestration capacity of forests and enables to account for effects of such activities in the future. In order to incorporate the role of greenhouse gas removals by sinks into the EU climate policy in much greater degree and preserve the environmental benefit of internal emission reductions in the Union, removal units should be allowed to use by EU ETS operators. The introduction of the removal units into the EU ETS is applied in a similar way as in the Linking Directive 2004/101/EC, i.e. through a direct use of the removal units for annual emission accounting. The removal units could be included into the system similarly as the allowances and they could be sold, purchased and surrendered within the Union registry. Due to the fact that up till now the use of CERs/ERUs in the EU ETS has been limited in quantity (depending on the Member State and installation type) and in order to avoid oversupply of units similar quantitative limitations should apply to removal units.</u></p>
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Justification

The connection of the LULUCF sector with EU ETS should be enable.

Article 1 (1a)new

	<p>In Article 3 point (w) is added:</p> <p><u>(w) 'removal unit 'is issued in respect of net removals by sinks from activities in the forestry sector and is equal to one metric tonne of carbon dioxide equivalent.</u></p>
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Justification:

EU climate policy should give more consideration to the important role of sequestration of GHG emissions. It is crucial that EU takes action focused on increasing sequestration potential and allows proper accounting of forest sequestration. GHG emission sequestration should be treated in the same manner as other emission reduction activities. This approach brings the benefits for neutralization of GHG emission comparable to emission reduction technologies (e.g. CCS) and at the same time creates measurable environmental profits, being in tune with sustainable development principles and economic effectiveness (lower emission reduction cost).

To allow for a connection of the LULUCF sector with the EU ETS through the use of potential sequestration units by the EU ETS participants¹, it will be necessary to make some indispensable changes in the EU ETS directive. Apart from EUA allowances, the only acceptable units within the EU ETS (indirectly) are the CER units (*Certified Emission Reduction*) stemming from CDM projects (*Clean Development Mechanism*) and ERU units (*Emission Reduction Units*) resulting from JI projects (*Joint Implementation*). Solutions for introducing the abovementioned units into the EU ETS market could be a basis for similar action applied to the sequestration units.

Directive 2004/101/EC² (so called „linking directive”) introduced CER and ERU units into the EU ETS. The directive enabled the EU ETS installation operators to use these units within certain limit for their annual emission accounting. One CER/ERU unit equals one EUA allowance.

Taking into account the abovementioned experience with CER/ERU units, the introduction of the sequestration units into the EU ETS could be applied in a similar way as adopted in the linking directive, i.e. through a direct use of the sequestration units for annual emission accounting. The sequestration units could be included into the system similarly as the allowances and they could be sold, purchased and surrendered within the Union registry.

¹ The EU ETS participants are understood as installation operators and aircraft operators covered by the European Union Emission Trading Scheme.

² Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms.

The abovementioned proposal for the introduction of the sequestration units to the EU ETS market and for the use of their potential is based upon the solutions applied and experiences in the second phase of the EU ETS. This solution was successfully implemented in the Union registry (and previously in the MS national registries) and the technical process of the CERs/ERUs use was implemented without obstacles. Thus, the similar way of introducing sequestration units into the EU ETS market should not be difficult. Furthermore, it is worth mentioning that this solution could be applied Europe-wide and would at the same time introduce uniform, transparent and equal principles for all MS and system participants.

Text proposed

Amendment

Article 1 (4)

<p>Article 10 is amended as follows:</p> <p>(a) the following subparagraphs are added to paragraph 1:</p> <p>"From 2021 onwards, <u>and without prejudice to a possible reduction pursuant to Article 10a(5a), [...]</u> the share of allowances to be auctioned [...] shall be <u>57</u>%.</p> <p>2% of the total quantity of allowances between 2021 and 2030 shall be auctioned to establish a fund to improve energy efficiency and modernise the energy systems of certain Member States as set out in Article 10d of this Directive ("the Modernisation Fund"). The total remaining quantity of allowances to be auctioned by Member States shall be distributed in accordance with paragraph 2.";</p>	<p>Article 10 is amended as follows:</p> <p>(a) the following subparagraphs are added to paragraph 1:</p> <p>"From 2021 onwards, <u>and without prejudice to a possible reduction pursuant to Article 10a(5a), [...]</u> [...] the share of allowances to be auctioned [...] shall be at least 57% 57%.</p> <p>2% of the total quantity of allowances between 2021 and 2030 shall be auctioned to establish a fund to improve energy efficiency and modernise the energy systems of certain Member States as set out in Article 10d of this Directive ("the Modernisation Fund"). The total remaining quantity of allowances to be auctioned by Member States shall be distributed in accordance with paragraph 2.";</p>
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Text proposed

Amendment

Article 1 (6)

<p>Articles 10b and 10c are replaced by the following:</p> <p style="text-align: center;">Article 10c</p> <p style="text-align: center;">Option for transitional free allocation for the modernisation of the energy sector</p> <p>1. By derogation from Article 10a(1) to (5), Member States which had in 2013 a <u>gross domestic product</u> (GDP) per capita in <u>euro</u> at market prices below 60% of the Union average may give a transitional free allocation to installations for electricity <u>generation</u> for the modernisation of the energy sector.</p>	<p>Articles 10b and 10c are replaced by the following:</p> <p style="text-align: center;">Article 10c</p> <p style="text-align: center;">Option for transitional free allocation for the modernisation of the energy sector</p> <p>1. By derogation from Article 10a(1) to (5), Member States which had in 2013 a <u>gross domestic product</u> per capita in <u>euro</u> at market prices below 60% of the Union average may give a transitional free allocation to installations for electricity <u>generation</u> – (including in cogeneration of heat and power) for the modernisation of the energy</p>
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<p>2. The Member State concerned shall organise a competitive bidding process, <u>to take place in one or more rounds between 2021 and 2030</u>, for projects with a total amount of investment exceeding <u>EUR 15 million</u> to select the investments to be financed with free allocation. This competitive bidding process shall:</p> <ul style="list-style-type: none"> (a) comply with the principles of transparency, non-discrimination, equal treatment and sound financial management; (b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the infrastructure, clean technologies <u>or</u> modernisation of the energy production, transmission and distribution sectors are eligible to bid; (c) define clear, objective, transparent and non-discriminatory selection criteria for the ranking of projects, so as to ensure that projects are selected which: <ul style="list-style-type: none"> (i) on the basis of a cost-benefit analysis, ensure a net positive gain in terms of emission reduction and realise a pre-determined significant level of CO₂ reductions; (ii) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand; (iii) offer best value for money; <p><u>By way of derogation from Article 10 (1), in the event an investment selected through the competitive bidding process is cancelled or the intended performance is not reached, the earmarked allowances may be used through one new round of the competitive bidding process at the earliest one year thereafter to finance other investments.</u></p> <p>By 30 June 2019, any Member State intending to make use of optional free allocation shall publish a detailed national framework setting out the competitive bidding process and selection criteria for public comment.</p> <p>Where investments with a value of less than €10 million are supported with free allocation, the Member State shall select projects based on objective and transparent criteria. The results of this selection process shall be published for public</p>	<p>sector.</p> <p>2. It is at discretion of the Member State to decide on allocation method. The Member State concerned shall <u>may</u> organise a competitive bidding process, <u>to take place in one or more rounds between 2021 and 2030</u>, for projects or prepare <u>National Investment Plan or mix these two instruments</u> with a total amount of investment exceeding <u>EUR 15 million</u> to select the investments to be financed with free allocation.-This competitive bidding process shall:</p> <ul style="list-style-type: none"> (a) comply with the principles of transparency, non-discrimination, equal treatment, technological neutrality and sound financial management; (b)-ensure that only projects which contribute to at least one of the requirements: the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the infrastructure (including heat distribution networks), clean technologies and or modernisation of the energy production, transmission and distribution sectors are eligible to bid; (c) define clear, objective, transparent and non-discriminatory selection criteria for the ranking of projects so as to ensure that projects are selected which: <ul style="list-style-type: none"> (i) on the basis of a cost-benefit analysis, ensure a net positive gain in terms of emission reduction and realise a pre-determined significant level of CO₂ reductions; (ii) are additional to clearly respond to replacement and modernisation needs and do not supply a market driven increase in energy demand; (iii) offer best value for money; <p><u>By way of derogation from Article 10 (1), in the event an investment selected through the competitive bidding process is cancelled or the intended performance is not reached, the earmarked allowances may be used through one new round of the competitive bidding process at the earliest one year thereafter to finance other investments.</u></p>
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<p>comment. On this basis, the Member State concerned shall establish and submit a list of investments to the Commission by 30 June 2019.</p> <p>3. The value of the intended investments shall at least equal the market value of the free allocation, while taking into account the need to limit directly linked price increases. The market value shall be the average of the price of allowances on the common auction platform in the preceding calendar year.</p> <p>4. Transitional free allocations shall be deducted from the quantity of allowances that the Member State would otherwise auction. The total free allocation shall be no more than 40% of the allowances which the Member State concerned receives in the period 2021-30 pursuant to Article 10(2)(a) spread out in equal annual volumes over the period from 2021-30. <u>Any allowances not allocated under this Article up to 2020 may be allocated over to the period 2021-2030 to investments selected through the competitive bidding process referred to in paragraph 2 of this Article.</u></p> <p>5. Allocations to operators shall be made upon demonstration that an investment selected according to the rules of the competitive bidding process has been carried out.</p> <p>6. Member States shall require benefiting electricity generators and network operators to report by 28 February of each year on the implementation of their selected investments. Member States shall report on this to the Commission, and the Commission shall make such reports public."</p>	<p>By 30 June 2019, any Member State intending to make use of optional free allocation <u>via competitive bidding</u> shall publish a detailed national framework setting out the competitive bidding process and selection criteria for public comment.</p> <p>Where investments with a value of less than €10 million are supported with free allocation, The Member State <u>intending to make use of optional free allocation via NIP</u> shall select projects <u>investments</u> based on objective and transparent criteria <u>taking into account:</u></p> <ul style="list-style-type: none"> a) <u>technological neutrality;</u> b) <u>retrofitting and upgrading of energy infrastructure including electricity storage</u> c) <u>clean technologies;</u> d) <u>diversification of energy mix and sources of supply;</u> e) <u>modernisation of the energy production, transmission and distribution sectors;</u> f) <u>GHG reductions.</u> <p><u>Investments undertaken from 24 October 2014 may be counted for this purpose.</u></p> <p>The <u>way</u> results of this selection process <u>and the results</u> shall be published for public comment. On this basis, the Member State concerned <u>choosing a NIP for free allocation</u> shall establish and submit a list of investments, to the Commission by 30 June September 2019.</p> <p>The Commission shall assess the list of investments by 31 January 2020. Within 3 months from the receipt of the list of investments from the Member State, the Commission may request additional clarifications with regard to the submitted information. The Commission may reject individual investments. A negative decision shall be duly justified by providing clear reasons for rejection based on proof of the lack of eligibility of the investment. Lack of decision by the Commission by the above date means approval of the list of investments as submitted.</p> <p>The NIP may be updated twice - in 2023 and in 2027 - and submitted to the Commission along with the report referred to in paragraph 6, in 2024 and in 2028. Member States may opt to assign allocated in NAP but not used allowances to projects selected via competitive bidding.</p> <p>3. The value of the intended investments shall at least equal the market value of the free allocation, while taking into account the need to limit directly linked price increases. The market value shall be the average of the price of allowances on the common auction platform in</p>
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	<p>the preceding calendar year.</p> <p>4. Transitional Free allocations shall be deducted from the quantity of allowances that the Member State would otherwise auction. The total free allocation shall be no more than 40% of the allowances which the Member State concerned receives in the period 2021-30 pursuant to Article 10(2)(a) spread out in equal annual volumes over the period from 2021-30. <u>Any allowances not allocated under this Article up to 2020 may be allocated over to the period 2021-2030 to investments selected through the competitive bidding process or NIP. The quantity of free allowances for all eligible Member States is inserted as Annex X and shall not be decreased by other mechanisms.</u></p> <p>5. Free allocations to operators shall be made allowed upon demonstration of incurred expenditure, at the level of a capital group, for that an investment both selected <u>via competitive bidding and included in the list of investments referred to paragraph 2</u> selected according to the rules of the competitive bidding process has been carried out.</p> <p>The free allocations to individual operators for period 2021-30 shall be determined and published by each of the Member States concerned by 30 September 2019. The allocations along with the list of electricity generators shall be updated in 2023 and 2027, taking into account new installations and most recent data available. The updated list of electricity generators shall be submitted to the Commission by 30 September 2024 and by 30 September 2028 respectively.</p> <p>6. Member States shall require benefiting operators and network operators to report by 28 February of each year on the implementation of their selected investments. Member States shall report annually on this by 31 March to the Commission on the balance of free allocation and investment expenditure incurred, and the Commission shall make such reports public."</p> <p>7. Two years before the end of the period during which a Member State may give transitional free allocation to installations for electricity production the Member State concerned may request the extension of that period. The Commission shall assess the request and it may submit to the European Parliament and to the Council appropriate proposals, including the conditions that would have to be met in the case of an extension of that period.</p>
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Justification

Member States shall freely decide about methods and procedures of selecting investments financed with free allocation, by organising either a competitive bidding process or by preparing National Investment Plan (NIP). Such approach enables concerned Member States to optimise investments according to directive aims and domestic energy and environmental policies, thereby reducing administrative burden and avoiding significant increase of energy prices. The possibility of updating NIP and redistribution of unused allowances will ensure more efficient use of derogation resources.

Revised EU ETS directive shall impose certain obligations with on one hand clear and on the other most suitable deadlines for the Commission and EU Member States so as to proceed as smoothly as possible with free allocation to installations for electricity production for the modernisation of the energy sector.

Text proposed

Amendment

Article 1 (7)

<p>The following Article 10d is inserted:</p> <p style="text-align: center;">"Article 10d</p> <p style="text-align: center;">Modernisation Fund</p> <p>1. A fund to support investments <u>proposed by the beneficiary Member States, including to finance small-scale investment projects</u>, in modernising energy systems and improving energy efficiency in Member States with a GDP per capita below 60% of the Union average in 2013 shall be established for the period 2021-2030 and financed as set out in Article 10. <u>The fund shall be financed through the auctioning of allowances</u> as set out in Article 10. The investments supported shall be consistent with the aims of this Directive, <u>as well as the objectives of the Union's 2030 climate and energy policy framework and the long-term objectives as expressed in the Paris Agreement.</u></p> <p>1a. <u>Without prejudice to the third subparagraph of paragraph 4, the financial resources from the fund shall [...] be used to support investments in the generation and use of electricity from renewable sources, the improvement of energy efficiency, and the modernisation of energy networks, including grids for electricity transmission and the increase of interconnections between Member States. Investments in energy efficiency in sectors not covered by Annex I to this Directive shall also be eligible.[...]</u></p> <p>2. <u>The fund shall operate under the responsibility of the beneficiary Member States. The European Investment Bank (EIB) shall ensure the allowances are auctioned in accordance with the</u></p>	<p>The following Article 10d is inserted:</p> <p style="text-align: center;">"Article 10d</p> <p style="text-align: center;">Modernisation Fund</p> <p>1. A fund to support investments <u>proposed by the beneficiary Member States, including to finance small-scale investment projects</u>, in modernising energy systems and improving energy efficiency (including electrification of transport, district heating, high efficiency cogeneration, renewable energy, geothermal heat and air quality improvement) in Member States with a GDP per capita below 60% of the Union average in 2013 shall be established for the period 2021-2030. <u>The fund shall be financed through the auctioning of allowances</u> as set out in Article 10. The investments supported shall be consistent with the aims of this Directive, <u>as well as the objectives of the Union's 2030 climate and energy policy framework and the long term objectives as expressed in the Paris Agreement.</u></p> <p>1a. Without prejudice to the third subparagraph of paragraph 4, the financial resources from the fund shall [...] be used to support investments in the generation and use of electricity from renewable sources, the improvement of energy efficiency, and the modernisation of energy networks, including grids for electricity transmission and the increase of interconnections between Member States. Investments in energy efficiency in sectors not covered by Annex I to this Directive shall also be eligible.[...]</p> <p>2. The fund shall operate under the responsibility of the beneficiary Member States. The European</p>
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principles and modalities laid down in Article 10(4) and shall be responsible for managing the revenues. It shall pass on the revenues to the Member States upon a disbursement decision from the Commission. The Commission shall adopt its decision in a timely manner. The revenues shall be distributed amongst the Member States and according to the share set out in Annex IIb, in accordance with paragraphs 4 to 9.

3. An investment committee for the fund is hereby established. The investment committee shall be composed of a representative from each beneficiary Member State, the Commission and the EIB, and three representatives elected by the other Member States for a period of 5 years. It shall be chaired by the representative from the Commission. One representative of each Member State which is not a member of the investment committee may attend meetings of the committee as an observer.
4. Before a beneficiary Member State may decide to finance an investment from its share in the fund, it shall present the investment project to the investment committee and to the EIB.

Where the EIB confirms that an investment falls into the areas listed in paragraph 1a, the Member State may proceed to the financing of the investment project from its share.

Where an investment in the modernisation of energy systems, which is proposed to be financed from the fund, does not fall into the areas [...] listed in paragraph 1a [...], the investment committee shall assess the technical and financial viability of such investments, including the emission reductions they realise, and issue a recommendation on financing the investment from the fund. This recommendation may include suggestions regarding appropriate financing instruments.

[4a moved to 5a]

5. The investment committee shall strive to adopt its recommendations by consensus. If the investment committee is not able to decide by consensus within a deadline set by the chairman, it shall take a decision by simple majority. [...] If the representative of the EIB does not endorse financing an investment, a recommendation [...] shall only be adopted if a majority of two-thirds of all members vote in favour. [...] The representative of the Member State in which the investment will take place and the representative of the EIB shall not be entitled to cast a vote in this case. This subparagraph shall not apply for small-scale projects funded through loans provided by a national promotional bank or through grants contributing to the

~~Investment Bank (EIB) shall ensure the allowances are auctioned in accordance with the principles and modalities laid down in Article 10(4) and shall be responsible for managing the revenues. It shall pass on the revenues to the Member States upon a disbursement decision from the Commission. The Commission shall adopt its decision in a timely manner. The revenues shall be distributed amongst the Member States and according to the share set out in Annex IIb, in accordance with paragraphs 4 to 9.~~

- ~~3. An investment committee for the fund is hereby established. The investment committee shall be composed of a representative from each beneficiary Member State, the Commission and the EIB, and three representatives elected by the other Member States for a period of 5 years. It shall be chaired by the representative from the Commission. One representative of each Member State which is not a member of the investment committee may attend meetings of the committee as an observer.~~
- ~~4. Before a beneficiary Member State may decide to finance an investment from its share in the fund, it shall present the investment project to the investment committee and to the EIB.~~

~~Where the EIB confirms that an investment falls into the areas listed in paragraph 1a, the Member State may proceed to the financing of the investment project from its share.~~

~~Where an investment in the modernisation of energy systems, which is proposed to be financed from the fund, does not fall into the areas [...] listed in paragraph 1a [...], the investment committee shall assess the technical and financial viability of such investments, including the emission reductions they realise, and issue a recommendation on financing the investment from the fund. This recommendation may include suggestions regarding appropriate financing instruments.~~

~~Where an investment in the modernisation of energy systems, which is proposed to be financed from the fund, does not fall into the areas [...] listed in paragraph 1a [...], the investment committee shall assess the technical and financial viability of such investments, including the emission reductions they realise, and issue a recommendation on financing the investment from the fund. This recommendation may include suggestions regarding appropriate financing instruments.~~

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- ~~5. The investment committee shall strive to adopt its recommendations by consensus. If the investment committee is not able to decide by consensus within a deadline set by the chairman, it shall take a decision by simple majority. [...] If the representative of the EIB does not endorse financing an investment, a recommendation [...] shall only be adopted if a majority of two-thirds of all members vote in favour. [...] The representative of the Member State in which the investment will take place and the representative of the EIB shall not be entitled to cast a vote in this case. This subparagraph shall not apply for small-scale projects funded through~~

<p>implementation of a national programme serving specific objectives in line with the objectives of the Modernisation Fund, provided that not more than 10% of the Member States' share set out in Annex IIb is used under the programme [...].</p> <p>5a. <u>Any acts or recommendations by the EIB or the investment committee pursuant to paragraphs 4 and 5 shall be made in a timely manner and [...] state the reasons on which they are based. Such acts and recommendations shall be made public.[...]</u></p> <p>6. <u>The beneficiary Member States shall be responsible for following up on the implementation with respect to selected projects.</u></p> <p>7. The beneficiary Member States shall report annually to the <u>Commission</u> on investments financed by the fund. The report shall be made public and include:</p> <p>(a) information on the investments financed per beneficiary Member State;</p> <p>(b) an assessment of the added value in terms of energy efficiency or modernisation of the energy system achieved through the investment.</p> <p>8. The <u>investment committee</u> shall report <u>annually</u> to the Commission on experience with the evaluation [...] of investments. <u>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 1a and the basis on which the investment committee bases its recommendations [...].</u></p> <p>9. The Commission <u>is</u> empowered to adopt <u>implementing acts [...]</u> concerning detailed rules on the operation of the fund. <u>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a."</u></p>	<p>loans provided by a national promotional bank or through grants contributing to the implementation of a national programme serving specific objectives in line with the objectives of the Modernisation Fund, provided that not more than 10% of the Member States' share set out in Annex IIb is used under the programme [...].</p> <p>5a. Any acts or recommendations by the EIB or the investment committee pursuant to paragraphs 4 and 5 shall be made in a timely manner and [...] state the reasons on which they are based. Such acts and recommendations shall be made public.[...]</p> <p>6. The beneficiary Member States shall be responsible for following up on the implementation with respect to selected projects.</p> <p>7. The beneficiary Member States shall report annually to the Commission on investments financed by the fund. The report shall be made public and include:</p> <p>(a) information on the investments financed per beneficiary Member State;</p> <p>(b) an assessment of the added value in terms of energy efficiency or modernisation of the energy system achieved through the investment.</p> <p>8. The investment committee shall report annually to the Commission on experience with the evaluation [...] of investments. 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 1a and the basis on which the investment committee bases its recommendations [...].</p> <p>2. The fund shall also finance small-scale investment projects in the modernisation of energy systems and energy efficiency (including thermal energy, district heating, high efficiency cogeneration, renewable energy, geothermal heat). To this end, the beneficiary Member States shall develop national guidelines and investment selection criteria specific to such projects in line with the objectives of the fund and the guidelines elaborated by an advisory board referred to in paragraph 4. The national rules shall be made public.</p> <p>3. The funds shall be distributed based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria, leading to the distribution set out in Annex IIb.</p> <p>4. The fund shall be governed by the beneficiary Member States assisted advisory board, which</p>
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	<p>shall be composed of representatives from the beneficiary Member States, and the EIB. The advisory board shall be responsible to determine guidelines in relation to objectives of an Union-level investment policy with regard to this fund, appropriate financing instruments and role of national financing institutions as well as investment selection criteria for small end large projects, taking into account technological neutrality of projects and specific needs of the beneficiary Member States.</p> <p>The beneficiary Member States shall be responsible for the day-to-day management of the fund. The national rules shall be made public. Upon a request by a beneficiary Member State, the EBI shall take over the day-to-day management as mentioned above in the Member State concerned, including the participation in the selection process of big-scale projects and monetization of the funds.</p> <p>The chairmanship of the advisory board shall be held by the beneficiary Member States and be based on a one-year-term rotation model final decisions on financing particular projects in beneficiary Member States is taken only by Member State concerned on the basis of the agreed guidelines.</p> <p><u>Member States may decide to use all or part of the proceeds from the Fund in order to finance the projects contributing to the implementation of a national programmes serving specific objectives in line with the objectives of the Modernisation Fund,</u></p> <p><u>Simplified arrangements for both small-scale projects and projects contributing to implementation of national programs shall be ensured.</u></p> <p>5. The beneficiary Member States shall report annually to the advisory board on investments financed by the fund. The report shall be made public and include:</p> <p>information on the investments financed per beneficiary Member State;</p> <p>(a) an assessment of the added value in terms of energy efficiency or modernisation of the energy system achieved through the investment;</p> <p>6. Each year, the advisory board shall report to the Commission on experience with the evaluation and selection of investments. The Commission shall review the basis on which projects are selected by 31 December 2024 and, where</p>
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	<p>appropriate, make proposals to the advisory board.</p> <p>97. The Commission <u>is</u> empowered to adopt <u>implementing acts</u> [...] concerning detailed rules on the operation of the fund. <u>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a.</u></p>
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Justification:

Enlarged governing entities by three non-beneficiary Member States is inconsistent with European Council conclusions on 2030 climate and energy framework. Investment board and a management committee shall be composed only of representatives from the beneficiary Member States just as it is stated in October 2014 European Council conclusions: “reserve will serve to establish a fund which will be managed by the beneficiary Member States, with the involvement of the EIB in the selection of projects”.

Revised EU ETS directive shall be consistent with October 2014 European Council conclusions namely with one of the arrangements that state: “Simplified arrangements for small-scale projects will be ensured”. Therefore, beneficiary Member States shall be given the right to select small-scale projects on their own especially when their realisation is envisaged within the existing national plan/programme in order to tailor the MF for national situation. In such a case only simple information to the investment board should suffice. It is not clear why we should introduce the higher administrative burden if the share of projects running via national programmes is more than 10% instead of using the current verifiable procedures. It should be up to the Member States which projects to finance via MF and the threshold of 10% should be deleted.

Furthermore, beneficiary Member States should not be excluded from discussion and decision-making process on large-scale projects as there is no reference to such a proposal in October 2014 European Council conclusions.

Issues related to the Modernisation Fund shall be clarified by the European Commission in the procedure, which ensure the active participation of Member States, i.e. comitology. Delegated act does not provide such a possibility.

Text proposed

Amendment

Article 1 (9)

<p>In Article 11a, paragraphs 8 and 9 are deleted.</p>	<p>Article 11a (8 and Article 11 (9)) is replaced by the following:</p> <p>“8. Operators and aircraft operators may use the removal units in the Community scheme up to an amount corresponding to XX% of allowances to be auctioned during the period 2021-2030. Operators under Article 10c and Article 10a in low income Member States (GDP per capita below 60% of the EU average, references to GDP in 2013 in EUR at market</p>
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	<p>prices) may use credits from projects issued pursuant to Article 24a and other projects administered by Member States that reduce greenhouse gas emissions not covered by the Community scheme. The amount of credits should be up to an amount corresponding to XX% of allowances to be auctioned by eligible Member States during the period 2021-2030.</p> <p>Any such measures shall not result in the double-counting of emission reductions.”</p>
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Justification:

European Union climate policy should give more consideration to the important role of sequestration of GHG emissions. It is crucial that UE takes action focused on increasing sequestration potential and allows proper accounting of forest sequestration. GHG emission sequestration should be treated in the same manner as other emission reduction activities. This approach brings the benefits for neutralization of GHG emission comparable to emission reduction technologies (e.g. CCS) and at the same time creates measurable environmental profits, being in tune with sustainable development principles and economic effectiveness (lower emission reduction cost).

To allow for a connection of the LULUCF sector with the EU ETS through the use of potential sequestration units by the EU ETS participants³, it will be necessary to make some indispensable changes in the EU ETS directive. Apart from EUA allowances, the only acceptable units within the EU ETS (indirectly) are the CER units (*Certified Emission Reduction*) stemming from CDM projects (*Clean Development Mechanism*) and ERU units (*Emission Reduction Units*) resulting from JI projects (*Joint Implementation*). Solutions for introducing the abovementioned units into the EU ETS market could be a basis for similar action applied to the sequestration units.

Directive 2004/101/EC⁴ (so called „linking directive”) introduced CER and ERU units into the EU ETS. The directive enabled the EU ETS installation operators to use these units within certain limit for their annual emission accounting. One CER/ERU unit equals one EUA allowance.

Taking into account the abovementioned experience with CER/ERU units, the introduction of the sequestration units into the EU ETS could be applied in a similar way as adopted in the linking directive, i.e. through a direct use of the sequestration units for annual emission accounting. The sequestration units could be included into the system similarly as the allowances and they could be sold, purchased and surrendered within the Union registry. Due to the fact that up till now the use of CERs/ERUs in the EU ETS has been limited in quantity (depending on the Member State and installation type) one may assume that similar quantitative limitations would apply to removal units.

The abovementioned proposal for the introduction of the sequestration units to the EU ETS market and for the use of their potential is based upon the solutions applied and experiences in the second phase of the EU ETS. This solution was successfully implemented in the Union registry (and previously in the MS national registries) and the technical process of the CERs/ERUs use was implemented without obstacles. Thus, the similar way of introducing sequestration units into the EU ETS market should not be difficult. Furthermore,

³ The EU ETS participants are understood as installation operators and aircraft operators covered by the European Union Emission Trading Scheme.

⁴ Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol’s project mechanisms.

it is worth mentioning that this solution could be applied Europe-wide and would at the same time introduce uniform, transparent and equal principles for all MS and system participants.

Any additional emission reduction units from projects issued pursuant to Article 24a and other projects administered by Member States that reduce greenhouse gas emissions not covered by the Community scheme (including LULUCF, CCU, etc.) after transferring to the EU ETS could be used by operators under Article 10c and Article 10a in low income Member States (GDP per capita below 60% of the EU average, references to GDP in 2013 in EUR at market prices). The amount of credits should be up to an amount corresponding to XX% of allowances to be auctioned by eligible Member States during the period 2021-2030. The total amount should be equivalent of one-off reduction stipulated in the para 2.12 of the Council conclusions (23 and 24 October 2014).

Text proposed by the Commission

Amendment

Article 1 (22a) (new)

<p>1. Following consultation with the operator, Member States may exclude from the Community scheme installations which have reported to the competent authority emissions of less than 25 000 tonnes of carbon dioxide equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW, excluding emissions from biomass, in each of the three years preceding the notification under point (a), and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:</p> <p>(a) it notifies the Commission of each such installation, specifying the equivalent measures applying to that installation that will achieve an equivalent contribution to emission reductions that are in place, before the list of installations pursuant to Article 11(1) has to be submitted and at the latest when this list is submitted to the Commission;</p> <p>(b) it confirms that monitoring arrangements are in place to assess whether any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year. Member States may allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between 2008 and 2010 which are below 5 000 tonnes a year, in accordance with Article 14;</p> <p>(c) it confirms that if any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures applying to that installation that will achieve an equivalent contribution to emission reductions are no longer in place, the installation will be reintroduced into the Community scheme;</p> <p>(d) it publishes the information referred to in points</p>	<p>1. Following consultation with the operator, Member States may exclude from the Community scheme installations which have reported to the competent authority emissions of less than 25 000 50 000 tonnes of carbon dioxide equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW, excluding emissions from biomass, in each of the three years preceding the notification under point (a), and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:</p> <p>(a) it notifies the Commission of each such installation, specifying the equivalent measures applying to that installation that will achieve an equivalent contribution to emission reductions that are in place, before the list of installations pursuant to Article 11(1) has to be submitted and at the latest when this list is submitted to the Commission;</p> <p>(b) it confirms that monitoring arrangements are in place to assess whether any installation emits 25 000 50 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year. Member States may allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between 2008 and 2010 which are below 5 000 tonnes a year, in accordance with Article 14;</p> <p>(c) it confirms that if any installation emits 25 000 50 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures applying to that installation that will achieve an equivalent contribution to emission reductions are no longer in place, the installation will be reintroduced into the Community scheme;</p> <p>(d) it publishes the information referred to in points</p>
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<p>(a), (b) and (c) for public comment. Hospitals may also be excluded if they undertake equivalent measures. 2. If, following a period of three months from the date of notification for public comment, the Commission does not object within a further period of six months, the exclusion shall be deemed approved. Following the surrender of allowances in respect of the period during which the installation is in the Community scheme, the installation shall be excluded and the Member State shall no longer issue free allowances to the installation pursuant to Article 10a. (...)</p>	<p>(a), (b) and (c) for public comment. Hospitals may also be excluded if they undertake equivalent measures. 2. If, following a period of three months from the date of notification for public comment, the Commission does not object within a further period of six months, the exclusion shall be deemed approved. Following the surrender of allowances in respect of the period during which the installation is in the Community scheme, the installation shall be excluded and the Member State shall no longer issue free allowances to the installation pursuant to Article 10a. (...)</p>
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