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

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Delegations will find in the Annex the four-column document on the abovementioned subject reflecting the outcome of the discussion held in Coreper today 6 October 2017, and which has been transmitted to the European Parliament with a view to the fifth trilogue meeting on 12 October 2017.

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

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 1 Recital 1</b>			
<p>(1) Directive 2003/87/EC of the European Parliament and of the Council<sup>1</sup> established a system for greenhouse gas emission allowance trading within the Union in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner.</p> <p><sup>1</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).</p>	<p>(1) Directive 2003/87/EC of the European Parliament and of the Council<sup>1</sup> established a system for greenhouse gas emission allowance trading within the Union in order to promote reductions of greenhouse gas emissions in a cost-effective and economically efficient manner <b><i>as well as the sustainable strengthening of Union industry against the risk of carbon and investment leakage.</i></b></p> <p><sup>1</sup> Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).</p>		Not acceptable

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<b>Amendment 2</b> <b>Recital 2</b>			
<p>(2) The European Council of October 2014 made a commitment to reduce the overall greenhouse gas emissions of the Union by at least 40% below 1990 levels by 2030. All sectors of the economy should contribute to achieving these emission reductions and the target will be delivered in the most cost-effective manner through the Union emission trading system (EU ETS) delivering a reduction of 43% below 2005 levels by 2030. This was confirmed in the intended nationally determined reduction commitment of the Union and its Member States submitted to the Secretariat of the UN Framework Convention on Climate Change on 6 March 2015<sup>2</sup>.</p> <p><sup>2</sup><a href="http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx">http://www4.unfccc.int/submissions/indc/Submission%20Pages/submissions.aspx</a></p>	<p>(2) The European Council of October 2014 made a commitment to reduce the overall greenhouse gas emissions of the Union by at least 40% below 1990 levels by 2030. All sectors of the economy should contribute to achieving <i>those</i> emission reductions and the target <i>is to</i> be delivered in the most cost-effective manner through the Union emission trading system (EU ETS) delivering a reduction of 43% below 2005 levels by 2030. This was confirmed in the intended nationally determined reduction commitment of the Union and its Member States submitted to the Secretariat of the <i>United Nations</i> Framework Convention on Climate Change (UNFCCC) on 6 March 2015. <i>The effort of emission reductions should be fairly shared between the sectors covered by the EU ETS.</i></p>	<p>(2) The European Council of October 2014 made a commitment to reduce the overall greenhouse gas emissions of the Union by at least 40% below 1990 levels by 2030. All sectors of the economy should contribute to achieving <u>those</u> emission reductions and the target will be delivered in the most cost-effective manner through the Union emission trading system (EU ETS) delivering a reduction of 43% below 2005 levels by 2030. This was confirmed in the intended nationally determined reduction commitment of the Union and its Member States submitted to the Secretariat of the <u>United Nations</u> Framework Convention on Climate Change (<u>UNFCCC</u>) on 6 March 2015<sup>2</sup>.</p>	<p>The last part of the amendment is not acceptable.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 3 Recital 2 a (new)</b>			
	<i>(2a) In order to honour the agreed commitment that all sectors of the economy contribute to the fulfilment of the target of reducing the overall greenhouse gas emissions of the Union by at least 40% below 1990 levels by 2030, it is important that the EU ETS, despite being the Union's primary tool to achieve its long-term climate and energy targets, is complemented by equivalent additional actions taken in other legal acts and instruments dealing with greenhouse gas emissions from sectors not covered by the EU ETS.</i>		Not acceptable
<b>Amendment 4 Recital 2 b (new)</b>			
	<i>(2b) Under the Agreement adopted in Paris at the 21st Conference of the Parties of the UNFCCC of 12 December 2015 (the 'Paris Agreement'), countries are required to put policies in place to achieve more than 180 Intended Nationally Determined Contributions (INDCs) that cover</i>	<u>(2a) The Paris Agreement was adopted on 12 December 2015 and entered into force on 4 November 2016. Its Parties have agreed to hold the increase in the global average temperature well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1,5°C</u>	<b><u>Last part of the recital moved to new recital 16b together with new compromise proposals.</u></b>

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	<p><i>some 98% of global greenhouse gas emissions. The Paris Agreement is aimed at limiting the increase in the global average temperature to well below 2° C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1,5° C above pre-industrial levels. Many of those policies are expected to involve carbon pricing or similar measures, and therefore a revision clause should be laid down in this Directive to allow the Commission, where appropriate, to propose stricter emissions reductions after the first stocktaking exercise under the Paris Agreement in 2023, an adjustment to the provisions for transitional carbon leakage to reflect the development of carbon pricing mechanisms outside the Union, and additional policy measures and tools to enhance the greenhouse gas reduction commitments of the Union and its Member States. The revision clause should also ensure that a communication is adopted within six months of the</i></p>	<p><u>above pre-industrial levels. The Parties have also agreed to periodically take stock of the implementation of the Paris Agreement to assess the collective progress towards achieving the purpose of the Agreement and its long-term goals [...].</u></p>	

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	<i>facilitative dialogue under the UNFCCC in 2018 assessing the consistency of the Union's climate change legislation with the Paris Agreement goals.</i>		
<b>Amendment 5 Recital 2 c (new)</b>			
	<i>(2c) In accordance with the Paris Agreement and in line with the commitment of the co-legislators expressed in Directive 2009/29/EC of the European Parliament and of the Council<sup>1a</sup> and Decision No 406/2009/EC of the European Parliament and of the Council<sup>1b</sup>, all sectors of the economy are required to contribute to the reduction of carbon dioxide (CO<sub>2</sub>) emissions. To this end, efforts to limit international maritime emissions through the International Maritime Organisation (IMO) are under way and should be encouraged, with the aim of establishing a clear IMO action plan for climate policy measures to reduce CO<sub>2</sub> emissions from shipping at a global level. The adoption of clear targets to reduce international</i>	2c) <u>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 EU and its Member States have undertaken an economy-wide reduction target. Efforts to limit international maritime emissions through the International Maritime Organisation (IMO) are under way and should be encouraged. The IMO has set up a process to adopt in 2018 an initial emission reduction strategy to reduce greenhouse gas emissions from international shipping. The</u>	<b><u>See new compromise suggestion in the third column at the end of the recital</u></b>

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	<p><i>maritime emissions through the IMO has become a matter of great urgency and a prerequisite for the Union to refrain from acting further on the inclusion of the maritime sector within the EU ETS. If, however, any such agreement is not reached by the end of 2021, the sector should be included under the EU ETS and a fund should be established for ship operators' contributions and collective compliance relating to CO2 emissions already covered by the Union system for monitoring, reporting and verification (MRV system) laid down in Regulation (EU) 2015/757 of the European Parliament and of the Council<sup>1c</sup> (emissions released in Union ports and during voyages to and from such ports). A share of revenues from the auction of allowances to the maritime sector should be used to improve energy efficiency and support investments in innovative technologies for the reduction of CO2 emissions in the maritime sector, including short sea shipping and ports.</i></p>	<p><b>adoption of an adequate emission reduction objective as part of this initial strategy has become a matter of urgency and is important for ensuring that international shipping contributes its fair share to the efforts needed to achieve the well below 2°C objective agreed under the Paris Agreement. The Commission should keep under review the progress by the IMO to agree on an adequate emission reduction objective and accompanying measures for the reduction of greenhouse gas emissions from international shipping ensuring that the sector duly contributes to the efforts needed to achieve the objectives agreed under the Paris Agreement.</b></p>	

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	<p><i><sup>1a</sup> 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 (OJ L 140, 5.6.2009, p.63).</i></p> <p><i><sup>1b</sup> Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).</i></p> <p><i><sup>1c</sup> Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC (OJ L 123, 19.5.2015, p. 55).</i></p>		



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<b>Amendment 143</b> <b>Recital 3</b>			
<p>(3) The European Council confirmed that a well-functioning, reformed EU ETS with an instrument to stabilise the market will be the main European instrument to achieve this target, with an annual reduction factor of 2.2% from 2021 onwards, free allocation not expiring but existing measures continuing after 2020 to prevent the risk of carbon leakage due to climate policy, as long as no comparable efforts are undertaken in other major economies, without reducing the share of allowances to be auctioned. The auction share should be expressed as a percentage figure in the legislation, to enhance planning certainty as regards investment decisions, to increase transparency and to render the overall system simpler and more easily understandable.</p>	<p>(3) A well-functioning, reformed EU ETS with an <i>enhanced</i> instrument to stabilise the market will be the main European <i>instruments</i> to achieve this target, with an annual reduction factor of 2,2% from 2021 onwards, free allocation not expiring but measures continuing after 2020 to prevent the risk of carbon leakage due to climate policy, as long as no comparable efforts are undertaken in other major economies. <b>The auction share should be expressed as a percentage figure in the legislation, which should decline on application of a cross-sectoral correction factor</b> to enhance planning certainty as regards investment decisions, to increase transparency, to render the overall system simpler and more easily understandable, <b>and to protect those sectors most at risk of carbon leakage from a cross-sectoral correction factor. Those provisions should be kept under review in line with the Paris</b></p>	<p>(3) The European Council confirmed that a well-functioning, reformed EU ETS with an instrument to stabilise the market will be the main European instrument to achieve this target, with an annual reduction factor of 2,2% from 2021 onwards, free allocation not expiring but existing measures continuing after 2020 to prevent the risk of carbon leakage due to climate policy, as long as no comparable efforts are undertaken in other major economies, without reducing the share of allowances to be auctioned. <b>The auction share should be expressed as a percentage figure in the legislation,</b> to enhance planning certainty as regards investment decisions, to increase transparency and to render the overall system simpler and more easily understandable.</p>	<p>First part: keep wording from European Council conclusions</p> <p>Second part: <b>tiered CSCF not acceptable</b></p>

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	<i>Agreement and adjusted accordingly if necessary to fulfil the Union's climate obligations pursuant to that agreement.</i>		
<b>Amendment 7 Recital 3 a (new)</b>			
	<i>(3a) Least Developed Countries (LDCs) are particularly vulnerable to the effects of climate change and are responsible only for very low levels of greenhouse gas emissions. Therefore, particular priority should be given to addressing the needs of LDCs through the use of EU ETS allowances to finance climate action, in particular adaptation to the impacts of climate change through the UNFCCC Green Climate Fund.</i>		See new compromise suggestion in Recital 9
<b>Amendment 8 Recital 4</b>			
(4) It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens. Achieving this requires continuation of ambitious climate action with the EU ETS as the cornerstone of Europe's climate	(4) It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens <b>and industries</b> . Achieving this requires continuation of ambitious climate action with the EU ETS as the	(4) It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens <u>and industries</u> . Achieving this requires continuation of ambitious climate action with the EU ETS as the	The amendments to the first and second sentence are acceptable.

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<p>policy, and progress on the other aspects of Energy Union<sup>3</sup>. Implementing the ambition decided in the 2030 framework contributes to delivering a meaningful carbon price and continuing to stimulate cost-efficient greenhouse gas emission reductions.</p> <p><sup>3</sup> COM(2015)80, establishing a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy</p>	<p>cornerstone of <i>Union's</i> climate policy, and progress on the other aspects of Energy Union<sup>3</sup>. <b><i>The interaction of the EU ETS with other Union and national climate and energy policies that have an impact on the demand for EU ETS allowances needs to be taken into account.</i></b> Implementing the ambition decided in the 2030 framework <b><i>and adequately addressing the progress on other aspects of the Energy Union</i></b> contributes to delivering a meaningful carbon price and <b><i>to</i></b> continuing to stimulate cost-efficient greenhouse gas emission reductions.</p> <p><sup>3</sup> COM(2015)80, establishing a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy</p>	<p>cornerstone of <u>the Union's</u> climate policy, and progress on the other aspects of Energy Union<sup>3</sup>. Implementing the ambition decided in the 2030 framework contributes to delivering a meaningful carbon price and continuing to stimulate cost-efficient greenhouse gas emission reductions.</p> <p><sup>3</sup> <u>6594/15</u> - COM(2015)80, establishing a Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy</p>	

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<b>Amendment 9 Recital 4 a (new)</b>			
	<i>(4a) Increased ambition in energy efficiency compared to the 27% target adopted by the Council should lead to more free allowances for industry at risk of carbon leakage.</i>		Not acceptable
<b>Amendment 10 Recital 5</b>			
<p>(5) Article 191(2) of the Treaty on the Functioning of the European Union requires that Union policy is based on the principle that the polluter should pay and, on this basis, Directive 2003/87/EC provides for a transition to full auctioning over time. Avoiding carbon leakage is a justification to postpone full transition, and targeted free allocation of allowances to industry is justified in order to address genuine risks of increases in greenhouse gas emissions in third countries where industry is not subject to comparable carbon constraints as long as comparable climate policy measures are not undertaken by other major economies.</p>	<p>(5) Article 191(2) of the Treaty on the Functioning of the European Union requires that Union policy is based on the principle that the polluter should pay and, on this basis, Directive 2003/87/EC provides for a transition to full auctioning over time. Avoiding carbon leakage is a justification to <b>temporarily</b> postpone full <b>auctioning</b>, and targeted free allocation of allowances to industry is <b>a justified exception to the principle that the polluter should pay, provided that no over-allocation occurs</b>, in order to address genuine risks of increases in greenhouse gas emissions in third countries where industry is not subject to comparable carbon</p>	<p>(5) Article 191(2) of the Treaty on the Functioning of the European Union requires that Union policy <u>be</u> based on the principle that the polluter should pay and, on this basis, Directive 2003/87/EC provides for a transition to full auctioning over time. Avoiding carbon leakage is a justification to <u>temporarily</u> postpone full <u>auctioning</u>, 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</p>	<p>The EP amendments to the first part of the second sentence is acceptable.</p> <p>EP could drop last part of the amendment if compromise found on recital 8a.</p>

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	constraints as long as comparable climate policy measures are not undertaken by other major economies. <i>To that end, allocation of free allowances should be more dynamic in accordance with thresholds provided for in this Directive.</i>	economies.	
<b>Amendment 11</b> <b>Recital 6</b>			
<p>(6) The auctioning of allowances remains the general rule, with free allocation as the exception. Consequently, and as confirmed by the European Council, the share of allowances to be auctioned, which was 57% over the period 2013-2020, should not be reduced. The Commission's Impact Assessment<sup>4</sup> provides details on the auction share and specifies that this 57% share is made up of allowances auctioned on behalf of Member States, including allowances set aside for new entrants but not allocated, allowances for modernising electricity generation in some Member States and allowances which are to be auctioned at a later point in time</p>	<p>(6) The auctioning of allowances remains the general rule, with free allocation as the exception. Consequently, the share of allowances to be auctioned, which <i>should be</i> 57% over the period <b>2021-2030</b>, should be reduced <i>on application of the cross sectoral correction factor to protect those sectors most exposed to the risk of carbon leakage</i>. The Commission's Impact Assessment provides details on the auction share and specifies that this 57% share is made up of allowances auctioned on behalf of Member States, including allowances set aside for new entrants but not allocated, allowances for modernising</p>	<p>(6) The auctioning of allowances remains the general rule, with free allocation as the exception. [...] The Commission's Impact Assessment<sup>4</sup> specifies that the share of allowances to be auctioned was 57% over the period 2013-2020. <b>In principle, the share should remain 57%.</b> It is made up of allowances auctioned on behalf of Member States, including allowances set aside for new entrants but not allocated, allowances for modernising electricity generation in some Member States and allowances which are to be auctioned at a later point in time because of their placement in the Market Stability Reserve established by Decision (EU)</p>	<p>First part of the amendment is not acceptable</p> <p>Concerning the last part of the amendment (Just Transition Fund), see comments to AM 45. See also compromise suggestions in recital 9 and Article 10(3) (l).</p> <p><b><u>New compromise suggestion in the third column in the context of an overall compromise package. Linked to new compromise</u></b></p>



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<p>because of their placement in the Market Stability Reserve established by Decision (EU) 2015/... of the European Parliament and of the Council<sup>5</sup>.</p>	<p>electricity generation in some Member States and allowances which are to be auctioned at a later point in time because of their placement in the Market Stability Reserve established by <i>Decision (EU) 2015/1814</i> of the European Parliament and of the Council<sup>5</sup>. <i>A just Transition Fund should be established to support regions with a high share of workers in carbon-dependent sectors and a GDP per capita well below the Union average.</i></p>	<p>2015/1814 of the European Parliament and of the Council<sup>5</sup>. <b>100 million</b> allowances used to support innovation are [...] included in this share. <b>In case the demand for free allowances triggers the need to apply a uniform cross-sectoral correction factor before 2030, the share of allowances to be auctioned over the ten year period beginning on 1 January 2021 should be reduced by up to 2,5% of the total quantity.</b> For the purposes of solidarity, growth and interconnections, 10% of the EU ETS allowances to be auctioned by the Member States should be distributed among those countries whose GDP per capita did not exceed 90% of the EU average (in 2013), and the rest of the allowances should be distributed among all Member States on the basis of verified emissions. The derogation from contributions to this distribution in 2013-2020 for certain Member States with an average level of income per capita more than 20% higher than the average in the Union should expire.</p>	<p><b><u>proposals in Art. 10a(8) and Art. 10a(5a).</u></b></p>

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<p><sup>4</sup> SEC(2015)XX  <sup>5</sup> Decision (EU) 2015/... of the European Parliament and of the Council of ... concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L [...], [...], p. [...]).</p>	<p><sup>5</sup> Decision (EU) <b>2015/1814</b> of the European Parliament and of the Council of <b>6 October 2015</b> concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (<b>OJ L 264, 9.10.2015, p. 1</b>).</p>	<p><sup>4</sup> 11065/15 ADD2 - <u>SWD</u> (2015) <u>135 final</u>,  <sup>5</sup> Decision (EU) 2015/1814 of the European Parliament and of the Council of <u>6 October 2015</u> concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L 264, <u>9.10.2015, p.1</u>).</p>	
<b><u>Recital 6a (new)</u></b>			
		<p><u>(6a) Recognising the interaction between climate policies at Union and national level, <b>Member States should have the possibility to cancel allowances from their auction volume in the event of closures of electricity generation capacity in their territory.</b> To ensure predictability for operators and market participants with regard to the amount of auction allowances available, that possibility should be limited to an amount corresponding to the average verified emissions of the installation concerned over a period</u></p>	<p>New compromise suggestion in relation to AM 58. See also new compromises suggested in Articles 10(1) and 12(4).</p>

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		of five years preceding the closure.	
<b>Amendment 12</b> <b>Recital 7</b>			
<p>(7) To preserve the environmental benefit of emission reductions in the Union while actions by other countries do not provide comparable incentives to industry to reduce emissions, free allocation should continue to installations in sectors and sub-sectors at genuine risk of carbon leakage. Experience gathered during the operation of the EU ETS confirmed that sectors and sub-sectors are at risk of carbon leakage to varying degrees, and that free allocation has prevented carbon leakage. While some sectors and sub-sectors can be deemed at a higher risk of carbon leakage, others are able to pass on a considerable share of the costs of allowances to cover their emissions in product prices without losing market share and only bear the remaining part of the costs so that they are at a low risk of carbon leakage. The Commission should determine and differentiate the relevant sectors based on their trade</p>	<p>(7) To preserve the environmental benefit of emission reductions in the Union while actions by other countries do not provide comparable incentives to industry to reduce emissions, free allocation should <i>temporarily</i> continue to installations in sectors and sub-sectors at genuine risk of carbon leakage. Experience gathered during the operation of the EU ETS confirmed that sectors and sub-sectors are at risk of carbon leakage to varying degrees, and that free allocation has prevented carbon leakage. While some sectors and sub-sectors can be deemed at a higher risk of carbon leakage, others are able to pass on a considerable share of the costs of allowances to cover their emissions in product prices without losing market share and only bear the remaining part of the costs so that they are at a low risk of carbon leakage. The Commission should determine and differentiate the</p>	<p>(7) To preserve the environmental benefit of emission reductions in the Union while actions by other countries do not provide comparable incentives to industry to reduce emissions, <u>transitional</u> free allocation should continue to installations in sectors and sub-sectors at genuine risk of carbon leakage. Experience gathered during the operation of the EU ETS confirmed that sectors and sub-sectors are at risk of carbon leakage to varying degrees, and that free allocation has prevented carbon leakage. While some sectors and sub-sectors can be deemed <u>to have</u> a higher risk of carbon leakage, others are able to pass on a considerable share of the costs of allowances to cover their emissions in product prices without losing market share and only bear the remaining part of the costs so that they are at a low risk of carbon leakage. The Commission should determine and differentiate the</p>	<p>See compromise proposal in the third column.</p> <p>Last part of the EP amendment (industrial gases): see new compromise suggestion in third column.</p>



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<p>intensity and their emissions intensity to better identify sectors at a genuine risk of carbon leakage. Where, based on these criteria, a threshold determined by taking into account the respective possibility for sectors and sub-sectors concerned to pass on costs in product prices is exceeded, the sector or sub-sector should be deemed at risk of carbon leakage. Others should be considered at a low risk or at no risk of carbon leakage. Taking into account the possibilities for sectors and sub-sectors outside of electricity generation to pass on costs in product prices should also reduce windfall profits.</p>	<p>relevant sectors based on their trade intensity and their emissions intensity to better identify sectors at a genuine risk of carbon leakage. Where, based on these criteria, a threshold determined by taking into account the respective possibility for sectors and sub-sectors concerned to pass on costs in product prices is exceeded, the sector or sub-sector should be deemed at risk of carbon leakage. Others should be considered at a low risk or at no risk of carbon leakage. Taking into account the possibilities for sectors and sub-sectors outside of electricity generation to pass on costs in product prices should also reduce windfall profits. <b><i>The risk of carbon leakage in sectors and subsectors for which free allocation is calculated on the basis of the benchmark values for aromatics, hydrogen and syngas should also be assessed considering that these products are produced both in chemical plants and refineries.</i></b></p>	<p>relevant sectors based on their trade intensity and their emissions intensity to better identify sectors at a genuine risk of carbon leakage. <u>While the assessment of sectors and subsectors should take place at a 4-digit level (NACE-4 code), specific circumstances should also be foreseen where it may be appropriate to have the possibility to request an assessment at a 6-digit or an 8-digit level (Prodcom). Such possibility should exist where sectors and subsectors have previously been considered as exposed to carbon leakage at Prodcom level, also considering that certain NACE codes, in particular those ending with .99, regroup heterogeneous activities not elsewhere classified (n.e.c.). Where a sector or subsector is subject to the refineries benchmark and another product benchmark, this circumstance should be taken into account so as to allow, where relevant, for a qualitative analysis of the risk of carbon leakage to ensure a level playing field for products produced both in</u></p>	

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		<p><u>refineries and in chemical plants.</u> Where, based on these criteria, a threshold determined by taking into account the respective possibility for sectors and sub-sectors concerned to pass on costs in product prices is exceeded, the sector or sub-sector should be deemed at risk of carbon leakage. Other <u>sectors</u> should be considered to <u>have a low risk or [...] no risk of carbon leakage.</u> Taking into account the possibilities for sectors and sub-sectors outside of electricity generation to pass on costs in product prices should also reduce windfall profits.</p>	
<b>Amendment 13</b> <b>Recital 8</b>			
<p>(8) In order to reflect technological progress in the sectors concerned and adjust them to the relevant period of allocation, provision should be made for the values of the benchmarks for free allocations to installations, determined on the basis of data from the years 2007-8, to be updated in line with observed average improvement. For reasons</p>	<p>(8) In order to reflect technological progress in the sectors concerned and adjust them to the relevant period of allocation, provisions should be made for the values of the benchmarks for free allocations to installations, determined on the basis of data from the years <b>2007 and 2008</b>, to be updated in line with observed average</p>	<p>(8) <u>The benchmark values for free allocation applicable from 2013 onwards should be reviewed in order to avoid windfall profits and 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).</u> In order to reflect</p>	<p>See comments to AMs 62-69.</p> <p><b><u>See new compromise proposals in the third column. Suggestion to increase the higher improvement rate is conditional to EP acceptance of the lower rate of 0,2.</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>of predictability, this should be done through applying a factor that represents the best assessment of progress across sectors, which should then take into account robust, objective and verified data from installations so that sectors whose rate of improvement differs considerably from this factor have a benchmark value closer to their actual rate of improvement. Where the data shows a difference from factor reduction of more than 0.5% of the 2007-8 value higher or lower per year over the relevant period, the related benchmark value <i>shall</i> be adjusted by that percentage. To ensure a level playing field for the production of aromatics, hydrogen and syngas in refineries and chemical plants, the benchmark values for aromatics, hydrogen and syngas should continue to be aligned to the refineries benchmarks.</p>	<p>improvement. For reasons of predictability, this should be done through applying a factor that represents the <i>actual</i> assessment of progress <i>by the 10% most efficient installations in</i> sectors, which should then take into account robust, objective and verified data from installations so that sectors whose rate of improvement differs considerably from this factor have a benchmark value closer to their actual rate of improvement. Where the data shows a difference from factor reduction of more than <i>1,75%</i> of the <i>value corresponding to the years of 2007 and 2008</i> (<i>either</i> higher or lower) per year over the relevant period, the related benchmark value <i>should</i> be adjusted by that percentage. <i>Where, however, the data shows an improvement rate of either 0,25 or less over the relevant period, the related benchmark value should be adjusted by that percentage.</i> To ensure a level playing field for the production of aromatics, hydrogen and syngas in refineries and chemical plants, the benchmark</p>	<p>technological progress in the sectors concerned and adjust them to the relevant period of allocation, provision should be made for the values of the benchmarks for free allocations to installations, determined on the basis of data from the years 2007-2008, to be updated in line with observed [...] improvement. For reasons of predictability, this should be done through applying a factor that represents the best assessment of progress across sectors, which should then take into account robust, objective and verified data from installations, <b>considering the performance of the 10% most efficient installations</b>, so that [...] benchmark values <u>reflect the actual rate of improvement</u>. <b>Where the data shows an annual reduction of less than 0,2% or more than 1,55% 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</b></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	values for aromatics, hydrogen and syngas should continue to be aligned to the refineries benchmarks.	<p>innovation. For the period 2021-2025, these benchmark values would be adjusted in respect of each year between 2008 and the middle of that period with either 0,2% or 1,55%, leading to an improvement of 3% or 23,25% respectively compared to the value applicable in the period 2013-2020. For the period 2026-2030, they would be adjusted in the same way, leading to an improvement of 4% or 31% respectively compared to the value applicable in the period 2013-2020. 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.</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Recital 8 a (new)</b>			
		<p>(8a) <u>The level of free allocation for installations should be better aligned with their actual production levels. To this end, allocations should be periodically adjusted in a symmetrical manner to take account of relevant increases and decreases in production.</u> <u>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 allocation and avoid 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.</u> <u>The Commission should be able to</u></p>	<p>See suggested new compromise wording in third column. Linked to AM10 (recital 5), and suggestions to AM60 (Art. 10a(1) subparagraphs 1 and 2), AM 82 (Art. 10a(20)) and Art. 10a(21).</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		consider further measures to be put in place, such as the use of [...] absolute thresholds regarding the changes to allocations, or with respect to the deadline that applies to the notification of changes in production.	
<b>Amendment 14</b> <b>Recital 9</b>			
<p>(9) Member States should partially compensate, in accordance with state aid rules, certain installations in sectors or sub-sectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices. The Protocol and accompanying decisions adopted by the Conference of the Parties in Paris need to provide for the dynamic mobilisation of climate finance, technology transfer and capacity building for eligible Parties, particularly those with least capabilities. Public sector climate finance will continue to play an important role in mobilising resources after 2020. Therefore,</p>	<p>(9) <i>In pursuing the goal of a level playing field</i>, Member States should partially compensate, <i>through a centralised system at Union level</i>, certain installations in sectors or sub-sectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices. Public sector climate finance will continue to play an important role in mobilising resources after 2020. Therefore, auction revenues should also be used for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate <i>change</i>. The amount of climate finance to be mobilised will also depend on the</p>	<p>(9) It would be desirable that Member States [...] partially compensate, in accordance with state aid rules, certain installations in sectors or sub-sectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices, <b><u>including inter alia for the consumption of electricity produced by the installations themselves through the combustion of waste gases. By seeking to use no more than 25% of the revenues generated from auctioning for indirect cost compensation, Member States are likely both to facilitate the achievement of the objectives of</u></b></p>	<p><b><u>See new compromise suggestions in the third column</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>auction revenues should also be used for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate. The amount of climate finance to be mobilised will also depend on the ambition and quality of the proposed Intended Nationally Determined Contributions (INDCs), subsequent investment plans and national adaptation planning processes. Member States should also use auction revenues to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy.</p>	<p>ambition and quality of the proposed <i>INDCs</i>, subsequent investment plans and national adaptation planning processes. Member States should also <b><i>address the social aspects of decarbonising their economies and</i></b> use auction revenues to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy. <b><i>It should be possible for Member States to add to the compensation received through the centralised system at Union level. Such financial measures should not exceed the levels referred to in the relevant state aid guidelines.</i></b></p>	<p><u>the EU ETS and to preserve the integrity of the internal market and of conditions of competition.</u> To enhance the transparency on the extent to which such compensation is provided, Member States should regularly report to the public on the measures they have in place and the beneficiaries ensuring, however, that the confidential nature of certain information and related data protection concerns are duly taken into account. Where a Member State uses a significant amount of its auction revenues for compensating indirect costs, there is an increased interest in making public the reasons for this choice. When reviewing the state aid guidelines on indirect compensation the Commission should consider inter alia the usefulness of upper limits on the compensation granted by Member States. The review of the Directive should consider the extent to which those financial measures have been effective in avoiding significant risks of carbon leakage due to indirect costs. Public sector climate</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p>finance will continue to play an important role in mobilising resources after 2020. Therefore, auction revenues should also be used for climate financing actions in vulnerable third countries, <u>in particular Least Developed Countries (LDCs), including adaptation to the impacts of climate change, <b>inter alia through the UNFCCC Green Climate Fund.</b></u></p> <p>The amount of climate finance to be mobilised will also depend on the ambition and quality of the [...] Nationally Determined Contributions (NDCs), subsequent investment plans and national adaptation planning processes.</p> <p><u>Regarding the potential social impacts of policies and investments required,</u> Member States should also use auction revenues to <u>contribute to a just transition to a low-carbon economy by promoting skill formation and reallocation of labour <u>in social dialogue with the communities and regions</u> affected by the transition of jobs [...].</u></p>	



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 15 Recital 10</b>			
<p>(10) The main long-term incentive from this Directive for the capture and storage of CO<sub>2</sub> (CCS), new renewable energy technologies and breakthrough innovation in low-carbon technologies and processes is the carbon price signal it creates and that allowances will not need to be surrendered for CO<sub>2</sub> emissions which are permanently stored or avoided. In addition, to supplement the resources already being used to accelerate demonstration of commercial CCS facilities and innovative renewable energy technologies, EU ETS allowances should be used to provide guaranteed rewards for deployment of CCS facilities, new renewable energy technologies and industrial innovation in low-carbon technologies and processes in the Union for CO<sub>2</sub> stored or avoided on a sufficient scale, provided an agreement on knowledge sharing is in place. The majority of this support should be dependent on verified avoidance of greenhouse</p>	<p>(10) The main long-term incentive from this Directive for <i>carbon capture and storage (CCS) and carbon capture and use (CCU)</i>, new renewable energy technologies and breakthrough innovation in low-carbon technologies and processes is the carbon price signal it creates and that allowances will not need to be surrendered for CO<sub>2</sub> emissions which are permanently stored or avoided. In addition, to supplement the resources already being used to accelerate demonstration of commercial CCS <i>and CCU</i> facilities and innovative renewable energy technologies, EU ETS allowances should be used to provide guaranteed rewards for deployment of <i>CCS and CCU</i> facilities, new renewable energy technologies and industrial innovation in low-carbon technologies and processes in the Union for CO<sub>2</sub> stored or avoided on a sufficient scale, provided an agreement on knowledge sharing is in place. The majority of this</p>	<p>(10) The main long-term incentive from [...] Directive 2003/87/EC for the capture and storage of CO<sub>2</sub> (CCS), new renewable energy technologies and breakthrough innovation in low-carbon technologies and processes, <u>including environmentally safe carbon capture and utilisation (CCU)</u>, is the carbon price signal it creates and that allowances will not need to be surrendered for CO<sub>2</sub> emissions which are <b>avoided or</b> permanently stored [...]. In addition, to supplement the resources already being used to accelerate demonstration of commercial CCS facilities and innovative renewable energy technologies, EU ETS allowances should be used to provide guaranteed rewards for deployment of CCS <u>or CCU</u> facilities, new renewable energy technologies and industrial innovation in low-carbon technologies and processes in the Union for CO<sub>2</sub> stored or avoided on a sufficient scale, provided an</p>	<p><b><u>See new compromise suggestions in the third column. Linked to Article 10a(8).</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>gas emissions, while some support may be given when pre-determined milestones are reached taking into account the technology deployed. The maximum percentage of project costs to be supported may vary by category of project.</p>	<p>support should be dependent on verified avoidance of greenhouse gas emissions, while some support may be given when pre-determined milestones are reached taking into account the technology deployed. The maximum percentage of project costs to be supported may vary by category of project.</p>	<p>agreement on knowledge sharing is in place. <b><u>In addition to allowances available for the period from 2021 onwards, revenues from the 300 million allowances available for the period from 2013 to 2020 not yet committed to innovation activities should be supplemented with 50 million unallocated allowances from the market stability reserve and be used in a timely manner to support innovation.</u></b> The majority of this support should be dependent on verified avoidance of greenhouse gas emissions, while some support may be given when pre-determined milestones are reached taking into account the technology deployed <b><u>and the specific circumstances of the sector in which it is being deployed. Milestones should be defined so as to make adequate financial resources available to the project.</u></b> The maximum percentage of project costs to be supported may vary by category of project. <b><u>Due consideration should be given to projects that will have a significant innovation impact</u></b></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<u>across the Union.</u>	
<b>Recital 10 a (new)</b>			
		<p>(10a) Greece had a GDP per capita below 60% of the Union average in 2014 but is not a beneficiary of the Modernisation Fund, and <b>should therefore be able to claim allowances to co-finance decarbonisation of the electricity supply of islands within its territory.</b> These allowances should come from the maximum amount referred to in Article 10a(5) which were not allocated for free by 31 December 2020. <b>These allowances should be auctioned in accordance with the modalities applicable to the Modernisation Fund.</b></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 16 Recital 11</b>			
<p>(11) A Modernisation Fund should be established from 2% of the total EU ETS allowances, and auctioned in accordance with the rules and modalities for auctions taking place on the Common Auction Platform set out in Regulation 1031/2010. Member States who in 2013 had a GDP per capita at market exchange rates <i>of</i> below 60% <i>below</i> the Union average should be eligible for funding from the Modernisation Fund and derogate up to 2030 from the principle of full auctioning for electricity generation by using the option of free allocation in order to transparently promote real investments modernising their energy sector while avoiding distortions of the internal energy market. The rules for governing the Modernisation Fund should provide a coherent, comprehensive and transparent framework to ensure the most efficient implementation possible, taking into account the need for easy access by all participants. The function of the</p>	<p>(11) A Modernisation Fund should be established from 2% of the total EU ETS allowances, and auctioned in accordance with the rules and modalities for auctions taking place on the Common Auction Platform set out in Regulation (EU) No 1031/2010. Member States <i>which</i> in 2013 had a GDP per capita at market exchange rates below 60% <i>of</i> the Union average should be eligible for funding from the Modernisation Fund. <i>Member States which in 2014 had a GDP per capita in EUR at market prices below 60% of the Union average should be able, up to 2030, to</i> derogate from the principle of full auctioning for electricity generation by using the option of free allocation in order to transparently promote real investments modernising <i>and diversifying</i> their energy sector, <i>in line with the Union 2030 and 2050 climate and energy goals</i>, while avoiding distortions of the internal energy market. The rules for governing the</p>	<p>(11) <b>A Modernisation Fund should be established from 2% of the total EU ETS allowances</b>, and auctioned in accordance with the rules and modalities for auctions taking place on the Common Auction Platform set out in <u>Commission Regulation (EU) No 1031/2010<sup>6</sup></u>. <b>Member States which in 2013 had a GDP per capita at market exchange rates of below 60% below the Union average should be eligible for funding from the Modernisation Fund and be able to derogate up to 2030 from the principle of full auctioning for electricity generation by using the option of free allocation in order to transparently promote real investments modernising their energy sector while avoiding distortions of the internal energy market. Investments under the Modernisation Fund aiming at improving energy efficiency could include investments in high efficiency cogeneration, [...] district heating and electrification of transport, in</b></p>	<p>Reference to 2014 GDP unacceptable. See provisions on Greece under Article 10(9) and recital 10a.</p> <p><b><u>See new compromise suggestions in the third column</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>governance structure should be commensurate with the purpose of ensuring the appropriate use of the funds. That governance structure should be composed of an investment board and a management committee and due account should be taken of the expertise of the EIB in the decision-making process unless support is provided to small projects through loans from a national promotional banks or through grants via a national programme sharing the objectives of the Modernisation Fund. Investments financed from the fund should be proposed by the Member States. To ensure that the investment needs in low income Member States are adequately addressed, the distribution of funds will take into account in equal shares verified emissions and GDP criteria. The financial assistance from the Modernisation Fund could be provided through different forms.</p>	<p>Modernisation Fund should provide a coherent, comprehensive and transparent framework to ensure the most efficient implementation possible, taking into account the need for easy access by all participants. <b><i>Such rules should be transparent, balanced and commensurate</i></b> with the purpose of ensuring the appropriate use of the funds. That governance structure should be composed of an investment board, <b><i>an advisory board</i></b> and a management committee. Due account should be taken of the expertise of the EIB in the decision-making process unless support is provided to small projects through loans from national promotional banks or through grants via a national programme sharing the objectives of the Modernisation Fund. Investments financed from the fund should be proposed by the Member States <b><i>and all financing from the fund should comply with specific eligibility criteria.</i></b> To ensure that the investment needs in low income Member States are</p>	<p><b><u>particular of road transport</u></b>. The rules for governing the Modernisation Fund should provide a coherent, comprehensive and transparent framework to ensure the most efficient implementation possible, taking into account the need for easy access by all participants <b><u>and the possibilities to leverage investments in Member States.</u></b> The function of the governance structure should be commensurate with the purpose of ensuring the appropriate use of the funds. That governance structure should <u>include</u> an investment committee [...] and due account should be taken of the expertise of the EIB in the decision-making process unless support is provided to small projects through loans from a national promotional bank or through grants via a national programme sharing the objectives of the Modernisation Fund. [...] <b><u>In order to identify and disclose any potential conflict of interest, the composition of the investment committee, the CVs of its members as well as their</u></b></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	adequately addressed, the distribution of funds will take into account in equal shares verified emissions and GDP criteria. The financial assistance from the Modernisation Fund could be provided through different forms.	<p><b><u>declaration of interests should be published and regularly be updated.</u></b>To ensure that the investment needs in low income Member States are adequately addressed, the <u>funds for the Modernisation Fund should be distributed amongst the Member States based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria.</u> The financial assistance from the Modernisation Fund could be provided through different forms. <b><u>To leverage resources and ensure an increased impact of relevant investments, free allowances for modernising electricity generation in some Member States and the resources available from the Modernisation Fund for investments outside the list of priority areas should be complemented by resources from private legal entities, which may include resources from private legal entities entirely or partially owned by public authorities.</u></b></p> <p><sup>6</sup> <u>Commission Regulation (EU) No</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><u>1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (OJ L 302, 18.11.2010, p. 1).</u></p>	
<b>Recital 11a (new)</b>			
		<p><u>(11a) In order to streamline the funding mechanisms and minimise the administrative burden related to their implementation, the Member States concerned should have the possibility to use 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. To ensure predictability and transparency with regard to the volumes of allowances either available for auctioning or for the transitional free allocation and the assets managed by the Modernisation</u></p>	<p>Compromise suggestion linked to Article 10d(2a) (new) in relation to EP AMs 48 and 91.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><u>Fund, Member States should inform the Commission of their intention to increase their resources under the Modernisation Fund ahead of 2021.</u></p>	
<p><b>Amendment 17</b> <b>Recital 12</b></p>			
<p>(12) The European Council confirmed that the modalities, including transparency, of the optional free allocation to modernise the energy sector in certain Member States should be improved. Investments with a value of €10 million or more should be selected by the Member State concerned through a competitive bidding process on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments modernising the energy sector in line with the Energy Union objectives. Investments with a value of less than €10 million should also be eligible for funding from the free allocation. The Member State concerned should select such investments based on clear and transparent criteria. The</p>	<p>(12) The European Council confirmed that the modalities, including transparency, of the optional free allocation to modernise <i>and diversify</i> the energy sector in certain Member States should be improved. Investments with a value of <i>EUR</i> 10 million or more should be selected by the Member State concerned through a competitive bidding process on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments modernising <i>or diversifying</i> the energy sector in line with the Energy Union objectives, <i>including that of promoting the Third Energy Package</i>. Investments with a value of less than <i>EUR</i> 10 million should also be eligible for funding from the free allocation. The Member State concerned</p>	<p>(12) The <u>October 2014</u> European Council confirmed that the <b><u>option to give free allocation to the energy sector should continue up to 2030 and that the</u></b> modalities, including transparency, of the optional free allocation to modernise the energy sector in certain Member States should be improved. Investments with a value of <u>€15</u> million or more should be selected by the Member State concerned through a competitive bidding process on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments modernising the energy sector in line with the Energy Union objectives. Investments with a value of less than <u>€15</u> million should also be eligible for funding from the free allocation. The</p>	<p><b><u>See new compromise suggestion in the third column.</u></b></p> <p>Last part of the amendment: See compromise suggestions in recital 11a (new) and Article 10d(2a) (new).</p>



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>results of this selection process should be subject to public consultation. The public should be duly kept informed at the stage of the selection of investment projects as well as of their implementation.</p>	<p>should select such investments based on clear and transparent criteria. The selection process should be subject to public consultation <i>and the results of such selection process, including rejected projects, should be made publically available.</i> The public should be duly kept informed at the stage of the selection of investment projects as well as of their implementation. <i>Member States should have the possibility of transferring part of or all the corresponding allowances to the Modernisation Fund if they are eligible to use both instruments. The derogation should be terminated by the end of the trading period in 2030.</i></p>	<p>Member State concerned should select such investments based on clear and transparent criteria. The results of this selection process should be subject to public consultation. The public should be duly kept informed at the stage of the selection of investment projects as well as of their implementation.</p>	
<p><b>Amendment 18</b> <b>Recital 13</b></p>			
<p>(13) EU ETS funding should be coherent with other Union funding programmes, including European Structural and Investment Funds, so as to ensure the effectiveness of public spending.</p>	<p>(13) EU ETS funding should be coherent with other Union funding programmes, including <i>Horizon 2020, the European Fund for Strategic Investments</i>, European Structural and Investment Funds, <i>and the European Investment Bank (EIB) Climate Investment</i></p>	<p>(13) EU ETS funding should be coherent with <u>the objectives of the Union's 2030 climate and energy policy framework and the long-term objectives expressed in the Paris Agreement</u>, as well as other Union funding programmes, so as to ensure the effectiveness of public</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>Strategy</i> , so as to ensure the effectiveness of public spending.	spending.	
<b>Amendment 19</b> <b>Recital 14</b>			
(14) The existing provisions which are in place for small installations to be excluded from the EU ETS allow the installations which are excluded to remain so, and it should be made possible for Member States to update their list of excluded installations and for Member States currently not making use of this option to do so at the beginning of each trading period.	(14) The existing provisions which are in place for small installations to be excluded from the EU ETS <i>should be extended to cover installations operated by small to medium enterprises (SMEs) emitting less than 50 000 tonnes of CO2 equivalent in each of the three years preceding the year of the application for exclusion.</i> It should be made possible for Member States to update their list of excluded installations and for Member States currently not making use of this option to do so at the beginning of each trading period <i>and halfway through the period. It should also be possible for installations emitting less than 5 000 tonnes of CO2 equivalent in each of the three years preceding the beginning of each trading period to be excluded from the EU ETS, subject to revision every five years. Member States should ensure that alternative equivalent</i>	(14) The existing provisions which are in place for small installations to be excluded from the EU ETS allow the installations which are excluded to remain so, and it should be made possible for Member States to update their list of excluded installations and for Member States currently not making use of this option to do so at the beginning of each <u>allocation period. At the same time, to avoid undue administrative burden it should also be possible for installations emitting less than 1000 tonnes of CO<sub>2</sub> equivalent in each of the three years preceding the beginning of each allocation period and for reserve or backup units operating less than 300 hours in each year of that period to be excluded from the EU ETS. The possibility to include additional activities and gases in the system should continue, without these being considered to be new</u>	The first part of the EP amendment is not acceptable Technical change suggested to first sentence (see third column). Last part of the EP amendment: compromise suggested in third column (linked to new compromise suggestion in Article 27a).

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>measures for installations that have opted out do not result in higher compliance costs. Monitoring, reporting and verification requirements should be simplified for small emitters covered by the EU ETS.</i></p>	<p><u>entrants. This possibility for the inclusion of additional activities and gases after 2020 should be without prejudice to the Union-wide quantity of allowances under the ETS and amounts derived from it.</u></p>	
<b>Recital 15</b>			
<p>(15) The European Council of October 2014 agreed that 10% of the EU ETS allowances to be auctioned by Member States are to be distributed among certain Member States for the purpose of solidarity, growth and interconnections while the rest of the allowances are distributed among all Member States in shares that are identical to the shares applicable in 2013-20, including for Member States which joined the Union during this period. Member States with a GDP per capita below 90% of the Union average in 2013 should benefit from this solidarity and the corresponding Annex to this Directive should be updated accordingly. The derogation from contributions to this distribution in 2013-20 for certain Member States</p>		<p><u>[(15) integrated into recital 6]</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
with an average level of income per capita more than 20% higher than the average in the Union should expire.			
<b>Recital 16</b>			
(16) Decision (EU) 2015/... establishes a Market Stability Reserve for the EU ETS in order to make auction supply more flexible and make the system more resilient. This decision also provides for allowances not allocated to new entrants up to 2020 and not allocated because of cessations and partial cessations to be placed in the Market Stability Reserve.		(16) 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. This decision also provides for allowances not allocated to new entrants up to 2020 and not allocated because of cessations and partial cessations to be placed in the Market Stability Reserve.	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Recital 16 a (new)</b>			
		<p>(16a) <u>A well-functioning, reformed EU ETS with an instrument to stabilise the market is a key pillar for the EU to reach its agreed target for 2030 and the commitments under the Paris Agreement. To address the current imbalance between supply and demand of allowances in the market, a Market Stability Reserve will be established in 2018 and become operational as of 2019. 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. Furthermore, as a long-term measure to improve the functioning of the EU ETS, unless otherwise decided in the first review in accordance with Article 3 of Decision (EU) 2015/1814, as from 2023, allowances held in the</u></p>	<p><b><u>See new compromise proposal in the third column (start of limiting the validity of allowances in MSR)</u></b></p> <p>Last part of the recital (Council text) deleted (obsolete because not reflected in the Articles).</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		reserve above the total number of allowances auctioned during the previous year should no longer be valid. Regular reviews of the functioning of the reserve should also consider whether to maintain those increased rates [...].	
<b>Amendment 20 Recital 16 a (new)</b>			
	<i>(16a) In order to considerably reduce the administrative burden faced by companies, it should be left open to the Commission to consider measures such as automating the submission and verification of emissions reports, fully exploiting the potential of information and communication technologies.</i>		Covered by Council text in recital 18c
<b>Recital 16b (new)</b>			
		<b><u>(16b) The provisions of this Directive should be kept under review in the light of international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement. The measures to support certain energy intensive industries that may be subject to carbon leakage referred to in</u></b>	<b><u>First part of the recital moved from previous recital 2b. Includes also new compromise suggestions in relation to AM 144 and AM 137.</u></b>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><u>Articles 10a and 10b should also be kept under review in the light of climate policy measures in other major economies. In that context the review may consider whether it is appropriate to replace the existing measures to prevent carbon leakage with carbon border adjustments or alternative measures, provided that these are fully compatible with WTO rules, so as to include in the EU ETS importers of products which are produced by the sectors or sub-sectors determined in accordance with Article 10a. 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. The Commission may make a proposals to the European</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><b><u>Parliament and the Council to amend the Directive as appropriate. In this context, the Commission should also consider whether measures in relation to the compensation of indirect costs should be further harmonised. As part of its regular reporting under Regulation (EU) No 525/2013, the Commission should also assess the outcome of the 2018 Facilitative Dialogue.</u></b></p>	
<b>Recital 17</b>			
<p>(17) In order to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Article 3d(3), Article 10(4), Article 10a(1) and (8), Article 10b, Article 10d, Article 14(1), Article 15, Article 19(3), Article 22, Article 24, Article 24a and Article 25a of Directive 2003/87/EC. In order to reduce</p>		<p>(17) In order to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of a legislative act, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of Article 3d(3), Article 10(4), Article 10a(1) [...], Article 10b, [...] Article 19(3), Article 22, Article 24, [...] and Article 25a of Directive 2003/87/EC. [...]</p>	



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>delegations to the minimum, the existing powers in respect of the operation of the special reserve, for attributing quantities of international credits which may be exchanged and placing further standards for what may be exchanged and for further rules on double counting in Article 3f(9), Article 11a(9) and Article 11b(7) of Directive 2003/87/EC are deleted. Acts adopted pursuant to those provisions continue to apply. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council. As regards the delegation in respect of Article 10(4) of Directive 2003/87/EC, those Member States which do not use the common platform for auctioning may continue not to do so.</p>			

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Recital 17 a (new)</b>			
		<p><u>(17a) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. 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. As regards the delegation in respect of Article 10(4) of Directive 2003/87/EC, those Member States which do not use the common platform for auctioning may continue not to do so. The delegation should also not affect the Member States' right to determine the use of their auctioning revenues.</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Recital 17 b (new)</b>			
		<u>[...]</u>	<b><u>Deleted (duplication with recital 18a)</u></b>
<b>Recital 18</b>			
<p>(18) In order to ensure uniform conditions for the implementation of the third subparagraph of Article 10a(2) and Article 16(12) of Directive 2003/87/EC, implementing powers should be conferred on the Commission. Those necessary implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>7</sup>. In order to reduce implementing acts to the minimum, the existing power in Article 11a(8) of Directive 2003/87/EC in respect of further specifying quantities of international credits for exchange should be deleted. Acts adopted pursuant to that provision continue to apply.</p> <p><sup>7</sup> Regulation (EU) No 182/2011 of 16 February 2011 laying down the rules and general principles concerning mechanisms for control</p>		<p>(18) In order to ensure uniform conditions for the implementation of the third to <u>eighth</u> subparagraphs of Article 10a(2), <u>Article 10a(8)</u>, <u>Article 10a(21)</u>, <u>Article 10d</u>, <u>Article 14(1) and (2) and Annex IV</u>, <u>Article 15 and Annex V</u>, <u>Article 16 and Article 24a</u> of Directive 2003/87/EC, implementing powers should be conferred on the Commission. Those [...] implementing powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>7</sup>.</p> <p><sup>7</sup> Regulation (EU) No 182/2011 of 16 February 2011 laying down the rules and general principles concerning mechanisms for control</p>	

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by the Member States of the Commission's exercise of implementing powers, OJ L 55, 28.02.2011, p. 13.		by the Member States of the Commission's exercise of implementing powers, OJ L 55, 28.02.2011, p. 13.	
<b>Recital 18 a (new)</b>			
		<p><u>(18a) In order to reduce the empowerments to the Commission to the minimum, the existing powers in respect of the adopting of acts concerning the operation of the special reserve, for further specifying quantities of international credits for exchange, for attributing quantities of international credits which may be exchanged and placing further standards for what may be exchanged and for further rules on double counting in Article 3f(9), Article 11a(8), Article 11a(9) and Article 11b(7) of Directive 2003/87/EC should be deleted. Acts adopted pursuant to those provisions continue to apply.</u></p>	
<b>Recital 18 b (new)</b>			
		<p><u>(18b) Acts adopted pursuant to Directive 2003/87/EC concerning subject matters for which this Directive grants the Commission the power to adopt delegated or</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><u>implementing acts continue to apply until repealed or amended by the latter. In the case of Commission Decision 2011/278/EU, the last column of Annex I thereof will be repealed if and when the Commission adopts an implementing act for the purposes of determining the revised benchmark values for free allocation. In order to increase predictability and simplify administrative processes, Commission Decision 2014/746/EU should continue to apply until the end of the year 2020.</u></p>	
<p><b>Amendment 21</b> <b>Recital 17a (new)</b></p>			
	<p><i>(17a) The delegated acts referred to in Articles 14 and 15 should simplify the rules of monitoring, reporting and verification as far as possible in order to reduce red tape for operators. The delegated act referred to in Article 19(3) should facilitate access to and the use of the registry, especially for small operators.</i></p>	<p><u>(18c) 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 administrative burden to the extent possible, without undermining the environmental integrity, security or</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><u>reliability of the EU ETS. When preparing those acts, the Commission should in particular assess the effectiveness of simplified monitoring rules, including for emergency and backup electricity generation units, taking into account the operating hours per year, and for other small emitters, and the possibilities to further develop such rules.</u></p>	
<p>(19) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents<sup>8</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers, where appropriate, the transmission of such documents to be justified.</p> <p><sup>8</sup> OJ C 369, 17.12.2011, p. 14.</p>			

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>(20) This Directive seeks to contribute to the objective of a high level of environmental protection in accordance with the principle of sustainable development in the most economically efficient manner while providing installations adequate time to adapt and providing for more favourable treatment of specially affected persons in a proportionate manner to the maximum extent compatible with the other objectives of this Directive.</p>			
<p>(21) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.</p>			
<p>(22) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty of the European Union. In accordance</p>			

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<p>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,  <b>HAVE ADOPTED THIS DIRECTIVE:</b></p>			



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<b>Amendment 22</b> <b>Article 1 - Point - 1 (new)</b>			
<p><i>Article 1</i> <i>Amendments to Directive 2003/87/EC</i> Directive 2003/87/EC is amended as follows:</p>	<p><i>(-1) Throughout the Directive, the term 'Community scheme' is replaced by 'EU ETS' and any necessary grammatical changes are made.</i></p>	<p><u>(-1) Throughout the Directive, the word "Community" is replaced by "Union".</u></p>	<p>To be looked at by legal/linguistic experts.</p>
<b>Article 1 - Point -2 (new)</b>			
		<p><u>(-2) Throughout the Directive, the word "scheme" is replaced by "system".</u></p>	<p>To be looked at by legal/linguistic experts.</p>
<b>Amendment 23</b> <b>Article 1 - Point -1a (new)</b>			
	<p><i>(-1a) Throughout the Directive, the term 'Community-wide' is replaced by 'Union- wide'.</i></p>		<p>To be looked at by legal/linguistic experts.</p>

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<b>Amendment 24</b> <b>Article 1 - Point -1b (new)</b>			
	<i>(-1b) Throughout the Directive, except in the cases referred to in points (-1) and (-1a) and in Article 26(2), the term 'Community' is replaced by 'Union' and any necessary grammatical changes are made.</i>		To be looked at by legal/linguistic experts.
<b>Amendment 25</b> <b>Article 1 - Point -1c (new)</b>			
	<i>(-1c) Throughout the Directive, the words 'regulatory procedure referred to in Article 23(2)' are replaced by the words 'examination procedure referred to in Article 30c(2)'.</i>		To be looked at by legal/linguistic experts in first instance.
<b>Amendment 26</b> <b>Article 1 - Point -1d (new)</b>			
	<i>(-1d) In Article 3g, in point (d) of Article 5(1), in point (c) of Article 6(2), in the second subparagraph of Article 10a(2), in Article 14(2), (3) and (4), in Article 19(1) and (4) and in Article 29a(4) the word 'regulation' is replaced by the word 'act' and any necessary grammatical changes are made.</i>		To be looked at by legal/linguistic experts.

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<b>Amendment 28</b> <b>Article 1 - Point -1f (new)</b> Directive 2003/87/EC - Article 3 - point h			
	<p><i><b>(-1f) In Article 3, point (h) is replaced by the following:</b></i></p> <p>'(h) 'new entrant' means:            - any installation carrying out one or more of the activities indicated in Annex I, which has obtained a greenhouse gas emissions permit for the first time after 30 June <b>2018</b>,            - any installation carrying out an activity which is included in the <b>Union</b> scheme pursuant to Article 24(1) or (2) for the first time, or            - any installation carrying out one or more of the activities indicated in Annex I or an activity which is included in the <b>Union</b> scheme pursuant to Article 24(1) or (2), which has had a significant extension after 30 June <b>2018</b>, only in so far as this extension is concerned;'</p>	<p><u>(0) In Article 3, point (h) is replaced by the following:</u></p> <p><u>"(h) 'new entrant' means:</u>            - <u>any installation carrying out one or more of the activities indicated in Annex I, which has obtained a greenhouse gas emissions permit for the first time within the period from 3 months before the date for submission of the list under Article 11(1), until 3 months before the date for the submission of the subsequent list under that Article [...].</u>  <u>[...]</u></p>	<p>EP can accept Council text.</p>

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<b>Amendment 29</b> <b>Article 1 - Point -1g (new)</b> <b>Article 3 - point ua (new)</b>			
	<p><i><b>(-1g) In Article 3, the following point is added:</b></i></p> <p><i><b>'(ua) 'small emitter' means an installation with low emissions which is operated by a small or medium-sized enterprise<sup>1a</sup> and that meets at least one of the following criteria:</b></i></p> <ul style="list-style-type: none"> <li><i><b>– the average annual verified emissions of that installation reported to the relevant competent authority during the trading period immediately preceding the current trading period, with the exclusion of CO2 stemming from biomass and before any subtraction of transferred CO2, is less than 50 000 tonnes of carbon dioxide equivalent per year;</b></i></li> <li><i><b>– the average annual emissions data referred to in the first indent are not available in relation to that installation or are no longer applicable to that installation because of changes in the installation's boundaries or changes to the operating</b></i></li> </ul>		Not acceptable

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	<p><i>conditions of the installation, but the annual emissions of that installation for the following five years, with the exclusion of CO2 stemming from biomass and before subtraction of transferred CO2, are expected to be less than 50 000 tonnes of carbon dioxide equivalent per year.'</i></p> <hr/> <p><i>1a As defined in Annex of recommendation 2003/361/EC</i></p>		
<p><b>Amendment 30</b>  <b>Article 1 - Point -1h (new)</b>  Article 3c - paragraph 2</p>			
	<p><i><b>(-1h) In Article 3c, paragraph 2 is replaced by the following:</b></i></p> <p>2. For the period referred to in Article 13 beginning on 1 January 2013, and, in the absence of any amendments following the review referred to in Article 30(4), for each subsequent period, the total quantity of allowances to be allocated to aircraft operators shall be equivalent to 95 % of the historical aviation emissions multiplied by the number of years in the period.</p> <p><i><b>The total quantity of allowances to</b></i></p>		<p>The institutions agree to consider AMs 30-35 under the ETS aviation proposal.</p>

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	<p><i>be allocated to aircraft operators in 2021 shall be 10% lower than the average allocation for the period from 1 January 2014 to 31 December 2016, and then decrease annually at the same rate as that of the total cap for the EU ETS referred to in the second subparagraph of Article 10(1) so as to bring the cap for the aviation sector more in line with the other EU ETS sectors by 2030.</i></p> <p><i>For aviation activities to and from aerodromes located in countries outside the EEA, the quantity of allowances to be allocated from 2021 onwards may be adjusted taking into account the future global market-based mechanism agreed by the International Civil Aviation Organisation (ICAO) in its 39th assembly. By 2019, the Commission shall present a legislative proposal to the European Parliament and the Council concerning those activities following the 40th assembly of the ICAO.</i></p> <p>This percentage may be reviewed as part of the general review of this</p>		

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	Directive.'		
<b>Amendment 31</b> <b>Article 1 - Point -1i (new)</b> Article 3c - paragraph 4			
	<i>(-1i) In Article 3c(4), the last sentence is replaced by the following:</i> That decision shall be considered within the Committee referred to in Article <b>30c(1)</b> .		The institutions agree to consider AMs 30-35 under the ETS aviation proposal.
<b>Amendment 32</b> <b>Article 1 - Point -1j (new)</b> Article 3d - paragraph 2			
	<i>(-1j) In Article 3d, paragraph 2 is replaced by the following:</i> '2. From 1 January <b>2021</b> , 50 % of allowances shall be auctioned.'		The institutions agree to consider AMs 30-35 under the ETS aviation proposal.
<b>Amendment 33</b> <b>Article 1 Point 1</b> Article 3d - paragraph 3			
(1) In Article 3d(3), the second subparagraph is replaced by the following:  “The Commission shall be empowered to adopt a delegated act in accordance with Article 23”.	(1) In Article <b>3d, paragraph 3</b> is replaced by the following:  <b>'3. The Commission is empowered to adopt delegated acts in accordance with Article 30b to supplement this Directive by laying down detailed arrangements for the auctioning</b>	“The Commission shall be empowered to adopt [...] delegated acts in accordance with Article 23 to <u>supplement this directive concerning the detailed arrangements for the auctioning by</u>	The institutions agree to consider AMs 30-35 under the ETS aviation proposal.

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	<p><i>by Member States of allowances not required to be issued free of charge in accordance with paragraphs 1 and 2 of this Article or Article 3f(8). The number of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For the period referred to in Article 3c(1), the reference year shall be 2010 and for each subsequent period referred to in Article 3c the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates.'</i></p>	<p><u>Member States of aviation allowances in accordance with paragraphs 1 and 2 of this Article or Article 3f (8). The number of allowances to be auctioned in each period by each Member State shall be proportionate to its share of the total attributed aviation emissions for all Member States for the reference year reported pursuant to Article 14(3) and verified pursuant to Article 15. For the period referred to in Article 3c(1), the reference year shall be 2010 and for each subsequent period referred to in Article 3c the reference year shall be the calendar year ending 24 months before the start of the period to which the auction relates. The delegated act shall ensure the respect of the principles set out by Article 10 (4) subparagraph 1."</u></p>	
<p><b>Amendment 34</b>  <b>Article 1 Point 1a (new)</b>  Article 3d - paragraph 4 - subparagraph 1</p>			
	<p><i>(1a) In Article 3d(4), the first subparagraph is replaced by the following:</i>  '4. All revenues <i>shall</i> be used to tackle climate change in the</p>		<p>The institutions agree to consider AMs 30-35 under the ETS aviation proposal.</p>



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	<p>Union and third countries, inter alia, to reduce greenhouse gas emissions, to adapt to the impacts of climate change in the Union and third countries, especially developing countries, to fund research and development for mitigation and adaptation, including in particular in the fields of aeronautics and air transport, to reduce emissions through low-emission transport and to cover the cost of administering the <i>Union</i> scheme. The proceeds of auctioning <i>may</i> also be used to fund contributions to the Global Energy Efficiency and Renewable Energy Fund, and measures to avoid deforestation.'</p>		
<p><b>Amendment 35</b>  <b>Article 1 Point 1b</b>  Article 3e - paragraph 1a (new)</p>			
	<p><i>(1b) In Article 3e, the following paragraph is added:  '1a. From 2021 onwards, no free allocation of allowances under this Directive shall be granted to the aviation sector unless it is confirmed by a subsequent decision adopted by the European</i></p>		<p>The institutions agree to consider AMs 30-35 under the ETS aviation proposal.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>Parliament and the Council, since ICAO Resolution A-39/3 envisages that a global market-based measure is to apply from 2021. In that respect, the co-legislators shall take into account the interaction between that market-based measure and the EU ETS.'</i>		
<b>Article 1 - paragraph 2</b>			
(2) In Article 3f, paragraph (9) is deleted.			
<b>Amendment 36</b> <b>Article 1 Point 2a (new)</b> <b>Chapter II a (new)</b>			
	<p><i>(2a) The following Chapter is inserted:</i></p> <p style="text-align: center;"><b>'CHAPTER IIa</b> <b>Inclusion of shipping in the absence of progress at international level</b> <b>Article 3ga</b> <b>Introduction</b></p> <p><i>As from 2021, in the absence of a comparable system operating under the IMO, CO2 emissions emitted in Union ports and during voyages to and from Union ports of call, shall be accounted for through the system set out in this</i></p>		Not acceptable as such. See compromise suggestions in recital 2c (third column).

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>Chapter, to be operational from 2023.</i></p> <p><i>Article 3gb Scope</i></p> <p><i>By 1 January 2023, the provisions of this Chapter shall apply to the allocation and issue of allowances in respect of CO2 emissions from ships within, arriving at or departing from ports under the jurisdiction of a Member State in accordance with the provisions laid down in Regulation (EU) 2015/757. Articles 12 and 16 shall apply to maritime activities in the same manner as to other activities.</i></p> <p><i>Article 3gc Extra allowances for maritime sector</i></p> <p><i>By 1 August 2021, the Commission shall adopt delegated acts in accordance with Article 30b in order to supplement this Directive by setting the total quantity of allowances for the maritime sector in line with other</i></p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>sectors, the method of allocation of allowances for that sector through auctioning and the special provisions with regard to the administering Member State. When the maritime sector is included in the EU ETS, the total amount of allowances shall be increased by that amount.</i></p> <p><i>20% of the revenues generated from the auctioning of allowances referred to in Article 3gd shall be used through the fund established under that Article ('Maritime Climate Fund') to improve energy efficiency and support investments in innovative technologies to reduce CO2 emissions in the maritime sector, including short sea shipping and ports.</i></p> <p><i>Article 3gd Maritime Climate Fund 1. A fund aimed at compensating for maritime emissions, improving energy efficiency and facilitating investments in innovative technologies to reduce CO2 emissions of the maritime sector</i></p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>shall be established at Union level.</i></p> <p><i>2. Ship operators may pay, on a voluntary basis, an annual membership contribution to the fund in accordance with their total emissions reported for the preceding calendar year under Regulation (EU) 2015/757. By way of derogation from Article 12(3), the fund shall surrender allowances collectively on behalf of ship operators which are members of the fund. The contribution per tonne of emissions shall be set by the fund by 28 February each year, and shall not be less than the level of the market price for allowances in the preceding year.</i></p> <p><i>3. The fund shall acquire allowances equal to the collective total quantity of emissions of its members during the preceding calendar year and surrender them in the registry established under Article 19 by 30 April each year for subsequent cancellation. Contributions shall be made</i></p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>public.</i></p> <p><i>4. The fund shall also improve energy efficiency and facilitate investments in innovative technologies to reduce CO2 emissions in the maritime sector, including short sea shipping and ports, through the revenues referred to in Article 3gc. All investments supported by the fund shall be made public and be consistent with the aims of this Directive.</i></p> <p><i>5. The Commission is empowered to adopt a delegated act in accordance with Article 30b to supplement this Directive concerning the implementation of this Article.</i></p> <p style="text-align: center;"><i>Article 3ge International cooperation</i></p> <p><i>In the event that an international agreement on global measures to reduce greenhouse gas emissions from maritime transport is reached, the Commission shall</i></p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>review this Directive and shall, if appropriate, propose amendments in order to ensure alignment with that international agreement.'</i>		
<b>Article 1 Point 2a (new)</b> Article 6 - paragraph 1 - subparagraph 3			
		(2a) In Article 6(1), the third subparagraph is deleted.	
<b>Amendment 37</b> <b>Article 1 Point 2b (new)</b> Article 5 - subparagraph 1 - point da (new)			
	<i>(2b) In Article 5, subparagraph 1, the following point is added: '(da) all CCU technologies that will be used in the installation in order to help reduce emissions',</i>		Not necessary (covered by existing Article 5).
<b>Amendment 38</b> <b>Article 1 Point 2c (new)</b> Article 6 - paragraph 2 - points ea and eb (new)			
	<i>(2c) In Article 6(2), the following points are added: '(ea) all legal requirements on social responsibility and reporting in order to ensure equal and effective implementation of environmental regulations and ensure that competent authorities and stakeholders, including workers' representatives, representatives of civil society and</i>		Not appropriate in the context of greenhouse gas emission permit.

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	<p><i>local communities, have access to all relevant information, as laid down in the Aarhus Convention and implemented in Union and national law, including this Directive;</i></p> <p><i>(eb) an obligation to publish every year comprehensive information in respect of combating climate change and compliance with Union directives in the field of the environment, health and safety at work; that information shall be accessible to workers' representatives and to the representatives of civil society from local communities in the vicinity of the installation.'</i></p>		
<p><b>Amendment 39</b>  <b>Article 1 Point 2d (new)</b>  Article 7</p>			
	<p><i>(2d) Article 7 is replaced by the following:</i></p> <p style="padding-left: 40px;"><i>'Article 7</i></p> <p><i>Without undue delay, the operator shall inform the competent authority of any planned changes to the nature or functioning of the installation, or any extension or</i></p>		The amendment is not necessary



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p>significant reduction of its capacity, which may require updating the greenhouse gas emissions permit. Where appropriate, the competent authority shall update the permit. Where there is a change in the identity of the installation's operator, the competent authority shall update the permit <i>with the relevant identity and contact information</i> of the new operator.'</p>		
<p><b>Article 1 Point 2b (new)</b> Article 8</p>			
		<p>(2b) [...] <u>Article 8 is replaced by the following:</u>  <u>"Article 8</u>  <u>Coordination with Directive 2010/75/EU of the European Parliament and of the Council (*)</u>  <u>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 of, and procedure for, the issue of a greenhouse gas emissions permit are coordinated with those for the permit provided for in that Directive. The requirements of</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><u>Articles 5, 6 and 7 of this Directive may be integrated into the procedures provided for in Directive 2010/75/EU.</u></p> <p><u>(*) Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17) ."</u></p>	
<p><b>Amendment 142</b> <b>Article 1 Point 3</b> Article 9 - paragraphs 2 and 3</p>			
<p>(3) In Article 9, the second and third paragraphs are replaced by the following:</p> <p>"Starting in 2021, the linear factor shall be 2.2%."</p>	<p>Starting in 2021, the linear factor shall be <i>2,2% and shall be kept under review with a view to increasing it to 2,4% by 2024 at the earliest.</i></p>	<p>"Starting in 2021, the linear factor shall be 2,2%."</p>	<p>See compromise suggestions in Article 30.</p>
<p><b>Amendment 41</b> <b>Article 1 Point 4 - point a</b> Article 10 - paragraph 1 - subparagraph 1</p>			
<p>(4) Article 10 is amended as follows: (a) three new subparagraphs are added to paragraph 1:</p>	<p><i>(a) paragraph 1 is replaced by the following:</i></p>	<p>(a) [...] paragraph 1 <u>is replaced by the following:</u></p>	<p>See compromise suggestion in third column (adding reference to Article 12(4) to existing paragraph 1 of ETS Directive. See also suggested</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>'1. From 2019 onwards, Member States shall either auction or cancel allowances that are not allocated free of charge in accordance with Articles 10a and 10c and are not placed in the MSR.'</i>	<u>"1. From 2019 onwards, Member States shall auction all allowances that are not allocated free of charge in accordance with Articles 10a and 10c and that are not placed in the market stability reserve established by Decision (EU) 2015/1814 of the European Parliament and of the Council or cancelled in accordance with Article 12(4)."</u>	changes to Article 12(4) and compromise suggested in recital 6a (new). See also EP 58.
<b>Amendment 42</b> <b>Article 1 Point 4 - point a</b> Article 10 - paragraph 1 - subparagraph 2			
"From 2021 onwards, the share of allowances to be auctioned by Member States shall be 57%.	From 2021 onwards, the share of allowances to be auctioned <i>or cancelled</i> shall be 57%, <i>and that share shall decrease by no more than five percentage points over the entire ten year period beginning on 1 January 2021 pursuant to Article 10a(5). Such an adjustment shall take place solely in the form of a reduction in allowances auctioned pursuant to point (a) of the first subparagraph of paragraph 2. Where no adjustment occurs, or where less than five percentage points are required to make an adjustment, the remaining quantity of</i>	<u>"From 2021 onwards, and without prejudice to a possible reduction pursuant to Article 10a(5a), the share of allowances to be auctioned [...] shall be 57%.</u>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>allowances shall be cancelled. Such cancellation shall not exceed 200 million allowances.</i>		
<b>Amendment 43</b> <b>Article 1 Point 4 - point a</b> Article 10 - paragraph 1 - subparagraph 3			
2% of the total quantity of allowances between 2021 and 2030 shall be auctioned to establish a fund to improve energy efficiency and modernise the energy systems of certain Member States as set out in Article 10d of this Directive (“the Modernisation Fund”).	2% of the total quantity of allowances between 2021 and 2030 shall be auctioned <i>in order</i> to establish a fund to improve energy efficiency and modernise the energy systems of certain <i>Member States</i> as set out in Article 10d of this Directive (“the Modernisation Fund”). <i>The quantity set out in this subparagraph shall form part of the 57% share of allowances to be auctioned as set out in the second subparagraph.</i>		
<b>Amendment 44</b> <b>Article 1 Point 4 - point a</b> Article 10 - paragraph 1 - subparagraph 3a (new)			
	<i>(3a) In addition, 3% of the total quantity of allowances to be issued between 2021 and 2030 shall be auctioned in order to compensate sectors or sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs actually incurred as</i>		Not acceptable

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>a result of greenhouse gas emission costs being passed on in electricity prices as set out in Article 10a(6) of this Directive. Two thirds of the quantity set out in this subparagraph shall form part of the 57% share of allowances to be auctioned as referred to in the second subparagraph.</i></p>		
<p><b>Amendment 45</b>  <b>Article 1 Point 4 - point a</b>  Article 10 - paragraph 1 - subparagraph 3b (new)</p>			
	<p><i>(3b) A Just Transition Fund shall be created as of 1 January 2021 as a complement to the European Regional Development Fund and the European Social Fund and shall be funded through the pooling of 2% of the auctioning revenues.</i></p> <p><i>The revenues of those auctions shall remain at Union level, and shall be used to support regions which combine a high share of workers in carbon-dependent sectors and a GDP per capita well below the Union average. Such measures shall respect the</i></p>		<p>The amendment is not acceptable. Linked to AM 11 - recital 6.</p> <p>See compromise suggestions in recital 9 and Article 10(3) (l).</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>principle of subsidiarity.</i></p> <p><i>Those auctioning revenues aimed at just transition may be put to use in different ways, such as:</i></p> <ul style="list-style-type: none"> <li><i>- creating redeployments and/or mobility cells,</i></li> <li><i>- education/training initiatives to re-skill or upskill workers,</i></li> <li><i>- support in job-seeking,</i></li> <li><i>- business creation, and</i></li> <li><i>- monitoring and pre-emptive measures to avoid or minimise the negative impact of the restructuring process on physical and mental health.</i></li> </ul> <p><i>Since the core activities to be financed by a Just Transition Fund are strongly related to the labour market, social partners shall be actively involved in the fund management in a manner based on the model of the European Social Fund committee and the participation of local social partners shall be a key requirement for projects to get funding.</i></p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 46</b> <b>Article 1 Point 4 - point a</b> Article 10 - paragraph 1 - subparagraph 4			
The total remaining quantity of allowances to be auctioned by Member States shall be distributed in accordance with paragraph 2."	The total remaining quantity of allowances to be auctioned by Member States, <i>after deducting the quantity of allowances referred to in the first subparagraph of Article 10a(8)</i> shall be distributed in accordance with paragraph 2.		Not acceptable
<b>Amendment 47</b> <b>Article 1 Point 4 - point a</b> Article 10 - paragraph 1 - subparagraph 4a (new)			
	<i>(4a) On 1 January 2021, 800 million allowances placed in the MSR shall be cancelled.</i>		Not acceptable
<b>Amendment 48</b> <b>Article 1 Point 4 - point b - point ii</b> Article 10 - paragraph 2 - point b			
(b) paragraph 2 is amended as follows: (i) in point (a), "88%" is replaced by "90%"; (ii) point (b) is replaced by the following: "(b) 10% of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity and growth within the	(b) 10% of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity and growth within the Community,	"(b) 10% of the total quantity of allowances to be auctioned being distributed amongst certain Member States for the purpose of solidarity, growth	Amendment not acceptable as such because discriminatory against certain Member States.  See compromise suggestion in Article 10d(2a) (new).

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>Community, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa."; and</p> <p>(iii) point (c) is deleted; (iv) the third subparagraph is replaced by the following: "If necessary, the percentage referred to in point (b) shall be adapted in a proportional manner to ensure that the distribution is 10%."</p>	<p>thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa. <i>For those Member States eligible to benefit from the Modernisation Fund as set out in Article 10d, their share of allowances specified in Annex IIa shall be transferred to their share in the Modernisation Fund.</i></p>	<p><u>and interconnections</u> within the <u>Union</u>, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa."; [...]</p>	



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 49</b> <b>Article 1 Point 4 - point ba (new)</b> Article 10 - paragraph 3 - introductory part			
	<p><i>(ba) in paragraph 3, the introductory part is replaced by the following:</i></p> <p>'3. Member States shall determine the use of revenues generated from the auctioning of allowances. <b>100%</b> of the <b>total</b> revenues generated from the auctioning of allowances referred to in paragraph 2 or the equivalent in financial value of these revenues, <b>shall</b> be used for one or more of the following:'</p>		Not acceptable
<b>Amendment 50</b> <b>Article 1 Point 4 - point bb (new)</b> Article 10 - paragraph 3 - point b			
	<p><i>(bb) in paragraph 3, point (b) is replaced by the following:</i></p> <p>'(b) to develop renewable energies to meet the commitment of the <b>Union to</b> renewable energies by <b>2030</b>, as well as to develop other technologies contributing to the transition to a safe and sustainable low- carbon economy and to help meet the commitment of the <b>Union</b> to increase energy efficiency by <b>2030 at the levels agreed in</b></p>	<p><u>in paragraph 3, point (b) is replaced by the following:</u></p> <p><u>"(b) to develop renewable energies to meet the commitment of the Union to [...] renewable energies, as well as to develop other technologies contributing to the transition to a safe and sustainable low- carbon economy and to help meet the commitment of the Union to increase energy efficiency, at the levels agreed in appropriate</u></p>	See compromise suggestion in the third column, which takes the EP amendment partly on board.

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>appropriate legislative acts;</i> '	<u>legislative acts;</u> "	
<b>Amendment 51</b> <b>Article 1 Point 4 - point bc (new)</b> Article 10 - paragraph 3 - point f			
	<i>(bc) in paragraph 3, point (f) is replaced by the following:</i> '(f) to encourage a shift to low emission and public forms of transport <b>and support - as long as CO2 costs are not similarly reflected for other surface transport modes - electrified transport modes such as railways or other electrified surface transport modes taking into account their indirect EU ETS costs;'         </b>		Not acceptable
<b>Amendment 52</b> <b>Article 1 Point 4 - point bd (new)</b> Article 10 - paragraph 3 - point h			
	<i>(bd) in paragraph 3, point (h) is replaced by the following:</i> '(h) measures intended to increase energy efficiency, <b>district heating systems</b> and insulation or to provide financial support in order to address social aspects in lower and middle income households;'	<u>in paragraph 3, point (h) is replaced by the following:</u> <u>"(h) measures intended to increase energy efficiency, district heating systems and insulation or to provide financial support in order to address social aspects in lower and middle income households;"</u>	The amendment is acceptable.

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Article 1 Point 4 - point c</b> Article 10 - paragraph 3j			
(c) in paragraph 3, the following points (j), (k) and (l) are added:		(c) in paragraph 3, the following points [...] are added:	
<b>Amendment 53</b> <b>Article 1 Point 4 - point c</b> Article 10 - paragraph 3 - point j			
"(j) to fund financial measures in favour of sectors or subsectors that are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, provided that these measure meet the conditions set out in Article 10a(6);  (k) for climate financing actions in vulnerable third countries, including adaptation to the impacts of climate change;	(j) to fund financial measures in favour of sectors or subsectors that are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, provided that <i>not more than 20% of revenues are used for this purpose, and that</i> these measures meet the conditions set out in Article 10a(6);	(j) [...] ( <i>deleted</i> )	Indirect costs addressed in Article 10a(6)

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 54</b> <b>Article 1 Point 4 - point c</b> Article 10 - paragraph 3 - point l			
(l) to promote skill formation and reallocation of labour affected by the transition of jobs in a decarbonising economy in close coordination with the social partners."	(l) to <i>address the social impact of the decarbonisation of their economies and</i> promote skill formation and reallocation of labour affected by the transition of jobs in close coordination with the social partners.	(l) to promote skill formation and reallocation of labour [...] in order to contribute to a <u>just transition to a low carbon economy, in particular in regions most affected by the transition of jobs</u> , in close coordination with the social partners;	See compromise suggestion in third column
<b>Amendment 55</b> <b>Article 1 Point 4 - point ca (new)</b> Article 10 - paragraph 3 - subparagraph 1a (new)			
	<i>(ca) in paragraph 3, the following subparagraph is inserted:            'This information shall be provided through a standardised template prepared by the Commission, including information on the use of auctioning revenues for the different categories and the additionality of the use of the funds. The Commission shall make this information public on its website.'</i>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 56</b> <b>Article 1 Point 4 - point cb (new)</b> Article 10 - paragraph 3 - subparagraph 2			
	<p><i>(cb) in paragraph 3, the second subparagraph is replaced by the following:</i></p> <p>'Member States shall be deemed to have fulfilled the provisions of this paragraph if they have in place and implement fiscal or financial support policies, including in particular in developing countries, or domestic regulatory policies, which leverage <b>additional</b> financial support, established for the purposes set out in the first subparagraph and which have a value equivalent to <b>100%</b> of the revenues generated from the auctioning of allowances referred to in paragraph 2 <b>and have reported those policies in a standardised template provided by the Commission.</b>'</p>		Not acceptable
<b>Amendment 57</b> <b>Article 1 Point 4 - point d</b> Article 10 - paragraph 4 - subparagraphs 1, 2 and 3			
(d) the third subparagraph of paragraph 4 is replaced by the following:	(d) <i>in paragraph 4, the first, second and third subparagraphs are</i> replaced by the following:	(d) [...] in paragraph 4 <u>the first subparagraph and the first sentence of the second subparagraph are</u>	To be looked at by legal/linguistic experts in first instance.

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>"The Commission shall be empowered to adopt a delegated act in accordance with Article 23."</p>	<p>'4. The Commission <i>is</i> empowered to adopt delegated <i>acts</i> in accordance with Article 30<i>b</i> to <i>supplement this Directive by laying down detailed arrangements for timing, administration and other aspects of auctioning to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner. To this end, the process shall be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available. Where an assessment concludes in relation to the individual industrial sectors that no significant impact on sectors or subsectors exposed to a significant risk of carbon leakage is to be expected, the Commission may, in exceptional circumstances, adapt the timetable for the period referred to in Article 13(1) beginning on 1 January 2013 so as to ensure the orderly functioning of the market. The Commission shall make no more</i></p>	<p>replaced by the following: "4. The Commission shall be empowered to adopt [...] delegated acts in accordance with Article 23 to supplement this Directive <u>concerning the timing, administration and other aspects of auctioning to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner. To this end, the process shall be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available.</u> <u>Those delegated acts shall ensure that auctions are designed to ensure that:"</u></p>	<p>Delegated/implementing acts to be discussed</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>than one such adaptation for a maximum number of 900 million allowances.</i></p> <p><i>Auctions shall be designed to ensure that:</i></p> <p><i>(a) operators, and in particular any SMEs covered by the EU ETS, have full, fair and equitable access;</i></p> <p><i>(b) all participants have access to the same information at the same time and that participants do not undermine the operation of the auction;</i></p> <p><i>(c) the organisation and participation in auctions is cost-efficient and undue administrative costs are avoided; and</i></p> <p><i>(d) small emitters have access to allowances.'</i></p>		
<p><b>Amendment 58</b></p> <p><b>Article 1 Point 4 - point da (new)</b></p> <p>Article 10 - paragraph 4 - subparagraph 4a (new)</p>			
	<p><i>(da) in paragraph 4, the following subparagraph is added:</i></p> <p><i>'Every two years Member States shall report to the Commission the closure of electricity generation in their territory capacity due to</i></p>		<p>See compromise suggestions in Article 10(1), Article 12 (4) and recital 6a(new)</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>national measures. The Commission shall calculate the equivalent number of allowances that those closures represent and inform the Member States. Member States may cancel a corresponding volume of allowances out of the total quantity distributed in accordance with paragraph 2.'</i></p>		
<p><b>Amendment 59</b>  <b>Article 1 Point 4 - point db (new)</b>  Article 10 - paragraph 5</p>			
	<p><i>(db) paragraph 5 is replaced by the following:</i>  '5. The Commission shall monitor the functioning of the <i>EU ETS</i>. Each year, it shall submit a report to the European Parliament and to the Council on <i>its</i> functioning including the implementation of the auctions, liquidity and the volumes traded. <i>The report shall also address the interaction of the EU ETS with other Union climate and energy policies, including how those policies impact upon the supply-demand balance of the EU ETS and their compliance with the Union's 2030 and 2050 climate</i></p>	<p>(4a) In paragraph 5, the second sentence is replaced by the following:  "<u>Each year, it shall submit a report to the European Parliament and to the Council on the functioning of the carbon market and other relevant climate and energy policies, including the implementation of the auctions, liquidity and the volumes traded, and summarising the information provided by Member States on the financial measures referred to in Article 10a(6).</u>"</p>	<p>See compromise suggestion in third column.   See also comments to AM 136.</p>



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>and energy goals. The report shall also take into account the risk of carbon leakage and the impact on investment within the Union.</i></p> <p>Member States shall ensure that any relevant information is submitted to the Commission at least two months before the Commission adopts the report.'</p>		
<p><b>Amendment 60</b>  <b>Article 1 - Point 5 - point a</b>  Article 10a - paragraph 1 - subparagraphs 1 and 2</p>			
<p>(5) Article 10a is amended as follows:  (a) the second paragraph of paragraph 1 is replaced by the following:</p> <p>"The Commission shall be empowered to adopt a delegated act in accordance with Article 23. This act shall also provide for additional allocation from the new entrants reserve for significant production increases by applying the same thresholds and allocation adjustments as apply in respect of partial cessations of operation."</p>	<p>(a) <i>in paragraph 1, the first and second subparagraphs are</i> replaced by the following:</p> <p><b><i>1.</i></b> The Commission <i>is</i> empowered to adopt a delegated act in accordance with <b><i>30b to supplement this Directive by setting Union-wide and fully harmonised measures for the allocation of the allowances referred to in paragraphs 4, 5 and 7, including any necessary provisions for a harmonised application of paragraph 19.</i></b> This act shall also provide for additional allocation</p>	<p>(a) The <b><u>first and second</u></b> subparagraphs of paragraph 1 <b>are</b> replaced by the following:</p> <p>"The Commission shall be empowered to adopt delegated acts in accordance with Article 23 <u>to supplement this Directive concerning the Union-wide and fully-harmonised rules for the allocation of the allowances referred to in paragraphs 4, 5, 7 and 19 of this Article.</u>"</p>	<p>Delegated/implementing acts to be discussed.</p> <p>Rolling average provisionally agreed.</p> <p>Linked to compromise suggestions in recital 8a and Art. 10a(21) (k)</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p>from the new entrants reserve for significant production <i>changes. It shall, in particular, provide that any decrease or increase of at least 10% in production expressed as a rolling average of verified production data for the two preceding years compared to the production activity reported in accordance with Article 11 is adjusted with a corresponding amount of allowances by placing allowances into, or releasing them from, the reserve referred to in paragraph 7.</i></p> <p><i>When preparing the delegated act referred to in the first subparagraph, the Commission shall take into account the need to limit administrative complexity and prevent gaming of the system. For that purpose it may, as appropriate, use flexibility in the application of the thresholds set out in this paragraph where justified to do so due to specific circumstances. '</i></p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 61</b> <b>Article 1 Point 5 - point aa (new)</b> Article 10a - paragraph 1 - subparagraph 3			
	<p><i>(aa) in paragraph 1, the third subparagraph is replaced by the following:</i></p> <p>'The measures referred to in the first subparagraph shall, to the extent feasible, determine <b>Union</b>-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, <b>CCS and CCU</b>, where such facilities are available, and shall not provide incentives to increase emissions. No free allocation shall be made in respect of any electricity production, except for cases falling within Article 10c and electricity produced from waste gases.'</p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 62</b> <b>Article 1 Point 5 - point b</b> Article 10a - paragraph 2 - subparagraph 3 - introductory part			
<p>(b) a new third subparagraph is added to paragraph 2 as follows:            "The benchmark values for free allocation shall be adjusted in order to avoid windfall profits and reflect technological progress in the period between 2007-8 and each later period for which free allocations are determined in accordance with Article 11(1). This adjustment shall reduce the benchmark values set by the act adopted pursuant to Article 10a by 1% of the value that was set based on 2007-8 data in respect of each year between 2008 and the middle of the relevant period of free allocation, unless:</p>	<p>(b) a new third subparagraph is added to paragraph 2 as follows:  <b><i>The Commission is empowered to adopt delegated acts in accordance with Article 30b to supplement this Directive for the purpose of determining the revised benchmark values for free allocation. Those acts shall be in accordance with the delegated acts adopted pursuant to paragraph 1 of this Article and shall comply with the following:</i></b></p>	<p>(b) <u>the following subparagraphs are added to paragraph 2 [...]:</u>  <u>"The Commission shall adopt implementing acts for the purposes of determining the revised benchmark values for free allocation. Those acts shall be in accordance with the delegated acts adopted pursuant to paragraph 1 of this Article and shall comply with the following:</u></p>	<p>EP tentatively accepts Council structure. Thresholds and implementing/delegated acts to be discussed.</p>
<b>Amendment 63</b> <b>Article 1 Point 5 - point b</b> Article 10a - paragraph 2 - subparagraph 3 - point - - i (new)			
	<p><b><i>(-i) For the period from 2021 to 2025, the benchmark values shall be determined on the basis of information submitted pursuant to Article 11 for the years 2016-2017;</i></b></p>	<p><u>(a) For the period from 2021 to 2025, the benchmark values shall be determined on the basis of information submitted pursuant to Article 11 for the years 2016-2017.</u></p>	<p>Identical</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 64</b> <b>Article 1 Point 5 - point b</b> Article 10a - paragraph 2 - subparagraph 3 - point - - i a(new)			
	<p><i>(-ia) On the basis of a comparison of the benchmark values based on this information with the benchmark value contained in Commission Decision 2011/278, the Commission shall determine the annual reduction rate for each benchmark and apply it to the benchmark values applicable in the period 2013-2020 in respect of each year between 2008 and 2023 to determine the benchmark values for the years 2021- 2025;</i></p>	<p><u>On the basis of a comparison of the benchmark values based on this information with the benchmark value contained in Commission Decision 2011/278, as adopted on 27 April 2011 (*), the Commission shall determine the annual reduction rate for each benchmark and apply it to the benchmark values applicable in the period 2013-2020 in respect of each year between 2008 and 2023 to determine the benchmark values for the years 2021-2025.</u></p> <p><u>(*) Commission Decision 2011/278 of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1)."</u></p>	<p>Identical</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 65</b> <b>Article 1 Point 5 - point b</b> Article 10a - paragraph 2 - subparagraph 3 - point - i			
<p>(i) On the basis of information submitted pursuant to Article 11, the Commission shall identify whether the values for each benchmark calculated using the principles in Article 10a differ from the annual reduction referred to above by more than 0.5% of the 2007-8 value higher or lower annually. If so, that benchmark value shall be adjusted either 0.5% or 1.5% in respect of each year between 2008 and the middle of the period for which free allocation is to be made;</p>	<p><i>(i) Where, on the basis of information submitted pursuant to Article 11 the rate of improvement does not exceed 0.25%, the benchmark value shall therefore be reduced by that percentage in the period 2021-2025, in respect of each year between 2008 and 2023;</i></p>	<p><u>(b) Where the annual reduction rate exceeds 1,55% or is below 0,2%, the benchmark values for 2021-2025 shall be the benchmark values applicable in the period 2013 to 2020 reduced by the relevant one of these two percentage rates in respect of each year between 2008 and 2023.</u></p>	<p>EP tentatively accepts Council structure. Thresholds and implementing/delegated acts to be discussed.</p> <p><b><u>New compromise proposal in the third column on the upper threshold level conditional to the EP accepting the lower threshold of 0,2%</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 66</b> <b>Article 1 Point 5 - point b</b> Article 10a - paragraph 2 - subparagraph 3 - point - ii (EP) / point (c) (Council)			
(ii) By way of derogation regarding the benchmark values for aromatics, hydrogen and syngas, these benchmark values shall be adjusted by the same percentage as the refineries benchmarks in order to preserve a level playing field for producers of these products.	<i>(ii) Where, on the basis of information submitted pursuant to Article 11 the rate of improvement exceeds 1,75%, the benchmark value shall therefore be reduced by that percentage in the period 2021-2025, in respect of each year between 2008 and 2023.</i>	(c) For the period from 2026 to 2030, the benchmark values shall be determined in the same manner on the basis of information submitted pursuant to Article 11 for the years 2021-2022 and with the annual reduction rate applying in respect of each year between 2008 and 2028.	EP tentatively accepts Council structure. Thresholds and implementing/delegated acts to be discussed.
Article 10a - paragraph 2 - subparagraph 4 (Council)			
		<u>By way of derogation regarding the benchmark values for aromatics, hydrogen and syngas, these benchmark values shall be adjusted by the same percentage as the refineries benchmarks in order to preserve a level playing field for producers of these products.</u>	
<b>Amendment 67</b> <b>Article 1 Point 5 - point b</b> Article 10a - paragraph 2 - subparagraph 4 (EP) / subparagraph 5 (Council)			
The Commission shall adopt an implementing act for this purpose in accordance with Article 22a."	<i>deleted</i>	<u>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a.</u>	EP tentatively accepts Council structure. Thresholds and implementing/delegated acts to be discussed

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 68</b> <b>Article 1 Point 5 - point ba (new)</b> Article 10a - paragraph 2 - subparagraph 3a (new)			
	<i>(ba) in paragraph 2, the following subparagraph is added:            ‘For the period between 2026 and 2030, the benchmark values shall be determined in the same manner on the basis of information submitted pursuant to Article 11 for the years 2021-2022 and with the annual reduction rate applying in respect of each year between 2008 and 2028.’</i>		EP tentatively accepts Council structure. Thresholds and implementing/delegated acts to be discussed.
<b>Amendment 69</b> <b>Article 1 Point 5 - point bb (new)</b> Article 10a - paragraph 2 - subparagraph 3b (new)			
	<i>(bb) in paragraph 2, the following subparagraph is added:            ‘By way of derogation regarding the benchmark values for aromatics, hydrogen and syngas, these benchmark values shall be adjusted by the same percentage as the refineries benchmarks in order to preserve a level playing field for producers of these products.’</i>		EP tentatively accepts Council structure. Thresholds and implementing/delegated acts to be discussed



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 165</b> <b>Article 1 Point 5 - point bc (new)</b> Article 10a - paragraph 3			
	<p><i>(bc) in paragraph 3, the following subparagraph is added:</i></p> <p>Subject to paragraphs 4 and 8, and notwithstanding Article 10c, no free allocation shall be given to electricity generators, to installations for the capture of CO<sub>2</sub>, to pipelines for transport of CO<sub>2</sub> or to CO<sub>2</sub> storage sites.</p> <p><i>Electricity generators producing electricity from waste gas are not electricity generators within the meaning of Article 3(u) of this Directive. In benchmark calculations, the full carbon content of waste gases used for electricity production shall be taken into account.</i></p>		<p>More information needed from EP, particularly on impacts. Concerns about potentially discriminatory effects.</p>
<b>Amendment 70</b> <b>Article 1 Point 5 - point bd (new)</b> Article 10a - paragraph 4			
	<p><i>(bd) paragraph 4 is replaced by the following:</i></p> <p>'4. Free allocation shall be given to district heating as well as to high efficiency cogeneration, as defined by Directive 2004/8/EC, for</p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	economically justifiable demand, in respect of the production of heating or cooling.'		
<b>Amendment 71</b> <b>Article 1 Point 5 - point c</b> Article 10a - paragraph 5			
<p>(c) paragraph 5 is replaced by the following:            "In order to respect the auctioning share set out in Article 10, the sum of free allocations in every year where the sum of free allocations does not reach the maximum level that respects the Member State auctioning share, the remaining allowances up to that level shall be used to prevent or limit reduction of free allocations to respect the Member State auctioning share in later years. Where, nonetheless, the maximum level is reached, free allocations shall be adjusted accordingly. Any such adjustment shall be done in a uniform manner.";</p>	<p><b>5. Where</b> the sum of free allocations in <i>a given</i> year does not reach the maximum level, <b>respecting</b> the Member <i>States'</i> auctioning share <i>set out in Article 10(1)</i>, the remaining allowances up to that level shall be used to prevent or limit <i>the</i> reduction of free allocations <i>in subsequent years. Where, however, the maximum level is reached, an amount of allowances equivalent to a reduction of up to five percentage points of the share of allowances to be auctioned by Member States over the entire ten year period beginning on 1 January 2021, pursuant to Article 10(1), shall be distributed free of charge to sectors and sub-sectors pursuant to Article 10b.</i> Where, nonetheless, <i>this reduction is</i></p>	<p>"5. In order to respect the auctioning share set out in Article 10, [...] in every year where the sum of free allocations does not reach the maximum level that respects the Member State auctioning share, the remaining allowances up to that level shall be used to prevent or limit reduction of free allocations to respect the Member State auctioning share in later years. Where, nonetheless, the maximum level is reached, free allocations shall be adjusted accordingly. Any such adjustment shall be done in a uniform manner.</p>	<p>Not acceptable because discriminatory.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>insufficient to meet the demand of sectors or sub- sectors pursuant to Article 10b, free allocations shall be adjusted accordingly by a uniform cross-sectoral correction factor to sectors with an intensity of trade with third countries below 15% or a carbon intensity below 7Kg CO2/Euro GVA.</i></p>		
<p><b>Article 1 Point 5 - point c</b> Article 10a - paragraph 5a (new)</p>			
		<p><u>5a. By way of derogation from paragraph 5 of this Article, an additional amount of up to 2,5% of the total quantity shall, to the extent necessary, be used to increase the maximum level available under paragraph 5.</u>";</p>	<p><b><u>New compromise suggestion to be seen in the context of a balanced overall package</u></b></p>
<p><b>Amendment 72</b> <b>Article 1 Point 5 - point d</b> Article 10a - paragraph 6 - subparagraph 1</p>			
<p>(d) the first subparagraph of paragraph 6 is replaced by the following: "Member States should adopt financial measures in favour of sectors or sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from</p>	<p><b>6. A centralised arrangement at Union level shall be adopted to compensate</b> sectors or sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually</p>	<p>(d) [...] paragraph 6 is replaced by the following: "Member States should adopt financial measures <b><u>in accordance with the second and third subparagraphs</u></b> in favour of sectors or sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect</p>	<p><b><u>See new compromise suggestions in third column</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>greenhouse gas emission costs passed on in electricity prices, taking into account any effects on the internal market. Such financial measures to compensate part of these costs shall be in accordance with state aid rules. "</p>	<p>incurred from greenhouse gas emission costs passed on in electricity prices.</p> <p><i>Compensation shall be proportionate to greenhouse gas emission costs actually passed through in electricity prices and shall be applied in accordance with the criteria laid down in the relevant state aid guidelines in order to avoid negative effects on the internal market as well as overcompensation of costs incurred.</i></p> <p><i>Where the amount of compensation available is not sufficient to compensate eligible indirect costs, the amount of compensation available for all eligible installations shall be reduced in a uniform manner.</i></p> <p><i>The Commission is empowered to adopt a delegated act in accordance with Article 30b to supplement this Directive for the purpose referred to in this paragraph by putting in place</i></p>	<p>costs <u>that are actually incurred from greenhouse gas emission costs</u> passed on in electricity prices <u>provided such financial measures are in accordance with state aid rules, notably do not cause undue distortions of competition</u> on the internal market. <b><u>Where the amount available for such financial measures exceeds 25% of the revenues generated from the auctioning of allowances, the Member State concerned shall set out the reasons for exceeding that amount.</u></b></p> <p><u>Member States shall also seek to use no more than 25% of the revenues generated from the auctioning of allowances for such financial measures. Within three months of the end of each year, Member States having such financial measures in place shall make available to the public in an easily accessible form the total amount of compensation provided per benefitting sectors and sub-sectors. In any year where here a Member State uses more than 25%</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>arrangements for the creation and operation of the fund.</i>	<p><u>of the revenues generated from the auctioning of allowances for such purposes, it shall publish a report setting out the reasons for exceeding that amount. The report shall include relevant information on power prices for large industrial consumers benefiting from such financial measures, without prejudice to requirements regarding the protection of confidential information. The report shall also include information on whether due consideration has been given to other measures to sustainably lower indirect carbon costs in the medium to long term. The Commission shall include in its report pursuant to Article 10 (5), inter alia, an assessment of the effects of such financial measures on the internal market and, if appropriate, recommend any measures that may be necessary pursuant to this assessment.</u></p> <p><u>Those measures shall ensure an adequate protection against the risk of carbon leakage based on ex-ante benchmarks of the indirect</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<u>emissions of CO<sub>2</sub> per unit of production. The ex-ante benchmarks shall be calculated for a given sector or subsector as the product of the electricity consumption per unit of production corresponding to the most efficient available technologies and of the CO<sub>2</sub> emissions of the relevant European electricity production mix."</u>	
<b>Amendment 73</b> <b>Article 1 Point 5 - point da (new)</b> Article 10a - paragraph 6 - subparagraph 1a (new)			
	<i>(da) in paragraph 6, a new subparagraph is inserted:            'Member States may also adopt national financial measures in favour of sectors or sub-sectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, taking into account any effects on the internal market. Such financial measures to compensate part of those costs shall be in accordance with state</i>		See Council position in subparagraph 1.

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>aid rules and Article 10(3) of this Directive. Those national measures, when combined with the support referred to in the first subparagraph, shall not exceed the maximum level of compensation referred to in the relevant state aid guidelines and shall not create new market distortions. The existing ceilings on state aid compensation shall continue to decline throughout the trading period.'</i></p>		
<p><b>Amendment 74</b>  <b>Article 1 Point 5 - point e - point i</b>  Article 10a - paragraph 7 - subparagraph 1</p>			
<p>(e) paragraph 7 is amended as follows:  (i) The first and second sentences of the first subparagraph are replaced by the following:  "Allowances from the maximum amount referred to Article 10a(5) of this Directive which were not allocated for free up to 2020 shall be set aside for new entrants and significant production increases, together with 250 million allowances placed in the market stability reserve pursuant to Article</p>	<p><b>7. 400 million allowances</b> shall be set aside for new entrants and significant production increases.</p>	<p>(i) The first [...] subparagraph <u>is</u> replaced by the following:  "Allowances from the maximum amount referred to in paragraph 5 of this Article which were not allocated for free up to 2020 shall be set aside for new entrants [...], together with 250 million allowances placed in the market stability reserve pursuant to Article 1(3) of Decision (EU)</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
1(3) of Decision (EU) 2015/... of the European Parliament and of the Council(*).		2015/1814 of the European Parliament and of the Council(*).	
<b>Amendment 75</b> <b>Article 1 Point 5 - point e- point i</b> Article 10a - paragraph 7 - subparagraph 2			
From 2021, allowances not allocated to installations because of the application of paragraphs 19 and 20 shall be added to the reserve."  (*) [ <i>insert the full title of the Decision and the OJ reference</i> ]."  _____	From 2021 <i>onwards, any</i> allowances not allocated to installations because of the application of paragraphs 19 and 20 shall be added to the reserve.	From 2021, allowances not allocated to installations because of the application of paragraphs 19 and 20 shall be added to the <u>amount of allowances set aside in accordance with the previous sentence.</u>  _____ (*) <u>Decision (EU) 2015/1814 of the European Parliament and of the Council of 6 October 2015 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading scheme and amending Directive 2003/87/EC (OJ L 264, 9.10.2015, p. 1).</u> "	
<b>Article 1 Point 5 - point e- point ii</b> Article 10a - paragraph 7 - subparagraphs 4 and 5			
(ii) The fifth subparagraph is deleted.		(ii) The <u>fourth and fifth</u> subparagraphs are deleted.	



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 76</b> <b>Article 1 Point 5 - point f- introductory part</b> Article 10a - paragraph 8			
(f) in paragraph 8, the first, second and third subparagraphs of paragraph 8 are replaced by the following:	(f) paragraph 8 <i>is</i> replaced by the following:	(f) in paragraph 8, the first, second and third subparagraphs are replaced by the following:	The deletion of the fourth subparagraph of the current ETS Directive is not acceptable.
<b>Amendment 77</b> <b>Article 1 Point 5 - point f</b> Article 10a - paragraph 8 - subparagraph 1			
<p>"400 million allowances shall be available to support innovation in low-carbon technologies and processes in industrial sectors listed in Annex I, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe capture and geological storage (CCS) of CO<sub>2</sub> as well as demonstration projects of innovative renewable energy technologies, in the territory of the Union.</p>	<p><b>8. 600</b> million allowances shall be available to <i>leverage investments in</i> innovation in low-carbon technologies and processes in industrial sectors listed in Annex I, <i>including bio-based materials and products substituting carbon intensive materials</i>, and to help stimulate the construction and operation of commercial demonstration projects that aim at the environmentally safe CCS <i>and CCU</i> as well as demonstration projects of innovative renewable energy technologies <i>and energy storage</i>, in the territory of the Union.</p>	<p>"<b>300</b> million allowances <u>from the quantity which could otherwise be allocated for free pursuant to this Article, and 100 million allowances from the quantity which could otherwise be auctioned pursuant to Article 10,</u> shall be available to support innovation in low-carbon technologies and processes, <u>including environmentally safe carbon capture and utilisation (CCU) that contributes substantially to mitigate climate change, as well as products substituting carbon intensive ones produced, in [...]</u> sectors listed in Annex I, and to help stimulate the construction and operation of [...]            projects that aim at the environmentally safe capture and</p>	<p><b><u>New compromise proposal in the context of an overall package.</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p>geological storage (CCS) of CO<sub>2</sub> as well as [...] innovative renewable energy <u>and energy storage technologies; in geographically balanced locations within the territory of the Union. Projects in all Member States, including small-scale projects, shall be eligible.</u></p>	
<p><b>Amendment 78</b> <b>Article 1 Point 5 - point f</b> Article 10a - paragraph 8 - subparagraph 2 (EP)</p>			
<p>The allowances shall be made available for innovation in low-carbon industrial technologies and processes and support for demonstration projects for the development of a wide range of CCS and innovative renewable energy technologies that are not yet commercially viable in geographically balanced locations. In order to promote innovative projects, up to 60% of the relevant costs of projects may be supported, out of which up to 40% may not be dependent on verified avoidance of greenhouse gas emissions provided that pre-determined milestones are attained taking into account the</p>	<p>The allowances shall be made available for innovation in low-carbon industrial technologies and processes and support for demonstration projects for the development of a wide range of innovative renewable energy technologies, <b>CCS and CCU</b> that are not yet commercially viable. <b><i>Projects shall be selected on the basis of their impact on energy systems or industrial processes within a Member State, a group of Member States or the Union.</i></b> In order to promote innovative projects, up to <b>75%</b> of the relevant costs of projects may be supported, out of which up to <b>60%</b> may not be</p>		<p><i>Note: The substance of this subparagraph is partly integrated in the previous and subsequent subparagraphs of the Council text due to restructuring.</i></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
technology deployed.	dependent on verified avoidance of greenhouse gas emissions provided that pre-determined milestones are attained taking into account the technology deployed. <i>Allowances shall be allocated to projects according to their needs to reach pre-determined milestones.</i>		
<b>Amendment 79</b> <b>Article 1 Point 5 - point f</b> Article 10a - paragraph 8 - subparagraph 3 (EP) / subparagraphs 2 and 3 (Council)			
<p>In addition, 50 million unallocated allowances from the market stability reserve established by Decision (EU) 2015/... shall supplement any existing resources remaining under this paragraph for projects referred to above, with projects in all Member States including small-scale projects, before 2021. Projects shall be selected on the basis of objective and transparent criteria.</p>	<p>In addition, 50 million unallocated allowances from the <i>MSR</i> shall supplement any existing resources remaining under this paragraph <i>as a consequence of funds resulting from NER300 allowance auctions for the period between 2013 and 2020 not having been used</i>, for projects referred to <i>in the first and second subparagraphs</i>, with projects in all Member States including small-scale projects, before 2021 <i>and from 2018 onwards</i>. Projects shall be selected on the basis of objective and transparent criteria, <i>taking into account their relevance in relation to the decarbonisation of the sectors concerned. Projects</i></p>	<p>In addition, 50 million unallocated allowances from the market stability reserve established by Decision (EU) 2015/1814 shall supplement any <u>remaining revenues from the 300 million allowances available in the period 2013-2020 under Commission Decision 2010/670/EU and be used in a timely manner for innovation support as referred to in the first subparagraph.</u> Projects shall be selected on the basis of objective and transparent criteria, <u>taking into account, where relevant, the extent to which projects contribute to emission reductions well below the benchmarks referred to in</u></p>	<p><b><u>See compromise suggestions in third column.</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>supported under this subparagraph may also receive further support under the first and second subparagraphs.</i></p>	<p>paragraph 2. Projects shall have the potential for widespread application <u>or for significantly lowering the costs of transitioning towards a low-carbon economy for the sectors concerned. Projects involving CCU shall deliver a net reduction in emissions and ensure <b>avoidance or permanent storage [...] of CO<sub>2</sub>.</b> Technologies receiving support shall not yet be commercially available, but <b>shall represent breakthrough solutions or be sufficiently mature to be ready for demonstration at pre-commercial scale.</b> Up to 60% of the relevant costs of projects may be supported, out of which up to 40% may not be dependent on verified avoidance of greenhouse gas emissions provided that pre-determined milestones, taking into account the technology deployed, are attained.</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 80</b> <b>Article 1 Point 5 - point f</b> Article 10a - paragraph 8 - subparagraph 4			
<p>The Commission shall be empowered to adopt a delegated act in accordance with Article 23."</p>	<p>The Commission <i>is</i> empowered to adopt delegated <i>acts</i> in accordance with Article <i>30b to supplement this Directive by setting the criteria to be used for the selection of projects that are eligible to benefit from the allowances referred to in this paragraph, taking due account of the following principles:</i></p> <p><i>(i) Projects shall focus on the design and development of breakthrough solutions and implementation of demonstration programmes;</i></p> <p><i>(ii) The activities shall run close-to- market in production plants to demonstrate the viability of breakthrough technologies in overcoming technological as well as non-technological barriers;</i></p> <p><i>(iii) Projects shall address technological solutions that have the potential to be of widespread</i></p>	<p>The Commission <u>is</u> empowered to adopt <u>implementing</u> acts [...] concerning detailed rules on the operation of the fund. <u>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a.</u>"</p>	<p>Delegated/implementing acts to be discussed.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>application, and may combine different technologies;</i></p> <p><i>(iv) Solutions and technologies shall ideally have the potential to be transferred within the sector and possibly to other sectors;</i></p> <p><i>(v) Projects where the anticipated emissions reductions are significantly below the relevant benchmark value shall be prioritised. Eligible projects shall either contribute to emissions reductions below the benchmark values referred to in paragraph 2 or shall have future prospects to significantly lower the cost of transitioning towards low-emissions energy production; and</i></p> <p><i>(vi) CCU projects shall deliver a net reduction in emissions and a permanent storage of CO2 across their lifetime.</i></p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Article 1 Point 5 - point fa (new)</b> Article 10a - paragraph 9			
		<p><u>(fa) paragraph 9 is replaced by the following:</u>  <u>"9. Greece, which had a GDP per capita below 60% of the Union average in 2014, may claim, prior to the application of paragraph 7 of this Article, allowances from the maximum amount referred to in paragraph 5 of this Article which were not allocated for free by 31 December 2020, up to 20 million allowances for co-financing up to 60% of decarbonising the electricity supply of islands within its territory. Article 10d(2) 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 the countries' islands could otherwise not be realised and where the EIB confirms the financial viability and the socio-economic benefits of the project."</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Article 1 Point 5 - point g</b> Article 10a - paragraph 9 and 10			
(g) paragraphs 9 and 10 are deleted. (h) in paragraph 11, the wording "with a view to reaching no free allocation in 2027" is deleted. (i) paragraphs 12 to 18 are deleted.		(g) paragraph [...] 10 <u>is</u> deleted.	
<b>Amendment 82</b> <b>Article 1 Point 5 - point ia (new)</b> Article 10a - paragraph 20			
	<p><i>(ia) paragraph 20 is replaced by the following:</i></p> <p>'20. The Commission shall, as part of the measures adopted under paragraph 1, include measures for defining installations that partially cease to operate or significantly reduce their capacity, and measures for adapting, as appropriate, the level of free allocations given to them accordingly.</p> <p><i>Those measures shall provide flexibility for industry sectors where capacity is regularly transferred between operating installations in the same company.'</i></p>	<p><u>(j) paragraph 20 is replaced by the following:</u></p> <p><u>"20. The level of free allocations given to installations whose operations have increased or decreased, as assessed on the basis of a rolling average of two years, by more than 15% compared to the level initially used to determine the free allocation for the relevant period referred to in Article 11(1) shall, as appropriate, be adjusted. Such adaptations shall be carried out with allowances from, or by adding allowances to, the amount of allowances set aside in accordance with paragraph 7."</u></p>	<p>See new compromise suggestion in third column</p> <p>Linked to AM10 (recital 5) and compromise suggestions to recital 8a, AM60 (Art. 10a(1) subparagraphs 1 and 2) and Art. 10a(21).</p> <p>EP could drop the second part of the amendment.</p>



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Article 1 Point 5 - point k (new)</b> Article 10a – paragraph 21			
		<p><u>(k) the following paragraph is added:</u>  <u>"21. In order to ensure an effective, non-discriminatory and uniform application of the adaptations and the threshold referred to in paragraph 20, to avoid undue administrative burden and to prevent manipulation or abuse of the adjustments to the allocation, the Commission may adopt implementing acts which define further arrangements for the adjustments. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a."</u></p>	<p>Delegated/implementing acts to be discussed.</p> <p>See third column for a compromise suggestion taking on board part of EP amendment 60 (on prevention of "gaming").</p> <p>Linked to suggested compromise on AM10 and recital 8a.</p>
<b>Amendment 83</b> <b>Article 1 Point 6</b> Article 10b – title			
<p>(6) Articles 10b and 10c are replaced by the following:  <i>"Article 10b</i>            Measures to support certain energy-intensive industries in the event of carbon leakage</p>	<p><i>"Article 10b</i>  <b>Transitional</b> measures to support certain energy intensive industries in the event of carbon leakage</p>	<p><i>"Article 10b</i>  <u>Transitional</u> measures to support certain energy intensive industries in the event of carbon leakage</p>	<p>The amendment is acceptable.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Article 1 Point 6</b> Article 10b - paragraph 1			
<p>1. Sectors and sub-sectors where the product exceeds 0.2 from multiplying their intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the European Economic Area (annual turnover plus total imports from third countries), by their emission intensity, measured in kgCO<sub>2</sub> divided by their gross value added (in €), shall be deemed to be at risk of carbon leakage. Such sectors and sub-sectors shall be allocated allowances free of charge for the period up to 2030 at 100% of the quantity determined in accordance with the measures adopted pursuant to Article 10a.</p>		<p>1. Sectors and sub-sectors where the product exceeds 0,2 from multiplying their intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the European Economic Area (annual turnover plus total imports from third countries), by their emission intensity, measured in kgCO<sub>2</sub> divided by their gross value added (in <u>euro</u>), shall be deemed to be at risk of carbon leakage. Such sectors and sub-sectors shall be allocated allowances free of charge for the period up to 2030 at 100% of the quantity determined [...] pursuant to Article 10a.</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 85</b> <b>Article 1 Point 6</b> Article 10b - paragraph 1a (new)			
	<p><i>(1a) After the adoption of the revision of the Directive 2012/27/EU of the European Parliament and of the Council*, the Commission shall reassess the share of emission reductions in the EU ETS and the Decision No 406/2009/EC of the European Parliament and of the Council**. Additional reductions by an increased energy efficiency target shall be used to protect industry at risk of carbon or investment leakage.</i></p> <hr/> <p><i>* Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC (OJ L 315, 14.11.2012, p. 1).</i></p> <p><i>** Decision No 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on</i></p>		Not acceptable

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>the effort of Member States to reduce their greenhouse gas emissions to meet the Community's greenhouse gas emission reduction commitments up to 2020 (OJ L 140, 5.6.2009, p. 136).</i></p>		
<p><b>Amendment 144</b> <b>Article 1 Point 6</b> Article 10b - paragraphs 1b and 1 c (new)</p>			
	<p><i>(1b) Following up to Article 6(2) of the Paris Agreement, the Commission shall assess in its report, to be prepared in accordance with Article 28aa, the development of climate mitigation policies, including market-based approaches, in third countries and regions and the effect of these policies on the competitiveness of European industry.</i></p> <p><i>(1c) If this report concludes that a significant risk of carbon leakage remains, the Commission shall, if appropriate, come forward with a legislative proposal introducing a carbon border adjustment, fully compatible with WTO rules, based on a feasibility study to be initiated at the publication of this</i></p>		<p>Not acceptable</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>Directive in the OJ. This mechanism would include in the EU ETS importers of products which are produced by the sectors or sub-sectors determined in accordance with Article 10a.</i>		
<b>Amendment 86</b> <b>Article 1 Point 6</b> Article 10b - paragraph 2			
<p>2. Sectors and sub-sectors where the product from multiplying their intensity of trade with third countries by their emission intensity is above 0.18 may be included in the group referred to in paragraph 1, on the basis of a qualitative assessment using the following criteria:</p> <p>(a) the extent to which it is possible for individual installations in the sector or sub-sectors concerned to reduce emission levels or electricity consumption;</p> <p>(b) current and projected market characteristics;</p> <p>(c) profit margins as a potential</p>	<p>2. Sectors and sub-sectors where the product from multiplying their intensity of trade with third countries by their emission intensity is above <b>0,12</b> may be included in the group referred to in paragraph 1, on the basis of a qualitative assessment using the following criteria:</p> <p>(a) the extent to which it is possible for individual installations in the sector or sub- sectors concerned to reduce emission levels or electricity consumption <b>taking into account associated increases in costs of production;</b></p> <p>(b) current and projected market characteristics;</p> <p>(c) profit margins as a potential</p>	<p>2. Sectors and sub-sectors where the product from multiplying their intensity of trade with third countries by their emission intensity is above <u>0,15</u> may be included in the group referred to in paragraph 1 <b>using data for the years 2014-2016</b> on the basis of a qualitative assessment <b>and</b> the following criteria:</p> <p>(a) the extent to which it is possible for individual installations in the sector or sub-sectors concerned to reduce emission levels or electricity consumption;</p> <p>(b) current and projected market characteristics, <u>including any common reference price where relevant;</u></p> <p>(c) profit margins as a potential</p>	<p><b><u>See new compromise suggestions in third column.</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
indicator of long-run investment or relocation decisions.	indicator of long-run investment or relocation decisions;  <i>(ca) commodities which are traded on worldwide markets for a common reference price.</i>	indicator of long-run investment or relocation decisions, <u>taking into account changes in costs of production relating to emission reductions.</u>	
<b>Article 1 Point 6</b> Article 10b - point 2a (new)			
		<u>2a. Sectors and sub-sectors that do not exceed the threshold referred to in paragraph 1, but with an emission intensity measured in kgCO<sub>2</sub> divided by their gross value added (in euro) which exceeds 1,5, shall also be assessed at a 4-digit level (NACE-4 code). The Commission shall make the results of this assessment public. Within three months from the publication referred to in the previous subparagraph, those sectors and sub-sectors may apply to the Commission for either a qualitative assessment of their carbon leakage exposure at a 4-digit level (NACE-4 code) or an assessment on the basis of the classification of goods used for statistics on industrial production in the Union at an 8-digit level</u>	See new compromise suggestion in third column.

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><u>(Prodcom). To this end, a sector and subsector shall submit duly substantiated, complete and independently verified data to enable the Commission to carry out the assessment together with the application.</u></p> <p><u>Where a sector or subsector chooses to be assessed at a 4-digit level (NACE-4 code), it may be included in the group referred to in paragraph 1 on the basis of the criteria referred to in paragraph 2, points (a), (b) and (c). Where a sector or subsector chooses to be assessed at an 8-digit level (Prodcom), it shall be included in the group referred to in paragraph 1 where, at this level, the threshold of 0,2 referred to in paragraph 1 is exceeded.</u></p> <p><u>Sectors and subsectors for which free allocation is calculated on the basis of the benchmark values referred to in the fourth subparagraph of Article 10a(2) may also request to be assessed in accordance with the third subparagraph of this paragraph.</u></p> <p><u>By way of derogation from</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><u>paragraphs 1 and 2, a Member State may request by 30 June 2018 that a sector or sub-sector listed in the Annex to Commission Decision 2014/746/EU in respect of classifications at a 6-digit or an 8-digit level (Prodcom) be considered to be included in the group referred to in paragraph 1. Any such request shall only be considered where the requesting Member State establishes that the application of this derogation is justified on the basis of duly substantiated, complete, verified and audited data for the five most recent years provided by the sector or sub-sector concerned and includes all relevant information with its request. On the basis of this data, the sector or sub-sector concerned shall be included in respect of those classifications where, within a heterogeneous NACE-4 code, it is shown they have a substantially higher trade and emission intensity at Prodcom level, exceeding the threshold set in paragraph 1.</u></p>	



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 87</b> <b>Article 1 Point 6</b> Article 10b - paragraph 3			
<p>3. Other sectors and sub-sectors are considered to be able to pass on more of the cost of allowances in product prices, and shall be allocated allowances free of charge for the period up to 2030 at 30% of the quantity determined in accordance with the measures adopted pursuant to Article 10a.</p>	<p>3. <i>The district heating sector is</i> considered to be able to pass on more of the cost of allowances in product prices, and shall be allocated allowances free of charge for the period up to 2030 at 30% of the quantity determined in accordance with the measures adopted pursuant to Article 10a. <i>Other sectors and sub-sectors shall not be allocated any allowances free of charge.</i></p>	<p>3. Other sectors and sub-sectors are considered to be able to pass on more of the cost of allowances in product prices, and shall be allocated allowances free of charge for the period up to 2030 at 30% of the quantity determined [...] pursuant to Article 10a.</p>	<p>Not acceptable</p>
<b>Amendment 88</b> <b>Article 1 Point 6</b> Article 10b - paragraph 4			
<p>4. By 31 December 2019, the Commission shall adopt a delegated act for the preceding paragraphs for activities at a 4-digit level (NACE-4 code) as concerns paragraph 1, in accordance with Article 23, based on data for the three most recent calendar years available.</p>	<p>4. By 31 December 2019, the Commission shall adopt delegated <i>acts in accordance with Article 30b to supplement this Directive in relation to paragraph 1 concerning the</i> activities at a 4-digit level (NACE-4 code) <i>or, where justified on the basis of objective criteria developed by the Commission, at the relevant level of disaggregation based on public and sector-specific data to</i></p>	<p>4. By 31 December 2019, the Commission shall <u>be empowered to</u> adopt delegated acts <u>in accordance with Article 23 to supplement this Directive concerning the determination of sectors and subsectors deemed at risk of carbon leakage, as referred to in paragraphs 1, 2 and 2a,</u> for activities at a 4-digit level (NACE-4 code) as concerns paragraph 1, based on data for the three most</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>comprise those activities covered by the EU ETS. The assessment of trade intensity shall be</i> based on data for the <i>five</i> most recent calendar years available.	recent calendar years available.	
<b>Amendment 89</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 1			
<p><i>Article 10c</i> Option for transitional free allocation for the modernisation of the energy sector</p> <p>1. By derogation from Article 10a(1) to (5), Member States which had in 2013 a GDP per capita in € at market prices below 60% of the Union average may give a transitional free allocation to installations for electricity production for the modernisation of the energy sector.</p>	<p>1. By <i>way of</i> derogation from Article 10a(1) to (5), Member States which had in 2013 a GDP per capita in <b>EUR</b> at market prices below 60% of the Union average may give transitional free allocation to installations for electricity <b>generation</b> for the modernisation, <b>diversification and sustainable transformation</b> of the energy sector. <b>This derogation shall end on 31 December 2030.</b></p>	<p>1. By <u>way of</u> derogation from Article 10a(1) to (5), Member States which had in 2013 a <u>gross domestic product</u> (GDP) per capita in <u>euro</u> at market prices below 60% of the Union average may give a transitional free allocation to installations for electricity <u>generation</u> for the modernisation <b>and diversification</b> of the energy sector. <b><u>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 the long term</u></b></p>	<p>The first part of the amendment is acceptable</p> <p><b><u>See new compromise suggestion in the third column</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<u>objectives as expressed in the Paris Agreement.</u>	
<b>Amendment 90</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 1 a (new)			
	<i>Ia. Member States not eligible pursuant to paragraph 1 but which had in 2014 a GDP per capita in EUR at market prices below 60% of the Union average may also make use of the derogation referred to in that paragraph up to the total quantity referred to in paragraph 4, provided that the corresponding number of allowances is transferred to the Modernisation Fund and the revenues are used to support investments in accordance with Article 10d.</i>		Not acceptable
<b>Amendment 91</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 1 b (new)			
	<i>Ib. Member States which are eligible under this Article to grant free allocation to installations for energy generation, may choose to transfer the corresponding number of allowances or part of</i>		<u>See compromise suggestions in Article 10d (2a) (new) and recital 11a (new).</u>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>them to the Modernisation Fund and allocate them pursuant to the provisions of Article 10d. In such a case, they shall inform the Commission before the transfer.</i>		
<b>Article 1 - Point 6</b> Article 10c - paragraph 2 - subparagraph 1 - introductory part and point a			
<p>2. The Member State concerned shall organise a competitive bidding process for projects with a total amount of investment exceeding €10 million to select the investments to be financed with free allocation. This competitive bidding process shall:</p> <p>(a) comply with the principles of transparency, non-discrimination, equal treatment and sound financial management;</p>		<p>2. The Member State concerned shall organise a competitive bidding process, <u>to take place in one or more rounds between 2021 and 2030</u>, for projects with a total amount of investment exceeding <u>EUR 15</u> million to select the investments to be financed with free allocation. This competitive bidding process shall:</p> <p>(a) comply with the principles of transparency, non-discrimination, equal treatment and sound financial management;</p>	
<b>Amendment 92</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 2 - subparagraph 1 - point b			
<p>(b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and</p>	<p>(b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and</p>	<p>(b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and</p>	Needs to be further discussed

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
retrofitting of the infrastructure, clean technologies and modernisation of the energy production, transmission and distribution sectors are eligible to bid;	retrofitting of the infrastructure, clean technologies ( <i>such as renewable technologies</i> ) or modernisation of the energy production, <i>district heating networks, energy efficiency, energy storage</i> , transmission and distribution sectors are eligible to bid;	retrofitting of the infrastructure, clean technologies <u>or</u> modernisation of the energy production, transmission and distribution sectors are eligible to bid;	
<b>Amendment 93</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 2 - subparagraph 1 - point c			
(c) define clear, objective, transparent and non-discriminatory selection criteria for the ranking of projects, so as to ensure that projects are selected which:	(c) define clear, objective, transparent and non-discriminatory selection criteria <i>in line with the Union 2050 climate and energy policy objectives</i> for the ranking of projects, so as to ensure that projects are selected which:		Not acceptable
<b>Amendment 94</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 2 - subparagraph 1 - point c - point i			
(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 CO <sub>2</sub> reductions;	(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 CO <sub>2</sub> reductions <i>proportionate to the size of the projects. Where projects relate to electricity production, total</i>		Not acceptable

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>greenhouse gas emissions per kilowatt hour of electricity produced in the installation shall not exceed 450g of CO2 equivalent after completion of the project. By 1 January 2021, the Commission shall adopt a delegated act in accordance with Article 30b in order to amend this Directive by defining for projects relating to heat production maximum total greenhouse gas emissions per kilowatt hour of heat produced in the installation that shall not be exceeded.</i></p>		
<p><b>Amendment 95</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 2 - subparagraph 1 - point c - point ii</p>			
<p>(ii) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand;</p> <p>(iii) offer best value for money;</p>	<p>(ii) are additional, <i>although they may be used to meet the relevant targets set under the 2030 Climate and Energy Framework</i>, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand;</p>		<p>Not acceptable</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 96</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 2 - subparagraph 1 - point c - point iii a (new)			
	<i>(iia) do not contribute to new coal-fired energy generation nor increase coal- dependency.</i>		<b><u>Not acceptable</u></b>
<b>Article 1 - Point 6</b> Article 10c - paragraph 2 - subparagraph 1a (new)			
		<u>By way of derogation from Article 10 (1), in the event an investment selected through the competitive bidding process is cancelled or the intended performance is not reached, the earmarked allowances may be used through one new round of the competitive bidding process at the earliest one year thereafter to finance other investments.</u>	
<b>Amendment 97</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 2 - subparagraph 2			
By 30 June 2019, any Member State intending to make use of optional free allocation shall publish a detailed national framework setting out the competitive bidding process and selection criteria for public comment.	By 30 June 2019, any Member State intending to make use of optional <i>transitional</i> free allocation <i>for the modernisation of the energy sector</i> shall publish a detailed national framework setting out the competitive bidding process and selection criteria for public	By 30 June 2019, any Member State intending to make use of optional <u>transitional</u> free allocation <u>for the modernisation of the energy sector</u> shall publish a detailed national framework setting out the competitive bidding process and selection criteria for public	The amendment is acceptable

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	comment.	comment.	
<b>Amendment 98</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 2 - subparagraph 3			
<p>Where investments with a value of less than €10 million are supported with free allocation, the Member State shall select projects based on objective and transparent criteria. The results of this selection process shall be published for public comment. On this basis, the Member State concerned shall establish and submit a list of investments to the Commission by 30 June 2019.</p>	<p>Where investments with a value of less than <i>EUR</i> 10 million are supported with free allocation, the Member State shall select projects based on objective and transparent criteria <i>consistent with reaching the Union's long-term climate and energy objectives. Those criteria shall be subject to public consultation, ensuring full transparency and accessibility of relevant documents, and fully reflect comments raised by stakeholders.</i> The results of this selection process shall be published for public <i>consultation</i>. On this basis, the Member State concerned shall establish and submit a list of investments to the Commission by 30 June 2019.</p>	<p>Where investments with a value of less than <u>EUR 15 million to be supported with free allocation are not selected through the competitive bidding process</u> referred to in this paragraph, the Member State shall select projects based on objective and transparent criteria. The results of this selection process shall be published for public comment. On this basis, the Member State concerned shall establish and submit a list of investments to the Commission by 30 June 2019. <u>Where more than one investment is carried out within the same installation, interrelated investments which individually are not technically or financially viable, shall be assessed as a whole to establish whether or not the value threshold referred to above is exceeded.</u></p>	<p>The first part of the EP amendment is not acceptable</p> <p><b><u>Compromise suggestion in the third column (last sentence) relates to EP amendment 100 (last part, see paragraph 6 below).</u></b></p>



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 99</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 3			
<p>3. The value of the intended investments shall at least equal the market value of the free allocation, while taking into account the need to limit directly linked price increases. The market value shall be the average of the price of allowances on the common auction platform in the preceding calendar year.</p>	<p>3. The value of the intended investments shall at least equal the market value of the free allocation, while taking into account the need to limit directly linked price increases. The market value shall be the average of the price of allowances on the common auction platform in the preceding calendar year. <i>Up to 75% of the relevant costs of an investment may be supported.</i></p>	<p>3. The value of the intended investments shall at least equal the market value of the free allocation, while taking into account the need to limit directly linked price increases. The market value shall be the average of the price of allowances on the common auction platform in the preceding calendar year. <b><u>Up to 70% of the relevant costs of an investment may be supported using the free allocation provided that the remaining cost is financed from private legal entities.</u></b></p>	<p><b><u>See compromise suggestion in the third column</u></b></p>
<b>Article 1 - Point 6</b> Article 10c - paragraph 4			
<p>4. Transitional free allocations shall be deducted from the quantity of allowances that the Member State would otherwise auction. The total free allocation shall be no more than 40% of the allowances which the Member State concerned receives in the period 2021-30 pursuant to Article 10(2)(a) spread out in equal annual volumes over</p>		<p>4. Transitional free allocations shall be deducted from the quantity of allowances that the Member State would otherwise auction. The total free allocation shall be no more than 40% of the allowances which the Member State concerned receives in the period 2021-<del>20</del>30 pursuant to Article 10(2)(a) spread out in equal annual volumes over</p>	<p>New text suggested at the end of the paragraph (adding a deadline to facilitate implementation work and provide clarity to markets).</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>the period from 2021-30.</p> <p>5. Allocations to operators shall be made upon demonstration that an investment selected according to the rules of the competitive bidding process has been carried out.</p>		<p>the period from 2021-<u>2030</u>. <u>Any allowances not allocated under this Article up to 2020 may be allocated over to the period 2021-2030 to investments selected through the competitive bidding process referred to in paragraph 2 of this Article, unless the Member State concerned informs the Commission by 30 September 2019 of its intention not to allocate all or part of these allowances over the period 2021-2030 and of the amount of allowances to be auctioned instead in 2020.</u></p>	
<b><u>Article 10c - paragraph 4a (new)</u></b>			
		<p><b><u>Where a Member State uses allowances distributed for the purpose of solidarity and growth within the Union in accordance with Article 10(2)(b) pursuant to Article 10d(2a), that Member State may, by way of derogation from paragraph 4 of this Article, use for transitional free allocation a total quantity of up to a 60% of the allowances received in the period 2021-2030 pursuant to Article 10(2)(a), using a corresponding number of</u></b></p>	<p><b><u>See new compromise suggestion in the third column.</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<u>the allowances distributed in accordance with Article 10(2)(b).</u>	
<b>Amendment 100</b> <b>Article 1 - Point 6</b> Article 10c - paragraph 6			
<p>6. Member States shall require benefiting electricity generators and network operators to report by 28 February of each year on the implementation of their selected investments. Member States shall report on this to the Commission, and the Commission shall make such reports public."</p>	<p>6. Member States shall require benefiting <i>energy</i> generators and network operators to report <b><i>annually by 31 March</i></b> of each year on the implementation of their selected investments, <b><i>including the balance of free allocation and investment expenditure incurred, the types of investments supported and the way in which they achieved the goals set out in point (b) of the first subparagraph of paragraph 2.</i></b> Member States shall report on this to the Commission, and the Commission shall make such reports <b><i>available to the</i></b> public. <b><i>Member States and the Commission shall monitor and analyse potential arbitrage with regard to the threshold of EUR 10 million for small projects and shall prevent unjustified dividing up of an investment over smaller projects by excluding more than one investment in the same</i></b></p>	<p>6. Member States shall require benefiting electricity generators and network operators to report by 28 February of each year on the implementation of their selected investments. Member States shall report on this to the Commission, and the Commission shall make such reports public.</p>	<p>The first part of the amendment is not acceptable.</p> <p>Concerning the last part of the amendment, compromise proposal in paragraph 2, third subparagraph of the Council text.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>beneficiary installation.</i>		
<b>Amendment 101</b> <b>Article 1 - point 6</b> Article 10c - paragraph 6a (new)			
	<i>6a. In case of a reasonable suspicion of irregularities or a failure by a Member State to report in accordance with paragraphs 2 to 6, the Commission may undertake an independent investigation, where necessary assisted by a contracted third party. The Commission shall also investigate other possible infringements, such as failure to implement the Third Energy Package. The Member State concerned shall provide all investment information and access necessary for the investigation, including access to installations and building sites. The Commission shall publish a report on that investigation.</i>		Not acceptable
<b>Amendment 102</b> <b>Article 1 - point 6</b> Article 10c - paragraph 6b (new)			
	<i>6b. In the case of infringement of Union climate and energy law, including the Third Energy</i>		Not acceptable

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>Package, or the criteria set out in this Article, the Commission may require the Member State to withhold free allocation.</i>		
<b>Article 1 - Point 7</b> Article 10d			
(7) The following Article 10d is inserted: <i>"Article 10d</i> Modernisation Fund		(7) The following Article is inserted:	
<b>Amendment 149</b> <b>Article 1 - point 7</b> Article 10d - paragraph 1 - subparagraph 1			
1. A fund to support investments in modernising energy systems and improving energy efficiency in Member States with a GDP per capita below 60% of the Union average in 2013 shall be established for the period 2021-30 and financed as set out in Article 10.	1. A fund to support <i>and leverage</i> investments in modernising energy systems, <i>including district heating</i> , and improving energy efficiency in Member States with a GDP per capita below 60% of the Union average in 2013, <i>or in 2014, or in 2015</i> , shall be established for the period <b>2021-2030</b> and financed as set out in Article 10.	1. A fund to support investments <u>proposed by the beneficiary Member States, including to finance small-scale investment projects</u> , in modernising energy systems and improving energy efficiency in Member States with a GDP per capita below 60% of the Union average in 2013 shall be established for the period 2021-2030. <u>The fund shall be financed through the auctioning of allowances</u> as set out in Article 10.	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 104</b> <b>Article 1 - Point 7</b> Article 10d - paragraph 1 - subparagraph 2			
<p>The investments supported shall be consistent with the aims of this Directive and the European Fund for Strategic Investments.</p>	<p>The investments supported shall <i>comply with the principles of transparency, non-discrimination, equal treatment, sound financial management and shall offer the best value for money. They shall be consistent with the aims of this Directive, the Union's long term climate and energy goals</i> and the European Fund for Strategic Investments, <i>and shall:</i>  <i>(i) Contribute to energy savings, renewable energy systems, energy storage and electricity interconnection, transmission and distribution sectors; where projects relate to electricity production, total greenhouse gas emissions per kilowatt hour of electricity produced in the installation shall not exceed 450g of CO2 equivalent after completion of the project. The Commission shall adopt a delegated act in accordance with Article 30b by 1 January 2021 in order to amend this Directive by</i></p>	<p>The investments supported shall be consistent with the aims of this Directive, <u>as well as the objectives of the Union's 2030 climate and energy policy framework and the long-term objectives as expressed in the Paris Agreement.</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>defining, for projects relating to heat production, maximum total greenhouse gas emissions per kilowatt hour of heat produced in the installation that shall not be exceeded;</i></p> <p><i>(ii) On the basis of a cost-benefit analysis, ensure a net-positive gain in terms of emissions reductions and realise a pre-determined significant level of CO2 reductions;</i></p> <p><i>(iii) Be additional although they may be used to meet the relevant targets set under the 2030 Climate and Energy Framework, clearly respond to replacement and modernisation needs and shall not supply a market-driven increase in energy demand;</i></p> <p><i>(iv) Not contribute to new coal-fired energy generation nor increase coal dependency.</i></p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Article 1 - Point 7</b> Article 10d - paragraph 1 - subparagraph 1a (new)			
		<u>1a. Without prejudice to the third subparagraph of paragraph 4, the financial resources from the fund shall be used to support investments in the generation and use of electricity from renewable sources, the improvement of energy efficiency, <b>energy storage</b> and the modernisation of energy networks, including grids for electricity transmission and the increase of interconnections between Member States. Investments in energy efficiency in sectors not covered by Annex I to this Directive shall also be eligible.</u>	<u><b>See new compromise suggestion in the third column</b></u>
<b>Amendment 105</b> <b>Article 1 - Point 7</b> Article 10d - paragraph 1 - subparagraph 2a (new)			
	<i>The Commission shall keep under review the requirements set out in this paragraph taking into account the Climate Strategy of the EIB. If, on the basis of technological progress, one or more of the requirements set out in this paragraph become irrelevant, the Commission shall adopt a</i>		



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>delegated act in accordance with Article 30b by 2024 in order to amend this Directive by outlining new or updated requirements.</i>		
<b>Amendment 106</b> <b>Article 1 - Point 7</b> Article 10d - paragraph 2			
<p>2. The fund shall also finance small-scale investment projects in the modernisation of energy systems and energy efficiency. To this end, the investment board shall develop guidelines and investment selection criteria specific to such projects.</p>	<p>2. The fund shall also finance small- scale investment projects in the modernisation of energy systems and energy efficiency. To this end, <i>its</i> investment board shall develop <i>investment</i> guidelines and selection criteria specific to such projects <i>in line with the objectives of this Directive and with the criteria set out in paragraph 1. Those guidelines and selection criteria shall be made available to the public.</i></p> <p><i>For the purpose of this paragraph a small-scale investment project means a project funded through loans provided by a national promotional bank or through grants contributing to the implementation of a national programme serving specific objectives that are in line with</i></p>	<p>2. <u>The fund shall operate under the responsibility of the beneficiary Member States. The European Investment Bank (EIB) shall ensure the allowances are auctioned in accordance with the principles and modalities laid down in Article 10(4) and shall be responsible for managing the revenues. It shall pass on the revenues to the Member States upon a disbursement decision from the Commission. The Commission shall adopt its decision in a timely manner. The revenues shall be distributed amongst the Member States and according to the share set out in Annex IIb, in accordance with paragraphs 4 to 9.</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>those of the Modernisation Fund, provided that not more than 10% of the Member States' share set out in Annex IIb is used.</i>		
<b>Article 1 - Point 7</b> <b>Article 10d - paragraph 2a (new)</b>			
		<p>2a. Any Member State concerned <u>may use the total free allocation pursuant to Article 10c(4), or part of it, and the amount of allowances distributed for the purpose of solidarity and growth within the Union in accordance with Article 10(2), point (b), or part of it, in accordance with Article 10d to support investments within the framework of the Modernisation Fund, thereby increasing the resources distributed to that Member State. By 30 September 2019, the Member State concerned shall notify the respective amounts of allowances to be used under Article 10(2), point (b), Article 10c and Article 10d to the Commission.</u></p>	<p><b><u>New suggestion to clarify that also part of the allowances can be used.</u></b></p> <p>Compromise proposal in the third column in relation to EP AMs 48 and 91. See also recital 11a (new).</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Article 1 - Point 7</b> Article 10d - paragraph 3			
<p>3. The funds shall be distributed based on a combination of a 50% share of verified emissions and a 50% share of GDP criteria, leading to the distribution set out in Annex IIb.</p>		<p>3. <u>An investment committee for the fund is hereby established. The investment committee shall be composed of a representative from each beneficiary Member State, the Commission and the EIB, and three representatives elected by the other Member States for a period of 5 years. It shall be chaired by the representative from the Commission. One representative of each Member State which is not a member of the investment committee may attend meetings of the committee as an observer.</u>  <b><u>The investment committee shall operate in a transparent manner.</u></b>  <u>The composition of the investment committee and the CVs and declarations of interests of its members shall be made available to the public and, where necessary, updated.</u></p>	<p>See compromise proposal in the third column taking partly on board EP AM 110 below.</p> <p><b><u>See new compromise suggestion in the third column.</u></b></p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 107</b> <b>Article 1 - Point 7</b> Article 10d - paragraph 3 a (new)			
	<p><i>3a. Any beneficiary Member State which has decided to grant transitional free allocation pursuant to Article 10c may transfer those allowances to its share of the Modernisation Fund set out in Annex IIb and allocate them pursuant to the provisions of Article 10d.</i></p>		
<b>Amendment 108</b> <b>Article 1- Point 7</b> Article 10d - paragraph 4 - subparagraph 1			
<p>4. The fund shall be governed by an investment board and a management committee, which shall be composed of representatives from the beneficiary Member States, the Commission, the EIB and three representatives elected by the other Member States for a period of 5 years. The investment board shall be responsible to determine an Union-level investment policy, appropriate financing instruments and investment selection criteria. The management committee shall be</p>	<p>4. <i>The beneficiary Member States shall be <b>responsible for the governance of the fund, and shall jointly establish</b> an investment board composed of <b>one representative per</b> beneficiary Member State, the Commission, the EIB, and three <b>observers from interested parties such as industrial federations, trade unions, or NGOs</b>. The investment board shall be responsible for <b>determining a</b> Union-level investment policy, <b>which shall be in line with the requirements set</b></i></p>	<p>4. <u>Before a beneficiary Member State may decide to finance an investment from its share in the fund, it shall present the investment project to the investment committee and to the EIB. Where the EIB confirms that an investment falls into the areas listed in paragraph 1a, the Member State may proceed to the financing of the investment project from its share. Where an investment in the modernisation of energy systems, which is proposed to be financed from the fund, does not fall into the</u></p>	<p><b><u>See the new compromise proposal in the third column, end of the subparagraph (see also addition to recital 11).</u></b></p>

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responsible for the day-to-day management of the fund.	<p><i>out in this Article and be consistent with Union policies. An advisory board, independent from the investment board, shall be established.</i></p> <p><i>The advisory board shall be composed of three representatives from the beneficiary Member States, three representatives from non-beneficiary Member States, a representative of the Commission, a representative of the EIB, and a representative from the European Bank for Reconstruction and Development (EBRD), selected for a five year period. The representatives of the advisory board shall have a high level of relevant market experience in project structuring and project financing. The advisory board shall provide advice and recommendations to the investment board on project eligibility for selection, investment and financing decisions, and any further project development assistance as required.</i></p> <p><i>A management committee shall be established. The</i></p>	<p>areas listed in paragraph 1a, the investment committee shall assess the technical and financial viability of such investments, including the emission reductions they realise, and issue a recommendation on financing the investment from the fund. This recommendation may include suggestions regarding appropriate financing instruments.</p> <p><b><u>Up to 70% of the relevant costs of an investment which does not fall into the areas listed in paragraph 1a may be supported with resources from the fund provided that the remaining cost is financed from private legal entities.</u></b></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	management committee shall be responsible for the day-to-day management of the fund.		
<b>Amendment 109</b> <b>Article 1- Point 7</b> Article 10d - paragraph 4 - subparagraph 2			
The investment board shall elect a representative from the Commission as chairman. The investment board shall strive to take decisions by consensus. If the investment board is not able to decide by consensus within a deadline set by the chairman, the investment board shall take a decision by simple majority.	The <i>chairman of the</i> investment board shall <i>be elected from among its members for a one-year term</i> . The investment board shall strive to take decisions by consensus. <i>The advisory</i> board shall <i>adopt its opinion</i> by simple majority.		
<b>Amendment 110</b> <b>Article 1- Point 7</b> Article 10d - paragraph 4 - subparagraph 3			
The management committee shall be composed of representatives appointed by the investment board. Decisions of the management committee shall be taken by simple majority.	The <i>investment board, advisory board and management committee</i> shall <i>operate in an open and transparent manner. The minutes of both board meetings shall be published. The composition of the investment board and advisory board shall be published and CVs and declarations of interests of the members shall be made available to the public and regularly</i>		The amendment is partly taken on board in suggested new subparagraph in paragraph 3 of the Council text (above).

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	<p><i>updated. The investment board and the advisory board shall, on an ongoing basis, check for the absence of any conflict of interest. The advisory board shall submit every six months to the European Parliament, the Council and the Commission a list of advice provided to projects.</i></p>		
<p><b>Amendment 111</b> <b>Article 1- Point 7</b> Article 10d - paragraph 4 - subparagraph 4</p>			
<p>If the EIB recommends not financing an investment and provides reasons for this recommendation, a decision shall only be adopted if a majority of two-thirds of all members vote in favour. The Member State in which the investment will take place and the EIB shall not be entitled to cast a vote in this case. For small projects funded through loans provided by a national promotional bank or through grants contributing to the implementation of a national programme serving specific objectives in line with the objectives of the Modernisation Fund, provided that not more than</p>	<p>If the EIB recommends <i>to the advisory board not to finance</i> an investment and provides reasons <i>why it is not in line with the investment policy adopted by the investment board and the selection criteria set out in paragraph 1, a positive opinion</i> shall only be adopted if a majority of two-thirds of all members vote in favour. The Member State in which the investment will take place and the EIB shall not be entitled to cast a vote in this case.</p>		

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10% of the Member States' share set out in Annex IIb is used under the programme, the two preceding sentences shall not apply.			
<b>Amendment 112</b> <b>Article 1 - Point 7</b> Article 10d - paragraph 5 - introductory part			
5. The beneficiary Member States shall report annually to the management committee on investments financed by the fund. The report shall be made public and include: (a) information on the investments financed per beneficiary Member State; (b) an assessment of the added value in terms of energy efficiency or modernisation of the energy system achieved through the investment;	5. The beneficiary Member States shall report annually to the <i>investment board and advisory board</i> on investments financed by the fund. The report shall be made <i>available to the</i> public and include:	5. The investment <u>committee</u> shall strive to adopt its recommendations by consensus. If the investment <u>committee</u> is not able to decide by consensus within a deadline set by the chairman, it shall take a decision by simple majority. [...] If the <u>representative of the EIB does not endorse financing an investment</u> , a recommendation [...] shall only be adopted if a majority of two-thirds of all members vote in favour. [...] The <u>representative of the</u> Member State in which the investment will take place and the <u>representative of the EIB</u> shall not be entitled to cast a vote in this case. <u>This subparagraph shall not apply</u> for small-scale projects funded through loans provided by a national promotional bank or through grants contributing to the implementation of a national	



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		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 [...].	
<b>Article 1 - Point 7</b> Article 10d - subparagraph 5a (new)			
		<u>5a. Any acts or recommendations by the EIB or the investment committee pursuant to paragraphs 4 and 5 shall be made in a timely manner and state the reasons on which they are based. Such acts and recommendations shall be made public.</u>	
<b>Amendment 113</b> <b>Article 1 - Point 7</b> Article 10d - paragraph 6			
6. Each year, the management committee shall report to the Commission on experience with the evaluation and selection of investments. The Commission shall review the basis on which projects are selected by 31 December 2024 and, where appropriate, make proposals to the management committee.	6. Each year, the <i>advisory board</i> shall report to the Commission on experience with the evaluation and selection of investments. The Commission shall review the basis on which projects are selected by 31 December 2024 and, where appropriate, make proposals to the <i>investment board and the advisory board</i> .	6. <u>The beneficiary Member States shall be responsible for following up on the implementation with respect to selected projects.</u>	

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<b>Amendment 114</b> <b>Article 1 - Point 7</b> Article 10d - paragraph 7			
<p>7.The Commission shall be empowered to adopt a delegated act in accordance with Article 23 to implement this Article."</p>	<p>7. The Commission <i>is</i> empowered to adopt delegated <i>acts</i> in accordance with Article <b>30b</b> to <i>supplement this Directive by laying down detailed arrangements for the effective functioning of the Modernisation Fund.</i></p>	<p><u>7.</u> The beneficiary Member States shall report annually to the <u>Commission</u> on investments financed by the fund. The report shall be made public and include:            (a) information on the investments financed per beneficiary Member State;            (b) an assessment of the added value in terms of energy efficiency or modernisation of the energy system achieved through the investment.</p>	
<b>Article 1 - Points 8 and 9 (new)</b> Article 10d			
		<p>8. The <u>investment committee</u> shall report <u>annually</u> to the Commission on experience with the evaluation [...] of investments. <u>By 31 December 2024, taking into consideration the findings of the investment committee, the Commission shall review the areas for [...] projects referred to in paragraph 1a and the basis on which the investment committee bases its recommendations [...].</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		9. The Commission <u>is</u> empowered to adopt <u>implementing</u> acts [...] concerning detailed rules on the operation of the fund. <u>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a.</u> "	
<b>Article 1 - Point 8</b> Article 11 - paragraph 1 - subparagraph 2			
<p>(8) In Article 11(1), the following second subparagraph is added:            "A list of installations covered by this Directive for the five years beginning on 1 January 2021 shall be submitted by 30 September 2018, and lists for the subsequent five years shall be submitted every five years thereafter. Each list shall include information on production activity, transfers of heat and gases, electricity production and emissions at sub-installation level over the five calendar years preceding its submission. Free allocations shall only be given to installations where such information is provided."</p>		<p>(8) In Article 11(1), the following [...] subparagraph is added:            "A list of installations covered by this Directive for the five years beginning on 1 January 2021 shall be submitted by 30 September 201<u>9</u>, and lists for the subsequent five years shall be submitted every five years thereafter. Each list shall include information on production activity, transfers of heat and gases, electricity production and emissions at sub-installation level over the five calendar years preceding its submission. Free allocations shall only be given to installations where such information is provided."</p>	<p><b><u>See new suggestion in third column.</u></b></p>

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<b>Amendment 115</b> <b>Article 1 - Point 8 a (new)</b> Article 11 - paragraph 1 - subparagraph 2 a (new)			
	<i>(8a) In Article 11(1) the following subparagraph is added:            'From 2021 onwards, Member States shall also ensure that during each calendar year every operator reports production activity for adjustments to allocation in accordance with Article 10a paragraph 7.'</i>		Activity levels already reported under free allocation rules. EP agrees to drop amendment.
<b>Amendment 116</b> <b>Article 1 - Point 8 b (new)</b> Article 11 - paragraph 3a (new)			
	<i>(8b) In Article 11, the following paragraph is added:            '3a. In case of a reasonable suspicion of irregularities or a failure by a Member State to provide the list and the information set out in paragraphs 1 to 3, the Commission may start an independent investigation, where necessary assisted by a contracted third party. The Member State concerned shall provide all information and access necessary for the investigation, including access to installations</i>		Not acceptable

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<i>and production data. The Commission shall respect the same confidentiality on commercially sensitive information as the Member State concerned and shall publish a report on that investigation.'</i>		
(9) In Article 11a, paragraphs 8 and 9 are deleted.			
(10) In Article 11b, paragraph 7 is deleted.			
<b>Amendment 117</b> <b>Article 1 - Point 10 a (new)</b> Article 12 - paragraph 3a			
	<i>(10a) In Article 12, paragraph 3a is replaced by the following:</i> '3a. An obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide <sup>1</sup> , <i>nor in respect of emissions verified as captured and/or re-used in an application ensuring a permanent bound of</i>		Not acceptable

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	<i>the CO2, for the purpose of carbon capture and re-use.'</i>		
<b>Article 1 - Point 10b (new)</b> <b>Article 12 - paragraph 4</b>			
		<p>(10b) <u>In Article 12, the following sentences are added at the end of paragraph 4:</u>  <u>"In case of closure of electricity generation capacity in their territory due to additional national measures, Member States may cancel allowances from the total quantity of allowances to be auctioned by them referred to in Article 10(2) up to the average verified emissions of the installation concerned over a period of five years preceding the closure. The Member State concerned shall inform the Commission of such intended cancellation in accordance with the delegated acts adopted pursuant to Article 10(4)."</u></p>	<p>Compromise suggestion in relation to EP AMs 41 and 58. Linked to compromise suggestions in Article 10 (1) and recital 6a (new).</p>
<p>(11) Article 13 is replaced by the following:  <i>"Article 13</i>  Validity of allowances  Allowances issued from 1 January 2013 onwards shall be valid indefinitely. Allowances issued</p>			

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>from 1 January 2021 onwards shall include an indication showing in which ten-year period beginning from 1 January 2021 they were issued, and be valid for emissions from the first year of that period onwards."</p>			
<p><b>Amendment 118</b>  <b>Article 1 - point 12</b>  Article 14 - paragraph 1</p>			
<p>(12) In Article 14(1), the second subparagraph is replaced by the following:  "The Commission shall be empowered to adopt a delegated act in accordance with Article 23."</p>	<p><i>(12) In Article 14, paragraph 1 is replaced by the following:</i></p> <p><i>'1. The Commission is empowered to adopt delegated acts in accordance with Article 30b to supplement this Directive by laying down detailed arrangements for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, the monitoring and reporting of tonne- kilometre data for the purpose of an application under Articles 3e or 3f, which shall be based on the principles for monitoring and reporting set out in Annex IV and the specification of the global warming potential of each</i></p>	<p><u>"The Commission shall adopt implementing acts concerning the detailed arrangements for the monitoring and reporting of emissions as set out in paragraphs 1 and 2 and in Annex IV. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a."</u></p>	<p>Last part of EP amendment covered by Council text in recital 18c (simplification).</p>

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	<p><i>greenhouse gas in the requirements for monitoring and reporting emissions for that gas.';</i>  <i>'By 31 December 2018, the Commission shall adjust existing rules on monitoring and reporting of emissions as defined in Commission Regulation (EU) 601/2012* in order to remove regulatory barriers to investment in more recent low carbon technologies such as carbon capture and usage (CCU). Those new rules shall be effective for all CCU technologies as of 1 January 2019.</i>  <i>That regulation shall also determine simplified monitoring, reporting and verification procedures for small emitters.</i></p> <p><i>* Commission Regulation (EU) No 601/2012 of 21 June 2012 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council. (OJ L 181, 12.7.2012, p. 30).'</i></p>		



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<b>Amendment 119</b> <b>Article 1 - point 13</b> Article 15 - paragraphs 4 and 5			
<p>(13) In Article 15, the fifth subparagraph is replaced by the following:            “The Commission shall be empowered to adopt a delegated act in accordance with Article 23.”.</p>	<p>(13) In Article 15, the <i>fourth and fifth paragraphs are</i> replaced by the following:            ‘The Commission <i>is</i> empowered to adopt delegated acts in accordance with Article <i>30b to supplement this directive by laying down detailed arrangements for the verification of emission reports based on the principles set out in Annex V and for the accreditation and supervision of verifiers. It shall specify conditions for the accreditation and withdrawal of accreditation, for mutual recognition and peer evaluation of accreditation bodies, as appropriate.</i>’</p>	<p>(13) In Article 15, the <u>fourth and fifth</u> subparagraphs <u>are</u> replaced by the following:            “<u>The Commission shall adopt implementing acts concerning the verification of emission reports based on the principles set out in Annex V and for the accreditation and supervision of verifiers. It shall specify conditions for the accreditation and withdrawal of accreditation, for mutual recognition and peer evaluation of accreditation bodies, as appropriate.</u>  <u>Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a.</u>”</p>	

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<b>Amendment 120</b> <b>Article 1 - point 13 a (new)</b> Article 16 - paragraph 7			
	<p><i>(13a) In Article 16, paragraph 7 is replaced by the following:</i></p> <p>7. When requests such as those referred to in paragraph 5 are addressed to the Commission, the Commission shall inform the other Member States through their representatives on the Committee referred to in Article 30c(1) in accordance with the Committee's Rules of Procedure.</p>		
<b>Amendment 121</b> <b>Article 1 - point 14</b> Article 16 - paragraph 12			
<p>(14) In Article 16, paragraph 12 is replaced by the following:            "12. Where appropriate, detailed rules shall be established in respect of the procedures referred to in this Article. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 22a."</p>	<p>(14) In Article 16, paragraph 12 is replaced by the following:            "12. Where appropriate, detailed rules shall be established in respect of the procedures referred to in this Article. Those implementing acts shall be adopted in accordance with the <i>examination</i> procedure referred to in Article 30c(2)."</p>	<p>(14) In Article 16, paragraph 12 is replaced by the following:            "12. <u>The Commission shall be empowered to adopt implementing acts containing</u> detailed rules in respect of the procedures referred to in this Article. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 22a."</p>	

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<b>Amendment 122</b> <b>Article 1 - point 15</b> Article 19 - paragraph 3			
<p>(15) In Article 19(3), the third sentence is replaced by the following:            "It shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems. The Commission shall be empowered to adopt a delegated act in accordance with Article 23."</p>	<p>(15) In Article <b>19, paragraph 3</b> is replaced by the following:  <i>'3 The Commission is empowered to adopt delegated acts in accordance with Article 30b to supplement this Directive by laying down detailed arrangements for the establishment of a standardised and secure system of registries in the form of standardised electronic databases containing common data elements to track the issue, holding, transfer and cancellation of allowances, to provide for public access and confidentiality, as appropriate, and to ensure that there are no transfers which are incompatible with the obligations resulting from the Kyoto Protocol. Those delegated acts shall also include provisions concerning the use and identification of CERs and ERUs in the EU ETS and the monitoring of the level of such use. Those acts shall also include provisions to put</i></p>	<p>(15) [...] Article 19(3)[...] is replaced by the following:            "[...] The Commission shall be empowered to adopt delegated acts in accordance with Article 23 <u>to supplement this Directive by laying down all necessary requirements concerning the Union Registry for the trading period commencing on 1 January 2013 and subsequent periods in the form of standardised electronic databases containing common data elements to track the issue, holding, transfer and cancellation, as relevant, of allowances, and to provide for public access and confidentiality, as appropriate. It shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems.</u>"</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	into effect rules on the mutual recognition of allowances in agreements to link emission trading systems.'		
<b>Amendment 123</b> <b>Article 1 - point 15 a (new)</b> Article 21 - paragraph 1			
	<p><i>(15a) In Article 21, paragraph 1 is replaced by the following:</i></p> <p>'1. Each year the Member States shall submit to the Commission a report on the application of this Directive. That report shall pay particular attention to the arrangements for the allocation of allowances, <i>financial measures pursuant to Article 10a(6)</i>, the operation of registries, the application of the implementing measures on monitoring and reporting, verification and accreditation and issues relating to compliance with this Directive and on the fiscal treatment of allowances, if any. The first report shall be sent to the Commission by 30 June 2005. The report shall be drawn up on the basis of a questionnaire or outline drafted by the Commission in accordance with</p>	<p>(15 -a) <u>In Article 21, the fourth sentence of paragraph 1 is replaced by the following:</u></p> <p><u>"The report shall be drawn up on the basis of a questionnaire or outline adopted by the Commission in the form of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2)."</u></p>	<p>First part of the amendment is covered by Council text in Art. 10a(6).</p> <p>See suggestion in third column to take account of future repeal of Directive 91/692/EEC.</p> <p>It is also suggested to add a new recital as follows:</p> <p><u>"Directive 2003/87/EC requires Member States to provide a report on its implementation on the basis of a questionnaire or outline drafted by the Commission in accordance with the procedure referred to in Directive 91/692/EEC<sup>1</sup>. The Commission has proposed to repeal the reporting requirements under Directive 91/692/EEC<sup>2</sup>. It is therefore appropriate to replace the</u></p>

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	the procedure laid down in Article 6 of Directive 91/692/EEC. The questionnaire or outline shall be sent to Member States at least six months before the deadline for the submission of the first report.'		reference to Directive 91/692/EEC by a reference to the procedure referred to in this Directive.  <sup>1</sup> Council Directive 91/692/EEC of 23 December 1991 standardizing and rationalizing reports on the implementation of certain Directives relating to the environment (OJ L 377, 31.12.1991, p. 48.) <sup>2</sup> COM(2016) 789 final."
<b>Amendment 124</b> <b>Article 1 - point 15 b (new)</b> Article 21 - paragraph 2 a (new)			
	<i>(15b) In Article 21, the following paragraph is inserted:</i>  <i>'2a. The report shall, using data provided through the cooperation referred to in Article 18b, include a list of operators subject to the requirements of this Directive who have not opened a registry account.'</i>		The amendment is not necessary for stationary installations.

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<b>Article 1 - point 15 a (new)</b> Article 21 - paragraph 4			
		(15a) <u>In Article 21, the following paragraph is added:</u> "4. Every three years, the report referred to in paragraph 1 shall also pay particular attention to the equivalent measures adopted for <u>small installations excluded from the EU ETS. This issue shall be considered in the exchange of information referred to in paragraph 3.</u> "	
<b>Amendment 125</b> <b>Article 1 - point 15 c (new)</b> Article 21 - paragraph 3 a (new)			
	<i>(15c) In Article 21 the following paragraph is added:</i>  <i>'3a. In case of a reasonable suspicion of irregularities or a failure by a Member State to report in accordance with paragraph 1, the Commission may undertake an independent investigation, where necessary assisted by a contracted third party. The Member State shall provide all information and access necessary for the investigation,</i>		

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	<i>including access to installations. The Commission shall publish a report on the investigation.'</i>		
<b>Amendment 126</b> <b>Article 1 - point 16</b> Article 22 - paragraph 2			
(16) In Article 22, the second subparagraph is replaced by the following: “The Commission shall be empowered to adopt a delegated act in accordance with Article 23”.	The Commission <i>is</i> empowered to adopt delegated <i>acts</i> in accordance with Article <i>30b to amend this Directive by laying down non-essential elements of the Annexes to this Directive, with the exception of Annexes I, IIa and IIb.</i>	<u><b>(16) [...] Article 22 [...] is replaced by the following:</b></u>  “The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to <u>amend the Annexes to this Directive, with the exception of Annexes I, IIa and IIb, where appropriate, in the light of the reports provided for in Article 21 and of the experience of the application of this Directive. Annexes IV and V may be amended in order to improve the monitoring, reporting and verification of emissions</u> ”.	<u><b>Technical adjustment</b></u>

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<b>Amendment 127</b> <b>Article 1 - point 18</b> Article 22a			
<p>(17) The following Article 22a is inserted:</p> <p><i>"Article 22a</i>  <b>Committee procedure</b>            1. The Commission shall be assisted by the Committee established by Article 8 of Decision 93/389/EEC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.            2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.            Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply."</p>	<p>(17) The following <i>Article</i> is inserted:</p> <p><i>'Article 30c</i>            Committee procedure'</p>	<p>(17) The following Article is inserted:</p> <p><i>"Article 22a</i>            Committee procedure            1. The Commission shall be assisted by the <u>Climate Change Committee</u> established by Article <u>26</u> of <u>Regulation (EU) 525/2013</u>.            That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.            2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.            Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply."</p>	



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 128</b> <b>Article 1 - point 18</b> Article 23			
<p>(18) Article 23 is replaced by the following:</p> <p><i>“Article 23</i>            Exercise of the delegation</p> <p>1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</p> <p>2. The power to adopt delegated acts referred to in Article 3d(3), Article 10(4), Article 10a(1) and (8), Article 10b, Article 10d, Article 14(1), Article 15, Article 19(3), Article 22, Article 24, Article 24a and Article 25a shall be conferred on the Commission for an indeterminate period of time from the (*).            (*) date of entry into force of the basic legislative act.</p> <p>3. The delegation of powers referred to in paragraph 2 may be revoked at any time by the</p>	<p><i>‘Article 30b</i>            Exercise of the delegation’</p>	<p><i>“Article 23</i>            Exercise of the delegation</p> <p>1.The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.</p> <p>2. The power to adopt delegated acts referred to in Article 3d(3), Article 10(4), Article 10a(1) [...], Article 10b, [...], Article 19(3), Article 22, Article 24 [...] and Article 25a shall be conferred on the Commission for an indeterminate period of time from the (*).            (*) date of entry into force of the basic legislative act.</p> <p>3. The delegation of powers referred to in <u>Article 3d(3), Article 10(4), Article 10a(1) and [...]</u></p>	

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<p>European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the <i>Official Journal of the European Union</i> or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p> <p>4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> <p>5. A delegated act adopted pursuant to the preceding paragraphs shall</p>		<p><u>Article 10b, [...] Article 19(3), Article 22, Article 24 [...] and Article 25a</u> may be revoked at any time by the European Parliament or by the Council. A decision to <u>revoke</u> shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.</p> <p>3a. <u>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.</u></p> <p>4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.</p> <p>5. A delegated act adopted pursuant to <u>Article 3d(3), Article 10(4),</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council."</p>		<p><u>Article 10a(1) [...], Article 10b, [...], Article 19(3), Article 22, Article 24 [...]</u> and Article 25a shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council."</p>	
<p><b>Amendment 129</b> <b>Article 1 - point 19 - point a</b> Article 24 - paragraph 1 - subparagraph 1</p>			
<p>(19) Article 24 is amended as follows: (a) paragraph 1 is replaced by the following: "From 2008, Member States may apply emission allowance trading in accordance with this Directive to activities and to greenhouse gases which are not listed in Annex I, taking into account all relevant</p>	<p>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</p>	<p><u>"1.</u> 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</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the Community scheme and the reliability of the planned monitoring and reporting system, provided that inclusion of such activities and greenhouse gases is approved by the Commission.</p>	<p>criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the <i>EU ETS</i> and the reliability of the planned monitoring and reporting system, provided that inclusion of such activities and <i>such</i> greenhouse gases is approved by the Commission. <b><i>Any such unilateral inclusion shall be proposed and approved no later than 18 months before the start of a new trading period in the EU ETS.</i></b></p>	<p>criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the <u>Union system</u> and the reliability of the planned monitoring and reporting system, provided that inclusion of such activities and greenhouse gases is approved by the Commission, in accordance with delegated acts which the Commission shall be empowered to adopt in accordance with Article 23, if the inclusion refers to activities and greenhouse gases which are not listed in Annex I.”;</p>	
<p><b>Amendment 130</b>  <b>Article 1 - point 19 - point a</b>  Article 24 - paragraph 1 - subparagraph 2</p>			
<p>In accordance with delegated acts which the Commission shall be empowered to adopt in accordance with Article 23, if the inclusion refers to activities and greenhouse gases which are not listed in Annex I.”;</p>	<p><b><i>The Commission is</i></b> empowered to adopt <b><i>delegated acts</i></b> in accordance with Article <b><i>30b to supplement this Directive by laying down detailed arrangements for approval of the inclusion of the activities and greenhouse gases referred to in the first subparagraph in the emission allowance trading scheme if that inclusion refers to activities and greenhouse gases which are not</i></b></p>	<p><i>[integrated into previous subparagraph]</i></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	listed in Annex I.		
<b>Amendment 131</b> <b>Article 1 - point 19 - point b</b> Article 24 - paragraph 3			
(b) the second subparagraph of paragraph 3 is replaced by the following: “The Commission shall be empowered to adopt delegated acts for such a regulation for the monitoring and reporting of emissions and activity data in accordance with Article 23”.	(b) paragraph 3 is replaced by the following:  <i>'3. The Commission is empowered to adopt delegated acts in accordance with Article 30b to supplement this Directive by laying down detailed arrangements for the monitoring of, and reporting on, related to activities, installations and greenhouse gases which are not listed as a combination in Annex I, if that monitoring and reporting can be carried out with sufficient accuracy.'</i> ;	(b) the second <u>sentence</u> of paragraph 3 is replaced by the following: “The Commission shall be empowered to adopt delegated acts <u>to supplement this Directive to this effect</u> ”.	
<b>Amendment 132</b> <b>Article 1 - point 20 - point a</b> Article 24a - paragraph 1 - subparagraphs 1 and 2			
(20) Article 24a is amended as follows: (a) the second subparagraph of paragraph 1 is replaced by the following: “Such measures shall be consistent with acts adopted pursuant to	(a) <i>in paragraph 1, the first and second subparagraphs are</i> replaced by the following: <i>'1. The Commission is empowered to adopt delegated acts in</i>	(a) the second subparagraph of paragraph 1 is replaced by the following: “Such measures shall be consistent with acts adopted pursuant to	<b><u>Technical adjustment in third column subsequent to deletion by this directive of Art.11b(7) of ETS Directive. Note that the acts adopted pursuant to the former Art. 11b(7) will continue to apply pursuant to recital 18a.</u></b>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>Article 11b(7). The Commission shall be empowered to adopt a delegated act in accordance with Article 23.”.</p> <p>(b) paragraph 2 is deleted.</p>	<p>accordance with Article <i>30b</i> to <i>supplement this Directive by laying down, in addition to the inclusions provided for in Article 24, detailed arrangements for issuing of allowances or credits in respect of projects administered by Member States that reduce greenhouse gas emissions not covered by the EU ETS.'</i></p>	<p><b>former</b> Article 11b(7) <b>as in force before [date of entry into force of this Directive].</b> The Commission is empowered to adopt implementing acts containing harmonised rules in respect of the procedures referred to in this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a”.</p> <p>(b) paragraph 2 is deleted.</p>	
<p>(21) Article 25(2) is deleted.</p>			
<p><b>Amendment 133</b> <b>Article 1 - point 22</b> Article 25a - paragraph 1</p>			
<p>(22) In Article 25a, paragraph 1 is replaced by the following:</p> <p>"Where a third country adopts measures for reducing the climate change impact of flights departing from that country which land in the Community, the Commission, after consulting with that third country, and with Member States within the Committee referred to in Article 23(1), shall consider options</p>	<p>1. Where a third country adopts measures for reducing the climate change impact of flights departing from that country which land in the <b>Union</b>, the Commission, after consulting with that third country, and with Member States within the Committee referred to in Article <b>30c</b>(1), shall consider options</p>	<p>(22) In Article 25a, <u>the first two subparagraphs of paragraph 1</u> are replaced by the following:</p> <p>"Where a third country adopts measures for reducing the climate change impact of flights departing from that country which land in the <u>Union</u>, the Commission, after consulting with that third country, and with Member States within the Committee referred to in Article 23(1), shall consider options</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>available in order to provide for optimal interaction between the Community scheme and that country's measures.</p> <p>Where necessary, the Commission may adopt amendments to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in Annex I or to provide for any other amendments to the aviation activities listed in Annex I which are required by an agreement pursuant to the fourth subparagraph. The Commission shall be empowered to adopt such amendments in accordance with Article 23."</p>	<p>available in order to provide for optimal interaction between the <i>EU ETS</i> and that <i>third</i> country's measures.</p> <p>Where necessary, the Commission may <i>submit a legislative proposal to the European Parliament and Council</i> to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in Annex I or to provide for any other amendments to the aviation activities listed in Annex I which are required by <i>such</i> agreement.</p>	<p>available in order to provide for optimal interaction between the <u>Union system</u> and that country's measures.</p> <p><u>The Commission shall be empowered to adopt delegated acts in accordance with Article 23 to amend Annex I of this Directive to provide for flights arriving from the third country concerned to be excluded from the aviation activities listed in Annex I or to provide for any other amendments to the aviation activities listed in Annex I which are required by an agreement concluded pursuant to Article 218 of the Treaty.</u></p>	
<p><b>Amendment 134</b>  <b>Article 1 - point 22 a (new)</b>  Article 27 - paragraph 1</p>			
	<p><i>(22a) In Article 27, paragraph 1 is replaced by the following:</i></p> <p>'1. Following consultation with the operator <i>and upon the operator's agreement</i>, Member States may exclude from the <i>EU ETS</i> installations <i>operated by an SME</i> which have reported to the</p>		Not acceptable

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p>competent authority emissions of less than <b>50 000</b> tonnes of carbon dioxide equivalent, excluding emissions from biomass, in each of the three years preceding the notification under point (a), and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:</p> <p>(a) it notifies the Commission of each such installation, specifying the equivalent measures applying to that installation that will achieve an equivalent contribution to emission reductions that are in place <b><i>and specifying how those measures would not result in higher compliance costs for such installations</i></b>, before the list of installations pursuant to Article 11(1) has to be submitted and at the latest when this list is submitted to the Commission;</p> <p>(b) it confirms that monitoring arrangements are in place to assess whether any installation emits <b>50 000</b> tonnes or more of carbon</p>		



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p>dioxide equivalent, excluding emissions from biomass, in any one calendar year. Member States, <b>following an operator's request, shall</b> allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between 2008 and 2010 which are below 5 000 tonnes a year, in accordance with Article 14;</p> <p>(c) it confirms that if any installation emits <b>50 000</b> tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures applying to that installation that will achieve an equivalent contribution to emission reductions are no longer in place, the installation will be reintroduced into the <b>EU ETS</b>;</p> <p>(d) it <b>makes</b> the information referred to in points (a), (b) and (c) <b>available to the public</b>. Hospitals may also be excluded if they undertake equivalent measures.'</p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Article 1 - point 22 a (new)</b> Article 27 - paragraph 3 - subparagraph 2			
		<p>(22a) <u>In Article 27 (3), the second subparagraph is replaced by the following:</u>  <u>"Any such installation shall stay in the Union system for the rest of the period referred to in Article 11(1) during which it was reintroduced."</u></p>	
<b>Amendment 135</b> <b>Article 1 - point 22 b (new)</b> Article 27 a (new)			
	<p><i>(22b) The following Article is inserted:</i>  <i>'Article 27a</i></p> <p><i>Exclusion of small installations not subject to equivalent measures</i></p> <p><i>1. 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 5 000 tonnes of carbon dioxide equivalent, excluding emissions from biomass, in each of the three years preceding the notification under point (a), if the Member State</i></p>	<p><u>The following Article is inserted:</u>  <u>"Article 27a</u>  <u>Optional exclusion of installations emitting less than 1000 tonnes</u>  <u>1. Member States may exclude from the EU ETS installations which have reported to the competent authority emissions of less than 1000 tonnes of carbon dioxide equivalent, excluding emissions from biomass, in each of the three years preceding the notification under point (a), if the Member State concerned complies with all of the following conditions:</u></p>	<p><b><u>Compromise proposal conditional on maintaining the 25000 tonnes threshold for small emitters under Article 27.</u></b></p> <p>See also recital 14.          (compromise in response to EP AMs 135 and exclusion of back-up generators in AM 138.)</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>concerned complies with the following conditions:</i></p> <p><i>(a) it notifies the Commission of each such installation before the list of installations pursuant to Article 11(1) is to be submitted or at the latest when that list is submitted to the Commission;</i></p> <p><i>(b) it confirms that monitoring arrangements are in place to assess whether any installation emits 5 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year;</i></p> <p><i>(c) it confirms that if any installation emits 5 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year the installation will be reintroduced into the EU ETS, unless Article 27 is applicable;</i></p> <p><i>(d) it makes the information referred to in points (a), (b) and (c) available to the public.</i></p>	<p><u>(a) it notifies the Commission of each such installation before the list of installations pursuant to Article 11(1) is to be submitted or at the latest when that list is submitted to the Commission;</u></p> <p><u>(b) it confirms that simplified monitoring arrangements are in place to assess whether any installation emits 1000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year;</u></p> <p><u>(c) it confirms that if any installation emits 1000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year, the installation will be reintroduced into the EU ETS; and</u></p> <p><u>(d) it makes the information referred to in points (a), (b) and (c) available to the public.</u></p> <p><u>2. When an installation is reintroduced into the EU ETS pursuant to paragraph 1(c), any</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>2. When an installation is reintroduced into the EU ETS pursuant to paragraph 1(c), any allowances issued pursuant to Article 10a shall be granted starting with the year of the reintroduction. Allowances issued to such installations shall be deducted from the quantity to be auctioned pursuant to Article 10(2) by the Member State in which the installation is situated.'</i></p>	<p><u>allowances issued pursuant to Article 10a shall be granted starting with the year of the reintroduction. Allowances issued to such installations shall be deducted from the quantity to be auctioned pursuant to Article 10(2) by the Member State in which the installation is situated.</u>  <u>3. Member States may also exclude from the EU ETS reserve or backup units which do not operate more than 300 hours per year in each of the three years preceding the notification under point (a) of paragraph 1 under the same conditions as set out in paragraphs 1 and 2.</u></p>	
<p><b>Amendment 136</b>  <b>Article 1 - point 22c (new)</b>  Article 29</p>			
	<p><i>(22c) Article 29 is amended as follows:</i>  ‘Report to ensure the better functioning of the carbon market</p> <p>If, on the basis of regular reports referred to in Article 10(5), the Commission has evidence that the carbon market is not functioning</p>		<p>AM could result in overlapping reporting requirements.</p> <p>See compromise suggestion to AM 59.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p>properly, it shall submit a report to the European Parliament and to the Council. <b><i>The report shall include a section dedicated to the interaction between the EU ETS and other Union and national climate and energy policies, as regards the volumes of emissions reductions, the cost effectiveness of such policies, and their impact on demand for EU ETS allowances.</i></b></p> <p>The report may be accompanied, if appropriate, by <b><i>legislative</i></b> proposals aiming at increasing transparency of the <b><i>EU ETS</i></b> and addressing <b><i>the capacity to contribute to the Union's 2030 and 2050 climate and energy goals and addressing</i></b> measures to improve its functioning, <b><i>including measures to account for the impact of complementary Union-wide energy and climate policies on the supply-demand balance of the EU ETS.</i></b></p>		

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 137</b> <b>Article 1 - point 22d (new)</b> Article 30a (new)			
	<p><i>(22d) The following Article is inserted:</i></p> <p style="text-align: center;"><i>'Article 30a</i>  <i>Adjustments upon global stocktake under the UNFCCC and the Paris Agreement</i></p> <p><i>Within six months of the facilitative dialogue under the UNFCCC in 2018 the Commission shall publish a communication assessing the consistency of the Union's climate change legislation with the Paris Agreement goals. In particular, the communication shall examine the role and adequacy of the EU ETS in meeting the Paris Agreement goals.</i></p> <p><i>Within six months of the global stocktake in 2023 and subsequent global stocktakes thereafter, the Commission shall submit a report assessing the need to adjust the Union's climate action</i></p>	<p><u>(22b) Article 30 is replaced by the following:</u></p> <p><u>“Article 30</u>  <u>Review in the light of the implementation of the Paris Agreement and the development of carbon markets in other major economies</u></p> <p><u>1. The provisions of 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.</u></p> <p><u>2. The measures to support certain energy intensive industries that may be subject to carbon leakage referred to in Articles 10a and 10b shall also be kept under review in the light of climate policy measures in other major economies.</u></p> <p><u>3. The Commission shall report to the European Parliament and to the Council in the context of each global stocktake agreed under the Paris Agreement, in particular with</u></p>	<p>Compromise suggestion in third column.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	<p><i>accordingly.</i></p> <p><i>The report shall consider adjustments to the EU ETS within the context of global mitigation efforts and efforts undertaken by other major economies. In particular, the report shall assess the need for stricter emissions reductions, the need to adjust the carbon leakage provisions, and whether or not additional policy measures and tools are needed to meet the greenhouse gas commitments of the Union and Member States.</i></p> <p><i>The report shall take into account the risk of carbon leakage, the competitiveness of European industries, investments within the Union and the Union's industrialisation policy.</i></p> <p><i>The report shall be accompanied by a legislative proposal, if appropriate, and in such a case the Commission shall in parallel publish a full impact assessment.'</i></p>	<p><u>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 as concerns the linear factor referred to in Article 9, and may make [...] proposals to the European Parliament and the Council to amend the Directive as appropriate.</u></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 138</b> <b>Article 1 - point 22e (new)</b> Annex I - paragraph 3			
	<p><i>(22e) Annex I(3) is replaced by the following:</i></p> <p>'3. When the total rated thermal input of an installation is calculated in order to decide upon its inclusion in the <i>EU ETS</i>, the rated thermal inputs of all technical units which are part of it, in which fuels are combusted within the installation, are added together. <i>Those</i> units could include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units. Units with a rated thermal input under 3 MW, <i>back-up and emergency units used solely to generate electricity for on-site consumption in the event of a power cut</i> and units which use exclusively biomass shall not be taken into account for the purposes of this calculation. "Units using exclusively biomass" includes units</p>		See compromise suggested in Article 27a (new) and recital 14.



Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
	which use fossil fuels only during start-up or shut-down of the unit.'		
<b>Article 1 - paragraph 23</b> Annex IIa			
(23) Annex IIa is amended in accordance with the Annex I to this Directive.		(23) <u>In Annex IIa of Directive 2003/87/EC, the entries for Belgium, Italy, Luxembourg and Sweden are deleted.</u>	
<b>Article 1 - paragraph 24</b> Annex IIb			
(24) Annex IIb is amended in accordance with the Annex II to this Directive.		(24) Annex IIb of Directive 2003/87/EC is replaced by the text appearing in Annex I to this Directive.	
<b>Article 1 - paragraph 25</b> Annex IV			
(25) Annex IV is amended in accordance with the Annex III to this Directive.		(25) Annex IV is amended in accordance with [...] Annex II to this Directive.	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Amendment 139</b> <b>Article 1a (new)</b> Article 1 - paragraph 5 - subparagraphs 1a and 1b (new)			
	<p><i>Article 1a</i></p> <p><i>Amendments to Decision (EU) 2015/1814</i></p> <p><i>Decision (EU) 2015/1814 is amended as follows:</i></p> <p><i>In Article 1(5), the following subparagraphs are added to the first subparagraph:</i></p> <p><i>1a) ‘By way of derogation, up until the review period referred to in Article 3, the percentages referred to in this subparagraph shall be doubled. The review shall consider doubling the intake rate until market balance is restored.</i></p> <p><i>1b) In addition, the review shall introduce a cap on the MSR and, if appropriate, the review shall be accompanied by a legislative proposal.’</i></p>	<p><u>Article 1a</u></p> <p><u>Amendments to Decision (EU) 2015/1814</u></p> <p><u>Article 1 of Decision (EU) 2015/1814 is amended as follows:</u></p> <p><u>(1) in paragraph 5, first subparagraph, the following sentence is added:</u></p> <p><b><u>"By way of derogation, until 31 December 2023, the percentages and the 100 million allowances referred to in this subparagraph shall be doubled."</u></b></p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<b>Article 1a (new)</b> Article 1 - paragraph 5 - subparagraph 2 (new)			
		(2) the following paragraph is inserted: "5a. Unless otherwise decided in the first review in accordance with Article 3, as from 2023, allowances held in the reserve above the total number of allowances auctioned during the previous year shall no longer be valid."	<b><u>New compromise proposal in the third column in the context of an overall compromise package.</u></b>
<b>Article 2 - paragraph 1</b>			
<p><i>Article 2</i> <i>Transposition</i></p> <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2018 at the latest. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall</p>		<p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [18 months following the entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall</p>	

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
<p>determine how such reference is to be made.</p> <p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>		<p>determine how such reference is to be made.</p> <p>2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.</p>	
<b>Article 3 - paragraph 1</b>			
<p><i>Article 3</i> <i>Transitional provision</i> When complying with their obligation as set out in the first subparagraph of Article 2(1) of this Directive, Member States shall ensure that their national legislation transposing Article 10, Article 10a(5) to (7), the first and second subparagraphs of Article 10a(8), Article 10a(12) to (18), Article 10c and Article 11a(8) and (9) and Annex IIa and Annex IIb of Directive 2003/87/EC as last amended by Decision (EU) 2015/..., continue to apply until 31 December 2020.</p>		<p>When complying with their obligation as set out in the first subparagraph of Article 2(1) of this Directive, Member States shall ensure that their national legislation transposing Article 10, Article 10a(5) to (7), the first and second subparagraphs of Article 10a(8), Article 10a(12) to (18), Article 10c and Article 11a(8) and (9) and Annex IIa and Annex IIb of Directive 2003/87/EC as last amended by Decision (EU) 2015/<u>1814</u>, continue to apply until 31 December 2020. <u>The list contained in the Annex to Commission Decision 2014/746/EU<sup>10</sup> shall continue to apply until 31 December 2020.</u></p>	<p>EP has requested to come back to the new text added by Council at political level.</p>

Commission proposal	EP amendments	Council position Coreper 6.10.2017	Comments/Suggestions
		<p><sup>10</sup> <u>Commission Decision 2014/746/EU of 27 October 2014 determining, pursuant to Directive 2003/87/EC of the European Parliament and of the Council, a list of sectors and subsectors which are deemed to be exposed to a significant risk of carbon leakage, for the period 2015 to 2019 (OJ L 308, 29.10.2014, p. 114).</u></p>	
<p><i>Article 4</i> <i>Entry into force</i> This Directive shall enter into force on the twentieth day following its publication in the <i>Official Journal of the European Union</i>.</p>			
<p><i>Article 5</i> <i>Addressees</i> This Directive is addressed to the Member States. Done at Brussels, <i>For the European Parliament</i> <i>The President</i> <i>For the Council</i> <i>The President</i></p>			

**Commission proposal**

**ANNEXES**

**to the**

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

**Annex I**

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

**“ANNEX IIa**

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

Member State share

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

## Annex II

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

### “ANNEX IIb

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

##### Share of Modernisation Fund

Bulgaria	5,84%
Czech Republic	15,59%
Estonia	2,78%
Croatia	3,14%
Latvia	1,44%
Lithuania	2,57%
Hungary	7,12%
Poland	43,41%
Romania	11,98%
Slovakia	6,13%"

### Annex III

In Annex IV, Part A, to Directive 2003/87/EC, the paragraph under the fourth heading entitled "Monitoring of emissions of emissions of other greenhouse gases" replaced by the following:  
"Standardised or accepted methods shall be used, developed by the Commission in collaboration with all relevant stakeholders and adopted pursuant to Article 14(1).".

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## Council General Approach

[...] (Annex deleted)

## ANNEX I

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

### “ANNEX IIb

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

##### Share of Modernisation Fund

Bulgaria	5,84%
Czech Republic	15,59%
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Latvia	1,44%
Lithuania	2,57%
Hungary	7,12%
Poland	43,41%
Romania	11,98%
Slovakia	6,13% "

In Annex IV, Part A, to Directive 2003/87/EC, the paragraph under the fourth heading entitled "Monitoring of emissions of emissions of other greenhouse gases" is replaced by the following:  
"Standardised or accepted methods shall be used, developed by the Commission in collaboration with all relevant stakeholders and adopted pursuant to Article 14(1).".

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