The Legal Objectives of the EU Emissions Trading System: An Evaluation Framework

**Supplementary Material:**

**Identification of goals embedded in the EU ETS Directive**

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## Methodology

To identify provisions that express goals, we linearly review Directive 2003/87/EC (EU ETS Directive) and all of the legal acts that have amended it, in chronological order, with the legal research method of document analysis.[[1]](#footnote-1) We limit the scope of our analysis exclusively to the EU ETS Directive and do not review legal acts that establish regulatory instruments and modalities that are relevant but distinct from the EU ETS, such as the Carbon Border Adjustment Mechanism Regulation[[2]](#footnote-2) or the Monitoring and Reporting Regulation[[3]](#footnote-3). We identify all legal acts that have amended Directive 2003/87/EC with the help of the latest Consolidated text of the EU ETS Directive, which provides an exhaustive list of the amending legal acts as of 1 March 2024.

The scope of our document analysis includes the following documents:

1. 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 [2003] OJ L275/32
2. Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol’s project mechanisms [2004] OJ L338/18
3. Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community [2009] OJ L8/3
4. Regulation (EC) 219/2009 of the European Parliament and of the Council of 11 March 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Two [2009] OJ L87/109
5. Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community [2009] OJ L140/63
6. Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community [2012] OJ L112/21
7. Decision 1359/2013/EU of the European Parliament and of the Council of 17 December 2013 amending Directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances [2013] OJ L343/1
8. Regulation (EU) 421/2014 of the European Parliament and of the Council of 16 April 2014 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions [2014] OJ L129/1
9. Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC [2015] OJ L264/1
10. Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021 [2017] OJ L350/7
11. Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 [2018] OJ L76/3
12. Commission Delegated Decision (EU) 2020/1071 of 18 May 2020 amending Directive 2003/87/EC of the European Parliament and of the Council, as regards the exclusion of incoming flights from Switzerland from the EU emissions trading system [2020] OJ L234/16
13. Commission Delegated Regulation (EU) 2021/1416 of 17 June 2021 amending Directive 2003/87/EC of the European Parliament and of the Council as regards the exclusion of incoming flights from the United Kingdom from the Union emissions trading system [2021] OJ L305/1
14. Decision (EU) 2023/136 of the European Parliament and of the Council of 18 January 2023 amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union [2023] OJ L19/1
15. Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC [2023] OJ L63/1
16. Directive (EU) 2023/958 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC as regards aviation’s contribution to the Union’s economy-wide emission reduction target and the appropriate implementation of a global market-based measure [2023] OJ L130/115
17. Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system [2023] OJ L130/134
18. Regulation (EU) 2024/795 of the European Parliament and of the Council of 29 February 2024 establishing the Strategic Technologies for Europe Platform (STEP), and amending Directive 2003/87/EC and Regulations (EU) 2021/1058, (EU) 2021/1056, (EU) 2021/1057, (EU) No 1303/2013, (EU) No 223/2014, (EU) 2021/1060, (EU) 2021/523, (EU) 2021/695, (EU) 2021/697 and (EU) 2021/241 [2024] OJ L, 2024/795, 29.2.2024
19. Consolidated text: Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC [01.03.2024] Document 02003L0087 — EN — 01.03.2024 — 016.001

In summary, this list consists of:

* The original EU ETS Directive 2003/87/EC [document 1]
* All 17 legal acts that have amended it as of 1 March 2024 [documents 2-18]
* The official Consolidated text of Directive 2003/87/EC [document 19], which has no legal effect per se but is useful because it consolidates the operative provisions in their present form, as amended and as they currently apply.

We review both operative provisions and preamble recitals. We include the latter in the scope of our analysis because, according to CJEU case law, recitals are not legally binding in their own right but can be useful for interpreting objectives enshrined in operative provisions.[[4]](#footnote-4)

Goals can be embedded in the legislative text in varying degrees of explicitness.[[5]](#footnote-5) Depending on the context, the words ‘aim’, ‘goal’, ‘objective’, ‘purpose’, and ‘in order to’, among others, may signal an expression of goals. However, goals may also be formulated in less explicit ways that would escape a set of pre-defined keywords (e.g. ‘in an economically efficient manner’). The varying explicitness of goals in the EU ETS Directive allows for a margin of subjectivity in their identification, which poses a limitation to our qualitative study. To mitigate this limitation, we take the following steps. First, we define in advance what we do and what we do not identify as a goal. Second, we record the identification process transparently, by providing a list of all provisions that we identify as expressing goals and by highlighting the specific goal-expressing text extracts in bold (section 2 below). Third, we conduct the goal identification exercise twice, to double-check for errors and increase consistency. These steps mitigate but do not fully eliminate the risk of misidentification, namely the inclusion of provisions that should have been excluded or the exclusion of provisions that should have been included in the Supplementary Table below. Nevertheless, due to the large number of goal-expressing provisions identified (405 sentences in total, 133 in operative provisions and 272 in recitals), the inclusion or exclusion of a small number of marginal, debatable cases would not change the objectives identified and, thus, would not influence the conclusions of the study.

In light of the above, to identify goals we go beyond the linguistic formulation and also consider the actual meaning of each provision. We define a goal-expressing provision as ‘a provision that expresses a specific intended outcome in relation to the EU ETS’. We thus exclude goals that refer to other instruments (e.g. the European Green Deal or the United Nations Framework Convention on Climate Change) and not specifically to the EU ETS. In addition, for a provision to be highlighted as one that expresses a goal (or goals), the intended outcome(s) therein should be specific enough to be concretely defined. For example, a text extract such as ‘in order to better exploit the benefits of emission trading’ (Recital 8, Directive 2009/29/EC) is vague, as emissions trading can encompass various different benefits. It is, thus, not considered specific and is not highlighted as a goal-expressing provision.

Objectives enshrined in recitals tend to have a higher degree of explicitness than objectives enshrined in operative provisions, as the very purpose of recitals is to ‘state the reasons for the chief provisions’ of a legislative act.[[6]](#footnote-6) Accordingly, when we examine whether an operative provision expresses a goal, we also consider the content of its corresponding recital(s). For example, Directive 2023/958 introduced Article 3c(6), which sets specific rules for covering the price differential between fossil kerosene and sustainable aviation fuels. That article is accompanied by recital 15 of the same Directive, which explains that these rules aim to incentivise investments in sustainable fuels. Therefore, in that case, both recital 15 and Article 3c(6) are listed as provisions that express the goal of incentivizing low-carbon investments.

To review the operative provisions, we use the Consolidated text of the EU ETS Directive, which consolidates the operative provisions in their present form, as amended and as they currently apply. It thus excludes past forms of operative provisions that have been amended, replaced or deleted.

To review the recitals, we examine the preambles of all documents linearly, in a chronological order. The Consolidated text does not contain recitals, as recitals are rarely amended. This poses the risk of identifying goals on the basis of old recitals that were associated with provisions that were eventually amended, replaced or deleted. For this reason, and in light of the non-directly-binding legal nature of recitals, in our subsequent content analysis, if a group consists solely of recitals, it should not be considered to constitute a goal. No group eventually consisted solely of recitals. Moreover, to avoid redundancy, recitals that merely repeat the wording of the operative provisions are not listed.

We performed the document analysis exercise twice: initially in January 2023 and subsequently (from the start) in June 2023.[[7]](#footnote-7) This repetition enabled us to double-check for errors, by comparing the tables of the two document analyses. It was also necessary for updating the table with the latest ETS reforms that took place in the first half of 2023, namely the amending provisions and recitals that were introduced by Decision (EU) 2023/136, Regulation (EU) 2023/435, Directive (EU) 2023/958 and Directive (EU) 2023/959. Lastly, the second document analysis helped us to identify and group the relevant provisions more consistently, as it was performed with a better understanding of the EU ETS goals, following the law and economics analysis of their content and interrelations on the basis of our first document review. In addition to the above, on 3 April 2024, a supplementary document analysis of amending Regulation (EU) 2024/795 was conducted.

## Identification of provisions that express goals

We identify, in total, ﻿405 sentences that express goals, 133 of which are found in operative provisions and 272 in recitals. Below we list first, the operative provisions (articles) and, second, the preamble recitals, and highlight in bold the specific text extracts that express EU ETS goals.

###  Articles

Article 1, Directive 2003/87/EC, as amended by Directive (EU) 2018/410

This Directive establishes a system for greenhouse gas emission allowance trading within the Union (hereinafter referred to as the ‘EU ETS’) **in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner**.

Article 1, Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

﻿Article 3c(4), Directive 2003/87/EC, as amended by Directive 2008/101/EC

By 2 August 2009, **the Commission shall decide on the historical aviation emissions, based on best available data, including estimates based on actual traffic information**.

﻿Article 3c(6), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

The allowances reserved under the first subparagraph of this paragraph shall be allocated by the Member States **to cover part of or all of the price differential between the use of fossil kerosene and the use of the relevant eligible aviation fuels**, taking into account incentives from the price of carbon and from harmonised minimum levels of taxation on fossil fuels.

﻿Article 3c(6), point (c), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

100 % of the remaining price differential between the use of fossil kerosene and any eligible aviation fuel that is not derived from fossil fuels covered by the first subparagraph of this paragraph, **at airports situated on islands smaller than 10 000 km2 and with no road or rail link with the mainland, at airports which are insufficiently large to be defined as Union airports in accordance with a regulation on ensuring a level playing field for sustainable air transport and at airports located in an outermost region**

﻿Article 3c(8), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

By way of derogation from Article 12(3), Article 14(3) and Article 16, Member States shall consider the requirements set out in those provisions to be satisfied and **shall take no action against aircraft operators in respect of emissions released until 31 December 2030 from flights between an aerodrome located in an outermost region of a Member State and an aerodrome located in the same Member State, including another aerodrome located in the same outermost region or in another outermost region of the same Member State**.

Article 3ga(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**Until 31 December 2030, a share of allowances shall be attributed to Member States with a ratio of shipping companies that would have been under their responsibility pursuant to Article 3gf compared to their respective population in 2020 and based on data** **available for the period from 2018 to 2020, above 15 shipping companies per million inhabitants.**

Article 3gg(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 3gg(2), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

In that report, the Commission shall, in particular, **consider progress at IMO level and examine whether any third country has a market-based measure equivalent to this Directive** and **assess the risk of an increase in evasive practices, including through a shift to other modes of transport or a shift of port hubs to ports outside the Union**.

Article 3gg(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

The Commission shall monitor the implementation of this Chapter in relation to maritime transport, **in particular to detect evasive behaviour in order to prevent such behaviour at an early stage**, including giving consideration to outermost regions, and report biennially from 2024 on the implementation of this Chapter in relation to maritime transport and possible trends regarding shipping companies seeking to evade the requirements of this Directive. The Commission shall also monitor **impacts regarding, inter alia, possible transport cost increases, market distortions and changes in port traffic, such as port evasion and shifts of transhipment hubs, the overall competitiveness of the maritime sector in the Member States, and in particular impacts on those shipping services that constitute essential services of territorial continuity**. If appropriate, the Commission shall propose measures to ensure the effective implementation of this Chapter in relation to maritime transport, in particular **measures to address trends regarding shipping companies seeking to evade the requirements of this Directive.**

Article 3gg(5), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

That report **shall also consider the interlinkages between this Directive and Regulation (EU) 2015/757** and draw on the experience gained from the application thereof. In that report, the Commission shall also examine **how this Directive can best account for the uptake of renewable and low-carbon maritime fuels on a lifecycle basis**.

Article 4, Directive 2003/87/EC, as amended by ﻿Directive (EU) 2018/410

**Member States shall ensure that, from 1 January 2005, no installation carries out any activity listed in Annex I resulting in emissions specified in relation to that activity unless its operator holds a permit issued by a competent authority in accordance with Articles 5 and 6, or the installation is excluded from the EU ETS pursuant to Article 27**.

Article 6, Directive 2003/87/EC

The competent authority shall issue a greenhouse gas emissions permit granting authorisation to emit greenhouse gases from all or part of an installation **if it is satisfied that the operator is capable of monitoring and reporting emissions.**

Article 8, Directive 2003/87/EC, as amended by Directive (EU) 2023/959

Member States shall take the necessary measures to ensure that, where installations carry out activities that are included in Annex I to Directive 2010/75/EU, **the conditions and procedure for the issue of a greenhouse gas emissions permit are coordinated with those for the issue of a permit provided for in that Directive**.

Article 8, Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**The Commission shall review the effectiveness of synergies with Directive 2010/75/EU. Environmental and climate-relevant permits shall be coordinated to ensure efficient and speedier execution of measures needed to comply with Union climate and energy objectives**.

Article 9, Directive 2003/87/EC, as amended by ﻿Directive (EU) 2018/410

**The Union-wide quantity of allowances issued each year starting in 2013 shall decrease in a linear manner** beginning from the mid-point of the period from 2008 to 2012.

Article 9, Directive 2003/87/EC, as amended by Directive (EU) 2023/959

Notwithstanding Article 10(1), **the allowances resulting from that increase shall be made available to support innovation in accordance with Article 10a(8**).

Article 9a(2), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

In respect of installations carrying out activities listed in Annex I, which are only included in the EU ETS from 2013 onwards, **Member States shall ensure that the operators of such installations submit to the relevant competent authority duly substantiated and independently verified emissions data in order for them to be taken into account for the adjustment of the Union-wide quantity of allowances to be issued**.

Article 10(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 10(2), point (b), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

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

Article 10(3), point (a), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**to reduce greenhouse gas emissions, including by contributing to the Global Energy Efficiency and Renewable Energy Fund and to the Adaptation Fund as made operational by the Poznan Conference on Climate Change (COP 14 and COP/MOP 4), to adapt to the impacts of climate change and to fund research and development as well as demonstration projects for reducing emissions and for adaptation to climate change, including participation in initiatives within the framework of the European Strategic Energy Technology Plan and the European Technology Platforms**

Article 10(3), point (b), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 10(3), point (c), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 10(3), point (d), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**﻿forestry and soil sequestration in the Union**

Article 10(3), point (e), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**the environmentally safe capture and geological storage of CO2, in particular from solid fossil fuel power stations and a range of industrial sectors and subsectors, including in third countries, and innovative technological carbon removal methods, such as direct air capture and storage**

Article 10(3), point (f), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**to invest in and accelerate the shift to forms of transport which contribute significantly to the decarbonisation of the sector, including the development of climate-friendly passenger and freight rail transport and bus services and technologies, measures to decarbonise the maritime sector, including the improvement of the energy efficiency of ships, ports, innovative technologies and infrastructure, and sustainable alternative fuels, such as hydrogen and ammonia that are produced from renewables, and zero-emission propulsion technologies, and to finance measures to support the decarbonisation of airports in accordance with a Regulation of the European Parliament and of the Council on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU of the European Parliament and of the Council, and a Regulation of the European Parliament and of the Council on ensuring a level playing field for sustainable air transport;**

Article 10(3), point (g), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**to finance research and development in energy efficiency and clean technologies in the sectors covered by this Directive**

Article 10(3), point (h), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**measures intended to improve energy efficiency, district heating systems and insulation, to support efficient and renewable heating and cooling systems, or to support the deep and staged deep renovation of buildings in accordance with Directive 2010/31/EU of the European Parliament and of the Council, starting with the renovation of the worst-performing buildings**

Article 10(3), point (i), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**to cover administrative expenses of the management of the EU ETS**

**﻿**Article 10(3), point (j), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**to finance climate actions in vulnerable third countries, including the adaptation to the impacts of climate change**

Article 10(3), point (ha), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 10(3), point (hb), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 10(3), point (k), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**to promote skill formation and reallocation of labour in order to contribute to a just transition to a climate-neutral economy, in particular in regions most affected by the transition of jobs, in close coordination with the social partners, and to invest in upskilling and reskilling of workers potentially affected by the transition, including workers in maritime transport**

Article 10(3), point (l), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**to address any residual risk of carbon leakage in the sectors covered by Annex I to Regulation (EU) 2023/956 of the European Parliament and of the Council, supporting the transition and promoting their decarbonisation in accordance with State aid rules.**

Article 10(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 10(4), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

The Commission is empowered to adopt delegated acts in accordance with Article 23 of this Directive to supplement this Directive concerning the timing, administration and other aspects of auctioning, including modalities for auctioning which are necessary for the transfer of a share of revenues to the Union budget as external assigned revenue in accordance with Article 30d(4) of this Directive or as own resources in accordance with Article 311, third paragraph, TFEU, **in order to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner. To that end, the process shall be predictable, in particular as regards the timing and sequencing of auctions and the estimated amount of allowances to be made available.**

Article 10(4), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

**Those delegated acts shall ensure that auctions are designed to ensure that: (a) operators, and in particular any small and medium-sized enterprises covered by the EU ETS, have full, fair and equitable access**; (b) **all participants have access to the same information at the same time and that participants do not undermine the operation of the auctions**; (c) **the organisation of, and participation in, the auctions is cost-efficient and undue administrative costs are avoided**; and (d) **access to allowances is granted to small emitters**.

Article 10(5), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

The Commission shall monitor the functioning of the European carbon market. **Each year, it shall submit a report to the European Parliament and to the Council on the functioning of the carbon market and on other relevant climate and energy policies, including the operation of the auctions, liquidity and the volumes traded**, and summarising the information provided by the European Securities and Markets Authority (ESMA) in accordance with paragraph 6 of this Article and the information provided by Member States on the financial measures referred to in Article 10a(6).

Article 10(6), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**ESMA shall regularly monitor the integrity and transparency of the European carbon market, in particular with regard to market volatility and price evolution, the operation of the auctions, trading operations on the market for emission allowances and derivatives thereof, including over-the-counter trading, liquidity and the volumes traded, and the categories and trading behaviour of market participants, including positions of financial intermediaries.** ESMA shall include the relevant findings and, where necessary, make recommendations in its assessments to the European Parliament, to the Council, to the Commission and to the European Systemic Risk Board in accordance with Article 32(3) of Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

Article 10a(1), Directive 2003/87/EC, as amended by ﻿Directive 2009/29/EC and Directive (EU) 2018/410

The measures referred to in the first subparagraph shall, to the extent feasible, determine Union-wide ex-ante benchmarks **so as to ensure that allocation takes place in a manner that provides incentives for reductions in greenhouse gas emissions and energy efficient techniques, by taking account of the most efficient techniques, substitutes, alternative production processes, high efficiency cogeneration, efficient energy recovery of waste gases, use of biomass and capture and storage of CO2, where such facilities are available, and shall not provide incentives to increase emissions**.

Article 10a(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

The Commission shall supplement this Directive by providing, in the delegated acts adopted pursuant to this paragraph and without prejudice to the rules applicable under Directive 2012/27/EU, **for administratively simple harmonised rules for the application of the third subparagraph of this paragraph that ensure that the application of the conditionality does not jeopardise a level playing field, environmental integrity or equal treatment between installations across the Union.**

Article 10a(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

Where any such allowances remain, 50 % of those allowances shall be made available **to support innovation** in accordance with paragraph 8 of this Article. The other 50 % of those allowances shall be auctioned in accordance with Article 10(1) of this Directive and Member States should use the respective revenues **to address any residual risk of carbon leakage in the sectors covered by Annex I to Regulation (EU) 2023/956**, supporting the transition and promoting their decarbonisation in accordance with State aid rules.

Article 10a(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**In order to provide further incentives for reducing greenhouse gas emissions and improving energy efficiency and to ensure a level playing field for installations using new technologies that partly reduce or fully eliminate greenhouse gas emissions, and installations using existing technologies,** the determined Union-wide ex-ante benchmarks shall be reviewed in relation to their application in the period from 2026 to 2030, with a view to potentially modifying the definitions and system boundaries of existing product benchmarks, considering as guiding principles the circular use-potential of materials and that the benchmarks should be independent of the feedstock and the type of production process, where the production processes have the same purpose.

Article 10a(1), Directive 2003/87/EC, as amended by ﻿Directive (EU) 2018/410

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

**﻿**Article 10a(1a), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**Allowances resulting from the reduction of free allocation shall be made available to support innovation** in accordance with paragraph 8.

**﻿**Article 10a(1a), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**The report shall in particular assess the carbon leakage risk in sectors to which CBAM will apply,** in particular the role and accelerated uptake of hydrogen, and the developments as regards trade flows and the embedded emissions of goods produced by those sectors on the global market. Where the report concludes that there is a carbon leakage risk for goods produced in the Union for export to third countries which do not apply the EU ETS or an equivalent carbon pricing mechanism, **the Commission shall, where appropriate, submit a legislative proposal to address that carbon leakage risk in a manner that is compliant with the rules of the World Trade Organization, including Article XX of the General Agreement on Tariffs and Trade 1994, and takes into account the decarbonisation of installations in the Union.**

**﻿**Article 10a(2), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

**﻿**Article 10a(2), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

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

**﻿**Article 10a(5b), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

Where less than 3 % of the total quantity of allowances is needed to increase the maximum amount available under paragraph 5: **a maximum of 50 million allowances shall be used to increase the amount of allowances available to support innovation in accordance with Article 10a(8);** and **a maximum of 0,5 % of the total quantity of allowances shall be used to increase the amount of allowances available to modernise the energy systems of certain Member States in accordance with Article 10d**.

**﻿**Article 10a(6), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

Member States should adopt financial measures in accordance with the second and fourth subparagraphs of this paragraph **in favour of sectors or subsectors which are exposed to a genuine risk of carbon leakage** due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices**, provided that such financial measures are in accordance with State aid rules, and in particular do not cause undue distortions of competition in the internal market.**

**﻿**Article 10a(6), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

**Those measures shall be such as to ensure that there is adequate protection against the risk of carbon leakage**, based on ex-ante benchmarks for the indirect emissions of CO2 per unit of production.

Article 10a(8), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

345 million allowances from the quantity which could otherwise be allocated for free pursuant to this Article, and 80 million allowances from the quantity which could otherwise be auctioned pursuant to Article 10, as well as the allowances resulting from the reduction of free allocation referred to in paragraph 1a of this Article, shall be made available to a fund (the ‘Innovation Fund’) **with the objective of supporting innovation in low- and zero-carbon techniques, processes and technologies that contribute significantly to the decarbonisation of the sectors covered by this Directive and contribute to zero pollution and circularity objectives, including projects aimed at scaling up such techniques, processes and technologies with a view to their broad roll-out across the Union. Such projects shall possess significant greenhouse gas emissions abatement potential and contribute to energy and resource savings in line with the Union’s climate and energy targets for 2030.**

Article 10a(8), Directive 2003/87/EC, as amended by Regulation (EU) 2024/795

**When designing and implementing calls for proposals or competitive bidding under the Innovation Fund, the Commission shall consider strategic projects recognised in accordance with a regulation of the European Parliament and of the Council establishing a framework of measures for strengthening Europe’s net-zero technology products manufacturing ecosystem, which are deemed to contribute to the objectives of the Strategic Technologies for Europe Platform (STEP) in accordance with Article 2(4) of Regulation (EU) 2024/795 of the European Parliament and of the Council. Member States shall consider providing support from the European Regional Development Fund and the Cohesion Fund established by Regulation (EU) 2021/1058 of the European Parliament and of the Council and the Just Transition Fund established by Regulation (EU) 2021/1056 to projects in their territory in the context of financial mechanisms developed under the Innovation Fund**, **such as the ‘auction-as-a-service’ scheme.**

**﻿**Article 10a(8), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

**﻿**Article 10a(8), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**The Commission shall, on request, provide technical assistance to Member States with low effective participation in projects under the Innovation Fund for the purpose of increasing the capacities of the requesting Member State to support the efforts of project proponents in their respective territories to submit applications for funding from the Innovation Fund, in order to improve the effective geographical participation in the Innovation Fund and increase the overall quality of submitted projects.**

**﻿**Article 10a(8), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**In preparing the calls for proposals, the Commission shall strive to ensure that all sectors are duly covered. The Commission shall take measures to ensure that the calls are communicated as widely as possible, and especially to small and medium-sized enterprises.**

**﻿**Article 10a(8), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**Financial support from the Innovation Fund shall be proportionate to the policy objectives set out in this Article and shall not lead to undue distortions of the internal market.**

**﻿**Article 10a(9), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

**Greece, which had a gross domestic product (GDP) per capita at market prices below 60 % of the Union average in 2014, may claim, prior to the application of paragraph 7 of this Article, up to 25 million allowances from the maximum amount referred to in paragraph 5 of this Article which are not allocated for free by 31 December 2020, for the co-financing of up to 60 % of the decarbonisation of the electricity supply of islands within its territory.** Article 10d(3) shall apply mutatis mutandis to such allowances. **Allowances may be claimed where, due to restricted access to the international debt markets, a project aiming at the decarbonisation of the electricity supply of Greece's islands could otherwise not be realised and where the European Investment Bank (EIB) confirms the financial viability and socio-economic benefits of the project.**

**﻿**Article 10a(21), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

**In order to ensure the effective, non-discriminatory and uniform application of the adjustments and threshold referred to in paragraph 20 of this Article, to avoid any undue administrative burden, and to prevent manipulation or abuse of the adjustments to the allocation**, the Commission may adopt implementing acts which define further arrangements for the adjustments.

**﻿**Article 10b(1), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

Sectors and subsectors in relation to which the product resulting 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 euros), exceeds 0,2, **shall be deemed to be at risk of carbon leakage. Such sectors and subsectors shall be allocated allowances free of charge for the period until 2030 at 100 % of the quantity determined pursuant to Article 10a.**

Article 10b(4), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

**﻿**Article 10b(4), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**The Commission shall seek synergies with similar plans as provided for in Union law.**

**﻿**Article 10c(1), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

By way of derogation from Article 10a(1) to (5), **Member States which had in 2013 a GDP per capita at market prices (in euros) below 60 % of the Union average may give a transitional free allocation to installations for electricity generation for the modernisation, diversification and sustainable transformation of the energy sector. The investments supported shall be consistent with the transition to a safe and sustainable low-carbon economy, the objectives of the Union's 2030 climate and energy policy framework, and reaching the long-term objectives expressed in the Paris Agreement.**

**﻿**Article 10c(2), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

**That 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, such as renewable energy technologies, or modernisation of the energy production sector, such as efficient and sustainable district heating, and of the transmission and distribution sector, are eligible to bid;** (c) **define clear, objective, transparent and non-discriminatory selection criteria for the ranking of projects, so as to ensure that only 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 taking into account the size of the project;** (ii) **are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand;** (iii) **offer the best value for money; and** (iv) **do not contribute to or improve the financial viability of highly emission-intensive electricity generation or increase dependency on emission-intensive fossil fuels.**

**﻿**Article 10d(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

The Modernisation Fund shall be financed through the auctioning of allowances as set out in Article 10, **for the beneficiary Member States set out therein**. **The investments supported shall be consistent with the aims of this Directive, as well as the objectives of the communication of the Commission of 11 December 2019 on “The European Green Deal” and Regulation (EU) 2021/1119 and the long-term objectives as expressed in the Paris Agreement.** The beneficiary Member States **may, where appropriate, use the resources of the Modernisation Fund to finance investments involving the adjacent Union border regions**.

**﻿**Article 10d(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

Furthermore, revenue from allowances referred to in Article 10(1), third subparagraph, of this Directive may, **where the activity qualifies as environmentally sustainable under Regulation (EU) 2020/852 of the European Parliament and of the Council and is duly justified for reasons of ensuring energy security**, be used for investments involving gaseous fossil fuels provided that, for energy generation, the allowances are auctioned before 31 December 2027 and, for investments involving downstream uses of gas, the allowances are auctioned before 31 December 2028.

**﻿**Article 10d(2), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

At least 80 % of the revenue from allowances referred to in Article 10(1), third subparagraph, and from allowances covered by a notification pursuant to paragraph 4 of this Article, and at least 90 % of the revenue from allowances referred to in Article 10(1), fourth subparagraph, **shall be used to support investments in the following**: (a) **the generation and use of electricity from renewable sources, including renewable hydrogen**; (b) **heating and cooling from renewable sources**; (c) **the reduction of overall energy use through energy efficiency, including in industry, transport, buildings, agriculture and waste**; (d) **energy storage and the modernisation of energy networks, including demand-side management, district heating pipelines, grids for electricity transmission, the increase of interconnections between Member States and infrastructure for zero-emission mobility**; (e) **support for low-income households, including in rural and remote areas, to address energy poverty and to modernise their heating systems**; and (f) **a just transition in carbon-dependent regions in the beneficiary Member States, so as to support the redeployment, reskilling and up-skilling of workers, education, job-seeking initiatives and start-ups, in dialogue with civil society and social partners, in a manner that is consistent with and contributes to the relevant actions included by the Member States in their territorial just transition plans in accordance with Article 8(2), first subparagraph, point** (k), of Regulation (EU) 2021/1056, where relevant.

**﻿**Article 10d(7), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

**This subparagraph shall not apply to small-scale projects funded through loans provided by a national promotional bank or through grants contributing to the implementation of a national programme serving specific objectives in line with the objectives of the Modernisation Fund**, provided that not more than 10 % of the Member States' share set out in Annex IIb is used under the programme.

**﻿**Article 10e(1), Directive 2003/87/EC, as amended by Regulation (EU) 2023/435

**That revenue shall be made available to the Recovery and Resilience Facility established by Regulation (EU) 2021/241 of the Parliament and of the Council and shall be implemented in accordance with the provisions of that Regulation**.

**﻿**Article 10e(4), Directive 2003/87/EC, as amended by Regulation (EU) 2023/435

By way of derogation from Article 1(5a) of Decision (EU) 2015/1814, until 31 December 2030, **27 million unallocated allowances in the market stability reserve from the total quantity which would otherwise be invalidated over that period shall be used to support innovation**, as referred to in Article 10a(8), first subparagraph, of this Directive.

**﻿**Article 10f, Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

﻿Article 11a(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

Subject to paragraphs 2 and 3 of this Article, aircraft operators that hold an air operator certificate issued by a Member State or are registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, shall be able to use the following units to comply with their obligations to cancel units in respect of the quantity notified pursuant to Article 12(6) as laid down in Article 12(9): (a) **credits authorised by parties participating in the mechanism established under Article 6(4) of the Paris Agreement; (b) credits authorised by the parties participating in crediting programmes which have been considered eligible by the ICAO Council as identified in the implementing act adopted pursuant to paragraph 8;** (c) credits authorised by parties to agreements pursuant to paragraph 5; (d) credits issued in respect of Union level projects pursuant to Article 24a.

﻿Article 11a(2), point (b), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

This condition shall not apply in respect of emissions released before 2027, **nor shall it apply in respect of least developed countries or small island developing States, as defined by the United Nations, except for those States whose GDP per capita equals or exceeds the Union average**.

﻿Article 11b(1), Directive 2003/87/EC, as amended by Directive 2004/101/EC

**Member States shall take all necessary measures to ensure that baselines for project activities,** **as defined by subsequent decisions adopted under the UNFCCC or the Kyoto Protocol, undertaken in countries having signed a Treaty of Accession with the Union fully comply with the acquis communautaire, including the temporary derogations set out in that Treaty of Accession**.

Article 12(1a), Directive 2003/87/EC, as amended by Directive 2009/29/EC

**The Commission shall, by 31 December 2010, examine whether the market for emissions allowances is sufficiently protected from insider dealing or market manipulation and, if appropriate, shall bring forward proposals to ensure such protection**.

Article 12(3-a), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

Where necessary, and for as long as is necessary, **in order to protect the environmental integrity of the EU ETS**, operators, aircraft operators, and shipping companies in the EU ETS shall be prohibited from using allowances that are issued by a Member State in respect of which there are obligations lapsing for operators, aircraft operators, and shipping companies.

Article 12(3-b), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**An obligation to surrender allowances shall not arise in respect of emissions released until 31 December 2030 from voyages between a port located in an outermost region of a Member State and a port located in the same Member State, including voyages between ports within an outermost region and voyages between ports in the outermost regions of the same Member State, and from the activities, within a port, of such ships in relation to such voyages**.

Article 12(3-c), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

By way of derogation from paragraph 3, first subparagraph, point (c), of this Article and Article 16, **the Commission shall, at the joint request of two Member States, one of which having no land border with another Member State and the other Member State being the geographically closest Member State to the Member State without such a land border, provide by means of an implementing act that Member States are to consider the requirements set out in those provisions to be satisfied and that they are to take no action against shipping companies in respect of emissions released until 31 December 2030 from voyages performed by passenger or ro-pax ships in the framework of a transnational public service contract or a transnational public service obligation, set out in the joint request, connecting the two Member States, and from the activities, within a port, of such ships in relation to such voyages**.

Article 12(3-d), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 12(3-e), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 12(7), Directive 2003/87/EC, as amended by Decision (EU) 2023/136

Pending a legislative act amending this Directive as regards the contribution of aviation to the Union’s economy-wide emission reduction target and appropriately implementing a global market-based measure, and **in the event that the period for the transposition of such a legislative act has not expired by 30 November 2023, and the Sector Growth Factor (SGF) for 2022 emissions, to be published by ICAO, equals zero, Member States shall, by 30 November 2023, notify aircraft operators that, in respect of the year 2022, their offsetting requirements within the meaning of paragraph 3.2.1 of ICAO’s CORSIA SARPs amount to zero**.

Article 14(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

Those implementing acts shall also specify the global warming potential of each greenhouse gas and **take into account up-to-date scientific knowledge on the effects of non-CO2 aviation emissions in the requirements for monitoring and reporting of emissions and their effects, including non-CO2 aviation effects**. Those implementing acts **shall provide for the application of the sustainability and greenhouse gas emission-saving criteria for the use of biomass established by Directive (EU) 2018/2001**, with any necessary adjustments for application under this Directive, in order for such biomass to be zero-rated. They shall specify how to account for storage of emissions from a mix of zero-rated sources and sources that are not zero-rated. They shall also specify **how to account for emissions from renewable fuels of non-biological origin and recycled carbon fuels, ensuring that such emissions are accounted for and that double counting is avoided**.

Article 14(2), Directive 2003/87/EC, as amended by ﻿Directive 2009/29/EC

**The acts referred to in paragraph 1 shall take into account the most accurate and up-to-date scientific evidence available, in particular from the IPCC**, and may also specify requirements for operators to report on emissions associated with the production of goods produced by energy intensive industries which may be subject to international competition.

Article 15, Directive 2003/87/EC, as amended by ﻿Directive 2008/101/EC

**Member States shall ensure that the reports submitted by operators and aircraft operators pursuant to Article 14(3) are verified in accordance with the criteria set out in Annex V and any detailed provisions adopted by the Commission in accordance with this Article**, and that the competent authority is informed thereof.

Article 15a, Directive 2003/87/EC, as amended by ﻿Directive 2009/29/EC

Member States and the Commission shall ensure that all decisions and reports relating to the quantity and allocation of allowances and to the monitoring, reporting and verification of emissions are immediately disclosed in an orderly manner **ensuring non-discriminatory access. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the applicable laws, regulations or administrative provisions.**

Article 16(1), Directive 2003/87/EC

**Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that such rules are implemented. The penalties provided for must be effective, proportionate and dissuasive**.

Article 16(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**Member States shall ensure that any operator or aircraft operator who does not surrender sufficient allowances by 30 April of each year to cover its emissions during the preceding year shall be held liable for the payment of an excess emissions penalty**.

Article 16(11a), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

As a result of the issuing of such an expulsion order, every Member State, with the exception of the Member State whose flag the ship is flying, **shall refuse entry of the ships under the responsibility of the shipping company concerned into any of its ports until the shipping company fulfils its surrender obligations in accordance with Article 12**.

Article 16(11a), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

This **paragraph shall be without prejudice to international maritime rules applicable in the case of ships in distress**.

Article 18, Directive 2003/87/EC, as amended by ﻿Directive 2004/101/EC

**Member States shall in particular ensure coordination between their designated focal point for approving project activities pursuant to Article 6 (1)(a) of the Kyoto Protocol and their designated national authority for the implementation of Article 12 of the Kyoto Protocol respectively designated in accordance with subsequent decisions adopted under the UNFCCC or the Kyoto Protocol**.

Article 18b(2), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

As far as practicable, such guidance and tools shall be made available to the Member States and the verifiers for information-sharing purposes and **in order to better ensure robust enforcement of the national measures transposing this Directive.**

Article 19(4), Directive 2003/87/EC, as amended by ﻿Directive 2009/29/EC

It shall contain appropriate modalities for the Union registry **to ensure that initiatives of the Member States pertaining to efficiency improvement, administrative cost management and quality control measures are possible.**

Article 19(4), Directive 2003/87/EC

**If irregularities are identified through the automated check, the Central Administrator shall inform the Member State or Member States concerned who shall not register the transactions in question or any further transactions relating to the allowances concerned until the irregularities have been resolved**.

Article 21a, Directive 2003/87/EC, as amended by ﻿Directive 2004/101/EC

**In accordance with the UNFCCC, the Kyoto Protocol and any subsequent decision adopted for their implementation, the Commission and the Member States shall endeavour to support capacity-building activities in developing countries and countries with economies in transition in order to help them take full advantage of JI and the CDM in a manner that supports their sustainable development strategies and to facilitate the engagement of entities in JI and CDM project development and implementation.**

﻿Article 23(4), Directive 2003/87/EC, as amended by ﻿Directive (EU) 2018/410

**Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.**

﻿Article 24(1), Directive 2003/87/EC, as amended by Directive (EU) 2018/410

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 EU ETS and the reliability of the planned monitoring and reporting system,** provided that the inclusion of such activities and greenhouse gases is approved by the Commission, in accordance with delegated acts which the Commission is empowered to adopt in accordance with Article 23.

﻿Article 24a(1), Directive 2003/87/EC, as amended by ﻿Directive 2009/29/EC

**Any such measures shall not result in the double-counting of emission reductions nor impede the undertaking of other policy measures to reduce emissions not covered by the EU ETS.**

﻿Article 25(1a), Directive 2003/87/EC, as amended by ﻿Directive 2009/29/EC and Directive (EU) 2018/410

**Agreements may be made to provide for the recognition of allowances between the EU ETS and compatible mandatory greenhouse gas emissions trading systems with absolute emissions caps established in any other country or in sub-federal or regional entities.**

﻿Article 25a(1), Directive 2003/87/EC, as amended by ﻿Directive (EU) 2018/410

Where a third country adopts measures for reducing the climate change impact of flights departing from that third country which land in the Union, the Commission, after consulting with that third country, and with Member States within the Committee referred to in Article 22a(1), shall consider options available **in order to provide for optimal interaction between the EU ETS and that country's measures.**

﻿Article 25a(6), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

**In respect of emissions from flights to and from least developed countries and small island developing States as defined by the United Nations, other than those listed in the implementing act adopted pursuant to paragraph 3 of this Article and those States whose GDP per capita equals or exceeds the Union average, aircraft operators shall not be required to surrender allowances in accordance with Article 12(3) in respect of those emissions**.

﻿Article 25a(7), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

**Where the Commission determines that there is a significant distortion of competition, such as a distortion caused by a third country applying CORSIA in a less stringent manner in its domestic law or failing to enforce CORSIA provisions in an equal manner for all aircraft operators, which is detrimental to aircraft operators that hold an air operator certificate issued by a Member State or are registered in a Member State, including in the outermost regions, dependencies and territories of that Member State, the Commission shall adopt implementing acts to exempt those aircraft operators from offsetting requirements** as laid down in Article 12(9) in respect of emissions from flights to and from such States.

﻿Article 27(1), Directive 2003/87/EC, as amended by ﻿Directive 2009/29/EC and Directive (EU) 2018/410

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

﻿Article 27a(1), Directive 2003/87/EC, as amended by ﻿Directive (EU) 2018/410

**Member States may exclude from the EU ETS installations that have reported to the competent authority of the Member State concerned emissions of less than 2 500 tonnes of carbon dioxide equivalent**, disregarding emissions from biomass, in each of the three years preceding the notification under point (a), provided that the Member State concerned.

﻿Article 28(2), Directive 2003/87/EC, as amended by Directive 2009/29/EC and Directive (EU) 2018/410

On the basis of the report referred to in paragraph 1, the Commission shall, as appropriate, submit a legislative proposal to the European Parliament and to the Council amending this Directive pursuant to paragraph 1, **with a view to the amending Directive entering into force upon the approval by the Union of the international agreement on climate change and in view of the emission reduction commitment to be implemented under that agreement.﻿ The proposal shall be based upon the principles of transparency, economic efficiency and cost-effectiveness, as well as fairness and solidarity in the distribution of efforts between Member States.**

﻿Article 28a(4), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

By way of derogation from Articles 3g, 12, 15 and 18a, where an aircraft operator has total annual emissions lower than 25 000 tonnes of CO2, or where an aircraft operator has total annual emissions lower than 3 000 tonnes of CO2 from flights other than those referred to in points (a) and (b) of paragraph 1 of this Article, **its emissions shall be considered to be verified emissions if determined by using the small emitters tool approved under Commission Regulation (EU) No 606/2010 and populated by Eurocontrol with data from its ETS support facility**.

﻿Article 28b(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

Before 1 January 2027 and every three years thereafter, **the Commission shall report to the European Parliament and to the Council on progress in the ICAO negotiations to implement the global market-based measure** to be applied to emissions from 2021, in particular with regard to:

﻿Article 28b(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

The Commission’s report referred to in paragraph 2 shall be accompanied by a legislative proposal, where appropriate, to amend this Directive **in a way that is consistent with the Paris Agreement temperature goal, the Union’s economy-wide greenhouse gas emission reduction commitment for 2030 and the objective of achieving climate neutrality by 2050 at the latest, and with the aim of preserving the environmental integrity and effectiveness of the Union’s climate action**.

﻿Article 28b(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/958

**The accompanying proposal shall also, as appropriate, allow the possibility for aircraft operators to deduct any costs incurred from CORSIA offsetting on those routes, to avoid double charging**.

﻿Article 28c, Directive 2003/87/EC, as amended by Directive (EU) 2018/410

The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the appropriate monitoring, reporting and verification of emissions **for the purpose of implementing the ICAO's global market-based measure on all routes covered by it**. Those delegated acts shall be based on the relevant instruments adopted in the ICAO, **shall avoid any distortion of competition and be consistent with the principles contained in the acts referred to in Article 14(1), and shall ensure that the emissions reports submitted are verified in accordance with the verification principles and criteria laid down in Article 15**.

Article 29, Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 29a(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

﻿**If the average allowance price for the six preceding calendar months is more than 2,4 times the average allowance price for the preceding two-year reference period, 75 million allowances shall be released from the market stability reserve** in accordance with Article 1(7) of Decision (EU) 2015/1814.

Article 30(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 30(2), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**The measures to support certain energy-intensive industries that may be subject to carbon leakage referred to in Articles 10a and 10b of this Directive shall also be kept under review in the light of climate policy measures in other major economies**. In this context, the Commission shall also consider whether measures in relation to the compensation of indirect costs should be further harmonised. The measures applicable to CBAM sectors **shall be kept under review in light of the application of Regulation (EU) 2023/956. Before 1 January 2028**, and every two years thereafter, as part of its reports to the European Parliament and to the Council pursuant to Article 30(6) of that Regulation, the **Commission shall assess the impact of CBAM on the risk of carbon leakage, including in relation to exports**. The report shall **assess the need for taking additional measures, including legislative measures, to address carbon leakage risks.**

Article 30(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 30(5), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

By 31 July 2026, the Commission shall report to the European Parliament and to the Council on the following matters, accompanied, where appropriate, by a legislative proposal and impact assessment: (a) **how negative emissions resulting from greenhouse gases that are removed from the atmosphere and safely and permanently stored could be accounted for and how those negative emissions could be covered by emissions trading, if appropriate, including a clear scope and strict criteria for such coverage, and safeguards to ensure that such removals do not offset necessary emission reductions in accordance with Union climate targets laid down in Regulation (EU) 2021/1119; (b) the feasibility of lowering the 20 MW total rated thermal input thresholds for the activities in Annex I from 2031; (c) whether all greenhouse gas emissions covered by this Directive are effectively accounted for, and whether double counting is effectively avoided**;

Article 30(6), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 30(7), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

In that regard, **the Commission shall** **take into account the importance of all sectors contributing to emission reductions and potential diversion of waste towards disposal by landfilling in the Union and waste exports to third countries. The Commission shall in addition take into account relevant criteria such as the effects on the internal market, potential distortions of competition, environmental integrity, alignment with the objectives of Directive 2008/98/EC of the European Parliament and of the Council and robustness and accuracy with regard to the monitoring and calculation of emissions**.

Article 30b(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**Member States shall ensure that, from 1 January 2025, no regulated entity carries out the activity referred to in Annex III unless that regulated entity holds a permit issued by a competent authority** in accordance with paragraphs 2 and 3 of this Article.

Article 30c(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**The Union-wide quantity of allowances issued under this Chapter each year from 2027 shall decrease in a linear manner beginning in 2024**.

Article 30c(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

The Union-wide quantity of allowances issued under this Chapter **shall be adjusted for each year from 2028 to compensate for the quantity of allowances surrendered in cases where it was not possible to avoid double counting of emissions or where allowances have been surrendered for emissions not covered by this Chapter as referred to in Article 30f(5)**.

Article 30d(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**150 million allowances issued under this Chapter shall be auctioned and all revenues from those auctions made available for the Social Climate Fund established by Regulation (EU) 2023/955 until 2032**.

Article 30d(4), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

From the remaining amount of allowances and in order to generate, together with the revenue from the allowances referred to in paragraph 3 of this Article and Article 10a(8b) of this Directive, a maximum amount of EUR 65 000 000 000, **the Commission shall ensure that an additional amount of allowances covered by this Chapter is auctioned and the revenues from those auctions are made available for the Social Climate Fund established by Regulation (EU) 2023/955 until 2032**.

Article 30d(5), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

The total quantity of allowances covered by this Chapter, after deducting the quantities set out in paragraphs 3 and 4 of this Article, **shall be auctioned by the Member States and distributed amongst them in shares that are identical to the share of reference emissions under Article 4(2) of Regulation (EU) 2018/842 for the categories of emission sources referred to in the second paragraph, points (b), (c) and (d), of Annex III to this Directive for the average of the period from 2016 to 2018 of the Member State concerned**, as comprehensively reviewed pursuant to Article 4(3) of that Regulation.

Article 30d(6), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

Member States shall use their revenues or the equivalent in financial value of those revenues for one or more of the purposes referred to in Article 10(3) of this Directive**, giving priority to activities that can contribute to addressing social aspects of the emissions trading under this Chapter**, or for one or more of the following: (a) **measures intended to contribute to the decarbonisation of heating and cooling of buildings or to the reduction of the energy needs of buildings, including the integration of renewable energies and related measures in accordance with Article 7(11) and Articles 12 and 20 of Directive 2012/27/EU, as well as measures to provide financial support for low-income households in worst-performing buildings**; (b) **measures intended to accelerate the uptake of zero-emission vehicles or to provide financial support for the deployment of fully interoperable refuelling and recharging infrastructure for zero-emission vehicles, or measures to encourage a shift to public transport and improve multimodality, or to provide financial support in order to address social aspects concerning low- and middle-income transport users**; (c) **to finance their Social Climate Plan in accordance with Article 15 of Regulation (EU) 2023/955**; (d) **to provide financial compensation to the final consumers of fuels in cases where it has not been possible to avoid double counting of emissions or where allowances have been surrendered for emissions not covered by this Chapter as referred to in Article 30f(5)**.

Article 30e(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

Until 31 December 2030, by way of derogation from paragraphs 1 and 2 of this Article, **where a regulated entity established in a given Member State is subject to a national carbon tax in force for the years 2027 to 2030, covering the activity referred to in Annex III, the competent authority of the Member State concerned may exempt that regulated entity from the obligation to surrender allowances under paragraph 2 of this Article for a given reference year**, provided that:

Article 30e(4), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**Hospitals which are not covered by Chapter III may be provided with financial compensation for the cost passed on to them due to the surrender of allowances under this Chapter**.

Article 30f(3), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

From 1 January 2028, Member States shall ensure that, by 30 April each year until 2030, **each regulated entity reports the average share of costs related to the surrender of allowances under this Chapter which it passed on to consumers for the preceding year**. The Commission shall adopt implementing acts concerning the requirements and templates for those reports. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2). The Commission shall assess the submitted reports and annually report its findings to the European Parliament and to the Council. **Where the Commission finds that improper practices exist with regard to the passing on of carbon costs, the report may be accompanied, where appropriate, by legislative proposals aimed at addressing such improper practices**.

Article 30f(5), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**Member States shall ensure that the regulated entities are able to identify and document reliably and accurately, per type of fuel, the precise quantities of fuel released for consumption which are used for combustion in the sectors referred to in Annex III, and the final use of the fuels released for consumption by the regulated entities**. **The Member States shall take appropriate measures to limit the risk of double counting** of emissions covered under this Chapter and the emissions under Chapters II and III, as well as the risk of allowances being surrendered for emissions not covered by this Chapter. **The Commission shall adopt implementing acts concerning the detailed rules for avoiding double counting and allowances being surrendered for emissions not covered by this Chapter**, as well as for **providing financial compensation to the final consumers of the fuels in cases where such double counting or surrender cannot be avoided**.

Article 30h(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

**Where, for more than three consecutive months, the average price of allowances in the auctions carried out in accordance with the delegated acts adopted pursuant to Article 10(4) of this Directive is more than twice the average price of allowances during the six preceding consecutive months in the auctions for the allowances covered by this Chapter, 50 million allowances covered by this Chapter shall be released from the market stability reserve** in accordance with Article 1a(7) of Decision (EU) 2015/1814.

Article 30j(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 30j(1), Directive 2003/87/EC, as amended by Directive (EU) 2023/959

The Commission may also, when adopting such delegated acts, supplement the extension with further rules governing measures **to address possible instances of double counting, including for the issue of additional allowances to compensate for allowances surrendered for use of fuels in activities listed in Annex** I. **Any financial measures by Member States in favour of companies in sectors and subsectors which are exposed to a genuine risk of carbon leakage, due to significant indirect costs that are incurred from greenhouse gas emission costs passed on in fuel prices due to the unilateral extension, shall be in accordance with State aid rules, and shall not cause undue distortions of competition in the internal market**.

Article 30k, Directive 2003/87/EC, as amended by Directive (EU) 2023/959

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

Article 30l, Directive 2003/87/EC, as amended by Directive (EU) 2023/959

The Commission shall take into account the relevant advice and reports of the Advisory Board, in particular as regards: (a) **the need for additional Union policies and measures to ensure compliance with the objectives and targets referred to in Article 30(3) of this Directive;** (b) **the need for additional Union policies and measures in view of agreements on global measures within ICAO to reduce the climate impact of aviation, and of the ambition and environmental integrity of the global market-based measure of the IMO referred to in Article 3gg of this Directive.**

###  Recitals

**[1] 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 [2003] OJ L275/32

Recital 5, Directive 2003/87/EC

This Directive **aims to contribute to fulfilling the commitments of the European Community and its Member States more effectively**, **through an efficient European market in greenhouse gas emission allowances, with the least possible diminution of economic development and employment**.

Recital 7, Directive 2003/87/EC

Community provisions relating to allocation of allowances by the Member States are necessary **to contribute to preserving the integrity of the internal market** **and** **to avoid distortions of competition**.

Recital 12, Directive 2003/87/EC

**Member States should lay down rules on penalties applicable to infringements of this Directive and** **ensure that they are implemented**.

Recital 13, Directive 2003/87/EC

**In order to ensure transparency**, the public should have access to information relating to the allocation of allowances and to the results of monitoring of emissions, subject only to restrictions provided for in Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information.

Recital 18, Directive 2003/87/EC

**Linking the Community scheme to greenhouse gas emission trading schemes in third countries** **will increase the cost-effectiveness of achieving the Community emission reductions target** as laid down in Decision 2002/358/EC on the joint fulfilment of commitments.

Recital 19, Directive 2003/87/EC

Project-based mechanisms including Joint Implementation (JI) and the Clean Development Mechanism (CDM) are important **to achieve the goals of both reducing global greenhouse gas emissions** and **increasing the cost-effective functioning of the Community scheme**.

Recital 20, Directive 2003/87/EC

This Directive **will encourage the use of more energy-efficient technologies**, including combined heat and power technology, producing less emissions per unit of output, while the future directive of the European Parliament and of the Council on the promotion of cogeneration based on useful heat demand in the internal energy market will specifically promote combined heat and power technology.

Recital 21, Directive 2003/87/EC

**Directive 96/61/EC should be amended to ensure that emission limit values are not set for direct emissions of greenhouse gases from an installation subject to this Directive** and that Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site, without prejudice to any other requirements pursuant to Directive 96/61/EC.

Recital 22, Directive 2003/87/EC

**This Directive is compatible with the United Nations Framework Convention on Climate Change and the Kyoto Protocol.** **It should be reviewed in the light of developments in that context** and to take into account experience in its implementation and progress achieved in monitoring of emissions of greenhouse gases.

Recital 23, Directive 2003/87/EC

**Emission allowance trading should form part of a comprehensive and coherent package of policies and measures implemented at Member State and Community level**.

Recital 25, Directive 2003/87/EC

**Policies and measures should be implemented at Member State and Community level across all sectors of the European Union economy, and not only within the industry and energy sectors, in order to generate substantial emissions reductions**.

Recital 26, Directive 2003/87/EC

Notwithstanding the multifaceted potential of market-based mechanisms, **the European Union strategy for climate change mitigation should be built on a balance between the Community scheme and other types of Community, domestic and international action**.

Recital 27, Directive 2003/87/EC

**This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union**.

Recital 30, Directive 2003/87/EC

Since the objective of the proposed action, the establishment of a Community scheme, cannot be sufficiently achieved by the Member States acting individually, and can therefore by reason of the scale and effects of the proposed action be better achieved at Community level, the Community may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 that objective,

**[2] Directive 2004/101/EC** of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol’s project mechanisms [2004] OJ L338/18

Recital 1, Directive 2004/101/EC

**It aims at contributing towards fulfilling the commitments of the Community and its Member States to reduce anthropogenic greenhouse gas emissions under the Kyoto Protocol** which was approved by Council Decision 2002/358/EC of 25 April 2002 concerning the approval, on behalf of the European Community, of the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the joint fulfilment of commitments thereunder.

Recital 2, Directive 2004/101/EC

Directive 2003/87/EC states that the recognition of credits from project-based mechanisms for fulfilling obligations as from 2005 **will increase the cost-effectiveness of achieving reductions of global greenhouse gas emissions** and **shall be provided for by provisions for linking the Kyoto project-based mechanisms, including joint implementation (JI) and the clean development mechanism (CDM), with the Community scheme**.

Recital 3, Directive 2004/101/EC

**Linking the Kyoto project-based mechanisms to the Community scheme, while safeguarding the latter’s environmental integrity**, gives the opportunity to use emission credits generated through project activities eligible pursuant to Articles 6 and 12 of the Kyoto Protocol in order to fulfil Member States’ obligations in accordance with Article 12(3) of Directive 2003/87/EC.

Recital 3, Directive 2004/101/EC

As a result, this will increase the diversity of low-cost compliance options within the Community scheme **leading to a reduction of the overall costs of compliance** with the Kyoto Protocol **while improving the liquidity of the Community market** in greenhouse gas emission allowances.

Recital 3, Directive 2004/101/EC

By stimulating demand for JI credits, **Community companies will invest in the development and transfer of advanced environmentally sound technologies and know-how**.

Recital 3, Directive 2004/101/EC

The demand for CDM credits will also be stimulated and **thus** **developing countries hosting CDM projects will be assisted in achieving their sustainable development goals**.

Recital 4, Directive 2004/101/EC

In addition to the use of the Kyoto project-based mechanisms by the Community and its Member States, and by companies and individuals outside the Community scheme, **those mechanisms should be linked to the Community scheme in such a way as to ensure consistency with the United Nations Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol and subsequent decisions adopted thereunder as well as with the objectives and architecture of the Community scheme and provisions laid down by Directive 2003/87/EC**.

Recital 10, Directive 2004/101/EC

**In order to avoid double counting**, CERs and ERUs should not be issued as a result of project activities undertaken within the Community that also lead to a reduction in, or limitation of, emissions from installations covered by Directive 2003/87/EC, unless an equal number of allowances is cancelled from the registry of the Member State of the CERs’ or ERUs’ origin.

Recital 12, Directive 2004/101/EC

Any Member State that authorises private or public entities to participate in project activities remains responsible for the fulfilment of its obligations under the UNFCCC and the Kyoto Protocol and **should therefore ensure that such participation is consistent with the relevant guidelines, modalities and procedures adopted pursuant to the UNFCCC or the Kyoto Protocol.**

Recital 13, Directive 2004/101/EC

**In accordance with the UNFCCC, the Kyoto Protocol and subsequent decisions adopted for their implementation**, **the Commission and the Member States should support capacity building activities in developing countries and countries with economies in transition** in order to help them take full advantage of JI and the CDM in a manner that supports their sustainable development strategies.

Recital 15, Directive 2004/101/EC

Since participation in JI and CDM project activities is voluntary, **corporate environmental and social responsibility and accountability should be enhanced in accordance with paragraph 17 of the Plan of implementation of the world summit on sustainable development**. In this connection, companies should be encouraged to improve the social and environmental performance of JI and CDM activities in which they participate.

Recital 19, Directive 2004/101/EC

Since the objective of the proposed action, namely the establishment of a link between the Kyoto project-based mechanisms and the Community scheme, cannot be sufficiently achieved by the Member States acting individually, and can therefore by reason of the scale and effects of this action be better achieved at Community level, the Community may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 that objective.

**[3] Directive 2008/101/EC** of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community [2009] OJ L8/3

Recital 14, Directive 2008/101/EC

**The objective of the amendments made to Directive 2003/87/EC by this Directive is to reduce the climate change impact attributable to aviation by including emissions from aviation activities in the Community scheme.**

Recital 16, Directive 2008/101/EC

**In order to avoid distortions of competition and improve environmental effectiveness**, emissions from all flights arriving at and departing from Community aerodromes should be included from 2012.

Recital 17, Directive 2008/101/EC

**The Community scheme may serve as a model for the use of emissions trading worldwide**. The Community and its Member States **should continue to be in contact with third parties during the implementation of this Directive** and to **encourage third countries to take equivalent measures**. If a third country adopts measures, which have an environmental effect at least equivalent to that of this Directive, to reduce the climate impact of flights to the Community, the Commission should consider the options available **in order to provide for optimal interaction between the Community scheme and that country’s measures, after consulting with that country.**

Recital 18, Directive 2008/101/EC

**In line with the principle of better regulation,** certain flights should be exempt from the Community scheme. **To further avoid disproportionate administrative burdens,** commercial air transport operators operating, for three consecutive four-month periods, fewer than 243 flights per period should be exempt from the Community scheme. This would benefit airlines operating limited services within the scope of the Community scheme**, including airlines from developing countries.**

Recital 20, Directive 2008/101/EC

**In order to avoid distortions of competition**, a harmonised allocation methodology should be specified for determining the total quantity of allowances to be issued and for distributing allowances to aircraft operators.

Recital 21, Directive 2008/101/EC

Full harmonisation of the proportion of allowances issued free of charge to all aircraft operators participating in the Community scheme is appropriate **in order to ensure a level playing field for aircraft operators**, given that each aircraft operator will be regulated by a single Member State in respect of all their operations to, from and within the EU and by the non-discrimination provisions of bilateral air service agreements with third countries.

Recital 24, Directive 2008/101/EC

**To increase the cost-effectiveness of the Community scheme**, aircraft operators should be able to use certified emission reductions (CERs) and emission reduction units (ERUs) from project activities to meet obligations to surrender allowances up to a harmonised limit.

Recital 25, Directive 2008/101/EC

In its Conclusions, the European Council meeting in Brussels on 13 and 14 March 2008 recognised that in a global context of competitive markets **the risk of carbon leakage is a concern that needs to be analysed and addressed urgently in the new Emissions Trading System Directive**, so that if international negotiations fail appropriate measures can be taken.

Recital 26, Directive 2008/101/EC

**In order to reduce the administrative burden on aircraft operators**, one Member State should be responsible for each aircraft operator.

Recital 26, Directive 2008/101/EC

In the event that an aircraft operator fails to comply with the requirements of this Directive and other enforcement measures by the administering Member State have failed to ensure compliance, **Member States should act in solidarity**.

Recital 27, Directive 2008/101/EC

**To maintain the integrity of the accounting system for the Community scheme** in view of the fact that emissions from international aviation are not integrated into Member States’ commitments under the Kyoto Protocol, allowances allocated to the aviation sector should only be used to meet the obligations placed on aircraft operators to surrender allowances under this Directive.

Recital 28, Directive 2008/101/EC

**In order to ensure equal treatment of aircraft operators**, Member States should follow harmonised rules for the administration of aircraft operators for which they have responsibility, in accordance with specific guidelines to be developed by the Commission.

Recital 29, Directive 2008/101/EC

**To safeguard the environmental integrity of the Community scheme**, units surrendered by aircraft operators should only count towards greenhouse gas reduction targets that take these emissions into account.

Recital 33, Directive 2008/101/EC

The review of the functioning of Directive 2003/87/EC in relation to aviation activities **should consider the structural dependence on aviation of countries which do not have adequate and comparable alternative modes of transport** and which are therefore highly dependent on air transport and in which the tourism sector provides a high contribution to those countries’ gross domestic product. **Special consideration should be given to mitigating or even eliminating any accessibility and competitiveness problems arising for the outermost regions of the Community**, as specified in Article 299(2) of the Treaty, and problems for public service obligations in connection with the implementation of this Directive.

Recital 37, Directive 2008/101/EC

Since the objective of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved at Community level, the Community may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 that objective.

**[4] Regulation (EC) 219/2009** of the European Parliament and of the Council of 11 March 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny — Adaptation to the regulatory procedure with scrutiny — Part Two [2009] OJ L87/109

*No relevant recitals*

**[5] Directive 2009/29/EC** of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the Community [2009] OJ L140/63

Recital 3, Directive 2009/29/EC

**By 2050, global greenhouse gas emissions should be reduced by at least 50 % below their 1990 levels.** **All sectors of the economy should contribute to achieving these emission reductions, including international maritime shipping and aviation. Aviation is contributing to these reductions through its inclusion in the Community scheme.** **In the event that no international agreement which includes international maritime emissions in its reduction targets through the International Maritime Organisation has been approved by the Member States or no such agreement through the UNFCCC has been approved by the Community by 31 December 2011, the Commission should make a proposal to include international maritime emissions according to harmonised modalities in the Community reduction commitment, with the aim of the proposed act entering into force by 2013. Such a proposal should** **minimise any negative impact on the Community’s competitiveness** **while taking into account the potential environmental benefits**.

Recital 4, Directive 2009/29/EC

Given that it anticipates a positive outcome to the COP 15 negotiations that will be held in Copenhagen in 2009, the European Union should begin to prepare tougher emission reduction targets for 2020 and beyond, and **should seek to ensure that, after 2013, the Community scheme allows, if necessary, for more stringent emission caps, as part of the Union’s contribution to a future international agreement on climate change** (hereinafter referred to as the international agreement on climate change).

Recital 5, Directive 2009/29/EC

**In order to contribute to achieving those long-term objectives**, **it is appropriate to set out a predictable path according to which the emissions of installations covered by the Community scheme should be reduced**.

Recital 5, Directive 2009/29/EC

**To achieve cost-effectively the commitment of the Community to at least a 20 % reduction in greenhouse gas emissions below 1990 levels**, emission allowances allocated in respect of those installations should be 21 % below their 2005 emission levels by 2020.

Recital 6, Directive 2009/29/EC

**In order to enhance the certainty and predictability of the Community scheme**, provisions should be specified to increase the level of contribution of the Community scheme to achieving an overall reduction of more than 20 %, **in particular in view of the European Council’s objective of a 30 % reduction by 2020 which is considered scientifically necessary to avoid dangerous climate change**

Recital 8, Directive 2009/29/EC

While experience gathered during the first trading period shows the potential of the Community scheme and the finalisation of national allocation plans for the second trading period will deliver significant emission reductions by 2012, a review undertaken in 2007 has confirmed that a more harmonised emission trading system is imperative in order to better exploit the benefits of emission trading, **to avoid distortions in the internal market and to facilitate the linking of emissions trading systems**.

Recital 8, Directive 2009/29/EC

Furthermore, **more predictability should be ensured** and the scope of the system should be extended by including new sectors and gases **with a view to both reinforcing a carbon price signal necessary to trigger the necessary investments** **and by offering new abatement opportunities, which will lead to lower overall abatement costs and the increased efficiency of the system**.

Recital 9, Directive 2009/29/EC

**The definition of greenhouse gases should be aligned with the definition contained in the UNFCCC**, and **greater clarity should be given on the setting and updating of global warming potentials for individual greenhouse gases**.

Recital 10, Directive 2009/29/EC

**The Community scheme should be extended to other installations the emissions of which are capable of being monitored, reported and verified with the same level of accuracy as that which applies** under the monitoring, reporting and verification requirements currently applicable.

Recital 11, Directive 2009/29/EC

This threshold offers **the maximum gain, in relative terms, of reduction of administrative costs for each tonne of CO2 equivalent excluded from the system, for reasons of administrative simplicity**.

Recital 11, Directive 2009/29/EC

As a consequence of the move from five-year allocation periods, **and in order to increase certainty and predictability**, provisions should be laid down regarding the frequency of revision of greenhouse gas emission permits.

Recital 11, Directive 2009/29/EC

**Taking into account the need to reduce unnecessary administrative burdens for smaller emitters**, Member States may set up simplified procedures and measures to comply with this Directive.

Recital 12, Directive 2009/29/EC

**Information on the application of this Directive should be easily accessible, in particular for small and medium-sized enterprises (SMEs).**

Recital 13, Directive 2009/29/EC

The Community-wide quantity of allowances should decrease in a linear manner calculated from the mid-point of the period from 2008 to 2012, **ensuring that the emissions trading system delivers gradual and predictable reductions of emissions over time**.

Recital 13, Directive 2009/29/EC

The annual decrease of allowances should be equal to 1,74 % of the allowances issued by Member States pursuant to Commission Decisions on Member States’ national allocation plans for the period from 2008 to 2012, **so that the Community scheme contributes cost-effectively to achieving the commitment of the Community to an overall reduction in emissions of at least 20 % by 2020**.

Recital 15, Directive 2009/29/EC

The additional effort to be made by the Community economy **requires, inter alia, that the revised Community scheme operate with the highest possible degree of economic efficiency and on the basis of fully harmonised conditions of allocation within the Community**.

Recital 15, Directive 2009/29/EC

Auctioning should therefore be the basic principle for allocation, as it is the simplest, and generally considered to be **the most economically efficient system**. **This should also eliminate windfall profits and put new entrants** and economies growing faster than average **on the same competitive footing** as existing installations.

Recital 16, Directive 2009/29/EC

**In order to maintain the environmental and administrative efficiency of the Community scheme, avoid distortions of competition and the early depletion of the new entrants reserve**, the rules on new entrants should be harmonised so as to ensure that all Member States adopt the same approach, in particular in relation to the meaning of ‘significant extensions’ of installations.

Recital 17, Directive 2009/29/EC

**The objectives of eliminating distortions to intra-Community competition and of ensuring the highest degree of economic efficiency in the transformation of the Community economy** towards a safe and sustainable low-carbon economy make it inappropriate to treat economic sectors differently under the Community scheme in individual Member States.

Recital 17, Directive 2009/29/EC

It is therefore necessary to develop other mechanisms **to support the efforts of those Member States with relatively lower income per capita and higher growth prospects**.

Recital 19, Directive 2009/29/EC

**In order to avoid distortions of competition**, electricity generators may receive free allowances for district heating and cooling and for heating and cooling produced through high-efficiency cogeneration as defined by Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market ﻿where such heat produced by installations in other sectors would be given free allocations.

Recital 20, Directive 2009/29/EC

In addition, **to accelerate the demonstration of the first commercial facilities and of innovative renewable energy technologies**, allowances should be set aside from the new entrants reserve to provide a guaranteed reward for the first such facilities in the Union for tonnes of CO 2 stored or avoided on a sufficient scale, provided an agreement on knowledge-sharing is in place.

Recital 22, Directive 2009/29/EC

**In order to ensure an orderly functioning of the carbon and electricity markets**, the auctioning of allowances for the period from 2013 onwards should start by 2011 and be based on clear and objective principles defined well in advance.

Recital 23, Directive 2009/29/EC

Transitional free allocation to installations should be provided for through harmonised Community-wide rules (exante benchmarks) **in order to minimise distortions of competition with the Community**.

Recital 23, Directive 2009/29/EC

**Any such rules should not give incentives to increase emissions and should ensure that an increasing proportion of these allowances is auctioned**. Allocations must be fixed prior to the trading period **so as to enable the market to function properly**.

Recital 24, Directive 2009/29/EC

In the event that other developed countries and other major emitters of greenhouse gases do not participate in this international agreement, this could lead to an increase in greenhouse gas emissions in third countries where industry would not be subject to comparable carbon constraints (carbon leakage), and at the same time could put certain energy-intensive sectors and subsectors in the Community which are subject to international competition at an economic disadvantage. **This could undermine the environmental integrity and benefit of actions by the Community. To address the risk of carbon leakage**, the Community should allocate 100 % of allowances free of charge to sectors or subsectors meeting the relevant criteria.

Recital 24, Directive 2009/29/EC

The definition of these sectors and subsectors and the measures required should be subject to reassessment **to ensure that action is taken where necessary and to avoid overcompensation**.

Recital 25, Directive 2009/29/EC

Any action taken would **need to be in conformity with the principles of the UNFCCC**, in particular the principle of common but differentiated responsibilities and respective capabilities, taking into account the particular situation of least developed countries (LDCs). **It would also need to be in conformity with the international obligations of the Community, including the obligations under the WTO agreement.**

Recital 27, Directive 2009/29/EC

**Such support should only be granted where it is necessary and proportionate and should ensure that the Community scheme incentives to save energy and to stimulate a shift in demand from ‘grey’ to ‘green’ electricity are maintained**.

Recital 28, Directive 2009/29/EC

**In order to ensure equal conditions of competition within the Community**, the use of credits for emission reductions outside the Community to be used by operators within the Community scheme should be harmonised.

Recital 28, Directive 2009/29/EC

The use of CERs and ERUs **should be consistent with the goal set by the Community of generating 20 % of energy from renewable sources by 2020,** and **promoting energy efficiency, innovation and technological development**.

Recital 29, Directive 2009/29/EC

**In order to provide predictability**, operators should be provided with certainty about the possibility to use after 2012 CERs and ERUs up to the remainder of the level which they were allowed to use in the period from 2008 to 2012, from project types which were eligible for use in the Community scheme during the period from 2008 to 2012.

Recital 31, Directive 2009/29/EC

LDCs are especially vulnerable to the effects of climate change, and are responsible only for a very low level of greenhouse gas emissions. Therefore, **particular priority should be given to addressing the needs of LDCs when revenues generated from auctioning are used to facilitate developing countries’ adaptation to the impacts of climate change**.

Recital 41, Directive 2009/29/EC

Third countries neighbouring the Union **should be encouraged to join the Community scheme if they comply with this Directive**. **The Commission should make every effort in negotiations with, and in the provision of financial and technical assistance to, candidate countries, potential candidate countries and countries covered by the European neighbourhood policy to promote this aim. This would facilitate technology and knowledge transfer to these countries**, which is an important means of providing economic, environmental and social benefits to all.

Recital 42, Directive 2009/29/EC

This Directive should provide for agreements to be made for the recognition of allowances between the Community scheme and other mandatory greenhouse gas emissions trading systems with absolute emissions caps, which are compatible with the Community scheme **taking into account the level of environmental ambition and the presence of a robust and comparable emissions monitoring, reporting and verification mechanism and compliance system**.

Recital 43, Directive 2009/29/EC

Taking into account experience under the Community scheme, it should be possible to issue allowances in respect of projects that reduce greenhouse gas emissions, provided that these projects take place in accordance with harmonised rules adopted at Community level and **these projects would not result in the double-counting of emission reductions or impede the extension of the scope of the Community scheme or the undertaking of other policy measures to reduce emissions not covered by the Community scheme**.

Recital 50, Directive 2009/29/EC

**This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union**.

Recital 51, Directive 2009/29/EC

Since the objectives of this Directive cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive be better achieved at Community level, the Community may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

**[6] Act concerning the conditions of accession of the Republic of Croatia** and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community [2012] OJ L112/21

*No relevant recitals*

**[7] Decision 1359/2013/EU** of the European Parliament and of the Council of 17 December 2013 amending Directive 2003/87/EC clarifying provisions on the timing of auctions of greenhouse gas allowances [2013] OJ L343/1

Recital 2, Decision 1359/2013/EU

**For the purposes of legal certainty and market predictability, it should be clarified that, in order to ensure the orderly functioning of the market**, the Commission is able in exceptional circumstances to adapt the auction timetable pursuant to Article 10(4) of Directive 2003/87/EC.

**[8] Regulation (EU) 421/2014** of the European Parliament and of the Council of 16 April 2014 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions [2014] OJ L129/1

Recital 2, Regulation (EU) 421/2014

The Union is endeavouring to secure a future international agreement to control greenhouse gas emissions from aviation and, in the meantime, is limiting climate change impacts from aviation activities to and from aerodromes in the Union, by autonomous action. **In order to ensure that those objectives are mutually supportive and not in conflict**, it is appropriate to take account of developments at, and positions taken in, international fora and in particular to take account of the resolution containing the ‘Consolidated statement of continuing ICAO policies and practices related to environmental protection’ adopted on 4 October 2013 at the 38th Session of the Assembly of the International Civil Aviation Organization (ICAO).

Recital 3, Regulation (EU) 421/2014

**In order to ensure legal certainty**, for the purposes of this derogation, flights between aerodromes located in States of the EEA and aerodromes located in countries that acceded to the Union in 2013 should be considered to be flights between States of the EEA.

Recital 5, Regulation (EU) 421/2014

The derogations provided for in this Regulation **take into account the results of bilateral and multilateral contacts with third countries, which the Commission will continue to pursue on behalf of the Union, in order to promote the use of market-based mechanisms to reduce emissions from aviation**.

Recital 8, Regulation (EU) 421/2014

**In order to avoid distortion of competition**, it is important that all flights on the same route be treated in the same way.

Recital 9, Regulation (EU) 421/2014

**To further avoid a disproportionate administrative burden for the smallest aircraft operators**, a temporary exemption should be added to Annex I to Directive 2003/87/EC.

Recital 10, Regulation (EU) 421/2014

It is appropriate to enable the use, by aircraft operators that are small emitters, of an alternative approach for the verification of their emissions **in order to reduce their administrative burden further**.

Recital 11, Regulation (EU) 421/2014

**Special consideration should be given to mitigating or even eliminating any accessibility and competitiveness problems arising for the outermost regions of the Union**.

Recital 12, Regulation (EU) 421/2014

**In order to ensure legal certainty for aircraft operators and national authorities** it is appropriate to allow until 2015 for the surrender and reporting deadlines for 2013 emissions.

Recital 14, Regulation (EU) 421/2014

In that report, **the Commission should, inter alia, consider all options for the coverage of emissions from aviation activities and, if appropriate, swiftly propose measures in order to ensure that international developments can be taken into account** and that any issues about the application of the derogation can be addressed.

Recital 15, Regulation (EU) 421/2014

**Since the objectives of this Regulation, namely to introduce a temporary derogation for the monitoring, reporting and surrendering of allowances from flights to and from countries outside the EEA from 1 January 2013 to 31 December 2016, to lighten the administrative burden and simplify the administration of the scheme**, cannot be sufficiently achieved by the Member States, but can rather, by reason of scale and effects of the action, be better achieved at Union level, the Union may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality**, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

Recital 16, Regulation (EU) 421/2014

﻿**It is essential to ensure legal certainty for aircraft operators and national authorities** in view of the surrender deadline of 30 April 2014 as referred to in Directive 2003/87/EC.

**[9] Decision (EU) 2015/1814** of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC [2015] OJ L264/1

Recital 2, Decision (EU) 2015/1814

According to the European Council conclusions of 23 and 24 October 2014 on the 2030 climate and energy policy framework, **a well-functioning, reformed EU ETS with an instrument to stabilise the market will be the main European instrument to achieve the Union's greenhouse gas emissions reduction target**.

Recital 4, Decision (EU) 2015/1814

Accordingly, the surplus would also only gradually decline, such that the market would have to continue to operate for more than a decade with a surplus of around 2 billion allowances or more, **thereby preventing the EU ETS from delivering the necessary investment signal to reduce CO2 emissions in a cost-efficient manner** and **from being a driver of low-carbon innovation contributing to economic growth and jobs.**

Recital 5, Decision (EU) 2015/1814

**In order to address that problem and to make the EU ETS more resilient in relation to supply-demand imbalances, so as to enable the EU ETS to function in an orderly market**, a market stability reserve (the ‘reserve’) should be established in 2018 and it should be operational as of 2019.

﻿Recital 5, Decision (EU) 2015/1814

**The reserve will also enhance synergy with other climate and energy policies.**

Recital 5, Decision (EU) 2015/1814

**In order to preserve a maximum degree of predictability**, clear rules should be set for placing allowances in the reserve and releasing them from it.

Recital 6, Decision (EU) 2015/1814

**Given the need for a smooth operation of the auction process**, further details on the adjustment, where necessary, should be set out in Commission Regulation (EU) No 1031/2010.

Recital 7, Decision (EU) 2015/1814

Furthermore, in addition to the establishment of the reserve, a few consequential amendments should be made to Directive 2003/87/EC **in order to ensure consistency and the smooth operation of the EU ETS**. In particular, the implementation of Directive 2003/87/EC may lead to large volumes of allowances being auctioned at the end of each trading period which could undermine market stability.

Recital 8, Decision (EU) 2015/1814

The planned reintroduction of 300 million allowances in 2019 and 600 million allowances in 2020, as determined in Commission Regulation (EU) No 176/2014, **would undermine the aim of the reserve to tackle structural supply-demand imbalances**.

Recital 9, Decision (EU) 2015/1814

**It is important that the EU ETS incentivise carbon-efficient growth** and **that the competitiveness of the Union's industries at genuine risk of carbon leakage be protected**.

Recital 9, Decision (EU) 2015/1814

**In pursuing the goal of a level playing field**, that review should also consider harmonised arrangements to compensate for indirect costs at Union level.

Recital 10, Decision (EU) 2015/1814

The Commission should monitor the functioning of the reserve in the context of its annual carbon market report. **That report should consider relevant effects on competitiveness, in particular in the industrial sector, including in relation to GDP, employment and investment indicators**. In addition, **the Commission should, within three years of the date of operation of the reserve and periodically thereafter, review the functioning of the reserve in the light of the experience gained from its application**.

Recital 10, Decision (EU) 2015/1814

**The review should also look into the impact of the reserve on growth, jobs, the Union's industrial competitiveness and on the risk of carbon leakage**. The review of the functioning of the reserve should be objective and **take into account the need to preserve regulatory stability and ensure long-term predictability in the transition to a low-carbon economy**.

Recital 11, Decision (EU) 2015/1814

Since the objectives of this Decision, namely to establish a market stability reserve and make it operational in the Union, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article**, this Decision does not go beyond what is necessary in order to achieve those objectives.

**[10] Regulation (EU) 2017/2392** of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021 [2017] OJ L350/7

Recital 3, Regulation (EU) 2017/2392

In its conclusions of October 2014, the European Council stated that **the target is to be delivered collectively by the Union in the most cost-effective manner possible, with the reductions in the European Union Emissions Trading System (‘EU ETS’) and non-ETS sectors amounting to 43 % and 30 % respectively by 2030 compared to 2005**.

Recital 4, Regulation (EU) 2017/2392

**Those provisions should be consistent with the Union's climate objectives and its commitments under the Paris Agreement**.

Recital 4, Regulation (EU) 2017/2392

The auction share should be expressed as a percentage figure in Directive 2003/87/EC of the European Parliament and of the Council, **to enhance planning certainty as regards investment decisions, to increase transparency, to minimise carbon leakage, and to render the overall system simpler and more easily understandable**.

Recital 8, Regulation (EU) 2017/2392

In that context, **in order to promote momentum in the ICAO and to facilitate the operationalisation of the ICAO scheme**, the current derogation from the EU ETS obligations for flights to and from third countries should be extended until 31 December 2023, subject to review, to allow the experience necessary for the implementation of the ICAO scheme to be gathered.

Recital 10, Regulation (EU) 2017/2392

**The environmental integrity of the EU ETS should be safeguarded** against the risk of obligations lapsing for aircraft operators and other operators regulated by a Member State. Therefore, allowances issued by such a Member State should only be useable if the obligations to surrender allowances for emissions are not at risk of lapsing in a way that results in undermining the environmental integrity of the EU ETS.

Recital 11, Regulation (EU) 2017/2392

Once there is clarity about the nature and content of the ICAO's instruments and in advance of the start of the ICAO's global market-based measure, **the Commission should present a report in which it should consider how to implement those instruments in Union law through a revision of Directive 2003/87/EC**. The Commission should further consider the rules applicable to intra-EEA flights, as appropriate. **In so doing, the Commission in its report should reflect the need to ensure consistency with Union law, in particular to avoid any distortion of competition and to minimise any undue administrative burden for Member States and aircraft operators**.

Recital 12, Regulation (EU) 2017/2392

Accordingly, the Commission should adopt provisions on monitoring, reporting and verification for the purpose of implementing the ICAO's global market-based measure **that avoid any distortion of competition.**

Recital 14, Regulation (EU) 2017/2392

**By way of simplification and in order to lighten administrative tasks**, aircraft operators with emissions lower than 3 000 tonnes of CO 2 per annum from intra-EEA flights should benefit from the use of the small emitters tool approved under Commission Regulation (EU) No 606/2010 for the verification of their emissions.

Recital 15, Regulation (EU) 2017/2392

Since the objectives of this Regulation**, namely to extend the current limitations of scope for aviation activities until 31 December 2023 and to prepare to implement a global market-based measure from 2021**, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale or effects, be better achieved at Union level, the Union may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article**, this Regulation does not go beyond what is necessary in order to achieve those objectives.

**[11] Directive (EU) 2018/410** of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 [2018] OJ L76/3

Recital 2, Directive (EU) 2018/410

**All sectors of the economy should contribute to achieving those emission reductions** and **the target is to be delivered in the most cost-effective manner through the European Union emission trading system (‘EU ETS’)**, amounting to a reduction of 43 % below 2005 levels by 2030.

Recital 4, Directive (EU) 2018/410

In line with the commitment of the co-legislators expressed in Directive 2009/29/EC of the European Parliament and of the Council and Decision No 406/2009/EC of the European Parliament and of the Council, **all sectors of the economy should contribute to the reduction of greenhouse gas emissions. Under the Paris Agreement, the Union and its Member States have undertaken an economy-wide reduction target.**

Recital 4, Directive (EU) 2018/410

The Commission should keep this under regular review, and **should report at least once a year to the European Parliament and to the Council on the progress achieved in the IMO towards an ambitious emission reduction objective, and on accompanying measures to ensure that the sector duly contributes to the efforts needed to achieve the objectives agreed under the Paris Agreement.** **Action from the IMO or the Union should start from 2023**, including preparatory work on adoption and implementation and due consideration being given by all stakeholders.

Recital 5, Directive (EU) 2018/410

The European Council of October 2014 confirmed in its conclusions that **a well-functioning, reformed EU ETS with an instrument to stabilise the market** will be the main European instrument to achieve the reduction target of at least 40 %, with an annual reduction factor of 2,2 % from 2021 onwards.

Recital 5, Directive (EU) 2018/410

The European Council also confirmed that free allocation will not expire and that existing measures will continue after 2020 **to prevent the risk of carbon leakage due to climate policy**, as long as no comparable efforts are undertaken in other major economies, without the share of allowances to be auctioned being reduced.

Recital 5, Directive (EU) 2018/410

The auction share should be expressed as a percentage figure in Directive 2003/87/EC **to enhance planning certainty as regards investment decisions, to increase transparency and to render the overall system simpler and more easily understandable**.

Recital 6, Directive (EU) 2018/410

It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens and industries. **Achieving this requires the continuation of ambitious climate action with the EU ETS as the cornerstone of the Union's climate policy, and also requires progress on the other aspects of the Energy Union**.

Recital 6, Directive (EU) 2018/410

Implementing the ambition decided in the Union's 2030 climate and energy policy framework **contributes to delivering a meaningful carbon price and continuing to stimulate cost-efficient greenhouse gas emission reductions**.

Recital 6, Directive (EU) 2018/410

**Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) requires that Union policy be 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**.

Recital 6, Directive (EU) 2018/410

**Avoiding carbon leakage justifies temporarily postponing full auctioning**, 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**.

Recital 8, Directive (EU) 2018/410

**That share should include 75 million allowances used to support innovation.**

Recital 8, Directive (EU) 2018/410

**For the purposes of solidarity, growth and interconnections,** 10 % of the allowances to be auctioned by the Member States should be distributed among those Member States whose gross domestic product (GDP) per capita at market prices did not exceed 90 % of the Union average in 2013, and the rest of the allowances should be distributed among all Member States on the basis of verified emissions.

Recital 9, Directive (EU) 2018/410

**Recognising the interaction between climate policies at Union and national level**, Member States should have the possibility of cancelling allowances from their auction volume in the event of closures of electricity-generation capacity in their territory.

Recital 9, Directive (EU) 2018/410

**To ensure predictability for operators and market participants with regard to the amount of auction allowances available**, the possibility of cancelling allowances in such cases should be limited to an amount corresponding to the average verified emissions of the installation concerned over a period of five years preceding the closure.

Recital 10, Directive (EU) 2018/410

**To preserve the environmental benefit of emission reductions in the Union while actions by third countries do not provide comparable incentives to industry to reduce emissions, transitional free allocation should continue to installations in sectors and subsectors at genuine risk of carbon leakage**. Experience gathered during the operation of the EU ETS has confirmed that sectors and subsectors are at risk of carbon leakage to varying degrees, and that free allocation has prevented carbon leakage.

Recital 10, Directive (EU) 2018/410

Where a sector or subsector is subject to the refineries benchmark and another product benchmark, this circumstance should be taken into account so that, where relevant, a qualitative analysis of the risk of carbon leakage can be done **to ensure a level playing field for products produced both in refineries and in chemical plants**.

Recital 11, Directive (EU) 2018/410

The benchmark values for free allocation applicable from 2013 onwards should be reviewed **in order to avoid windfall profits and to reflect technological progress** in the sectors concerned in the period between 2007-2008 and each later period for which free allocations are determined in accordance with Article 11(1) of Directive 2003/87/EC.

Recital 11, Directive (EU) 2018/410

**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, considering the average performance of the 10 % most efficient installations, so that benchmark values reflect the actual rate of improvement.

Recital 11, Directive (EU) 2018/410

Where the data shows an annual reduction of less than 0,2 % or more than 1,6 % of the 2007-2008 value over the relevant period, the related benchmark value should be adjusted with rates other than the actual rates of improvement **to preserve emission reduction incentives and properly reward innovation**.

Recital 11, Directive (EU) 2018/410

**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.

Recital 12, Directive (EU) 2018/410

The level of free allocation for installations should be better aligned with their actual production levels. To that end, allocations should be periodically adjusted in a symmetrical manner to take account of relevant increases and decreases in production. **Data used in this context should be complete, consistent, independently verified and should present the same high level of accuracy and quality as the data used to determine the free allocation**. **In order to prevent manipulation or abuse of the system for adjustments to allocations** and **to avoid any undue administrative burden**, considering the deadline that applies to the notification of changes in production, and bearing in mind the need to ensure that the changes to the allocations are carried out in an effective, non-discriminatory and uniform manner, the relevant threshold should be set at 15 % and be assessed on the basis of a rolling average of two years.

Recital 13, Directive (EU) 2018/410

**It would be desirable that Member States partially compensate, in accordance with State aid rules, certain installations in sectors or subsectors 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**, including inter alia for the consumption of electricity by the installations themselves produced through the combustion of waste gases.

Recital 13, Directive (EU) 2018/410

By seeking to use no more than 25 % of the revenues generated from the auctioning of allowances for indirect cost compensation, **Member States are likely both to facilitate the achievement of the objectives of the EU ETS and to preserve the integrity of the internal market and of conditions of competition**.

Recital 13, Directive (EU) 2018/410

**Therefore, auction revenues should also be used for financing climate actions in vulnerable third countries, in particular Least Developed Countries, including adaptation to the impacts of climate change**, inter alia through the UNFCCC Green Climate Fund. The amount of climate finance to be mobilised will also depend on the ambition and quality of the Nationally Determined Contributions, subsequent investment plans and national adaptation planning processes.

Recital 13, Directive (EU) 2018/410

**Regarding the potential social impacts of policies and investments required**, Member States should also use auction revenues **to contribute to a just transition to a low-carbon economy by promoting skill formation and reallocation of labour in social dialogue with the communities and regions affected by the transition of jobs**.

Recital 14, Directive (EU) 2018/410

**The main long-term incentive arising from Directive 2003/87/EC for the capture and storage of CO2 (‘CCS’), for new renewable energy technologies and for breakthrough innovation in low-carbon technologies and processes, including environmentally safe carbon capture and utilisation (‘CCU’), is the carbon price signal it creates** and the fact that allowances will not need to be surrendered for CO 2 emissions which are avoided or permanently stored. **In addition, in order to supplement the resources already being used to accelerate demonstration of commercial CCS facilities and innovative renewable energy technologies, allowances should be used to provide guaranteed rewards for deployment of CCS or CCU 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.

Recital 15, Directive (EU) 2018/410

**Greece had a GDP per capita at market prices below 60 % of the Union average in 2014 but is not a beneficiary of the Modernisation Fund, and should therefore be able to claim allowances to co-finance decarbonisation of the electricity supply of islands within its territory**.

Recital 16, Directive (EU) 2018/410

**Member States which in 2013 had a GDP per capita at market prices below 60 % of the Union average should be eligible for funding from the Modernisation Fund and be able to derogate, until 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.**

Recital 16, Directive (EU) 2018/410

**In order to ensure that investment needs in low income Member States are adequately addressed**, the funds for the Modernisation Fund should be distributed amongst the Member States based on the combined criteria of a 50 % share of verified emissions and a 50 % share of GDP.

Recital 17, Directive (EU) 2018/410

**In order to streamline the funding mechanisms and minimise the administrative burden related to their implementation**, the Member States concerned should have the possibility of using their share of the 10 % redistributed allowances and of the transitional free allocation for the modernisation of the energy sector under the provisions of the Modernisation Fund.

Recital 17, Directive (EU) 2018/410

**To ensure predictability and transparency with regard to the volumes of allowances either available for auctioning or for the transitional free allocation**, and with regard to the assets managed by the Modernisation Fund, Member States should inform the Commission of their intention to increase their resources under the Modernisation Fund before 2021.

Recital 18, Directive (EU) 2018/410

Investments with a value of EUR 12,5 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 that modernise or diversify the energy sector in line with the objectives of the Energy Union**.

Recital 19, Directive (EU) 2018/410

**EU ETS funding should be coherent with the objectives of the Union's 2030 climate and energy policy framework and the long-term objectives expressed in the Paris Agreement, as well as other Union funding programmes, so as to ensure the effectiveness of public spending**.

Recital 20, Directive (EU) 2018/410

At the same time, **to avoid an undue administrative burden**, it should also be possible for Member States to exclude from the EU ETS installations that emit less than 2 500 tonnes of carbon dioxide equivalent in each of the three years preceding the beginning of each allocation period, and reserve or backup units operating less than 300 hours in each year of that three-year period.

Recital 22, Directive (EU) 2018/410

Decision (EU) 2015/1814 establishes a market stability reserve for the EU ETS **in order to make auction supply more flexible and make the system more resilient**.

Recital 23, Directive (EU) 2018/410

**A well-functioning, reformed EU ETS with an instrument to stabilise the market is a key means for the Union to reach its agreed target for 2030 and the commitments under the Paris Agreement**.

Recital 23, Directive (EU) 2018/410

**Considering the need to deliver a credible investment signal to reduce CO2 emissions in a cost-efficient manner and with a view to strengthening the EU ETS**, Decision (EU) 2015/1814 should be amended so as to increase, until 31 December 2023, the percentage rates for determining the number of allowances to be placed each year in the reserve.

Recital 24, Directive (EU) 2018/410

**Directive 2003/87/EC should be kept under review in the light of international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement**.

Recital 24, Directive (EU) 2018/410

The measures to support certain energy intensive industries that could be subject to carbon leakage as referred to in Articles 10a and 10b of Directive 2003/87/EC should also be kept under review in the light of climate policy measures in other major economies. In that context, **the review of Directive 2003/87/EC could consider whether it is appropriate to replace, adapt or complement any existing measures to prevent carbon leakage with carbon border adjustments or alternative measures, provided that such measures are fully compatible with the rules of the World Trade Organisation**, so as to include in the EU ETS importers of products which are produced by the sectors or subsectors determined in accordance with Article 10a of Directive 2003/87/EC.

Recital 24, Directive (EU) 2018/410

The Commission should report to the European Parliament and to the Council in the context of each global stocktake agreed under the Paris Agreement, **in particular with regard to the need for increased stringency of Union policies and measures, including the EU ETS, in view of necessary greenhouse gas reductions by the Union and its Member States.**

Recital 26, Directive (EU) 2018/410

**In order to ensure uniform conditions for the implementation** of the third to sixth subparagraphs of Article 10a(2), Article 10a(21), Article 10d, Article 14(1) and (2), Articles 15 and 16 and Article 21(1) of Directive 2003/87/EC, and Annexes IV and V to that Directive, implementing powers should be conferred on the Commission.

Recital 28, Directive (EU) 2018/410

**In order to increase predictability and to simplify administrative processes**, Commission Decision 2014/746/EU should continue to apply until the end of 2020.

Recital 29, Directive (EU) 2018/410

The delegated and implementing acts referred to in this Directive, particularly in respect of provisions on monitoring, reporting and verification and on the Union Registry, **should aim to simplify rules and reduce any administrative burden to the extent possible, without undermining the environmental integrity, security or reliability of the EU ETS**.

Recital 31, Directive (EU) 2018/410

**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 particularly affected persons in a proportionate manner to the maximum extent compatible with the other objectives of this Directive**.

Recital 32, Directive (EU) 2018/410

**This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.**

Recital 33, Directive (EU) 2018/410

Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article**, this Directive does not go beyond what is necessary in order to achieve those objectives,

**[12] Commission Delegated Decision (EU) 2020/1071** of 18 May 2020 amending Directive 2003/87/EC of the European Parliament and of the Council, as regards the exclusion of incoming flights from Switzerland from the EU emissions trading system [2020] OJ L234/16

Recital 1, Commission Delegated Decision (EU) 2020/1071

Article 25a of Directive 2003/87/EC empowers the Commission to adopt provisions to exclude flights arriving from a third country from the EU emissions trading system (EU ETS). **Such provisions should provide for optimal interaction between the EU ETS and a third country’s measures for reducing the climate change impact of aviation.**

Recital 3, Commission Delegated Decision (EU) 2020/1071

**In order to maintain stability as regards the coverage of operators,** that exclusion should not affect the provisions that exclude certain aviation activities from the EU ETS based on specified thresholds in terms of number of flights or emissions per operator.

**[13] Commission Delegated Regulation (EU) 2021/1416** of 17 June 2021 amending Directive 2003/87/EC of the European Parliament and of the Council as regards the exclusion of incoming flights from the United Kingdom from the Union emissions trading system [2021] OJ L305/1

Recital 1, Commission Delegated Decision (EU) 2021/1416

Article 25a of Directive 2003/87/EC empowers the Commission to adopt provisions to exclude flights arriving from a third country from the Union emissions trading system (EU ETS). **Such provisions should provide for optimal interaction between the EU ETS and a third country’s measures for reducing the climate change impact of aviation.**

Recital 3, Commission Delegated Decision (EU) 2021/1416

**In order to maintain stability as regards the coverage of aircraft operators by the EU ETS**, that exclusion of flights from aerodromes situated in the United Kingdom to aerodromes situated in the EEA should not affect the provisions that exclude certain aviation activities from the EU ETS based on specified thresholds in terms of number of flights or emissions per operator.

**[14] Decision (EU) 2023/136** of the European Parliament and of the Council of 18 January 2023 amending Directive 2003/87/EC as regards the notification of offsetting in respect of a global market-based measure for aircraft operators based in the Union [2023] OJ L19/1

Recital 8, Decision (EU) 2023/136

Since the objectives of this Decision cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article**, this Decision does not go beyond what is necessary in order to achieve those objectives.

Recital 9, Decision (EU) 2023/136

**It is important to ensure there is legal certainty for national authorities and for aircraft operators as regards CORSIA offsetting for the year 2021**, as soon as possible in 2022. Accordingly, this Decision should enter into force without delay.

**[15] Regulation (EU) 2023/435** of the European Parliament and of the Council of 27 February 2023 amending Regulation (EU) 2021/241 as regards REPowerEU chapters in recovery and resilience plans and amending Regulations (EU) No 1303/2013, (EU) 2021/1060 and (EU) 2021/1755, and Directive 2003/87/EC [2023] OJ L63/1

Recital 33, Regulation (EU) 2023/435

The current economic and geopolitical situation requires the Union to mobilise available resources to rapidly diversify the Union’s energy supply and reduce dependence on fossil fuels before 2030. **In that context, Directive 2003/87/EC should allow for an exceptional monetisation by auctioning of a portion of allowances from the innovation fund and of allowances allocated to Member States, except allowances distributed for the purposes of solidarity, growth and interconnections, and** **should direct revenues towards reforms and investments contributing to the REPowerEU objectives, in the Facility framework**.

**[16] Directive (EU) 2023/958** of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC as regards aviation’s contribution to the Union’s economy-wide emission reduction target and the appropriate implementation of a global market-based measure [2023] OJ L130/115

Recital 5, Directive (EU) 2023/958

Following the adoption of this Directive, **the notification of differences between CORSIA and the EU ETS to the ICAO Secretariat should be updated by a second notification of differences consistent with Union law to reflect the revisions made to Directive 2003/87/EC**.

Recital 9, Directive (EU) 2023/958

Amendments introduced by this Directive are essential to **ensuring the integrity of the EU ETS** and **effectively steering the EU ETS in order for it to contribute, as a policy tool, to achieving the Union’s objectives of reducing net greenhouse gas emissions by at least 55 % by 2030 and becoming climate-neutral by 2050, at the latest, as well as the aim of achieving negative emissions thereafter as laid down in Article 2(1) of Regulation (EU) 2021/1119**. Those amendments are therefore also **aimed at the implementation of the Union’s contributions under the Paris Agreement as regards aviation**.

Recital 12, Directive (EU) 2023/958

﻿**Achieving the increased climate ambition will require channelling as many resources as possible to the climate transition, which should also be a just transition. As a result, all auction revenues that are not attributed to the Union budget should be used for climate-related purposes**.

Recital 15, Directive (EU) 2023/958

**Directive 2003/87/EC should contribute to incentivising the decarbonisation of commercial air transport**. The transition from the use of fossil fuels would play a role in achieving such decarbonisation. However, considering the high level of competition between aircraft operators, the developing Union market for sustainable aviation fuels, and the significant price differential between fossil kerosene and sustainable aviation fuels, that transition should be supported by incentivising early movers. **Therefore, during the period from 1 January 2024 until 31 December 2030, 20 million allowances should be reserved in order to be allocated to cover part of the remaining price differential between fossil kerosene and the eligible aviation fuels for individual aircraft operators.**

Recital 16, Directive (EU) 2023/958

Supersonic commercial flights ceased to be available, inter alia, due to the **disproportionally elevated environmental damage** they caused. Nevertheless, current trends show intensive research into the re-introduction of supersonic aviation. **The positive correlation between the speed of travel and the level of emissions due to fuel burn justifies treating subsonic flights differently from supersonic flights**. **Therefore, it is appropriate to exclude possible future supersonic flights from the support provided under this Directive for non-fossil fuels**.

Recital 17, Directive (EU) 2023/958

**Directive 2003/87/EC should also be amended with regard to acceptable units for compliance, to take into account the CORSIA Emissions Unit Eligibility Criteria adopted by the ICAO Council at its 216th session in March 2019 as an essential element of CORSIA**.

Recital 17, Directive (EU) 2023/958

**To ensure that the Union’s CORSIA implementation supports the Paris Agreement goals and gives incentives for broad participation in CORSIA**, the units for compliance should originate from States that are Parties to the Paris Agreement and that participate in CORSIA, and **double counting should be avoided.**

Recital 18, Directive (EU) 2023/958

**In order to ensure uniform conditions for the use of units in accordance with Directive 2003/87/EC**, implementing powers should be conferred on the Commission to adopt a list of units building on those which have been considered acceptable by the ICAO Council to use for compliance with CORSIA, and that fulfil the eligibility conditions provided for by this Directive.

Recital 19, Directive (EU) 2023/958

**In order to ensure uniform conditions for the necessary arrangements for authorisation by the participating parties, for timely adjustments to the reporting of anthropogenic emissions by sources and removals by sinks covered by the nationally determined contributions of the participating parties, and for avoidance of double counting and a net increase in global emissions**, implementing powers should be conferred on the Commission to lay down detailed requirements for such arrangements.

Recital 20, Directive (EU) 2023/958

**In order to ensure uniform conditions for the calculation of the offsetting requirements for CORSIA for aircraft operators based in the Union**, the corresponding implementing powers should be conferred on the Commission.

Recital 21, Directive (EU) 2023/958

**As CORSIA implementation and enforcement for aircraft operators based outside the Union is meant to be solely the responsibility of the home country of those aircraft operators**, aircraft operators based outside the Union should not be required to cancel units for compliance with CORSIA under this Directive.

Recital 22, Directive (EU) 2023/958

**As CORSIA implementation and enforcement for aircraft operators based outside the Union is meant to be solely the responsibility of the home country of those aircraft operators**, where an aircraft operator based outside the Union has significant emissions from flights within the European Economic Area (EEA), or departing from an aerodrome located in the EEA to an aerodrome located in Switzerland or in the United Kingdom, the State in which that aircraft operator is based can also notify differences regarding the application of CORSIA in respect of intra-European flights. Directive 2003/87/EC should be kept under review in light of developments in that regard.

Recital 23, Directive (EU) 2023/958

**To ensure equal treatment on routes, flights to and from States that are not implementing CORSIA for the purposes of Union law** other than flights departing from an aerodrome located in the EEA and arriving at an aerodrome located in the EEA, in Switzerland or in the United Kingdom should be exempt from obligations to surrender allowances or to cancel units. **To incentivise full implementation of CORSIA starting in 2027,** the exemption should only apply to emissions released until 31 December 2026 in relation to the surrender of allowances.

Recital 25, Directive (EU) 2023/958

**Data transparency and public access to information are essential to improve accountability and enforceability**. Therefore, the Commission should publish in a user-friendly manner data on aircraft operators’ emissions and offsetting. **Such publication would facilitate assessing the impact of CORSIA on the global reduction of CO2 emissions and its role in achieving the goals of the Paris Agreement**.

Recital 26, Directive (EU) 2023/958

**Flights to and from least developed countries and small island developing States, as defined by the United Nations, not implementing CORSIA, for the purposes of Union law, other than those States whose GDP per capita equals or exceeds the Union average, should be exempt from obligations to surrender allowances or to cancel units**. There should be no end date for that exemption.

Recital 27, Directive (EU) 2023/958

**In order to ensure uniform conditions for exempting aircraft operators from offsetting requirements as laid down under this Directive in respect of emissions from flights to and from States applying CORSIA in a less stringent manner in its domestic law, or failing to enforce CORSIA provisions in a manner equal to all aircraft operators pursuant to this Directive**, implementing powers should be conferred on the Commission to exempt aircraft operators based in the Union from offsetting requirements in respect of emissions from flights where a significant distortion of competition to the detriment of aircraft operators based in the Union occurs due to a less stringent implementation or enforcement of CORSIA in third countries. The distortion of competition could be caused by a less stringent approach to eligible units or double counting provisions.

Recital 28, Directive (EU) 2023/958

**In order to ensure uniform conditions for the establishment of a level playing field on routes between two different States applying CORSIA where those States allow aircraft operators to use units other than those on the list of units for compliance adopted pursuant to an implementing act under this Directive**, implementing powers should be conferred on the Commission to allow aircraft operators based in a Member State to use unit types additional to that list of units for compliance or not to be bound by the conditions for eligibility of units introduced by this Directive.

Recital 30, Directive (EU) 2023/958

**In order to facilitate progress at ICAO**, the Union has on three occasions adopted time-bound derogations to the EU ETS so as to limit compliance obligations to emissions from flights between aerodromes located in the EEA, with equal treatment on routes of aircraft operators wherever they are based.

Recital 33, Directive (EU) 2023/958

**In order to ensure uniform conditions for establishing a list of States which are considered to be applying CORSIA for the purposes of Directive 2003/87/EC**, implementing powers should be conferred on the Commission to adopt and maintain the list of States other than EEA countries, Switzerland and the United Kingdom which are considered to be participating in CORSIA for the purposes of Union law.

Recital 34, Directive (EU) 2023/958

The transition of the aviation sector towards sustainable aviation has to take into account the social dimension of the sector and its competitiveness, **in order to ensure that that transition is socially just and provides training, reskilling and upskilling for workers**. The Commission should submit a report to the European Parliament and to the Council on the application of this Directive and its social impacts on the aviation sector.

Recital 36, Directive (EU) 2023/958

While the EU ETS has applied to flights since 2012, **the ‘Fit for 55’ package includes additional measures which, together with the EU ETS, could have a cumulative impact on the sector**. **In order to safeguard air connectivity for flights serving island regions or small airports**, the mechanism under this Directive, which is designed to bridge the remaining price differential between fossil fuels and alternatives thereto**, should limit adverse impacts on air connectivity and mitigate the risk of carbon leakage**.

Recital 37, Directive (EU) 2023/958

**The emission factor of jet kerosene (Jet A1 or Jet A) under the EU ETS should be aligned with the emission factor for that fuel established in CORSIA SARPs**.

Recital 39, Directive (EU) 2023/958

**In order to establish detailed rules for the yearly calculation of the cost difference between fossil kerosene and eligible fuels in accordance with a regulation on ensuring a level playing field for sustainable air transport, for the allocation of allowances for the use of such eligible fuels, and for the calculation of the greenhouse gas emissions saved as a result of the use of such eligible fuels, as well as to establish arrangements for taking account of incentives deriving from the price of carbon and from harmonised minimum levels of taxation on fossil fuels**, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission.

Recital 40, Directive (EU) 2023/958

**Special consideration should be given to promoting accessibility for the outermost regions of the Union**. Therefore, a temporary derogation from the EU ETS should be provided until 31 December 2030 for emissions from flights between an aerodrome located in an outermost region of a Member State and an aerodrome located in the same Member State outside that outermost region, **in order to respond to the most important needs of residents in terms of employment, education and other opportunities.**

Recital 42, Directive (EU) 2023/958

Therefore, Member States **should ensure that the national transposition provisions do not hamper innovations and are technologically neutral.** At Union level, the necessary research and innovation efforts are supported, among other things, through Horizon Europe – the Framework Programme for Research and Innovation, which includes significant funding and new instruments for the sectors coming under the EU ETS.

Recital 43, Directive (EU) 2023/958

The Innovation Fund established by Directive 2003/87/EC is **to support research on, and the development and deployment of, decarbonisation solutions, including zero-emission technologies, and reduce the climate and environmental impacts of the aviation sector**. **It is also to support electrification and actions to reduce the overall impacts of aviation.**

Recital 44, Directive (EU) 2023/958

Since the objectives of this Directive, namely to ensure aviation’s contribution to the Union’s economy-wide emission reduction target and to appropriately implement CORSIA in Union law, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, **in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article**, this Directive does not go beyond what is necessary in order to achieve those objectives.

Recital 45, Directive (EU) 2023/958

Member States should transpose this Directive by 31 December 2023 **in view of the need for urgent climate action and for all sectors to contribute to emission reduction in a cost-effective manner**.

﻿Recital 46, Directive (EU) 2023/958

Simplifications of administrative procedures and adaptation of those procedures to best practice would **keep the administrative burden to a minimum**.

**[17] Directive (EU) 2023/959** of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system [2023] OJ L130/134

Recital 5, Directive (EU) 2023/959

As the EU Emissions Trading System (EU ETS), established by Directive 2003/87/EC, is a cornerstone of the Union’s climate policy and **constitutes its key tool for reducing greenhouse gas emissions in a cost-effective way**, the amendments to Directive 2003/87/EC, including with regard to the scope thereof, adopted through this Directive are part of the essential elements of the ‘Fit for 55’ package.

Recital 9, Directive (EU) 2023/959

Therefore, the ambition of the EU ETS should be adjusted **so as to be in line with the economywide net greenhouse gas emission reduction target for 2030, the objective of achieving climate neutrality by 2050 at the latest and the aim of achieving negative emissions thereafter**, as laid down in Regulation (EU) 2021/1119.

Recital 13, Directive (EU) 2023/959

Measures under Directive 2010/75/EU, as the main instrument regulating air, water and soil pollutant emissions, will often also enable greenhouse gas emissions to be reduced. In line with Article 8 of Directive 2003/87/EC, Member States **should ensure coordination between the permit requirements of Directive 2003/87/EC and those of Directive 2010/75/EU**.

Recital 14, Directive (EU) 2023/959

Recognising that new innovative technologies will often allow emissions of both greenhouse gases and pollutants to be reduced, **it is important to ensure synergies between measures delivering reductions of emissions of both greenhouse gases and pollutants**, in particular Directive 2010/75/EU, and review their effectiveness in this regard.

Recital 15, Directive (EU) 2023/959

In order to **incentivise the use of high efficiency cogeneration** and to **level the playing field** for all installations receiving free allocation for heat production and district heating, all references to electricity generators in Directive 2003/87/EC should be deleted.

Recital 20, Directive (EU) 2023/959

In this context, Directive 2003/87/EC should be amended to include maritime transport in the EU ETS **in order to ensure that that sector contributes its fair share to the increased climate objectives of the Union as well as to the objectives of the Paris Agreement**, which in Article 4(4) states that developed countries should continue to take the lead by undertaking economy-wide emission reduction targets, while developing countries are encouraged to move over time towards economy-wide emission reduction or limitation targets.

Recital 20, Directive (EU) 2023/959

The coverage of a share of the emissions from both incoming and outgoing voyages between the Union and third countries **ensures the effectiveness of the EU ETS, in particular by increasing the environmental impact of the measure** compared to a geographical scope limited to voyages within the Union, **while limiting the risk of evasive port calls and the risk of delocalisation of transhipment activities outside the Union**.

Recital 20, Directive (EU) 2023/959

**To protect the environmental integrity of the system**, where fewer allowances are surrendered compared to verified emissions for maritime transport during those years, once the difference between verified emissions and allowances surrendered has been established each year, an amount of allowances corresponding to that difference should be cancelled.

Recital 21, Directive (EU) 2023/959

In particular, Member States with a high reliance on shipping will be most exposed to the effect of the extension. Member States with a large maritime sector compared to their relative size will be more affected by the extension of the EU ETS to maritime transport. **It is therefore appropriate to provide additional time-limited assistance to those Member States in the form of additional allowances** to support decarbonisation of maritime activities and for the administrative costs incurred.

Recital 22, Directive (EU) 2023/959

The EU ETS should contribute significantly to **reducing greenhouse gas emissions from maritime activities** and to **increasing efficiency** in relation to such activities. The use of EU ETS revenues pursuant to Article 10(3) of Directive 2003/87/EC should include, inter alia, the promotion of climate-friendly transport and public transport in all sectors.

Recital 27, Directive (EU) 2023/959

Where appropriate, the report should be accompanied by a legislative proposal to amend Directive 2003/87/EC **in a manner that is consistent with the Union 2030 climate target and the climate-neutrality objective set out in Regulation (EU) 2021/1119**, and **with the aim of preserving the environmental integrity and effectiveness of Union climate action**, **in order to ensure coherence between the implementation of the global market-based measure and the EU ETS**, **while avoiding any significant double burden**, and thereby recalling the Union’s competence to regulate its share of emissions from international shipping voyages, in line with the obligations of the Paris Agreement.

Recital 28, Directive (EU) 2023/959

**Evasive port calls to ports outside of the Union and relocation of transhipment activities to ports outside of the Union will not only diminish the environmental benefits of internalising the cost of emissions from maritime transport activities but can also lead to additional emissions** due to the extra distance travelled to evade the requirements of Directive 2003/87/EC. **It is therefore appropriate to exclude from the definition of ‘port of call’ certain stops at non-Union ports**.

Recital 29, Directive (EU) 2023/959

The Commission should review the functioning of Directive 2003/87/EC in relation to maritime transport activities in the light of experience in applying that Directive, **including detecting evasive behaviour in order to prevent such behaviour at an early stage, and should then propose measures to ensure the effectiveness of that Directive**.

Recital 30, Directive (EU) 2023/959

**For reasons of administrative practicability**, it is too early to include ships below 5 000 gross tonnage in the EU ETS from the start of the inclusion of maritime transport, but their inclusion in the future **would improve the effectiveness of the EU ETS and potentially reduce evasive behaviour** with the use of ships below the 5 000 gross tonnage threshold.

Recital 33, Directive (EU) 2023/959

**In order to reduce the administrative burden on shipping companies**, one Member State should be responsible for each shipping company.

Recital 33, Directive (EU) 2023/959

**In order to ensure equal treatment of shipping companies**, Member States should follow harmonised rules for the administration of shipping companies for which they have responsibility, in accordance with detailed rules to be established by the Commission.

Recital 34, Directive (EU) 2023/959

In the event that a shipping company fails to comply with those requirements and any enforcement measures taken by the administering authority in respect of a shipping company have failed to ensure compliance, **Member States should act in solidarity**.

Recital 36, Directive (EU) 2023/959

As far as practicable, such tools should be made available to the Member States and the verifiers **in order to better ensure robust enforcement** **of the national measures transposing Directive 2003/87/EC**.

Recital 40, Directive (EU) 2023/959

The list of climate-related purposes in Article 10(3) of Directive 2003/87/EC **should be expanded to cover additional purposes with a positive environmental impact**.

Recital 40, Directive (EU) 2023/959

This should include **use for financial support to address social aspects** in lower- and middle-income households by reducing distortive taxes and targeted reductions of duties and charges for renewable electricity.

Recital 41, Directive (EU) 2023/959

Therefore, Member States **are encouraged to increase the use of EU ETS revenues pursuant to Article 10(3) of Directive 2003/87/EC to contribute to the protection, restoration and better management of marine-based ecosystems, in particular marine protected areas**.

Recital 43, Directive (EU) 2023/959

**To address the distributional and social effects of the transition in low-income Member States, an additional amount of 2,5 percent of the Union-wide quantity of allowances from 2024 to 2030 should be used to fund the energy transition of the Member States** **with a gross domestic product (GDP) per capita below 75 percent** of the Union average in the years 2016 to 2018, through the Modernisation Fund referred to in Article 10d of Directive 2003/87/EC

Recital 44, Directive (EU) 2023/959

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

Recital 45, Directive (EU) 2023/959

**Further incentives to reduce greenhouse gas emissions by using cost-efficient techniques should be provided**.

Recital 45, Directive (EU) 2023/959

The Commission should ensure that the application of that conditionality **does not jeopardise a level playing field, environmental integrity or equal treatment of installations across the Union**.

Recital 46, Directive (EU) 2023/959

The Carbon Border Adjustment Mechanism (CBAM), established under Regulation (EU) 2023/956 of the European Parliament and of the Council (16), is set to replace the mechanisms established under Directive 2003/87/EC **to prevent the risk of carbon leakage**.

Recital 46, Directive (EU) 2023/959

The free allocation no longer provided to the CBAM sectors based on this calculation (CBAM demand) **is to be added to the Innovation Fund, so as to support innovation** in low-carbon technologies, carbon capture and utilisation (CCU), carbon capture, transport and geological storage (CCS), renewable energy and energy storage, in a way that contributes to mitigating climate change.

Recital 47, Directive (EU) 2023/959

**In order to mitigate potential carbon leakage risks** related to goods subject to CBAM and produced in the Union for export to third countries which do not apply the EU ETS or a similar carbon pricing mechanism, an assessment should be carried out before the end of the transitional period under Regulation (EU) 2023/956.

Recital 48, Directive (EU) 2023/959

**In order to better reflect technological progress while ensuring emission reduction incentives and properly rewarding innovation**, the minimum adjustment of the benchmark values should be increased from 0,2

Recital 48, Directive (EU) 2023/959

**In order to provide predictability to installations**, the Commission should adopt implementing acts determining the revised benchmark values for free allocation as soon as possible before the start of the period from 2026 to 2030.

Recital 49, Directive (EU) 2023/959

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

Recital 50, Directive (EU) 2023/959

**To reward best performers and innovation**, installations whose greenhouse gas emission levels are below the average of the 10

Recital 51, Directive (EU) 2023/959

**In order to speed up the decarbonisation of the economy while strengthening the industrial competitiveness of the Union**, an additional 20 million allowances from the quantity which could otherwise be allocated for free and an additional 5 million allowances from the quantity which could otherwise be auctioned should be made available to the Innovation Fund.

Recital 52, Directive (EU) 2023/959

A comprehensive approach to innovation is essential for achieving the objectives of Regulation (EU) 2021/1119. At Union level, the necessary research and innovation efforts are supported, among other things, through Horizon Europe, which includes significant funding and new instruments for the sectors coming under the EU ETS. Consequently, the Commission **should seek synergies with Horizon Europe and, where relevant, with other Union funding programmes**.

Recital 56, Directive (EU) 2023/959

Technical assistance from the Commission focused on Member States from which few or no projects have been submitted so far would contribute to achieving a high number of project applications for funding by the Innovation Fund across all Member States. **That assistance should, among other things, support activities aimed at improving the quality of proposals for projects located in the Member States from which few or no projects have been submitted**, for example through sharing information, lessons learned and best practice, and at boosting the activities of national contact points.

Recital 63, Directive (EU) 2023/959

**To ensure predictability and transparency with regard to the amount of allowances available** either for auctioning or for the transitional free allocation, and with regard to the assets managed by the Modernisation Fund, Member States should inform the Commission of the amounts of remaining allowances to be used for each purpose, respectively, by 15 May 2024.

Recital 64, Directive (EU) 2023/959

**The scope of the Modernisation Fund should be aligned with the most recent climate objectives of the Union by requiring that investments are consistent with the objectives of the European Green Deal and Regulation (EU) 2021/1119, and eliminating the support to any investments related to energy generation based on fossil fuels**, except as regards the support for such investments with revenue from allowances voluntarily transferred to the Modernisation Fund in accordance with Article 10d(4) of Directive 2003/87/EC.

Recital 68, Directive (EU) 2023/959

**To ensure that renewable fuels of nonbiological origin and recycled carbon fuels contribute to greenhouse gas emission reductions, and to avoid double counting for fuels that do so**, it is appropriate to explicitly extend the empowerment in Article 14(1) of Directive 2003/87/EC to the adoption by the Commission of implementing acts laying down the necessary adjustments for how to account for the eventual release of CO2, **in a way that ensures that all emissions are accounted for, including where such fuels are produced from captured CO2 outside the Union, while avoiding double counting and ensuring appropriate incentives are in place for capturing emissions**, **taking also into account the treatment of those fuels under Directive (EU) 2018/2001**.

Recital 69, Directive (EU) 2023/959

Where the emissions from the transport are also covered by another activity under Directive 2003/87/EC, the emissions should be accounted for under that other activity **to prevent double counting**.

Recital 71, Directive (EU) 2023/959

**In order to incentivise the uptake of low- and zero-carbon technologies**, Member States should provide operators with the options of remaining within the scope of the EU ETS until the end of the current and next five-year period referred to in Article 11(1) of Directive 2003/87/EC if the installation changes its production process to reduce its greenhouse gas emissions and no longer meets the threshold of 20 MW of total rated thermal input.

Recital 72, Directive (EU) 2023/959

Its assessments should, where relevant, include recommendations **to improve market integrity and transparency** as well as reporting obligations, and to **enhance the prevention and detection of market abuse and help in maintaining orderly markets for emission allowances and derivatives thereof**.

Recital 73, Directive (EU) 2023/959

**In order to further incentivise investments required for the decarbonisation of district heating** and **to address social aspects related to high energy prices and the high greenhouse gas emission intensity of district heating installations**, in Member States with a very high share of emissions from district heating in comparison with the size of the economy, operators should be able to apply for additional transitional free allocation for district heating installations and the additional value of the free allocation should be invested to significantly reduce emissions before 2030.

Recital 74, Directive (EU) 2023/959

Unexpected or sudden excessive price increases in the carbon market can negatively affect **market predictability, which is essential for the planning of decarbonisation investments**.

Recital 74, Directive (EU) 2023/959

The triggering condition should be closely monitored by the Commission and published on a monthly basis **in order to improve transparency**. **To ensure the orderly auctioning of the allowances** released from the market stability reserve pursuant to this safeguard measure and **to improve market predictability**, this measure should not apply again until at least twelve months after the end of the previous release of allowances in the market under the measure.

Recital 75, Directive (EU) 2023/959

**With a view to ensuring synergies and consistency with the existing Union infrastructure for the EU ETS**, it is appropriate to set up an emissions trading system for the buildings, road transport and additional sectors via an amendment to Directive 2003/87/EC.

Recital 76, Directive (EU) 2023/959

This sequencing would allow emissions trading in those sectors to start **in an** **orderly and efficient manner**. It would also allow the measures to be in place to **ensure a socially fair introduction of emissions trading into the buildings, road transport and additional sectors, so as to mitigate the impact of the carbon price on vulnerable households and transport users**.

Recital 77, Directive (EU) 2023/959

Therefore, **for reasons of technical feasibility and administrative efficiency**, it is more appropriate to establish the point of regulation further upstream in the supply chain.

Recital 77, Directive (EU) 2023/959

**To avoid double coverage**, the release for consumption of fuels which are used in activities under Annex I to that Directive should not be covered.

Recital 79, Directive (EU) 2023/959

**In order for the new system to start in an orderly manner**, Member States should ensure that regulated entities falling within the scope of the new emissions trading system have a valid permit as of the start of the system in 2025.

Recital 80, Directive (EU) 2023/959

The total quantity of allowances for the new emissions trading system should follow a linear trajectory to reach the emission reduction target for 2030, **taking into account the** **cost-efficient contribution** **of the buildings and road transport sectors of 43 percent emission reductions by 2030 compared to 2005 and of the additional sectors, a combined cost-efficient contribution of 42 percent emission reductions by 2030 compared to 2005**.

Recital 82, Directive (EU) 2023/959

**In order to ensure a smooth start to the new emissions trading system** and taking into account the need of the regulated entities to hedge or buy ahead allowances to mitigate their price and liquidity risk, a higher amount of allowances should be auctioned early on.

Recital 83, Directive (EU) 2023/959

The distribution rules on auction shares are highly relevant for any auction revenues that would accrue to the Member States, especially **in view of the need to strengthen the ability of the Member States to address the social impacts of a carbon price signal in the buildings and road transport sectors**.

Recital 84, Directive (EU) 2023/959

The introduction of the carbon price in the buildings and road transport sectors should be accompanied by **effective social compensation, especially in view of the existing levels of energy poverty**.

Recital 86, Directive (EU) 2023/959

**In order to minimise the administrative burden**, a number of rules applicable to the existing emissions trading system for stationary installations and aviation should be made applicable to the new emissions trading system for the buildings, road transport and additional sectors, with the necessary adaptations.

Recital 87, Directive (EU) 2023/959

**To ensure the objectives of Directive 2003/87/EC are achieved and that the new emissions trading system is coherent, the option of applying that derogation should only be available where the national tax rate is higher than the average auctioning price for the relevant year, and should only apply to the surrender obligation of the regulated entities paying such a tax**.

Recital 87, Directive (EU) 2023/959

**To ensure stability and transparency of the system**, the national tax, including the relevant tax rates, should be notified to the Commission by the end of the transposition period of this Directive.

Recital 88, Directive (EU) 2023/959

For emissions trading in the buildings, road transport and additional sectors to be effective, **it should be possible to monitor emissions with high certainty and at reasonable cost**.

Recital 89, Directive (EU) 2023/959

**Transparency as regards carbon costs and the extent to which they are passed on to consumers is of key importance for enabling swift and cost-efficient emission reductions in all sectors of the economy**. This is of particular importance in an emissions trading system which is based on upstream obligations. The new emissions trading system is meant to incentivise regulated entities to reduce the carbon content of the fuels, and such entities **should not make undue profits by passing on more carbon costs to consumers than they incur**.

Recital 90, Directive (EU) 2023/959

It is appropriate to introduce measures **to address the potential risk of excessive price increases, which, if particularly high at the start of the new emissions trading system, may undermine the readiness of households and individuals to invest in reducing their greenhouse gas emissions**.

Recital 92, Directive (EU) 2023/959

**As an additional safeguard mechanism ahead of the start of emissions trading in the buildings, road transport and additional sectors, it should be possible to delay the application of the cap and the surrendering obligations where gas or oil wholesale prices are exceptionally high compared to historical trends**. The mechanism should be automatic, meaning that the application of the cap and the surrendering obligations is to be delayed by one year if concrete energy price triggers are met. The reference prices should be determined on the basis of benchmark contracts in the gas and oil wholesale markets which are immediately available and the **most relevant for final consumers**.

Recital 92, Directive (EU) 2023/959

﻿**In order to ensure market certainty**, the Commission should provide clarity on the application of the delay sufficiently in advance, through a notice in the Official Journal of the European Union.

Recital 94, Directive (EU) 2023/959

﻿**To ensure synergies with the existing regulatory framework**, the conferral of implementing powers in Articles 14 and 15 of that Directive should be extended to cover the buildings, road transport and additional sectors.

Recital 95, Directive (EU) 2023/959

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

Recital 97, Directive (EU) 2023/959

**With a view to achieving the climate-neutrality objective set out in Article 2(1) of Regulation (EU) 2021/1119**, a Union-wide climate target for 2040 should be set, based on a legislative proposal to amend that Regulation. **The EU ETS should be reviewed to align it with the Union 2040 climate target.**

Recital 97, Directive (EU) 2023/959

Until all stages of the life of a product in which captured carbon is used are subject to carbon pricing, in particular at the stage of waste incineration, reliance on accounting for emissions at the point of their release from products into the atmosphere **would result in emissions being undercounted**. **In order to regulate the capture of carbon in a way that reduces net emissions and ensures that all emissions are accounted for and that double counting is avoided**, while generating economic incentives, the Commission should assess, by July 2026, whether all greenhouse gas emissions covered by Directive 2003/87/EC are effectively accounted for, and whether double counting is effectively avoided.

Recital 98, Directive (EU) 2023/959

**To avoid diversion of waste from municipal waste incineration installations towards landfills in the Union, which create methane emissions, and to avoid exports of waste to third countries, with a potentially negative impact on the environment**, in its report the Commission should take into account the potential diversion of waste towards disposal by landfilling in the Union and waste exports to third countries. The Commission should also take into account the **effects on the internal market, potential distortions of competition, environmental integrity, alignment with the objectives of Directive 2008/98/EC of the European Parliament and of the Council and robustness and accuracy with respect to the monitoring and calculation of emissions**.

Recital 99, Directive (EU) 2023/959

Moreover, **to ensure synergies with the existing regulatory framework**, the delegation in Article 10(4) of Directive 2003/87/EC concerning the timing, administration and other aspects of ﻿auctioning should be extended to cover the buildings, road transport and additional sectors.

Recital 99, Directive (EU) 2023/959

In particular, **to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States’ experts**, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Recital 100, Directive (EU) 2023/959

The provisions relating to the existing EU ETS and its extension to maritime transport should apply from 2024 in line with **the need for urgent climate action** and **for all sectors to contribute to emission reductions in a cost-effective manner**.

Recital 102, Directive (EU) 2023/959

**Considering the need to deliver a stronger investment signal to reduce emissions in a cost-efficient manner and with a view to strengthening the EU ETS**, Decision (EU) 2015/1814 should be amended so as to increase the percentage rate for determining the number of allowances to be placed each year in the market stability reserve.

Recital 102, Directive (EU) 2023/959

**This would prevent the considerable uncertainty in the auction volumes** that results when the TNAC is close to the threshold, and **at the same time ensure that the surplus reaches the volume bandwidth within which the carbon market is deemed to operate in a balanced manner**.

Recital 104, Directive (EU) 2023/959

In addition, since aviation allowances can be used in the same way as general allowances, **including aviation in the reserve would make it a more accurate, and thus a better, tool to ensure the stability of the market**.

Recital 104, Directive (EU) 2023/959

**In order to mitigate the risk of supply and demand imbalances associated with the start of emissions trading for the buildings, road transport and additional sectors, as well as to render it more resistant to market shocks**, the rule-based mechanism of the market stability reserve should be applied to those sectors.

Recital 105, Directive (EU) 2023/959

**Since the objectives of this Directive, namely to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient way in a manner commensurate with the economy-wide net greenhouse gas emission reduction target for 2030 through an extended and amended Union wide market-based mechanism**, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, **in accordance with the principle of subsidiarity** as set out in Article 5 of the Treaty on European Union. ﻿**In accordance with the principle of proportionality as set out in that Article**, this Directive does not go beyond what is necessary in order to achieve those objectives.

**[18] Regulation (EU) 2024/795** of the European Parliament and of the Council of 29 February 2024 establishing the Strategic Technologies for Europe Platform (STEP), and amending Directive 2003/87/EC and Regulations (EU) 2021/1058, (EU) 2021/1056, (EU) 2021/1057, (EU) No 1303/2013, (EU) No 223/2014, (EU) 2021/1060, (EU) 2021/523, (EU) 2021/695, (EU) 2021/697 and (EU) 2021/241 [2024] OJ L, 2024/795, 29.2.2024

Recital 11, Regulation (EU) 2024/795

**A Sovereignty Seal should be awarded to projects contributing to the STEP objectives**, provided that the project has been assessed and complies with the minimum quality requirements, in particular eligibility, exclusion and award criteria, **provided in calls for proposals under** Horizon Europe, the European Defence Fund, **the Innovation Fund**, the EU4Health Programme or the Digital Europe Programme, regardless of whether the project has received funding under one of those instruments.

Recital 12, Regulation (EU) 2024/795

Provided that they comply with the provisions of Regulation (EU) 2021/241, **Member States should consider including projects that have been awarded the Sovereignty Seal when revising their recovery and resilience plans and** **should be able to consider including projects when deciding on investment projects to be financed from their share of the Modernisation Fund established pursuant to Directive 2003/87/EC**.

Recital 18, Regulation (EU) 2024/795

The Innovation Fund supports investments in innovative low-carbon technologies, which fall within the scope of this Regulation. **The Innovation Fund will therefore be instrumental in supporting the development or manufacturing in the Union of critical clean and resource-efficient technologies. When designing and implementing calls for proposals or competitive bidding under the Innovation Fund, the Commission should consider projects recognised as strategic under the Net-Zero Industry Act, which are deemed to contribute to the STEP objectives**.

## Grouping of provisions

In Supplementary Table below, we group the identified provisions based on the goal(s) they express with the method of content analysis.[[8]](#footnote-8) In several instances, there are more than one goals embedded in the same provision or sentence. We group specific provisions into goals with a high degree of granularity, as the resulting groups (goals) are further categorized into main goals and sub-goals in Table 1 of the main article. The goals in the Supplementary Table below are listed in the order they appear in legislation. The Supplementary Table is based on the document analysis we conducted in July 2023 and the supplementary analysis of Regulation (EU) 2024/795 conducted in April 2024.

**Supplementary Table | EU ETS objectives and their respective legal sources**

|  |  |
| --- | --- |
| Objective | Legal sources |
| GHG emissions reductions | Articles 1, 9, 10(3), 10a(1), 10b(4), 10c(2), 27(1) and 30c(1), Directive 2003/87/EC, as amendedRecitals 19 and 25, Directive 2003/87/EC; Recital 1, Directive 2004/101/EC; Recitals 14 and 16, Directive 2008/101/EC; Recitals 13 and 23, Directive 2009/29/EC; Recital 5, Regulation (EU) 421/2014; Recital 4, Decision (EU) 2015/1814; Recitals 2, 4, 10, 11, 23, 24 and 31, Directive (EU) 2018/410; Recitals 19 and 45, Directive (EU) 2023/958; Recitals 5, 20, 22, 28, 45, 48, 51, 68, 73, 80, 89, 90, 97, 100, 102 and 105, Directive (EU) 2023/959 |
| Cost-effectiveness | Articles 1, 10(4) and 28(2), Directive 2003/87/EC, as amendedRecitals 18 and 19, Directive 2003/87/EC; Recitals 2 and 3, Directive 2004/101/EC; Recital 24, Directive 2008/101/EC; Recitals 5, 8 and 13, Directive 2009/29/EC; Recital 4, Decision (EU) 2015/1814; Recital 3, Regulation (EU) 2017/2392; Recitals 2, 6 and 23, Directive (EU) 2018/410; Recital 45, Directive (EU) 2023/958; Recitals 5, 45, 80, 89, 100, 102 and 105, Directive (EU) 2023/959 |
| Economic efficiency | Articles 1, 10c(2) and 28(2), Directive 2003/87/EC, as amendedRecital 5, Directive 2003/87/EC; Recitals 8, 15, 17, and 24, Directive 2009/29/EC; Recital 31, Directive (EU) 2018/410; Recital 76 and 105, Directive (EU) 2023/959 |
| Consistency with climate objectives(EU and international) | Articles 1, 3gg(1), 8, 10a(8), 10c(1), 10d(1), 28(2), 28b(3), 30(1), 30(3), 30(5), 30(6), 30(7) and 30l, Directive 2003/87/EC, as amendedRecital 5, Directive 2003/87/EC; Recital 1 and 4, Directive 2004/101/EC; Recitals 3, 5, 6, 13 and 28, Directive 2009/29/EC; Recitals 3 and 4, Regulation (EU) 2017/2392; Recitals 2, 4, 19, 23 and 24, Directive (EU) 2018/410; Recitals 9, 17 and 25, Directive (EU) 2023/958; Recitals 9, 20, 27, 64, 95, 97 and 105, Directive (EU) 2023/959 |
| Environmental integrity(emissions accuracy, prevention of non-compliance and abuse) | Articles 3c(4), 3gg(1), 4, 6, 9a(2), 10a(1), 10a(21), 10b(4), 12(3-a), 14(1), 14(2), 15, 16(1), 16(3), 16(11a), 18b(2), 19(4), 24(1), 24a(1), 25(1a), 28b(3), 28c, 30(5), 30(7), 30b(1), 30c(3), 30f(5) and 30j(1), Directive 2003/87/EC, as amendedRecital 12, Directive 2003/87/EC; Recitals 3 and 10, Directive 2004/101/EC; Recitals 27 and 29, Directive 2008/101/EC; Recitals 10, 24, 42 and 43, Directive 2009/29/EC; Recital 10, Regulation (EU) 2017/2392; Recitals 12 and 29, Directive (EU) 2018/410; Recitals 9, 17, 19, 25 and 39, Directive (EU) 2023/958; Recitals 20, 27, 36, 45, 68, 69, 72, 77, 88, 97, 98 and 104, Directive (EU) 2023/959 |
| Promotion of innovation and investments (climate mitigation/adaptation) | Articles 3c(6), 3gg(5), 9, 10(1), 10(2), 10(3), 10a(1), 10a(1a), 10a(2), 10a(5b), 10a(8), 10b(4), 10c(1), 10c(2), 10d(1), 10d(2), 10e(4) and 30d(6), Directive 2003/87/EC, as amendedRecital 20, Directive 2003/87/EC; Recital 3, Directive 2004/101/EC; Recitals 8, 20, 27 and 28, Directive 2009/29/EC; Recital 4, Decision (EU) 2015/1814; Recital 4, Regulation (EU) 2017/2392; Recitals 5, 8, 11, 14, 16 and 23, Directive (EU) 2018/410; Recital 33, Regulation (EU) 2023/435; Recitals 12, 15, 42 and 43, Directive (EU) 2023/958; Recitals 15, 22, 44, 45, 46, 48, 49, 50, 64, 68, 71, 73, 74, 90 and 102, Directive (EU) 2023/959; Recitals 11, 12 and 18, Regulation (EU) 2024/795 |
| Just transition of society and labour | Articles 3c(6), 3c(8), 3gg(3), 10(3), 10(4), 10a(8), 10a(9), 10d(2), 12(3-b), 12(3-c), 12(3-d), 12(3-e), 28(2), 30(7), 30d(3), 30d(4), 30d(6), 30e(4), 30f(3), 30f(5), 30h(1) and 30k, Directive 2003/87/EC, as amendedRecital 33, Directive 2008/101/EC; Recital 3 and 15, Directive 2009/29/EC; Recital 11, Regulation (EU) 421/2014; Recitals 2, 4, 11, 13, 15 and 31, Directive (EU) 2018/410; Recitals 12, 16, 34, 36 and 40, Directive (EU) 2023/958; Recitals 20, 40, 43, 73, 76, 83, 84, 89, 90, 92 and 100, Directive (EU) 2023/959 |
| Solidarity among EU Member States | Articles 3ga(3), 10(1), 10(2), 10a(5b), 10a(8), 10a(9), 10b(4), 10c(1), 10d(1), 28(2) and 30d(5), Directive 2003/87/EC, as amendedRecitals 26 and 33, Directive 2008/101/EC; Recital 17, Directive 2009/29/EC; Recitals 8, 15 and 16, Directive (EU) 2018/410; Recitals 21, 34, 43 and 56, Directive (EU) 2023/959 |
| Coherence with other policies (national, EU or external) | Articles 3gg(1), 3gg(2), 3gg(5), 8, 10(3), 10(5), 10a(1), 10a(8), 10b(4), 10c(1), 10d(1), 10d(7), 10e(1), 10f, 11a(1), 11b(1), 12(7), 14(1), 18, 21a, 24a(1), 25(1a), 25a(1), 27(1), 28b(1), 28b(3), 28c, 30(2), 30(3), 30(6), 30(7), 30d(3), 30d(4), 30d(5), 30d(6), 30e(3) and 30l, Directive 2003/87/EC, as amendedRecitals 18, 19, 21, 22, 23, 25 and 26, Directive 2003/87/EC; Recitals 2, 3, 4, 12 and 15, Directive 2004/101/EC; Recitals 17 and 27, Directive 2008/101/EC; Recitals 3, 4, 8, 9, 22, 28, 41, 42 and 43, Directive 2009/29/EC; Recitals 2, 5 and 14, Regulation (EU) 421/2014; Recital 5, Decision (EU) 2015/1814; Recitals 8, 11 and 15, Regulation (EU) 2017/2392; Recitals 4, 6, 9, 18, 19, 24 and 31, Directive (EU) 2018/410; Recital 1, Commission Delegated Decision (EU) 2020/1071; Recital 1, Commission Delegated Decision (EU) 2021/1416; Recital 9, Decision (EU) 2023/136; Recital 33, Regulation (EU) 2023/435; Recitals 17, 21, 22, 23, 25, 26, 27, 28, 30, 33, 36, 37, 39 and 42, Directive (EU) 2023/958; Recitals 27, 40, 41, 52, 75, 87, 94, 95, 98 and 99, Directive (EU) 2023/959; Recitals 11, 12 and 18, Regulation (EU) 2024/795 |
| Reduction of ETS administrative costs (particularly for smaller emitters) | Articles 3gg(1), 10(3), 10(4), 10a(1), 10a(21), 19(4), 27(1), 27a(1) and 28a(4), Directive 2003/87/EC, as amendedRecitals 18 and 26, Directive 2008/101/EC; Recital 11, Directive 2009/29/EC; Recitals 9, 10 and 15, Regulation (EU) 421/2014; Recitals 4, 11 and Recital 14, Regulation (EU) 2017/2392; Recitals 5, 12, 17, 20, 28 and 29, Directive (EU) 2018/410; Recital 46, Directive (EU) 2023/958; Recitals 30, 33, 77, 86 and 88, Directive (EU) 2023/959 |
| Avoidance of carbon leakage | Articles 3gg(2), 3gg(3), 10(3), 10a(1), 10a(1a), 10a(6), 10b(1), 30(2) and 30j(1), Directive 2003/87/EC, as amendedRecital 25, Directive 2008/101/EC; Recital 24, Directive 2009/29/EC; Recitals 9 and 10, Decision (EU) 2015/1814; Recital 4, Regulation (EU) 2017/2392; Recitals 5, 6, 10, 13 and 24, Directive (EU) 2018/410; Recital 36, Directive (EU) 2023/958; Recital 20, 28, 29, 30, 46, 47 and 98, Directive (EU) 2023/959 |
| Minimization of impact on economic development and employment | Articles 3gg(3), 10(2) and 30k, Directive 2003/87/EC, as amendedRecital 5, Directive 2003/87/EC; Recital 3, Directive 2009/29/EC; Recitals 4, 9 and 10, Decision (EU) 2015/1814; Recital 8, Directive (EU) 2018/410; Recitals 51 and 92, Directive (EU) 2023/959 |
| Avoidance of competitive distortions in the internal market | Articles 3gg(3), 10a(1), 10a(2), 10a(6), 10a(8), 10a(21), 24(1), 25a(7), 28c, 30(7) and 30j(1), Directive 2003/87/EC, as amendedRecital 7, Directive 2003/87/EC; Recital 16, 20, 21 and 33, Directive 2008/101/EC; Recitals 8, 15, 16, 17, 19, 23 and 28, Directive 2009/29/EC; Recital 8, Regulation (EU) 421/2014; Recital 9, Decision (EU) 2015/1814; Recital 11 and 12, Regulation (EU) 2017/2392; Recital 10, 11, 13, 16 and 26, Directive (EU) 2018/410; Recitals 18, 19, 20, 27, 28, 33 and 39, Directive (EU) 2023/958; Recital 15, 45 and 98, Directive (EU) 2023/959 |
| Support to third countries(climate mitigation/adaptation) | Articles 10(3), 10d(1), 11a(2), 21a and 25a(6), Directive 2003/87/EC, as amendedRecitals 3 and 13, Directive 2004/101/EC; Recital 18, Directive 2008/101/EC; Recitals 31 and 41, Directive 2009/29/EC; Recital 13, Directive (EU) 2018/410; Recital 26, Directive (EU) 2023/958 |
| Coherence with legal norms | Articles 10(3), 10(4), 10a(1), 10a(1a), 10a(6), 10a(8), 10c(2), 10f, 11b(1), 15a, 16(1), 16(11a), 21a, 28(2) and 30(1), Directive 2003/87/EC, as amendedRecitals 22, 27 and 30, Directive 2003/87/EC; Recitals 12, 13 and 19, Directive 2004/101/EC; Recitals 18, 28 and 37, Directive 2008/101/EC; Recitals 25, 27, 50 and 51, Directive 2009/29/EC; Recitals 3, 12, 15 and 16, Regulation (EU) 421/2014; Recital 11, Decision (EU) 2015/1814; Recitals 4, 11 and 15, Regulation (EU) 2017/2392; Recitals 4, 6, 13, 24, 31, 32 and 33, Directive (EU) 2018/410; Recitals 8 and 9, Decision (EU) 2023/136; Recitals 5, 23 and 44, Directive (EU) 2023/958; Recitals 13, 14, 33, 45, 99 and 105, Directive (EU) 2023/959 |
| Proper ETS market functioning(transparency, liquidity and predictability) | Articles 10(4), 10(5), 12(1a), 29, 29a(1) and 30h(1), Directive 2003/87/EC, as amendedRecital 13, Directive 2003/87/EC; Recital 3, Directive 2004/101/EC; Recitals 5, 6, 8, 9, 11, 12, 13, 16, 22, 23 and 29, Directive 2009/29/EC; Recital 2, Decision 1359/2013/EU; Recitals 3, 12 and 16, Regulation (EU) 421/2014; Recitals 2, 5, 6, 7, 8 and 10, Decision (EU) 2015/1814; Recital 4, Regulation (EU) 2017/2392; Recitals 5, 9, 11, 17, 18, 22, 23, 28 and 29, Directive (EU) 2018/410; Recital 3, Commission Delegated Decision (EU) 2020/1071; Recital 3, Commission Delegated Decision (EU) 2021/1416; Recital 5, Directive (EU) 2023/958; Recitals 48, 63, 72, 74, 76, 79, 82, 87, 92, 102 and 104, Directive (EU) 2023/959 |

1. Document analysis is a systematic procedure for reviewing documents to extract information, which can then be organized into categories. G.A. Bowen, ‘Document Analysis as a Qualitative Research Method’ (2009) 9(2) *Qualitative Research Journal*, pp. 27-40, at 27-8. [↑](#footnote-ref-1)
2. Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 Establishing a Carbon Border Adjustment Mechanism [2023] OJ L130/52. [↑](#footnote-ref-2)
3. Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018 on the Monitoring and Reporting of Greenhouse Gas Emissions Pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012 [2018] OJ L334/1. [↑](#footnote-ref-3)
4. See Case 215/88, *Casa Fleischhandels-GmbH* v*. Bundesanstalt für landwirtschaftliche Marktordnung* ECLI:EU:C:1989:331, para. 31. [↑](#footnote-ref-4)
5. In Case C-344/04, *The Queen, on the application of* *International Air Transport Association, European Low Fares Airline Association* v. *Department for Transport* ECLI:EU:C:2006:10, para. 83, the European Court of Justice observes that ‘(a)dmittedly, in addition to this direct objective explicitly set out by the Community legislature, the regulation, like any other generally applicable legislation, may implicitly involve other, secondary, objectives such as, as the claimants in the main proceedings submit, that of reducing, through preventive action, the number of flights that are cancelled or subject to a long delay’. [↑](#footnote-ref-5)
6. European Parliament, Council of the European Union and European Commission, *Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation* (Publications Office of the European Union, 2015), pp. 31-2. See also Consolidated version of the Treaty on the Functioning of the European Union (TFEU) [2016] OJ C202/47, Art. 296. [↑](#footnote-ref-6)
7. A document that records the initial document analysis that we conducted in January 2023 is available online at: <https://osf.io/n2vtx/?view\_only=8345eb5047ea420095b04abc1d34bced>. [↑](#footnote-ref-7)
8. Bowen (n 1) 32. [↑](#footnote-ref-8)