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Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments

(Text with EEA relevance)

{SWD(2015) 135 final}

{SWD(2015) 136 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

To effectively tackle climate change and achieve the EU's long-term decarbonisation objectives to cut emissions by at least 80% by 2050, continued progress is needed to a low-carbon economy with new opportunities for growth and jobs. As an important step in these efforts, the European Council agreed in October 2014 the 2030 policy framework for climate and energy.

The implementation of this 2030 energy and climate policy framework is a key element for building a resilient Energy Union with a forward-looking climate policy which is an overarching priority for the Commission over the coming years. At the same time, with the agreement on the 2030 policy framework and its implementation through this proposal, the EU has taken an important step towards a strong international climate agreement to be adopted in Paris in December 2015.

A centrepiece of the 2030 policy framework is the binding target to reduce overall EU greenhouse gas emissions by at least 40% domestically below 1990 levels by 2030. To achieve this target cost-effectively, the sectors covered by the EU emissions trading system (EU ETS) will have to reduce their emissions by 43% compared to 2005 while non-ETS sectors will have to reduce their emissions by 30% compared to 2005. The European Council outlined the main principles to achieve the reduction in the EU ETS¹. This proposal creates the necessary legal framework implementing these principles set out by the European Council, addressing three main issues:

(1) The proposal translates the 43% greenhouse gas reduction target in 2030 in the ETS into a cap declining by 2.2% annually from 2021 onwards, corresponding to an additional reduction of around 556 million tonnes of carbon dioxide in the period 2021-2030 compared to the current annual decline of 1.74%.

(2) The proposal builds on the positive experience with the harmonised rules implemented since 2013, by further developing predictable, robust and fair rules for free allocation of allowances to industry to address the potential risk of carbon leakage in an adequate manner. The proposed rules aim at safeguarding the international competitiveness of the EU energy intensive industries in the gradual transition to a low-carbon economy as long as no comparable efforts are undertaken in other major economies, and maintain incentives for long-term investment in low-carbon technologies. Given that the European Council has decided that the share of allowances auctioned should not reduce, the number of allowances for free for industry is limited, necessitating well-targeted rules. This targeting is mainly achieved by three means: *A more frequent alignment of the free allocation to production data* will ensure that support is provided to growing companies and sectors. *Updating the benchmarks* used to calculate the free allocation will reflect industries' technological capacities and progress over the previous decade. The *list of sectors* receiving the highest share of free allocation will be more targeted to those most exposed to the potential risk of carbon leakage. While carbon leakage rules mainly address compensation for direct carbon costs, the proposal also addresses indirect carbon costs.

Bearing in mind the different energy mixes of Member States, proceeds from the EU ETS should be used for compensation of indirect carbon costs in line with State aid rules. Member

¹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/145397.pdf

States should partially compensate certain installations in sectors or sub-sectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices, where such support is necessary and proportionate and the incentive to save energy and to stimulate a shift in demand from "grey" to "green" electricity is maintained.

The Protocol and accompanying decisions adopted by the Conference of the Parties in Paris need to provide for the dynamic mobilisation of climate finance, technology transfer and capacity building for eligible Parties, particularly those with least capabilities. Public sector climate finance will continue to play an important role in mobilising resources after 2020. Therefore, auction revenues should also be used for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate. The amount of climate finance to be mobilised will also depend on the ambition and quality of the proposed Intended Nationally Determined Contributions (INDCs) of Parties, subsequent investment plans and national adaptation planning processes.

Proceeds from the EU ETS should also be used to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy, in close coordination with the social partners.

(3) The proposal contains several funding mechanisms to support economic actors in the power sector and industry in the innovation and investment challenges they face in the transition to a low-carbon economy. More specifically, the proposal supplements existing support for demonstration of innovative technologies and extends this to breakthrough innovation in industry. Free allocation of allowances continues to be available to modernise the power sector in lower-income Member States and a dedicated fund is established to facilitate investments in modernising the energy systems and improve energy efficiency so as to contribute to emission reductions. This additional funding builds on existing experience with the cooperation between the Commission and the European Investment Bank (EIB) in the context of the EU ETS and, where relevant, draws on features of the European Fund for Strategic Investments (EFSI).

This proposal also adapts the Directive and all powers previously delegated to the Commission for exercise through the Regulatory Procedure with scrutiny, to the system of delegated and implementing acts agreed pursuant to the Treaty of Lisbon². In the light of the EU's commitment to Better Regulation, delegations and implementing acts are maintained only where they are essential for the effective operation of the EU ETS.

This proposal does not address issues relating to aviation's coverage in the EU ETS. Adjustments to the Directive's application to aviation activities should take effect after an international agreement has been reached at the ICAO Assembly in 2016 on a global-market based measure for implementation by 2020.

Consistency with existing policy provisions in the policy area

In terms of coherence with other policies in the area of climate action, renewables and energy efficiency policies are the most relevant. Both policies fully support the environmental effectiveness of the EU ETS and synergies between these policies and the EU ETS have been strengthened through the recently agreed Market Stability Reserve. In particular, as analysed in the impact assessment accompanying the 2030 climate and energy framework, cost-effectively achieving the overall emission reduction target of 40% compared to 1990 requires substantial contributions from renewable energy and energy efficiency measures.

² Regulation (EU) No 182/2011 of 16 February 2011

In terms of coherence with international climate policy, it is important to note that the EU ETS has effectively put a price on carbon and is widely used as a model for emissions trading systems around the world, benefitting from the EU's learning effects.

Consistency with other Union policies

The proposal provides for implementation of part of the 2030 climate and energy policy framework as a key element in the context of building a resilient Energy Union with a forward-looking climate policy.

Decarbonisation requires adjustments. EU policies and funds actively accompany those adjustments. In addition to the measures directly related to the EU ETS, EU instruments such as the European Fund for Strategic Investments or the Horizon 2020 programme as well as the European Structural and Investment Funds (EFSD) also offer potential funding for low-carbon innovation investments, leading to a perceived risk of funding duplication. The expansion of renewable energy and resource efficiency as well R&D are priority areas of the European Fund for Strategic Investment that will generate €315 billion of additional investment in the EU in the next three years. EFSD will work through financial instruments only, lending to existing projects ready to start within three years and will have a wider scope covering variety of sectors such as the digital economy and education. EU ETS funding is designed in accordance with State aid rules so as to ensure the effectiveness of public spending and to prevent market distortions. EU employment, social and skills policies accompany the transition of jobs in a decarbonising economy, including through the European Social Fund.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

Legal basis

Articles 191 to 193 of the Treaty of the Functioning of the European Union (TFEU) confirm and specify EU competencies in the area of climate change. The legal basis for this proposal is Article 192 TFEU.

Subsidiarity (for non-exclusive competence)

The EU ETS Directive is an existing EU policy instrument that continues after 2020. In accordance with the principle of subsidiarity set out in Article 5 of the Treaty of the Functioning of the European Union, the objectives of the proposal amending this instrument can only be achieved through a proposal from the Commission at EU level.

Climate change is a trans-boundary problem, so coordination is necessary of climate action at European level and, where possible, at global level. More specifically, action at EU level will most effectively deliver the post-2020 carbon market reform, incentivising industry to invest in low-carbon technologies while preserving their international competitiveness and the EU's internal market.

The objectives of this Directive therefore cannot be sufficiently achieved by the Member States acting unilaterally, but can rather, by reasons of the scale and effects of the Directive, be better achieved at Union level.

Proportionality

As set out in the impact assessment, the proposal complies with the proportionality principle because it does not go beyond what is necessary in order to achieve the objectives of implementing the EU's greenhouse gas emission reduction target for 2030 in a cost-effective manner while at the same time ensuring the proper functioning of the internal market.

Choice of the instrument

The objectives of the present proposal can best be pursued through a Directive. This is the most appropriate legal instrument to make amendments to the existing EU ETS Directive (Directive 2003/87/EC).

A Directive requires Member States to achieve the objectives and implement the measures into their national substantive and procedural law systems. This approach gives the Member States more freedom when implementing an EU measure than does a Regulation, in that Member States are left the choice of the most appropriate means of implementing the measures in the Directive. This allows Member States to ensure that the amended rules are consistent with their existing substantive and procedural legal framework implementing the EU ETS, in particular regulating the permitting of installations as well as enforcement measures and penalties.

Finally, the choice of a Directive as the appropriate instrument is also in line with the principle that there should be as little intervention as possible, so long as the objectives are achieved.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

Ex-post evaluations/fitness checks of existing legislation

The preliminary findings of a study evaluating the existing ETS Directive in terms of relevance, effectiveness, efficiency, EU-added value and coherence with other Union policies indicate that overall the EU ETS as a policy tool combining environmental regulation with a market instrument is working in practice and delivering on its targets. It is highly relevant for meeting the EU's climate targets, as it represents a cost-effective way for emission reductions. Emissions in the covered sectors have decreased steadily, and even though not all emission reductions can be attributed to the EU ETS alone, there is evidence that the system does contribute effectively to emission reductions.

The EU ETS facilitates the internalisation of CO₂ costs. It plays a role when investment decisions are taken, even though with the current low carbon price, the CO₂ costs are often included in the general envelope of energy costs. Smaller improvements in terms of GHG efficiency have become regular practice, but larger investments in GHG efficiency still remain the exception.

Moreover, the EU ETS has a clear EU value added since different systems or other climate policies at Member State level would lead to a fragmented and costly situation for the regulated entities, as well as different ambition levels and carbon prices throughout the EU, leading also to administrative complexity. The EU ETS with an EU-wide carbon price and its harmonised infrastructure takes advantages of the synergies that EU action can provide.

However, the implementation of the emission reduction target for 2030 and setting the cap at the emission level leading to a reduction of 43% compared to 2005 requires changes to the existing framework. This mainly includes the change of the annual linear reduction factor reducing the EU ETS cap from 2021 onwards, free allocation and carbon leakage, the share of allowances to be auctioned as well as low-carbon funding mechanisms.

Stakeholder consultations

At various steps in developing this proposal, Member States, industry representatives, NGOs, research and academic institutions, trade unions and citizens were involved. Complementing the public consultation for the 2030 framework, an extensive follow-up stakeholder

consultation was carried out on various technical aspects of the post-2020 carbon leakage provisions, as well as aspects related to innovation support. The Commission gained important insights from a written consultation open for comments from May to July 2014³ and three stakeholder meetings convened in June, July and September 2014⁴ focussing on carbon leakage. The findings of this consultation are publicly available on the following website:

http://ec.europa.eu/clima/policies/ets/cap/leakage/documentation_en.htm

This was followed by an online consultation open for comments from December 2014 to March 2015 focussing mainly on other EU ETS aspects, such as the continuation of the free allocation for the power sector, lessons learnt from the NER300 applicable to the future Innovation Fund and its extension to industrial innovation projects, the governance structure of the Modernisation Fund, experience with the optional exclusion of small emitters from the ETS in phase 3, fees for the Union registry and the general evaluation of the EU ETS. The Commission received over 500 contributions from a wide spectrum of stakeholders. The results of this second consultation are reported in section 1.3.2. and Annex 3 of the Impact Assessment accompanying this proposal⁵ and have been taken into account for the current proposal to the extent possible.

In general, the public consultations showed broad support for the EU ETS as a policy instrument.

On free allocation and addressing the risk of carbon leakage, a number of industry stakeholders favour limited changes to the current system, while other stakeholders, including Member States and civil society, believe that more targeting or further harmonisation is needed. Taking into account these comments, the proposal provides for limited changes to the existing rules, but a more targeted approach to free allocation, updating benchmarks based on technological progress achieved over time while ensuring an adequate protection of industry's international competitiveness. At the same time, the proposal allows for a better alignment of the free allocation with current production levels by a more frequent calculation of individual allocations.

With regard to the Innovation Fund, energy and industry stakeholders generally welcome continued support for low-carbon innovation and the expansion of scope to include industry reflected in the proposal. Views differed on how the risk sharing approach could be tailored for industry or CCS to improve the effectiveness compared to the current NER 300 mechanism. The proposal addresses such concerns by allowing support at an earlier stage in the project life cycle and a higher rate of support.

On the Modernisation Fund, views on the appropriate governance structure also differed to a certain extent. Some stakeholders support a key role for the beneficiary Member States in managing the Fund, while others ask for a stronger role for all Member States, the Commission and the European Investment Bank. The proposal strikes a reasonable balance between the need to ensure efficient funding of projects in the beneficiary Member States on the one hand, and to ensure that the interests of all Member States and the expertise of the EIB on the other hand, are brought together to modernise the energy systems.

³ A summary of the findings and the individual submissions can be found on the DG Climate Action website http://ec.europa.eu/clima/consultations/articles/0023_en.htm

⁴ Recordings of the meetings and the presentation can be found on the DG Climate Action website: http://ec.europa.eu/clima/policies/ets/cap/leakage/documentation_en.htm

⁵ SEC(2015)XXX

Regarding the optional free allocation to the energy sector, market participants generally support streamlined and simplified rules, as well as harmonised reporting guidelines to enhance the transparency of the mechanism. This need for increased transparency and clearer rules is duly reflected in the proposal, in particular, by enabling the Commission to publish information on investments received from the Member States.

- **Collection and use of expertise**

In terms of external expertise, the Commission bases itself on the growing body of peer-reviewed empirical research on the EU ETS. In addition it gathered expertise from a study on evaluation of the ETS, commissioned in 2014 and carried out by a consortium led by ICF International⁶. Furthermore, in 2014, a study⁷ was commissioned to assess the issue of costs being passed through from industrial sectors to their downstream customers and to determine the factors influencing such ability to pass through costs quantifying it for major energy intensive industry sectors. Another study⁸ was commissioned to evaluate the experience gathered with the harmonised benchmark-based allocation process, and in particular to evaluate whether the benchmarks have achieved the intended objectives. In 2013, a study⁹ was commissioned to assess the evidence for carbon leakage in the period 2005-2012 for ten major energy intensive industry sectors. The findings of these studies are discussed in the impact assessment accompanying the proposal.

Verified data received from the Member States to determine the free allocation in phase 3 were also used for the analysis carried out in the impact assessment.

- **Impact assessment**

The proposed Directive is accompanied by an impact assessment, which built largely on the findings of the comprehensive impact assessment on the 2030 framework¹⁰, focusing on certain ETS-specific methodological elements not already assessed.

A summary sheet for the impact assessment, an executive summary, and the positive opinion of the Impact Assessment Board will be made publically available. The impact assessment was carried out for a number of aspects on which the European Council gave strategic guidance in its conclusions on the 2030 framework. This includes addressing the potential risk of carbon leakage, the establishment of a Modernisation and an Innovation Fund, optional free allocation to modernise the electricity sector in lower income Member States, as well as aspects building on the lessons learnt since 2013, such as the validity of emission allowances, guaranteeing a robust and secure registry and the continuation of the optional exclusion of small emitters.

For addressing the potential risk of carbon leakage, a range of options were considered concerning the update of benchmarks, production level adjustments, classification of sectors into carbon leakage groups and indirect cost compensation. For the Innovation Fund, options focussed on the way projects are screened and selected, and the way in which financial support is provided. For the Modernisation Fund, options were considered on its governance.

⁶ ICF International, Umweltbundesamt, SQ Consult, Ecologic Institut, Vivid Economics and ZEW – on-going work

⁷ 'Study on different pass-through factors to assess the impact of the EU ETS carbon cost' – on-going work

⁸ 'Assessment of the first years of the functioning of the new allocation system based on benchmarks' – on-going work

⁹ Carbon Leakage and Competitiveness Assessment, Ecorys, 2014
(http://ec.europa.eu/clima/policies/ets/cap/leakage/docs/cl_evidence_factsheets_en.pdf)

¹⁰ SWD(2014) 15 final

Regarding the optional free allocation to the energy sector, options are developed for improving its modalities and enhance transparency compared to the current practice.

In terms of impacts, the environmental ambition of the EU ETS is determined by the cap and the proposed change of the linear reduction factor ensures that the agreed headline target of a 43% reduction compared to 2005 for sectors under the EU ETS is achieved. The fact that the contribution the EU ETS has to make to the overall EU 2030 reduction target has already been set contributes to the fact that the overall impact was independent of the assessed policy choices.

Businesses covered by the EU ETS are directly affected. Sectoral impacts in major industrial sectors covered by the EU ETS vary to some degree depending on the options. However, policy choices that lower the costs and impacts on some industrial sectors typically result in higher costs and impacts for other industrial sectors because the total number of allowances that are available for free is limited. The proposal also provides opportunities for producers of renewable energy, and manufacturers of equipment for low-carbon technologies. In particular, additional funding for innovative technologies will generate new business opportunities.

- **Regulatory fitness and simplification**

In line with the Commission commitment to Better Regulation, the proposal has been prepared inclusively, based on full transparency and continuous engagement with stakeholders, listening to external feedback and taking into account external scrutiny to ensure the proposal strikes the right balance (see also section on the collection and use of expertise).

While the majority of installations under the EU ETS are in the energy-intensive industries with market structures characterised by large enterprises, the proposal also caters for small emitters, which may be owned by SMEs or micro enterprises: In addition to existing rules alleviating the administrative burden and costs of monitoring and reporting emissions, such installations with low emissions benefit from the proposed continuation of the possibility for Member States to exclude them from the EU ETS if they are subject to national measures leading to an equivalent contribution to emission reductions.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, it contributes to the objective of a high level of environmental protection in accordance with the principle of sustainable development as laid down in Article 37 of the Charter of Fundamental Rights of the European Union.¹¹

4. BUDGETARY IMPLICATIONS

The EU ETS generates significant revenues for Member States' budgets. The proposal affects national budgets and administrations primarily because of this link. The secure operation of the Union registry is funded from the Union budget. There is also a small and limited impact on the EU budget which is, however, fully covered by the current MFF 2014-2020.

¹¹ OJ C 326, 26.10.2012, p. 391

5. OTHER ELEMENTS

Implementation plans and monitoring, evaluation and reporting arrangements

The delivery of the 2030 energy and climate framework will be included in the integrated governance and monitoring process under the Energy Union.

Article 10(5) of the current Directive requires the Commission to monitor the functioning of the European carbon market and to submit each year a corresponding report to the European Parliament and the Council. In the context of the monitoring process, the Commission will also continue its dialogue with all relevant stakeholders.

Once the proposed Directive has been adopted, the Commission will continue to monitor the legal framework transposing obligations under the EU ETS in the Member States as well the implementation of specific obligations. To this end, Article 21 foresees that each year, the Member States submit to the Commission a report on the application of the Directive.

The proposal does not change any of the above reporting requirements. However, it foresees further specific reporting requirements for Member States, for example, for the free allocation of allowances to the power sector and the funding provided through the Modernisation Fund to modernise the energy systems in low-income Member States. These reporting requirements are designed to improve and guarantee the transparency of the implementation of the supported investments.

Finally, an ex-post evaluation will be made once the measures put forward by the proposal are being fully implemented in the Member States and have been operating for a significant period of time.

Explanatory documents

The proposed Directive sets out specific measures amending the existing modalities of the EU ETS. There are several legal obligations stemming from the proposed Directive. Its effective transposition will therefore require that specific and targeted amendments are made to the relevant national rules. However, in order for the Commission to monitor the correct implementation, it may in certain cases be insufficient for Member States to transmit the text of the amended national implementing provisions. Where appropriate, the proposal may therefore require Explanatory Documents on its transposition.

Detailed explanation of the specific provisions of the proposal

The main elements of the EU ETS Directive which are amended through the proposal are the following:

Linear reduction factor (Art. 9)

The linear reduction factor is changed to 2.2% from 2021 onwards. It ensures that the overall quantity of allowances ('cap') will decline at an increased annual pace resulting in an overall emission reduction of sectors under the EU ETS of 43% by 2030.

Auction share (Art. 10)

In line with the guidance from European Council of October 2014 that the share of allowances auctioned should not decline, the proposal sets out the relevant share as a percentage figure, taking into account the different elements determining this share in 2013 to 2020. In terms of distribution, 10% of the EU ETS allowances to be auctioned by the Member States will continue to be distributed to the benefit of certain lower-income Member States for the

purposes of solidarity, growth and interconnections, while the rest of the allowances will be shared out among all Member States.

Free allocation and carbon leakage provisions (Art. 10a and 10b)

The proposal provides that the benchmarks for the determination of the free allocation to industry will be updated to reflect the technological progress realised over time in the relevant sectors. To this end, a standard rate will be applied with the possibility of applying a modified rate in case that the actual rate of technological progress in a sector is shown to deviate substantially from this standard rate.

Sectors deemed to be exposed to a risk of carbon leakage will continue to receive a higher allocation than others who have a higher ability to pass on relevant costs in product prices. The revised methodology to identify the sectors and sub-sectors at a genuine risk of carbon leakage is based on two combined criteria: emissions intensity and trade intensity.

Furthermore, free allocation will be better aligned with actual production levels of sectors. To this end, free allocations will be periodically updated, while incentives to innovate are fully maintained and the administrative burden and costs for Member States, operators and the Commission remain reasonable.

Allocations for new entrants and significant increases in production will be provided from a dedicated reserve. This new entrants' reserve will be created with 250 million of unallocated allowances from the Market Stability Reserve and supplemented by allowances that remain unused due to the closure of installations or significant changes in production in the period from 2021 onwards. Allowances not allocated for free from the industry's share up to 2020 and not placed in the Market Stability Reserve will also be added to this new entrants' reserve.

Indirect carbon costs (Art. 10a(6))

With regard to indirect carbon costs that arise due to carbon costs being passed on in the price of electricity, the proposal foresees that Member States should provide compensation in line with the rules on State aid and that the revenues from auctioning should be used in this regard.

Installations with low emissions (small emitters) (Art. 27 and 11(1))

With regard to installations with low emissions, considering their relative higher administrative costs under the EU ETS, it is appropriate that the possibility to exclude such installations from the system is continued. The proposal thus foresees that installations excluded today may remain excluded provided they make an equivalent contribution to emission reductions. Member States may also exclude further installations as of 2021.

Innovation support (Art. 10a (8))

Existing EU-level support for innovation is supplemented through dedicating 400 million allowances for these purposes. An extra 50 million allowances is added to this amount from the allowances that remain unused in 2013 to 2020 and would otherwise be placed in the Market Stability Reserve in 2020. While such innovation support is currently limited to carbon capture and storage and renewable energy projects, the proposal broadens the support to industry with the aim to boost low-carbon innovation incentives.

Modernisation of the energy systems in lower income Member States (Art. 10c and 10d)

To support the modernisation of energy systems in lower income Member States and fully exploit the power sectors potential to contribute to cost-effective emission reductions, the proposal foresees two measures: the continuation of the free allocation to the power sector and the creation of a Modernisation Fund.

As often pointed out by stakeholders, a major hurdle to assessing the effectiveness of the transitional free allocation to the power sector in certain Member States is a lack of transparency with regard to the applicable rules as well as the realisation of investments. The proposal enhances the transparency by requiring Member States to select investments above a certain monetary threshold on the basis of a competitive bidding process. It also sets clear publication requirements for the Member States and provides the Commission with the possibility to render important information on investments carried out public.

The Modernisation Fund is created with 2% of the overall quantity of allowances. These will be auctioned in accordance with the rules provided for in the EU ETS Auctioning Regulation to generate the necessary funds for projects to be carried out. The funds will be distributed between eligible Member States according to a predetermined key set out in the Annex of the proposal. Particular attention will be paid to the funding of small-scale projects.

Validity of allowances (Art. 13)

In order to ease administrative costs, the proposal foresees that allowances issued for one trading period remain valid for later periods.

Transition to the system of delegated and implementing acts ('Lisbonisation')

Important implementing legislation, including a regulation on auctioning, a regulation on the Union Registry as well as decisions on the rules for free allocation and carbon leakage has been adopted. To align the Directive with the provisions of the Treaty of Lisbon, the proposal empowers the Commission to adopt delegated and implementing acts in line with the relevant procedure where such powers were previously granted to the Commission.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
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 Commission¹²,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee¹³,
Having regard to the opinion of the Committee of the Regions¹⁴,
Acting in accordance with the ordinary legislative procedure,
Whereas:

- (1) Directive 2003/87/EC of the European Parliament and of the Council¹⁵ 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.
- (2) The European Council of October 2014 made a commitment to reduce the overall greenhouse gas emissions of the Union by at least 40% below 1990 levels by 2030. All sectors of the economy should contribute to achieving these emission reductions and the target will be delivered in the most cost-effective manner through the Union emission trading system (EU ETS) delivering a reduction of 43% below 2005 levels by 2030. This was confirmed in the intended nationally determined reduction commitment of the Union and its Member States submitted to the Secretariat of the UN Framework Convention on Climate Change on 6 March 2015¹⁶.
- (3) The European Council confirmed that a well-functioning, reformed EU ETS with an instrument to stabilise the market will be the main European instrument to achieve this target, with an annual reduction factor of 2.2% from 2021 onwards, free allocation not expiring but existing measures continuing after 2020 to prevent the risk of carbon leakage due to climate policy, as long as no comparable efforts are undertaken in other

¹² OJ C [...], [...], p. [...].

¹³ OJ C [...], [...], p. [...].

¹⁴ OJ C [...], [...], p. [...].

¹⁵ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

¹⁶ <http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx>

major economies, without reducing the share of allowances to be auctioned. The auction share should be expressed as a percentage figure in the legislation, to enhance planning certainty as regards investment decisions, to increase transparency and to render the overall system simpler and more easily understandable.

- (4) It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens. Achieving this requires continuation of ambitious climate action with the EU ETS as the cornerstone of Europe's climate policy, and progress on the other aspects of Energy Union¹⁷. Implementing the ambition decided in the 2030 framework contributes to delivering a meaningful carbon price and continuing to stimulate cost-efficient greenhouse gas emission reductions.
- (5) Article 191(2) of the Treaty on the Functioning of the European Union requires that Union policy is based on the principle that the polluter should pay and, on this basis, Directive 2003/87/EC provides for a transition to full auctioning over time. Avoiding carbon leakage is a justification to postpone full transition, and targeted free allocation of allowances to industry is justified in order to address genuine risks of increases in greenhouse gas emissions in third countries where industry is not subject to comparable carbon constraints as long as comparable climate policy measures are not undertaken by other major economies.
- (6) The auctioning of allowances remains the general rule, with free allocation as the exception. Consequently, and as confirmed by the European Council, the share of allowances to be auctioned, which was 57% over the period 2013-2020, should not be reduced. The Commission's Impact Assessment¹⁸ provides details on the auction share and specifies that this 57% share is made up of allowances auctioned on behalf of Member States, including allowances set aside for new entrants but not allocated, allowances for modernising electricity generation in some Member States and allowances which are to be auctioned at a later point in time because of their placement in the Market Stability Reserve established by Decision (EU) 2015/... of the European Parliament and of the Council¹⁹.
- (7) To preserve the environmental benefit of emission reductions in the Union while actions by other countries do not provide comparable incentives to industry to reduce emissions, free allocation should continue to installations in sectors and sub-sectors at genuine risk of carbon leakage. Experience gathered during the operation of the EU ETS confirmed that sectors and sub-sectors are at risk of carbon leakage to varying degrees, and that free allocation has prevented carbon leakage. While some sectors and sub-sectors can be deemed at a higher risk of carbon leakage, others are able to pass on a considerable share of the costs of allowances to cover their emissions in product prices without losing market share and only bear the remaining part of the costs so that they are at a low risk of carbon leakage. The Commission should determine and differentiate the relevant sectors based on their trade intensity and their emissions intensity to better identify sectors at a genuine risk of carbon leakage. Where, based on these criteria, a threshold determined by taking into account the respective possibility for sectors and sub-sectors concerned to pass on costs in product prices is exceeded,

¹⁷ COM(2015)80, establishing a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy

¹⁸ SEC(2015)XX

¹⁹ Decision (EU) 2015/... of the European Parliament and of the Council of ... 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 [...], [...], p. [...]).

the sector or sub-sector should be deemed at risk of carbon leakage. Others should be considered at a low risk or at no risk of carbon leakage. Taking into account the possibilities for sectors and sub-sectors outside of electricity generation to pass on costs in product prices should also reduce windfall profits.

- (8) In order to reflect technological progress in the sectors concerned and adjust them to the relevant period of allocation, provision should be made for the values of the benchmarks for free allocations to installations, determined on the basis of data from the years 2007-8, to be updated in line with observed average improvement. For reasons of predictability, this should be done through applying a factor that represents the best assessment of progress across sectors, which should then take into account robust, objective and verified data from installations so that sectors whose rate of improvement differs considerably from this factor have a benchmark value closer to their actual rate of improvement. Where the data shows a difference from factor reduction of more than 0.5% of the 2007-8 value higher or lower per year over the relevant period, the related benchmark value shall be adjusted by that percentage. To ensure a level playing field for the production of aromatics, hydrogen and syngas in refineries and chemical plants, the benchmark values for aromatics, hydrogen and syngas should continue to be aligned to the refineries benchmarks.
- (9) Member States should partially compensate, in accordance with state aid rules, certain installations in sectors or sub-sectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices. The Protocol and accompanying decisions adopted by the Conference of the Parties in Paris need to provide for the dynamic mobilisation of climate finance, technology transfer and capacity building for eligible Parties, particularly those with least capabilities. Public sector climate finance will continue to play an important role in mobilising resources after 2020. Therefore, auction revenues should also be used for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate. The amount of climate finance to be mobilised will also depend on the ambition and quality of the proposed Intended Nationally Determined Contributions (INDCs), subsequent investment plans and national adaptation planning processes. Member States should also use auction revenues to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy.
- (10) The main long-term incentive from this Directive for the capture and storage of CO₂ (CCS), new renewable energy technologies and breakthrough innovation in low-carbon technologies and processes is the carbon price signal it creates and that allowances will not need to be surrendered for CO₂ emissions which are permanently stored or avoided. In addition, to supplement the resources already being used to accelerate demonstration of commercial CCS facilities and innovative renewable energy technologies, EU ETS allowances should be used to provide guaranteed rewards for deployment of CCS facilities, new renewable energy technologies and industrial innovation in low-carbon technologies and processes in the Union for CO₂ stored or avoided on a sufficient scale, provided an agreement on knowledge sharing is in place. The majority of this support should be dependent on verified avoidance of greenhouse gas emissions, while some support may be given when pre-determined milestones are reached taking into account the technology deployed. The maximum percentage of project costs to be supported may vary by category of project.
- (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. 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 an investment board and a management 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 distribution of funds will take into account in equal shares verified emissions and GDP criteria. The financial assistance from the Modernisation Fund could be provided through different forms.

- (12) The 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 €10 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 €10 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.
- (13) EU ETS funding should be coherent with other Union funding programmes, including European Structural and Investment Funds, so as to ensure the effectiveness of public spending.
- (14) The existing provisions which are in place for small installations to be excluded from the EU ETS allow the installations which are excluded to remain so, and it should be made possible for Member States to update their list of excluded installations and for Member States currently not making use of this option to do so at the beginning of each trading period.
- (15) The European Council of October 2014 agreed that 10% of the EU ETS allowances to be auctioned by Member States are to be distributed among certain Member States for the purpose of solidarity, growth and interconnections while the rest of the allowances are distributed among all Member States in shares that are identical to the shares applicable in 2013-20, including for Member States which joined the Union during this period. Member States with a GDP per capita below 90% of the Union average in 2013 should benefit from this solidarity and the corresponding Annex to this Directive should be updated accordingly. The derogation from contributions to this distribution

in 2013-20 for certain Member States with an average level of income per capita more than 20% higher than the average in the Union should expire.

- (16) Decision (EU) 2015/... establishes a Market Stability Reserve for the EU ETS in order to make auction supply more flexible and make the system more resilient. This decision also provides for allowances not allocated to new entrants up to 2020 and not allocated because of cessations and partial cessations to be placed in the Market Stability Reserve.
- (17) 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 Article 3d(3), Article 10(4), Article 10a(1) and (8), Article 10b, Article 10d, Article 14(1), Article 15, Article 19(3), Article 22, Article 24, Article 24a and Article 25a of Directive 2003/87/EC. In order to reduce delegations to the minimum, the existing powers in respect of the operation of the special reserve, for attributing quantities of international credits which may be exchanged and placing further standards for what may be exchanged and for further rules on double counting in Article 3f(9), Article 11a(9) and Article 11b(7) of Directive 2003/87/EC are deleted. Acts adopted pursuant to those provisions continue to apply. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council. As regards the delegation in respect of Article 10(4) of Directive 2003/87/EC, those Member States which do not use the common platform for auctioning may continue not to do so.
- (18) In order to ensure uniform conditions for the implementation of the third subparagraph of Article 10a(2) and Article 16(12) of Directive 2003/87/EC, implementing powers should be conferred on the Commission. Those necessary implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council²⁰. In order to reduce implementing acts to the minimum, the existing power in Article 11a(8) of Directive 2003/87/EC in respect of further specifying quantities of international credits for exchange should be deleted. Acts adopted pursuant to that provision continue to apply.
- (19) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents²¹, 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, where appropriate, the transmission of such documents to be justified.
- (20) This Directive seeks to contribute to the objective of a high level of environmental protection in accordance with the principle of sustainable development in the most economically efficient manner while providing installations adequate time to adapt and providing for more favourable treatment of specially affected persons in a

²⁰ 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.

²¹ OJ C 369, 17.12.2011, p. 14.

proportionate manner to the maximum extent compatible with the other objectives of this Directive.

- (21) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (22) 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 of the 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1
Amendments to Directive 2003/87/EC

Directive 2003/87/EC is amended as follows:

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

“The Commission shall be empowered to adopt a delegated act in accordance with Article 23”.
- (2) In Article 3f, paragraph (9) is deleted.
- (3) In Article 9, the second and third paragraphs are replaced by the following:

"Starting in 2021, the linear factor shall be 2.2%."
- (4) Article 10 is amended as follows:
 - (a) three new subparagraphs are added to paragraph 1:

"From 2021 onwards, the share of allowances to be auctioned by Member States shall be 57%.

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

The total remaining quantity of allowances to be auctioned by Member States shall be distributed in accordance with paragraph 2.”;
 - (b) paragraph 2 is amended as follows:
 - (i) in point (a), "88%" is replaced by "90%";
 - (ii) point (b) is replaced by the following:

"(b) 10% of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity and growth within the Community, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa.”; and
 - (iii) point (c) is deleted;
 - (iv) the third subparagraph is replaced by the following:

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

(c) in paragraph 3, the following points (j), (k) and (l) are added:

"(j) to fund financial measures in favour of sectors or subsectors that are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, provided that these measures meet the conditions set out in Article 10a(6);

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

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

(d) the third subparagraph of paragraph 4 is replaced by the following:

"The Commission shall be empowered to adopt a delegated act in accordance with Article 23."

(5) Article 10a is amended as follows:

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

"The Commission shall be empowered to adopt a delegated act in accordance with Article 23. This act shall also provide for additional allocation from the new entrants reserve for significant production increases by applying the same thresholds and allocation adjustments as apply in respect of partial cessations of operation."

(b) a new third subparagraph is added to paragraph 2 as follows:

"The benchmark values for free allocation shall be adjusted in order to avoid windfall profits and reflect technological progress in the period between 2007-8 and each later period for which free allocations are determined in accordance with Article 11(1). This adjustment shall reduce the benchmark values set by the act adopted pursuant to Article 10a by 1% of the value that was set based on 2007-8 data in respect of each year between 2008 and the middle of the relevant period of free allocation, unless:

(i) On the basis of information submitted pursuant to Article 11, the Commission shall identify whether the values for each benchmark calculated using the principles in Article 10a differ from the annual reduction referred to above by more than 0.5% of the 2007-8 value higher or lower annually. If so, that benchmark value shall be adjusted either 0.5% or 1.5% in respect of each year between 2008 and the middle of the period for which free allocation is to be made;

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

The Commission shall adopt an implementing act for this purpose in accordance with Article 22a."

(c) paragraph 5 is replaced by the following:

"In order to respect the auctioning share set out in Article 10, the sum of free allocations in every year where the sum of free allocations does not reach the

maximum level that respects the Member State auctioning share, the remaining allowances up to that level shall be used to prevent or limit reduction of free allocations to respect the Member State auctioning share in later years. Where, nonetheless, the maximum level is reached, free allocations shall be adjusted accordingly. Any such adjustment shall be done in a uniform manner.";

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

"Member States should adopt financial measures in favour of sectors or sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, taking into account any effects on the internal market. Such financial measures to compensate part of these costs shall be in accordance with state aid rules. "

(e) paragraph 7 is amended as follows

(i) The first and second sentences of the first subparagraph are replaced by the following:

"Allowances from the maximum amount referred to Article 10a(5) of this Directive which were not allocated for free up to 2020 shall be set aside for new entrants and significant production increases, together with 250 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU) 2015/... of the European Parliament and of the Council(*).

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

(*). [insert the full title of the Decision and the OJ reference]."

(ii) The fifth subparagraph is deleted.

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

"400 million allowances shall be available to support innovation in low-carbon technologies and processes in industrial sectors listed in Annex I, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe capture and geological storage (CCS) of CO₂ as well as demonstration projects of innovative renewable energy technologies, in the territory of the Union.

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

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

Member States including small-scale projects, before 2021. Projects shall be selected on the basis of objective and transparent criteria.

The Commission shall be empowered to adopt a delegated act in accordance with Article 23."

(g) paragraphs 9 and 10 are deleted.

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

(i) paragraphs 12 to 18 are deleted.

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

"Article 10b

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

1. Sectors and sub-sectors where the product exceeds 0.2 from multiplying their intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the European Economic Area (annual turnover plus total imports from third countries), by their emission intensity, measured in kgCO₂ divided by their gross value added (in €), shall be deemed to be at risk of carbon leakage. Such sectors and sub-sectors shall be allocated allowances free of charge for the period up to 2030 at 100% of the quantity determined in accordance with the measures adopted pursuant to Article 10a.
2. Sectors and sub-sectors where the product from multiplying their intensity of trade with third countries by their emission intensity is above 0.18 may be included in the group referred to in paragraph 1, on the basis of a qualitative assessment using the following criteria:
 - a) the extent to which it is possible for individual installations in the sector or sub-sectors concerned to reduce emission levels or electricity consumption;
 - b) current and projected market characteristics;
 - c) profit margins as a potential indicator of long-run investment or relocation decisions.
3. Other sectors and sub-sectors are considered to be able to pass on more of the cost of allowances in product prices, and shall be allocated allowances free of charge for the period up to 2030 at 30% of the quantity determined in accordance with the measures adopted pursuant to Article 10a.
4. By 31 December 2019, the Commission shall adopt a delegated act for the preceding paragraphs for activities at a 4-digit level (NACE-4 code) as concerns paragraph 1, in accordance with Article 23, based on data for the three most recent calendar years available.

Article 10c

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

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

2. The Member State concerned shall organise a competitive bidding process for projects with a total amount of investment exceeding €10 million to select the investments to be financed with free allocation. This competitive bidding process shall:
- (a) comply with the principles of transparency, non-discrimination, equal treatment and sound financial management;
 - (b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the infrastructure, clean technologies and modernisation of the energy production, transmission and distribution sectors are eligible to bid;
 - (c) define clear, objective, transparent and non-discriminatory selection criteria for the ranking of projects, so as to ensure that projects are selected which:
 - (i) on the basis of a cost-benefit analysis, ensure a net positive gain in terms of emission reduction and realise a pre-determined significant level of CO₂ reductions;
 - (ii) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand;
 - (iii) offer best value for money;

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

Where investments with a value of less than €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 comment. On this basis, the Member State concerned shall establish and submit a list of investments to the Commission by 30 June 2019.

3. The value of the intended investments shall at least equal the market value of the free allocation, while taking into account the need to limit directly linked price increases. The market value shall be the average of the price of allowances on the common auction platform in the preceding calendar year.
4. Transitional free allocations shall be deducted from the quantity of allowances that the Member State would otherwise auction. The total free allocation shall be no more than 40% of the allowances which the Member State concerned receives in the period 2021-30 pursuant to Article 10(2)(a) spread out in equal annual volumes over the period from 2021-30.
5. Allocations to operators shall be made upon demonstration that an investment selected according to the rules of the competitive bidding process has been carried out.
6. Member States shall require benefiting electricity generators and network operators to report by 28 February of each year on the implementation of their selected investments. Member States shall report on this to the Commission, and the Commission shall make such reports public."
- (7) The following Article 10d is inserted:

Modernisation Fund

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

The investments supported shall be consistent with the aims of this Directive and the European Fund for Strategic Investments.

2. The fund shall also finance small-scale investment projects in the modernisation of energy systems and energy efficiency. To this end, the investment board shall develop guidelines and investment selection criteria specific to such projects.
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.
4. The fund shall be governed by an investment board and a management committee, which shall be composed of representatives from the beneficiary Member States, the Commission, the EIB and three representatives elected by the other Member States for a period of 5 years. The investment board shall be responsible to determine an Union-level investment policy, appropriate financing instruments and investment selection criteria. The management committee shall be responsible for the day-to-day management of the fund.

The investment board shall elect a representative from the Commission as chairman. The investment board shall strive to take decisions by consensus. If the investment board is not able to decide by consensus within a deadline set by the chairman, the investment board shall take a decision by simple majority.

The management committee shall be composed of representatives appointed by the investment board. Decisions of the management committee shall be taken by simple majority.

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

5. The beneficiary Member States shall report annually to the management committee on investments financed by the fund. The report shall be made public and include:
 - (a) information on the investments financed per beneficiary Member State;
 - (b) an assessment of the added value in terms of energy efficiency or modernisation of the energy system achieved through the investment;
6. Each year, the management committee shall report to the Commission on experience with the evaluation and selection of investments. The Commission shall review the

basis on which projects are selected by 31 December 2024 and, where appropriate, make proposals to the management committee.

7. The Commission shall be empowered to adopt a delegated act in accordance with Article 23 to implement this Article."

(8) In Article 11(1), the following second subparagraph is added:

"A list of installations covered by this Directive for the five years beginning on 1 January 2021 shall be submitted by 30 September 2018, and lists for the subsequent five years shall be submitted every five years thereafter. Each list shall include information on production activity, transfers of heat and gases, electricity production and emissions at sub-installation level over the five calendar years preceding its submission. Free allocations shall only be given to installations where such information is provided."

(9) In Article 11a, paragraphs 8 and 9 are deleted.

(10) In Article 11b, paragraph 7 is deleted.

(11) Article 13 is replaced by the following:

"Article 13

Validity of allowances

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

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

"The Commission shall be empowered to adopt a delegated act in accordance with Article 23."

(13) In Article 15, the fifth subparagraph is replaced by the following:

"The Commission shall be empowered to adopt a delegated act in accordance with Article 23."

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

"12. Where appropriate, detailed rules shall be established in respect of the procedures referred to in this Article. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 22a."

(15) In Article 19(3), the third sentence is replaced by the following:

"It shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems. The Commission shall be empowered to adopt a delegated act in accordance with Article 23."

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

"The Commission shall be empowered to adopt a delegated act in accordance with Article 23"

(17) The following Article 22a is inserted:

"Article 22a

Committee procedure

1. The Commission shall be assisted by the Committee established by Article 8 of Decision 93/389/EEC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

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

- (18) Article 23 is replaced by the following:

“Article 23

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 3d(3), Article 10(4), Article 10a(1) and (8), Article 10b, Article 10d, Article 14(1), Article 15, Article 19(3), Article 22, Article 24, Article 24a and Article 25a shall be conferred on the Commission for an indeterminate period of time from the (*).

(*) date of entry into force of the basic legislative act.

3. The delegation of powers referred to in paragraph 2 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *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.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to the preceding paragraphs shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council."

- (19) Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following:

“From 2008, Member States may apply emission allowance trading in accordance with this Directive to activities and to greenhouse gases which are not listed in Annex I, taking into account all relevant criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the Community scheme and the reliability of the planned monitoring and reporting system, provided that inclusion of such activities and greenhouse gases is approved by the Commission.

In accordance with delegated acts which the Commission shall be empowered to adopt in accordance with Article 23, if the inclusion refers to activities and greenhouse gases which are not listed in Annex I.”;

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

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

(20) Article 24a is amended as follows:

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

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

(b) paragraph 2 is deleted.

(21) Article 25(2) is deleted.

(22) In Article 25a, paragraph 1 is replaced by the following:

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

Where necessary, the Commission may adopt amendments to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in Annex I or to provide for any other amendments to the aviation activities listed in Annex I which are required by an agreement pursuant to the fourth subparagraph. The Commission shall be empowered to adopt such amendments in accordance with Article 23."

(23) Annex IIa is amended in accordance with the Annex I to this Directive.

(24) Annex IIb is amended in accordance with the Annex II to this Directive.

(25) Annex IV is amended in accordance with the Annex III to this Directive.

Article 2 *Transposition*

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

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3
Transitional provision

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

Article 4
Entry into force

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

Article 5
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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

1.2. Policy area(s) concerned in the ABM/ABB structure²²

Policy area: Climate Action

ABB activity: Climate action at Union and international level (ABB code 34 02)

Policy Area: Energy (ABB Code 32 02)

1.3. Nature of the proposal/initiative

The proposal/initiative relates to **a new action**

The proposal/initiative relates to **a new action following a pilot project/preparatory action**²³

The proposal/initiative relates to **the extension of an existing action**

The proposal/initiative relates to **an action redirected towards a new action**

1.4. Objective(s)

1.4.1. *The Commission's multiannual strategic objective(s) targeted by the proposal/initiative*

This proposal is a first piece of legislation implementing the 2030 Climate and Energy package agreed by the European Council in October 2014, to achieve the EU 2030 greenhouse gas emission reduction target of at least -40% compared to 1990 domestically in a cost effective manner and contribute to limiting global warming.

This proposal is part of the Commission's ten political priorities, and an important element of the Strategic Framework for the Energy Union.

1.4.2. *Specific objective(s) and ABM/ABB activity(ies) concerned*

Specific objective No 1

Revise the EU ETS Directive in a manner to ensure emissions in the EU ETS are reduced by 43% below 2005 levels by 2030.

Specific objective No 2

Promote low-carbon innovation and establish, for industrial sectors, appropriate provisions to address the potential risk of carbon leakage in the absence of comparable climate policy measures in other major economies..

Specific objective No 3

Implement further ETS-related aspects of the 2030 climate and energy policy framework.

²²

ABM: activity-based management; ABB: activity-based budgeting.

²³

As referred to in Article 54(2)(a) or (b) of the Financial Regulation.

ABM/ABB activity(ies) concerned:

Climate action/ Climate action at Union and international level

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The EU ETS Directive exists and continues being in force post-2020. The present initiative:

- amends the level of annual emission reductions so that the Union-wide quantity of allowances issued each year starting in 2021 decrease by a higher linear factor of 2.2%.
- guarantees that free allocation to industry will continue after 2020 to address the potential risk of carbon leakage, as long as comparable climate policies are not undertaken by other major economies.
- maintains the Innovation Fund as a stepped-up effort to rapidly introduce new low-carbon technologies to the market enabling the EU to reach its long-term decarbonisation goals.
- establishes the Modernisation Fund and optional free allocation to the energy sector to contribute to the modernisation of the energy systems in lower income Member States.

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

Indicator nr 1: level of reduction of greenhouse gas emissions in the EU.

Indicator nr 2: level of emission for the sectors in the EU Emissions Trading System (ETS).

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive and the Commission is to develop the relevant implementing measures for the period after 2020.

1.5.2. Added value of EU involvement

The EU ETS Directive exists and continues being in force post-2020. Climate change is a trans-boundary problem. Since the objective of the proposed action cannot be sufficiently achieved by the Member States acting individually, coordination of climate action at European level and, where possible, at global level is necessary and EU action is justified on grounds of subsidiarity. Moreover, many of the policy elements have an important internal market dimension and many of the required investments have an important European dimension. Therefore, the objectives can be better achieved by an EU framework for action.

1.5.3. *Lessons learned from similar experiences in the past*

The Commission has gained valuable experience during the 10 years for which the EU ETS has been in operation. Experience shows that there is still potential for improving efficiency thanks to reinforced research, development and innovation efforts. Reinforced investment efforts should help modernising the energy system (modernisation fund) in lower income Member States.

1.5.4. *Compatibility and possible synergy with other appropriate instruments*

Synergies will be exploited by making use of existing Commission expertise in the management of financial resources and experience acquired under existing EU-EIB financing instruments.

1.6. Duration and financial impact

- Proposal/initiative of **limited duration**
 - Proposal/initiative in effect from YYYY to YYYY
 - Financial impact from YYYY to YYYY
- ✓ Proposal/initiative of **unlimited duration**
 - Implementation with a start-up period from YYYY to YYYY,
 - followed by full-scale operation.

1.7. Management mode(s) planned²⁴

- Direct management** by the Commission
 - ✓ by its departments, including by its staff in the Union delegations;
 - by the executive agencies
- Shared management** with the Member States
- ✓ **Indirect management** by entrusting budget implementation tasks to:
 - third countries or the bodies they have designated;
 - international organisations and their agencies (to be specified);
 - ✓ the EIB and the European Investment Fund;
 - bodies referred to in Articles 208 and 209 of the Financial Regulation;
 - public law bodies;
 - bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
 - bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
 - persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
 - *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

The management of EU ETS allowances is done through legislation for which the Commission departments are responsible.

The Modernisation Fund is to be governed by an investment board and a management committee, which shall be composed of representatives from the Member States, the Commission and the EIB. The management committee is to be chaired by the Commission.

²⁴ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Modernisation Fund: In accordance with Article 10d of Directive 2003/87/EC as introduced by the proposal, the beneficiary Member States shall report annually to the management committee on investments financed by the funds. The management committee shall report to the Commission on experience with evaluation and selection of investments within six months of completion of the selection process.

In relation to Article 10c, Member States are eligible to use optional free allocation to promote investments for modernising the energy sector and are to report on the investments to the Commission.

In accordance with Article 21 of Directive 2003/87/EC as it applies now, each year the Member States shall submit to the Commission a report on the application of this Directive. The Commission shall publish a report on the application of this Directive between three months of receiving the reports from the Member States.

Finally, the Commission shall submit a report on the functioning of the European Carbon market in accordance with Article 10(5) to the European Parliament and the Council.

2.2. Management and control system

2.2.1. Risk(s) identified

The EU ETS is the flagship policy mechanism to achieve the EU's emission reductions from around half the economy. Since 2013, the Commission is tasked to provide a Union Registry, an online database that provides an accurate accounting for all allowances transaction, a common auctioning platform for the auctioning of Member States allowances and the relevant support infrastructure for both. The Union Registry in which allowances are held under the EU ETS is threatened by a risk of fraudulent cyber-attacks that could result in theft or misappropriation of allowances leading to significant financial loss (up to several billion euros), legal litigation and considerable impact on Commission's reputation and credibility. The risk is cross-cutting and, alongside DG CLIMA, involves DG DIGIT, HR-DS, BUDG and LS. Mitigating measures have been put in place. The financial risk would increase in line with increases in the value of the carbon market. The distribution of free allowances at a very high total value also requires strict policies on how these allowances can be distributed, and assurance of respect of the rules in place. This involves management and control system at the level of the Member States and at the level of the Commission.

2.2.2. Information concerning the internal control system set up

A High-level Steering Committee involving the lead DG and associated DGs is in place since 2011. A fully-fledged risk assessment has been conducted in 2014 which has identified new IT security measures taken as from 2015. As a result of the recommendations put forward by the IAS in its audit report on the EU ETS Registry (IT security), measures to further improve the security of the registry system as well

as measures on governance, quality assurance and testing have been implemented. Additional mitigating actions are being implemented since 2014. This is an ongoing process.

2.2.3. *Estimate of the costs and benefits of the controls and assessment of the expected level of risk of error*

The risk of error is not applicable.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

In response to the specific fraud risks for the EU ETS, DG CLIMA reinforced the Commission-wide guidelines regarding professional ethics and integrity by a dedicated "Code of Ethics and Conduct in relation to insider trading, fraud and disclosure of sensitive information", specific trainings, awareness raising initiatives. It also developed the EU ETS Sensitive Information Classification Policy and the related handling instructions with 3 levels of sensitivity. The related three ETS markings are approved by DG HR-DS (as referenced in Security Notice 1 in its revision 10). DG HR-DS considers this marking policy should serve as an example to other DGs. Appropriate training sessions for newcomers are organised on a regular basis. DG CLIMA plans to extend this policy to users in Member States.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff. ²⁵	from EFTA countries ²⁶	from candidate countries ²⁷	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
2	34 01 04 01	Non diff.	NO	NO	NO	NO
2	34 02 01	Diff.	NO	NO	NO	NO

- New budget lines requested : Not applicable.

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading..... ...]	Diff./Non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 21(2)(b) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

²⁵ Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

²⁶ EFTA: European Free Trade Association.

²⁷ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

DG: CLIMA			2018 ²⁸	2019	2020	2021 and subsequent years	TOTAL
Budget line 34 02 01	Commitments	(1)	0.750	NA	NA	NA	0.750
	Payments	(2)	0.250	0.500	NA	NA	0.750
Budget line 34 01 04 01	Commitments	(1a)	0.27	0.27	0.27	0.27	2.7
	Payments	(2a)	0.27	0.27	0.27	0.27	2.7
TOTAL appropriations for DG CLIMA	Commitments	=1+1 a +3	0.27	0.27	0.27	0.27	2.7
	Payments	=2+2 a +3	0.27	0.27	0.27	0.27	2.7
• TOTAL operational appropriations	Commitments	(4)					
	Payments	(5)					
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)					
TOTAL appropriations under HEADING 2 of the multiannual financial framework	Commitments	=4+6	1.020	0.27	0.27	0.27	3.450
	Payments	=5+6	0.520	0.770	0.27	0.27	3.450

If more than one heading is affected by the proposal / initiative:

²⁸

Year N is the year in which implementation of the proposal/initiative starts.

Heading of multiannual financial framework	5	‘Administrative expenditure’				
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EUR million (to three decimal places)

	2018 ²⁹	2019	2020	2021 and subsequent years	TOTAL
• Human resources	0.4	0.4	0.4	0.792	6.744
• Other administrative expenditure	0.539	0.539	0.539	0.404	4.445
TOTAL DG CLIMA					
Appropriations					

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0.939	0.939	0.939	1.196	11.189
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EUR million (to three decimal places)

	2018 ³⁰	2019	2020	2021	TOTAL	
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	1.959	1.209	1.209	1.466	14.639
	Payments	1.959	1.209	1.209	1.466	14.639

²⁹

Year N is the year in which implementation of the proposal/initiative starts.

³⁰

Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. Estimated impact on operational appropriations

- The proposal/initiative does not require the use of operational appropriations
- The proposal/initiative requires the use of operational appropriations³¹, as explained below:

Commitment appropriations in EUR million (to three decimal places)

Indicate objectives and outputs	↓	Type ³²	Average cost	2018		2019		2020		2021 and subsequent years		TOTAL
				N	Cost	N	Cost	N	Cost	N	Cost	
SPECIFIC OBJECTIVE No 1 ³³												
- Output	Number of studies		0.250	1	0.250	-	-	-	-	-	-	-
Subtotal for specific objective No 1				1	0.250	-	-	-	-	-	-	-
SPECIFIC OBJECTIVE No 2 ...												
- Output	Number of studies		0.250	1	0.250	-	-	-	-	-	-	-
Subtotal for specific objective No 2				1	0.250	-	-	-	-	-	-	-
SPECIFIC OBJECTIVE No 3 ...												
- Output	Number of studies		0.250	1	0.250	-	-	-	-	-	-	-
Subtotal for specific objective No 3				1	0.250	-	-	-	-	-	-	-

³¹ Article 22 of LIFE 2014-2020 Regulation (EC) No 1293/2013, published in the Official Journal L 347/185 of 20 December 2013.

³² Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

³³ As described in point 1.4.2. 'Specific objective(s)...'

TOTAL COST	3	0.750	-	-	-	-	-	-	-	-	-	-
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3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

- The proposal/initiative does not require the use of appropriations of an administrative nature
- The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

	2018 ³⁴	2019	2020	2021 and subsequent years	TOTAL
--	--------------------	------	------	---------------------------	-------

HEADING 5 of the multiannual financial framework					
Human resources	0.4	0.4	0.4	0.792	6.744
Other administrative expenditure	0.539	0.539	0.539	0.404	5.195
Subtotal HEADING 5 of the multiannual financial framework	0.939	0.939	0.939	1.196	11.939

Outside HEADING 5³⁵ of the multiannual financial framework					
Human resources	-	-	-	-	-
Other expenditure of an administrative nature	0.270	0.270	0.270	0.270	2.7
Subtotal outside HEADING 5 of the multiannual financial framework	0.270	0.270	0.270	0.270	2.7

TOTAL	1.209	1.209	1.209	1.466	14.639
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The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

³⁴

Year N is the year in which implementation of the proposal/initiative starts.

³⁵

Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.3.2. Estimated requirements of human resources

- The proposal/initiative does not require the use of human resources.
- The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

		2018 ³⁶	2019	2020	2021 and subsequent years
34 01 01 01 (Headquarters and Commission's Representation Offices)		3	3	3	6
XX 01 01 02 (Delegations)					
XX 01 05 01 (Indirect research)					
10 01 05 01 (Direct research)					
34 01 02 01 (AC, END, INT from the 'global envelope')					
34 01 02 02 (AC, AL, END, INT and JED in the delegations)					
34 01 04 01 ³⁷	- at Headquarters				
	- in Delegations				
XX 01 05 02 (AC, END, INT - Indirect research)					
10 01 05 02 (AC, END, INT - Direct research)					
Other budget lines (specify)					
TOTAL		3	3	3	6

XX is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	Data collection, calculation of the industrial allocations and preparation of the relevant Commission Decisions, monitoring and evaluation of the national plans provided by the Member States, publication of reports, management of the Modernisation fund.
External staff	

³⁶ Year N is the year in which implementation of the proposal/initiative starts.

³⁷ Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.4. *Compatibility with the current multiannual financial framework*

- The proposal/initiative is compatible the current multiannual financial framework.
- The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.
- The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework.

Internal deployment possibilities within DG CLIMA having been exhausted, readjustments within headings 2 and 5 of the MFF within the limits of the ceilings are needed, as additional new tasks must be performed in order to be able to meet the requirements resulting from the new provisions of this initiative: additional budget should be allocated under headings 2 and 5 from 2018 in order to cover the staff, meetings and missions budget needed to perform two data collections per trading period (instead of one currently), and the management of the Innovation and Modernisation funds. See details in the tables under 3.2.3. We cannot prejudge the decisions of the budgetary authority on the next MFF but as the initiative is planned beyond 2027, we consider that the same amount should be reprogrammed in the next MFF's.

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties.
- ~~The proposal/initiative provides for the co-financing estimated below:~~

Appropriations in EUR million (to three decimal places)

	Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

3.3. Estimated impact on revenue

- The proposal/initiative has no financial impact on revenue.
- The proposal/initiative has the following financial impact:
 - on own resources
 - on miscellaneous revenue

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative ³⁸							
		Year N	Year N+1	Year N+2	Year N+3	Enter as many years as necessary to show the duration of the impact (see point 1.6)			
Article									

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

³⁸ As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 25 % for collection costs.



Brussels, 15.7.2015
COM(2015) 337 final

ANNEXES 1 to 3

ANNEXES

to the

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

{SWD(2015) 135 final}
{SWD(2015) 136 final}

ANNEXES

to the

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

Annex I

Annex IIa to Directive 2003/87/EC is replaced by the following:

“ANNEX IIa

Increases in the percentage of allowances to be auctioned by Member States pursuant to Article 10(2)(a) for the purpose of solidarity and growth in order to reduce emissions and adapt to the effects of climate change

Member State share

Bulgaria	53%
Czech Republic	31%
Estonia	42%
Greece	17%
Spain	13%
Cyprus	20%
Latvia	56%
Lithuania	46%
Hungary	28%
Malta	23%
Poland	39%
Portugal	16%
Romania	53%
Slovenia	20%
Slovakia	41% "

Annex II

Annex IIb to Directive 2003/87/EC is replaced by the following:

“ANNEX IIb

Distribution of funds from the Modernisation Fund up to 31 December 2030

	Share of Modernisation Fund
Bulgaria	5,84%
Czech Republic	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% "

Annex III

In Annex IV, Part A, to Directive 2003/87/EC, the paragraph under the fourth heading entitled "Monitoring of emissions of emissions of other greenhouse gases" replaced by the following:

"Standardised or accepted methods shall be used, developed by the Commission in collaboration with all relevant stakeholders and adopted pursuant to Article 14(1).".