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## Legislation

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<sup>(1)</sup> Text with EEA relevance.

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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## I

(Legislative acts)

## REGULATIONS

**REGULATION (EU) 2018/409 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 14 March 2018****amending Council Regulation (EC, Euratom) No 480/2009 establishing a Guarantee Fund for external actions**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 209 and 212 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure <sup>(1)</sup>,

Whereas:

- (1) The Guarantee Fund for external actions (the 'Fund') is regulated by Council Regulation (EC, Euratom) No 480/2009 <sup>(2)</sup>.
- (2) The Fund is endowed by one annual payment from the general budget of the Union, by interest on Fund resources invested and by amounts recovered from defaulting debtors.
- (3) Risk-premium revenues generated under the financing operations of the European Investment Bank (EIB) that benefit from a Union budgetary guarantee should be paid into the Fund.
- (4) Where the amount of the Fund exceeds 10 % of the Union's total outstanding capital liabilities, the surplus should be paid back into the general budget of the Union in order to better protect the general budget of the Union against potential additional risk of default of the EIB financing operations addressing the long-term economic resilience of refugees, migrants, host and transit communities, and communities of origin as a strategic response to addressing root causes of migration.
- (5) Regulation (EC, Euratom) No 480/2009 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC, Euratom) No 480/2009 is amended as follows:

(1) in Article 2, the following indent is added:

‘— risk-premium revenues generated under the financing operations of the EIB for which the Union provides a guarantee which is remunerated.’;

<sup>(1)</sup> Position of the European Parliament of 8 February 2018 (not yet published in the Official Journal) and decision of the Council of 27 February 2018.

<sup>(2)</sup> Council Regulation (EC, Euratom) No 480/2009 of 25 May 2009 establishing a Guarantee Fund for external actions (OJ L 145, 10.6.2009, p. 10).

(2) in Article 3, the third paragraph is replaced by the following:

'If the amount of the Fund exceeds 10 % of the Union's total outstanding capital liabilities, the surplus shall be paid back into the general budget of the European Union. That surplus shall be paid in one transaction to a special heading in the statement of revenue in the general budget of the European Union of the year  $n + 1$  on the basis of the year-end  $n - 1$  difference between 10 % of the Union's total outstanding capital liabilities amount and the value of the Fund's net assets, calculated at the beginning of the year  $n$ .'

(3) Article 7 is replaced by the following:

'Article 7

The Commission shall entrust the financial management of the Fund to the EIB.

By 30 June 2019, the Commission shall submit to the European Parliament and to the Council an independent external evaluation of the advantages and disadvantages of entrusting the financial management of the assets of the Fund and of the European Fund for Sustainable Development to the Commission, the EIB, or a combination of the two, taking into account the relevant technical and institutional criteria used in comparing asset-management services, including the technical infrastructure, a comparison of costs for the services given, the institutional set-up, reporting, performance, accountability and the expertise of each institution and the other asset-management mandates for the general budget of the European Union. The evaluation shall, where appropriate, be accompanied by a legislative proposal.'

(4) Article 8 is replaced by the following:

'Article 8

The Commission shall, by 31 May of each year, submit to the European Parliament, to the Council and to the Court of Auditors an annual report on the management of the Fund in the previous calendar year. The annual report shall contain a presentation of the financial position and information on the functioning of the Fund at the end of the previous calendar year, the financial flows as well as the significant transactions and any relevant information on the financial accounts, such as detailed information on the outstanding capital of guaranteed loans or the Fund's assets during the previous calendar year, as well as conclusions and lessons learned. The report shall also include information about the financial management and performance and the risk of the Fund at the end of the previous calendar year. As of 2019 and every third year thereafter, it shall also include an assessment on the adequacy of the 9 % target and the 10 % threshold for the Fund, as referred to in the second and third paragraphs of Article 3 respectively.'

#### Article 2

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 14 March 2018.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

L. PAVLOVA

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# DIRECTIVES

## DIRECTIVE (EU) 2018/410 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 March 2018

**amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) Directive 2003/87/EC of the European Parliament and of the Council <sup>(4)</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.
- (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 those emission reductions and the target is to be delivered in the most cost-effective manner through the European Union emission trading system ('EU ETS'), amounting to a reduction of 43 % below 2005 levels by 2030. This was confirmed in the intended nationally determined reduction commitment of the Union and its Member States submitted to the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) on 6 March 2015.
- (3) The Paris Agreement, adopted on 12 December 2015 under the UNFCCC ('the Paris Agreement') 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 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 Paris Agreement and its long-term goals.

<sup>(1)</sup> OJ C 71, 24.2.2016, p. 57.

<sup>(2)</sup> OJ C 240, 1.7.2016, p. 62.

<sup>(3)</sup> Position of the European Parliament of 6 February 2018 (not yet published in the Official Journal) and decision of the Council of 27 February 2018.

<sup>(4)</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).

- (4) In line with the commitment of the co-legislators expressed in Directive 2009/29/EC of the European Parliament and of the Council <sup>(1)</sup> and Decision No 406/2009/EC of the European Parliament and of the Council <sup>(2)</sup>, all sectors of the economy should contribute to the reduction of greenhouse gas emissions. Under the Paris Agreement, the Union and its Member States have undertaken an economy-wide reduction target. 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 adoption of an ambitious 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 objective of well below 2 °C agreed under the Paris Agreement. The Commission should keep this under regular review, and should report at least once a year to the European Parliament and to the Council on the progress achieved in the IMO towards an ambitious emission reduction objective, and on accompanying measures to ensure that the sector duly contributes to the efforts needed to achieve the objectives agreed under the Paris Agreement. Action from the IMO or the Union should start from 2023, including preparatory work on adoption and implementation and due consideration being given by all stakeholders.
- (5) The European Council of October 2014 confirmed in its conclusions that a well-functioning, reformed EU ETS with an instrument to stabilise the market will be the main European instrument to achieve the reduction target of at least 40 %, with an annual reduction factor of 2,2 % from 2021 onwards. The European Council also confirmed that free allocation will not expire and that existing measures will continue after 2020 to prevent the risk of carbon leakage due to climate policy, as long as no comparable efforts are undertaken in other major economies, without the share of allowances to be auctioned being reduced. The auction share should be expressed as a percentage figure in Directive 2003/87/EC to enhance planning certainty as regards investment decisions, to increase transparency and to render the overall system simpler and more easily understandable.
- (6) It is a key Union priority to establish a resilient Energy Union to provide secure, sustainable, competitive and affordable energy to its citizens and industries. Achieving this requires the continuation of ambitious climate action with the EU ETS as the cornerstone of the Union's climate policy, and also requires progress on the other aspects of the Energy Union. Implementing the ambition decided in the Union's 2030 climate and energy policy framework contributes to delivering a meaningful carbon price and continuing to stimulate cost-efficient greenhouse gas emission reductions.
- (7) Article 191(2) of the Treaty on the Functioning of the European Union (TFEU) requires that Union policy be based on the principle that the polluter should pay and, on this basis, Directive 2003/87/EC provides for a transition to full auctioning over time. Avoiding carbon leakage justifies temporarily postponing full auctioning, and targeted free allocation of allowances to industry is justified in order to address genuine risks of increases in greenhouse gas emissions in third countries where industry is not subject to comparable carbon constraints, as long as comparable climate policy measures are not undertaken by other major economies.
- (8) The auctioning of allowances remains the general rule, with free allocation as the exception. The Commission's Impact Assessment specifies that the share of allowances to be auctioned is 57 % over the period from 2013 to 2020. In principle, that share should remain 57 %. 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) 2015/1814 of the European Parliament and of the Council <sup>(3)</sup>. That share should include 75 million allowances used to support innovation. In the event that 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 3 % of the total quantity of allowances. For the purposes of solidarity, growth and interconnections, 10 % of the allowances to be auctioned by the Member States should be distributed among those Member States whose gross domestic product (GDP) per capita at market prices did not

(1) 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).

(2) 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).

(3) 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).

exceed 90 % of the Union average in 2013, and the rest of the allowances should be distributed among all Member States on the basis of verified emissions. The derogation for certain Member States with an average level of income per capita more than 20 % higher than the Union average in relation to that distribution in the period from 2013 to 2020 should expire.

- (9) Recognising the interaction between climate policies at Union and national level, Member States should have the possibility of cancelling allowances from their auction volume in the event of closures of electricity-generation capacity in their territory. To ensure predictability for operators and market participants with regard to the amount of auction allowances available, the possibility of cancelling allowances in such cases should be limited to an amount corresponding to the average verified emissions of the installation concerned over a period of five years preceding the closure.
- (10) To preserve the environmental benefit of emission reductions in the Union while actions by third countries do not provide comparable incentives to industry to reduce emissions, transitional free allocation should continue to installations in sectors and subsectors at genuine risk of carbon leakage. Experience gathered during the operation of the EU ETS has confirmed that sectors and subsectors are at risk of carbon leakage to varying degrees, and that free allocation has prevented carbon leakage. While some sectors and subsectors can be deemed to be at a higher risk of carbon leakage, others are able to pass on a considerable share of the costs of allowances to cover their emissions in product prices without losing market share, and only bear the remaining part of the costs so that they are at a low risk of carbon leakage. The Commission should determine and differentiate the relevant sectors based on their trade intensity and their emissions intensity to better identify sectors at genuine risk of carbon leakage.

While the assessment of sectors and subsectors should take place at a 4-digit level (NACE-4 code), specific circumstances should also be anticipated in which it may be appropriate to have the possibility of requesting an assessment at a 6-digit or an 8-digit level (Prodcom). Such possibility should exist where sectors and subsectors have previously been considered to be exposed to carbon leakage at a 6-digit or an 8-digit level (Prodcom), given that certain NACE codes, in particular those ending with .99, encompass 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 that, where relevant, a qualitative analysis of the risk of carbon leakage can be done to ensure a level playing field for products produced both in refineries and in chemical plants. Where, based on the criteria of trade intensity and emissions intensity, a threshold determined by taking into account the respective possibility for sectors and subsectors concerned to pass on costs in product prices is exceeded, the sector or subsector should be deemed at risk of carbon leakage. Other sectors and subsectors should be considered to be at low risk or no risk of carbon leakage. Taking into account the possibilities for sectors and subsectors outside of electricity generation to pass on costs through product prices should also reduce windfall profits. Unless otherwise decided in a review pursuant to Article 30 of Directive 2003/87/EC, free allocations to sectors and subsectors considered to be at low risk or no risk of carbon leakage, except district heating, should decrease by equal amounts after 2026 so as to reach a level of no free allocation in 2030.

- (11) The benchmark values for free allocation applicable from 2013 onwards should be reviewed in order to avoid windfall profits and to reflect technological progress in the sectors concerned in the period between 2007-2008 and each later period for which free allocations are determined in accordance with Article 11(1) of Directive 2003/87/EC. In order to reflect technological progress in the sectors concerned and adjust the benchmark values to the relevant period of allocation, provision should be made for the benchmark values for free allocations to installations, determined on the basis of data from the years 2007 and 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, considering the average performance of the 10 % most efficient installations, so that benchmark values reflect the actual rate of improvement. Where the data shows an annual reduction of less than 0,2 % or more than 1,6 % of the 2007-2008 value over the relevant period, the related benchmark value should be adjusted with rates other than the actual rates of improvement to preserve emission reduction incentives and properly reward innovation. For the period from 2021 to 2025, those benchmark values should be adjusted in respect of each year between 2008 and the middle of the period from 2021 to 2025 with either 0,2 % or 1,6 %, leading to an improvement of 3 % or 24 % respectively compared to the value applicable in the period from 2013 to 2020. For the period from 2026 to 2030, those benchmark values should be adjusted in

the same way, leading to an improvement of 4 % or 32 % respectively compared to the value applicable in the period from 2013 to 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.

- (12) The level of free allocation for installations should be better aligned with their actual production levels. To that end, allocations should be periodically adjusted in a symmetrical manner to take account of relevant increases and decreases in production. Data used in this context should be complete, consistent, independently verified and should present the same high level of accuracy and quality as the data used to determine the free allocation. In order to prevent manipulation or abuse of the system for adjustments to allocations and to avoid any undue administrative burden, considering the deadline that applies to the notification of changes in production, and bearing in mind the need to ensure that the changes to the allocations are carried out in an effective, non-discriminatory and uniform manner, the relevant threshold should be set at 15 % and be assessed on the basis of a rolling average of two years. The Commission should be able to 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.
- (13) It would be desirable that Member States partially compensate, in accordance with State aid rules, certain installations in sectors or subsectors which have been determined to be exposed to a significant risk of carbon leakage because of costs related to greenhouse gas emissions passed on in electricity prices, including *inter alia* for the consumption of electricity by the installations themselves produced through the combustion of waste gases. By seeking to use no more than 25 % of the revenues generated from the auctioning of allowances for indirect cost compensation, Member States are likely both to facilitate the achievement of the objectives of the EU ETS and to preserve the integrity of the internal market and of conditions of competition. To enhance the transparency in relation to the extent to which such compensation is provided, Member States should regularly report to the public on the measures they have in place and on the beneficiaries of the compensation, while ensuring 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 its State aid guidelines on compensation for indirect emission costs, the Commission should consider *inter alia* the usefulness of upper limits on the compensation granted by Member States. The review of Directive 2003/87/EC should consider the extent to which those financial measures have been effective in avoiding significant risks of carbon leakage due to indirect costs, and consider the possibility of further harmonisation of the measures, including a harmonised mechanism. Public sector climate finance will continue to play an important role in mobilising resources after 2020.

Therefore, auction revenues should also be used for financing climate actions in vulnerable third countries, in particular Least Developed Countries, including adaptation to the impacts of climate change, *inter alia* through the UNFCCC Green Climate Fund. The amount of climate finance to be mobilised will also depend on the ambition and quality of the Nationally Determined Contributions, subsequent investment plans and national adaptation planning processes. Regarding the potential social impacts of policies and investments required, Member States should also use auction revenues to contribute to a just transition to a low-carbon economy by promoting skill formation and reallocation of labour in social dialogue with the communities and regions affected by the transition of jobs.

- (14) The main long-term incentive arising from Directive 2003/87/EC for the capture and storage of CO<sub>2</sub> ('CCS'), for new renewable energy technologies and for breakthrough innovation in low-carbon technologies and processes, including environmentally safe carbon capture and utilisation ('CCU'), is the carbon price signal it creates and the fact that allowances will not need to be surrendered for CO<sub>2</sub> emissions which are avoided or permanently stored. In addition, in order to supplement the resources already being used to accelerate demonstration of commercial CCS facilities and innovative renewable energy technologies, allowances should be used to provide guaranteed rewards for deployment of CCS or CCU facilities, new renewable energy technologies and industrial innovation in low-carbon technologies and processes in the Union for CO<sub>2</sub> stored or avoided on a sufficient scale, provided an agreement on knowledge sharing is in place.



In addition to 400 million allowances initially made 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. Depending on the extent to which the share of allowances to be auctioned is reduced to avoid the need to apply a uniform cross-sectoral correction factor, the amount of allowances available under this fund should be increased by up to 50 million allowances. The majority of this support should be dependent on verified avoidance of greenhouse gas emissions, while it should be possible for some support to be given when pre-determined milestones are reached taking into account the technology deployed 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. The maximum percentage of project costs to be supported can vary by category of project. Due consideration should be given to projects that will have a significant innovation impact across the Union.

- (15) Greece had a GDP per capita at market prices below 60 % of the Union average in 2014 but is not a beneficiary of the Modernisation Fund, and should therefore be able to claim allowances to co-finance decarbonisation of the electricity supply of islands within its territory. Those allowances should come from the maximum amount of allowances referred to in Article 10a(5) of Directive 2003/87/EC which are not allocated for free by 31 December 2020, and should be auctioned in accordance with the modalities applicable to the Modernisation Fund.
- (16) A Modernisation Fund should be established from 2 % of the total quantity of allowances, and auctioned in accordance with the rules and modalities for auctions taking place on the Common Auction Platform set out in Commission Regulation (EU) No 1031/2010 <sup>(1)</sup>. Depending on the extent to which the share of allowances to be auctioned is reduced to avoid the need to apply a uniform cross-sectoral correction factor, the amount of allowances available under the Modernisation Fund should be increased by up to 0,5 % of the total quantity of allowances. Member States which in 2013 had a GDP per capita at market prices below 60 % of the Union average should be eligible for funding from the Modernisation Fund and be able to derogate, until 2030, from the principle of full auctioning for electricity generation by using the option of free allocation in order to transparently promote real investments modernising their energy sector while avoiding distortions of the internal energy market. Investments under the Modernisation Fund aimed at improving energy efficiency could include investments in the electrification of transport, in particular of road transport. 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 and the possibilities of leveraging investments in Member States. The governance structure should be commensurate with the purpose of ensuring the appropriate use of the funds.

That governance structure should include an investment committee, and due account should be taken of the expertise of the European Investment Bank (EIB) in the decision-making process unless support is provided to small-scale projects through loans from a national promotional bank or through grants via a national programme sharing the objectives of the Modernisation Fund. In order to identify and disclose any potential conflict of interest, the composition of the investment committee, the *curricula vitae* of its members as well as their declaration of interests should be published and regularly updated. In order to ensure that investment needs in low income Member States are adequately addressed, the funds for the Modernisation Fund should be distributed amongst the Member States based on the combined criteria of a 50 % share of verified emissions and a 50 % share of GDP. The financial assistance from the Modernisation Fund could be provided in different forms. To leverage resources and ensure that relevant investments have an increased impact, 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 could include separate resources from private legal entities that are entirely or partially owned by public authorities.

- (17) In order to streamline the funding mechanisms and minimise the administrative burden related to their implementation, the Member States concerned should have the possibility of using their share of the 10 % redistributed allowances and of the transitional free allocation for the modernisation of the energy sector under the provisions of the Modernisation Fund. To ensure predictability and transparency with regard to the volumes of allowances either available for auctioning or for the transitional free allocation, and with regard to the assets managed by the Modernisation Fund, Member States should inform the Commission of their intention to increase their resources under the Modernisation Fund before 2021.

<sup>(1)</sup> Commission Regulation (EU) No 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).

- (18) The European Council of October 2014 confirmed that the option to give free allocation to the energy sector should continue until 2030 and 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 EUR 12,5 million or more should be selected by the Member State concerned through a competitive bidding process on the basis of clear and transparent rules to ensure that free allocation is used to promote real investments that modernise or diversify the energy sector in line with the objectives of the Energy Union. Investments with a value of less than EUR 12,5 million should also be eligible for funding from the free allocation. The Member State concerned should select such investments based on clear and transparent criteria. The results of this selection process should be subject to public consultation. The public should be kept duly informed at the stage of the selection of investment projects as well as of their implementation. Investments should be complemented by resources from private legal entities, which could include separate resources from private legal entities that are entirely or partially owned by public authorities.
- (19) EU ETS funding should be coherent with the objectives of the Union's 2030 climate and energy policy framework and the long-term objectives expressed in the Paris Agreement, as well as other Union funding programmes, so as to ensure the effectiveness of public spending.
- (20) 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 allocation period. At the same time, to avoid an undue administrative burden, it should also be possible for Member States to exclude from the EU ETS installations that emit less than 2 500 tonnes of carbon dioxide equivalent in each of the three years preceding the beginning of each allocation period, and reserve or backup units operating less than 300 hours in each year of that three-year period. The possibility of including additional activities and gases in the system should continue, without them being considered new entrants. That possibility for the inclusion of additional activities and gases after 2020 should be without prejudice to the Union-wide quantity of allowances under the EU ETS and amounts derived from it.
- (21) 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 Council Directive 91/692/EEC<sup>(1)</sup>. The Commission has proposed to repeal the reporting requirements under Directive 91/692/EEC. It is therefore appropriate to replace the reference to Directive 91/692/EEC with a reference to the procedure referred to in Directive 2003/87/EC.
- (22) 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. That Decision also provides for allowances that are not allocated to new entrants by 2020 and not allocated because of cessations and partial cessations to be placed in the market stability reserve.
- (23) A well-functioning, reformed EU ETS with an instrument to stabilise the market is a key means for the Union to reach its agreed target for 2030 and the commitments under the Paris Agreement. To address the current imbalance between supply and demand of allowances in the market, a market stability reserve will be established under Decision (EU) 2015/1814 in 2018 and become operational as of 2019. Considering the need to deliver a credible investment signal to reduce CO<sub>2</sub> 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, from 2023 allowances held in the 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.
- (24) Directive 2003/87/EC should be kept under review in the light of international developments and efforts undertaken to achieve the long-term objectives of the Paris Agreement. The measures to support certain energy intensive industries that could be subject to carbon leakage as referred to in Articles 10a and 10b of Directive 2003/87/EC should also be kept under review in the light of climate policy measures in other major economies. In that context, the review of Directive 2003/87/EC could consider whether it is appropriate

<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).

to replace, adapt or complement any existing measures to prevent carbon leakage with carbon border adjustments or alternative measures, provided that such measures are fully compatible with the rules of the World Trade Organisation, so as to include in the EU ETS importers of products which are produced by the sectors or subsectors determined in accordance with Article 10a of Directive 2003/87/EC. 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 should be able to make proposals to the European Parliament and to the Council to amend Directive 2003/87/EC where appropriate. As part of its regular reporting under Regulation (EU) No 525/2013 of the European Parliament and of the Council <sup>(1)</sup>, the Commission should also assess the outcome of the 2018 Facilitative dialogue under the UNFCCC (Talanoa dialogue).

- (25) 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 TFEU should be delegated to the Commission in respect of Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c of Directive 2003/87/EC. 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 <sup>(2)</sup>. 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 should be able to continue not to do so. In addition, that delegation should not affect the Member States' right to determine the use of their auctioning revenues.
- (26) In order to ensure uniform conditions for the implementation of the third to sixth subparagraphs of Article 10a(2), Article 10a(21), Article 10d, Article 14(1) and (2), Articles 15 and 16 and Article 21(1) of Directive 2003/87/EC, and Annexes IV and V to that Directive, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council <sup>(3)</sup>.
- (27) In order to reduce the empowerments to the Commission to the minimum, the existing powers in respect of the adoption of acts concerning the following should be revoked: operation of the special reserve in Article 3f(9) of Directive 2003/87/EC, further specifying quantities of international credits for exchange and attributing quantities of international credits which may be exchanged in Article 11a(8) of that Directive, the laying down of further standards for what may be exchanged in Article 11a(9) of that Directive, and the laying down of further rules on double counting in Article 11b(7) of that Directive. Acts adopted pursuant to those provisions continue to apply.
- (28) Acts adopted pursuant to Directive 2003/87/EC concerning subject matter in respect of which this Directive grants the Commission the power to adopt delegated or implementing acts continue to apply until repealed or amended. In the case of Commission Decision 2011/278/EU <sup>(4)</sup>, the last column of Annex I thereto will be repealed if and when the Commission adopts an implementing act for the purpose of determining the revised benchmark values for free allocation. In order to increase predictability and to simplify administrative processes, Commission Decision 2014/746/EU <sup>(5)</sup> should continue to apply until the end of 2020.

<sup>(1)</sup> Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

<sup>(2)</sup> OJ L 123, 12.5.2016, p. 1.

<sup>(3)</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

<sup>(4)</sup> Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1).

<sup>(5)</sup> 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).

- (29) The delegated and implementing acts referred to in this Directive, particularly in respect of provisions on monitoring, reporting and verification and on the Union Registry, should aim to simplify rules and reduce any administrative burden to the extent possible, without undermining the environmental integrity, security or reliability of the EU ETS. 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 should also assess the possibilities of further developing such rules.
- (30) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents <sup>(1)</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 the transmission of such documents to be justified.
- (31) This Directive seeks to contribute to the objective of a high level of environmental protection, in accordance with the principle of sustainable development, in the most economically efficient manner, while providing installations adequate time to adapt, and providing for more favourable treatment of particularly affected persons in a proportionate manner to the maximum extent compatible with the other objectives of this Directive.
- (32) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (33) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

#### **Amendments to Directive 2003/87/EC**

Directive 2003/87/EC is amended as follows:

- (1) Throughout the Directive, the term ‘Community scheme’ is replaced by ‘EU ETS’ and any necessary grammatical changes are made.
- (2) Throughout the Directive, except in the cases referred to in point (1) of this Article, in Article 26 of the Directive and in point (5) of Part A of Annex V to the Directive, the word ‘scheme’ is replaced by ‘system’ and any necessary grammatical changes are made.
- (3) Throughout the Directive, except in the cases referred to in point (1) of this Article and in Article 26 of the Directive, the word ‘Community’ is replaced by ‘Union’ and any necessary grammatical changes are made.
- (4) Throughout the Directive, the words ‘regulatory procedure referred to in Article 23(2)’ are replaced by ‘examination procedure referred to in Article 22a(2)’.
- (5) In the first subparagraph of Article 3c(2) and in Article 10(1a), the reference to ‘Article 13(1)’ is replaced by a reference to ‘Article 13’.
- (6) In Article 3g, in point (d) of the first paragraph of Article 5, 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), in the first subparagraph of Article 24(3) and in Article 29a(4), the word ‘regulation’ is replaced by ‘acts’ and any necessary grammatical changes are made.
- (7) In Article 3, point (h) is replaced by the following:

‘(h) “new entrant” means any installation carrying out one or more of the activities listed in Annex I, which has obtained a greenhouse gas emissions permit for the first time within the period starting from three months before the date for submission of the list under Article 11(1), and ending three months before the date for the submission of the subsequent list under that Article.’

<sup>(1)</sup> OJ C 369, 17.12.2011, p. 14.

(8) In Article 3d, paragraph 3 is replaced by the following:

‘3. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the detailed arrangements for the auctioning by Member States of aviation allowances in accordance with paragraphs 1 and 2 of this Article or with 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 acts shall ensure that the principles set out in the first subparagraph of Article 10(4) are respected.’.

(9) In Article 3f, paragraph 9 is deleted.

(10) In Article 6(1), the third subparagraph is deleted.

(11) Article 8 is replaced by the following:

‘Article 8

#### **Coordination with Directive 2010/75/EU**

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 of the European Parliament and of the Council (\*), the conditions and procedure for the issue of a greenhouse gas emissions permit are coordinated with those for the issue of a permit provided for in that Directive. The requirements laid down in Articles 5, 6 and 7 of this Directive may be integrated into the procedures provided for in Directive 2010/75/EU.

(\*) 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).’.

(12) In Article 9, the second and third paragraphs are replaced by the following:

‘Starting in 2021, the linear factor shall be 2,2 %.’.

(13) Article 10 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. From 2019 onwards, Member States shall auction all allowances that are not allocated free of charge in accordance with Articles 10a and 10c of this Directive and that are not placed in the market stability reserve established by Decision (EU) 2015/1814 of the European Parliament and of the Council (\*) (the “market stability reserve”) or cancelled in accordance with Article 12(4) of this Directive.

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 %.

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 (“the Modernisation Fund”).

The total remaining quantity of allowances to be auctioned by Member States shall be distributed in accordance with paragraph 2.

(\*) 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).’;

(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 purposes of solidarity, growth and interconnections within the Union, thereby increasing the amount of allowances that those Member States auction under point (a) by the percentages specified in Annex IIa.’;

(iii) point (c) is deleted;

(iv) the third subparagraph is replaced by the following:

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

(c) paragraph 3 is amended as follows:

(i) point (b) is replaced by the following:

‘(b) to develop renewable energies to meet the commitment of the Union to renewable energies, as well as to develop other technologies that contribute to the transition to a safe and sustainable low-carbon economy, and to help to meet the commitment of the Union to increase energy efficiency, at the levels agreed in relevant legislative acts.’;

(ii) point (h) is replaced by the following:

‘(h) measures intended to improve energy efficiency, district heating systems and insulation, or to provide financial support in order to address social aspects in lower- and middle-income households.’;

(iii) the following points are added:

‘(j) to finance climate actions in vulnerable third countries, including the adaptation to the impacts of climate change;

(k) to promote skill formation and reallocation of labour in order to contribute to a just transition to a low carbon economy, in particular in regions most affected by the transition of jobs, in close coordination with the social partners.’;

(d) in paragraph 4, the first, second and third subparagraphs are replaced by the following:

‘4. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the timing, administration and other aspects of auctioning, in order to ensure that it is conducted in an open, transparent, harmonised and non-discriminatory manner. To that end, the process shall be predictable, in particular as regards the timing and sequencing of auctions and the estimated volumes of allowances to be made available.

Those delegated acts shall ensure that auctions are designed to ensure that:

(a) operators, and in particular any small and medium-sized enterprises covered by the EU ETS, have full, fair and equitable access;

(b) all participants have access to the same information at the same time and that participants do not undermine the operation of the auctions;

(c) the organisation of, and participation in, the auctions is cost-efficient and undue administrative costs are avoided; and

(d) access to allowances is granted to small emitters.’;

(e) in paragraph 5, the second sentence is replaced by the following:

‘Each year, it shall submit a report to the European Parliament and to the Council on the functioning of the carbon market and on other relevant climate and energy policies, including the operation of the auctions, liquidity and the volumes traded, and summarising the information provided by Member States on the financial measures referred to in Article 10a(6).’.

(14) Article 10a is amended as follows:

(a) in paragraph 1, the first and second subparagraphs are replaced by the following:

‘1. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning the Union-wide and fully harmonised rules for the allocation of allowances referred to in paragraphs 4, 5, 7 and 19 of this Article.’;

- (b) in paragraph 2, the following subparagraphs are added:

‘The Commission shall adopt implementing acts for the purpose of determining the revised benchmark values for free allocation. Those acts shall be in accordance with the delegated acts adopted pursuant to paragraph 1 of this Article and shall comply with the following:

- (a) For the period from 2021 to 2025, the benchmark values shall be determined on the basis of information submitted pursuant to Article 11 for the years 2016 and 2017. On the basis of a comparison of those benchmark values with the benchmark values contained in Commission Decision 2011/278/EU (\*), as adopted on 27 April 2011, the Commission shall determine the annual reduction rate for each benchmark, and shall apply it to the benchmark values applicable in the period from 2013 to 2020 in respect of each year between 2008 and 2023 to determine the benchmark values for the period from 2021 to 2025.
- (b) Where the annual reduction rate exceeds 1,6 % or is below 0,2 %, the benchmark values for the period from 2021 to 2025 shall be the benchmark values applicable in the period from 2013 to 2020 reduced by whichever of those two percentage rates is relevant, in respect of each year between 2008 and 2023.
- (c) For the period from 2026 to 2030, the benchmark values shall be determined in the same manner as set out in points (a) and (b) on the basis of information submitted pursuant to Article 11 for the years 2021 and 2022 and on the basis of applying the annual reduction rate in respect of each year between 2008 and 2028.

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

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

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

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(\*) Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1).;

- (c) paragraph 4 is replaced by the following:

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

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(\*) 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).;

- (d) paragraph 5 is replaced by the following:

‘5. In order to respect the auctioning share set out in Article 10, for every year in which the sum of free allocations does not reach the maximum amount that respects the auctioning share, the remaining allowances up to that amount shall be used to prevent or limit reduction of free allocations to respect the auctioning share in later years. Where, nonetheless, the maximum amount is reached, free allocations shall be adjusted accordingly. Any such adjustment shall be done in a uniform manner.’;

- (e) the following paragraphs are inserted:

‘5a. By way of derogation from paragraph 5, an additional amount of up to 3 % of the total quantity of allowances shall, to the extent necessary, be used to increase the maximum amount available under paragraph 5.

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

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

(f) paragraph 6 is replaced by the following:

‘6. Member States should adopt financial measures in accordance with the second and fourth subparagraphs in favour of sectors or subsectors which are exposed to a genuine risk of carbon leakage due to significant indirect costs that are actually incurred from greenhouse gas emission costs passed on in electricity prices, provided that such financial measures are in accordance with State aid rules, and in particular do not cause undue distortions of competition in the internal market. Where the amount available for such financial measures exceeds 25 % of the revenues generated from the auctioning of allowances, the Member State concerned shall set out the reasons for exceeding that amount.

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

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

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

(g) paragraph 7 is amended as follows:

(i) the first subparagraph is replaced by the following:

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

From 2021, allowances that pursuant to paragraphs 19 and 20 are not allocated to installations shall be added to the amount of allowances set aside in accordance with the first sentence of the first subparagraph of this paragraph.;

(ii) the fourth and fifth subparagraphs are deleted.

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

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



In addition, 50 million unallocated allowances from the market stability reserve shall supplement any remaining revenues from the 300 million allowances available in the period from 2013 to 2020 under Commission Decision 2010/670/EU (\*), and shall be used in a timely manner for innovation support as referred to in the first subparagraph.

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

The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive concerning rules on the operation of the innovation fund, including the selection procedure and criteria.

(\*) Commission Decision 2010/670/EU of 3 November 2010 laying down criteria and measures for the financing of commercial demonstration projects that aim at the environmentally safe capture and geological storage of CO<sub>2</sub>, as well as demonstration projects of innovative renewable energy technologies under the scheme for greenhouse gas emission allowance trading within the Community established by Directive 2003/87/EC of the European Parliament and of the Council (OJ L 290, 6.11.2010, p. 39).;

(i) paragraph 9 is replaced by the following:

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

(j) paragraph 10 is deleted;

(k) in paragraph 11, the wording ‘, with a view to reaching no free allocation in 2027’ is deleted;

(l) paragraphs 12 to 18 are deleted;

(m) paragraph 20 is replaced by the following:

‘20. The level of free allocations given to installations whose operations have increased or decreased, as assessed on the basis of a rolling average of two years, by more than 15 % compared to the level initially used to determine the free allocation for the relevant period referred to in Article 11(1) shall, as appropriate, be adjusted. Such adjustments shall be carried out with allowances from, or by adding allowances to, the amount of allowances set aside in accordance with paragraph 7 of this Article.’;

(n) the following paragraph is added:

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

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

*‘Article 10b*

**Transitional measures to support certain energy intensive industries in the event of carbon leakage**

1. Sectors and subsectors in relation to which the product resulting from multiplying their intensity of trade with third countries, defined as the ratio between the total value of exports to third countries plus the value of imports from third countries and the total market size for the European Economic Area (annual turnover plus total imports from third countries), by their emission intensity, measured in kgCO<sub>2</sub>, divided by their gross value added (in euros), exceeds 0,2, shall be deemed to be at risk of carbon leakage. Such sectors and subsectors shall be allocated allowances free of charge for the period until 2030 at 100 % of the quantity determined pursuant to Article 10a.

2. Sectors and subsectors in relation to which the product resulting from multiplying their intensity of trade with third countries by their emission intensity exceeds 0,15 may be included in the group referred to in paragraph 1, using data for the years from 2014 to 2016, on the basis of a qualitative assessment and of the following criteria:

- (a) the extent to which it is possible for individual installations in the sector or subsector concerned to reduce emission levels or electricity consumption;
- (b) current and projected market characteristics, including, where relevant, any common reference price;
- (c) profit margins as a potential indicator of long-run investment or relocation decisions, taking into account changes in costs of production relating to emission reductions.

3. Sectors and subsectors that do not exceed the threshold referred to in paragraph 1, but have an emission intensity measured in kgCO<sub>2</sub>, divided by their gross value added (in euros), which exceeds 1,5, shall also be assessed at a 4-digit level (NACE-4 code). The Commission shall make the results of that assessment public.

Within three months of the publication referred to in the first subparagraph, the sectors and subsectors referred to in that subparagraph 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 (Prodcom). To that end, sectors and subsectors shall submit duly substantiated, complete and independently verified data to enable the Commission to carry out the assessment together with the application.

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 points (a), (b) and (c) of paragraph 2. 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 provided that, at that level, the threshold of 0,2 referred to in paragraph 1 is exceeded.

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.

By way of derogation from paragraphs 1 and 2, a Member State may request, by 30 June 2018, that a sector or subsector 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 that 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 subsector concerned, and includes all relevant information with its request. On the basis of those data, the sector or subsector concerned shall be included in respect of those classifications where, within a heterogeneous 4-digit level (NACE-4 code), it is shown that it has a substantially higher trade and emission intensity at a 6-digit or an 8-digit level (Prodcom), exceeding the threshold set out in paragraph 1.

4. Other sectors and subsectors are considered to be able to pass on more of the costs of allowances in product prices, and shall be allocated allowances free of charge at 30 % of the quantity determined pursuant to Article 10a. Unless otherwise decided in the review pursuant to Article 30, free allocations to other sectors and subsectors, except district heating, shall decrease by equal amounts after 2026 so as to reach a level of no free allocation in 2030.

5. The Commission is empowered to adopt, by 31 December 2019, delegated acts 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 3 of this Article, for activities at a 4-digit level (NACE-4 code) as far as paragraph 1 of this Article is concerned, based on data for the three most recent calendar years available.

*Article 10c*

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

1. By way of derogation from Article 10a(1) to (5), Member States which had in 2013 a GDP per capita at market prices (in euros) below 60 % of the Union average may give a transitional free allocation to installations for electricity generation for the modernisation, diversification and sustainable transformation of the energy sector. The investments supported shall be consistent with the transition to a safe and sustainable low-carbon economy, the objectives of the Union's 2030 climate and energy policy framework, and reaching the long-term objectives expressed in the Paris Agreement. The derogation provided for in this paragraph shall end on 31 December 2030.

2. The Member State concerned shall organise a competitive bidding process, to take place in one or more rounds between 2021 and 2030, for projects involving a total amount of investment exceeding EUR 12,5 million, in order to select the investments to be financed with free allocation. That competitive bidding process shall:

- (a) comply with the principles of transparency, non-discrimination, equal treatment and sound financial management;
- (b) ensure that only projects which contribute to the diversification of their energy mix and sources of supply, the necessary restructuring, environmental upgrading and retrofitting of the infrastructure, clean technologies, such as renewable energy technologies, or modernisation of the energy production sector, such as efficient and sustainable district heating, and of the transmission and distribution sector, are eligible to bid;
- (c) define clear, objective, transparent and non-discriminatory selection criteria for the ranking of projects, so as to ensure that only projects are selected which:
  - (i) on the basis of a cost-benefit analysis, ensure a net positive gain in terms of emission reduction and realise a pre-determined significant level of CO<sub>2</sub> reductions taking into account the size of the project;
  - (ii) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand;
  - (iii) offer the best value for money; and
  - (iv) do not contribute to or improve the financial viability of highly emission-intensive electricity generation or increase dependency on emission-intensive fossil fuels.

By way of derogation from Article 10(1) and without prejudice to the last sentence of paragraph 1 of this Article, in the event that an investment selected through the competitive bidding process is cancelled or the intended performance is not reached, the earmarked allowances may be used through a single additional round of the competitive bidding process at the earliest one year thereafter to finance other investments.

By 30 June 2019, any Member State intending to make use of optional transitional free allocation for the modernisation of the energy sector shall publish a detailed national framework setting out the competitive bidding process, including the planned number of rounds referred to in the first subparagraph, and the selection criteria, for public comment.

Where investments with a value of less than EUR 12,5 million are to be supported with free allocation and are not selected through the competitive bidding process 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, by 30 June 2019, establish, publish and submit to the Commission a list of investments. Where more than one investment is carried out within the same installation, they shall be assessed as a whole to establish whether or not the value threshold of EUR 12,5 million is exceeded, unless those investments are, independently, technically or financially viable.

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. Up to 70 % of the relevant costs of an investment may be supported using the free allocation, provided that the remaining costs are financed by private legal entities.

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 will receive, pursuant to Article 10(2)(a), in the period from 2021 to 2030, spread out in equal annual volumes over that period.

5. Where a Member State, pursuant to Article 10d(4), uses allowances distributed for the purposes of solidarity, growth and interconnections within the Union in accordance with Article 10(2)(b), 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 60 % of the allowances received in the period from 2021 to 2030 pursuant to Article 10(2)(a), using a corresponding amount of the allowances distributed in accordance with Article 10(2)(b).

Any allowances not allocated under this Article by 2020 may be allocated over the period from 2021 to 2030 to investments selected through the competitive bidding process referred to in paragraph 2, unless the Member State concerned informs the Commission by 30 September 2019 of its intention not to allocate some or all of those allowances over the period from 2021 to 2030, and of the amount of allowances to be auctioned instead in 2020. Where such allowances are allocated over the period from 2021 to 2030, a corresponding amount of allowances shall be taken into account for the application of the 60 % limit set out in the first subparagraph of this paragraph.

6. Allocations to operators shall be made upon demonstration that an investment selected in accordance with the rules of the competitive bidding process has been carried out. Where an investment leads to additional electricity generation capacity, the operator concerned shall also demonstrate that a corresponding amount of electricity-generation capacity with higher emission intensity has been decommissioned by it or another associated operator by the start of operation of the additional capacity.

7. 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, including the balance of free allocation and investment expenditure incurred and the types of investments supported. Member States shall report on this to the Commission, and the Commission shall make such reports public.

(\*) 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).'

(16) The following Article is inserted:

*'Article 10d*

#### **Modernisation Fund**

1. A fund to support investments proposed by the beneficiary Member States, including the financing of small-scale investment projects, to modernise energy systems and improve energy efficiency, in Member States with a GDP per capita at market prices below 60 % of the Union average in 2013 (the "Modernisation Fund"), shall be established for the period from 2021 to 2030. The Modernisation Fund shall be financed through the auctioning of allowances as set out in Article 10.

The investments supported shall be consistent with the aims of this Directive, 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. No support from the Modernisation Fund shall be provided to energy generation facilities that use solid fossil fuels, other than efficient and sustainable district heating in Member States with a GDP per capita at market prices below 30 % of the Union average in 2013, provided that an amount of allowances of at least an equivalent value is used for investments under Article 10c that do not involve solid fossil fuels.

2. At least 70 % of the financial resources from the Modernisation Fund shall be used to support investments in the generation and use of electricity from renewable sources, the improvement of energy efficiency, except energy efficiency relating to energy generation using solid fossil fuels, energy storage and the modernisation of energy networks, including district heating pipelines, grids for electricity transmission and the increase of interconnections between Member States, as well as to support a just transition in carbon-dependent regions in the beneficiary Member States, so as to support the redeployment, re-skilling and up-skilling of workers, education, job-seeking initiatives and start-ups, in dialogue with the social partners. Investments in energy efficiency in transport, buildings, agriculture and waste shall also be eligible.

3. The Modernisation Fund shall operate under the responsibility of the beneficiary Member States. The EIB shall ensure that 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. The EIB shall pass on the revenues to the Member States upon a disbursement decision from the Commission, where this disbursement for investments is in line with paragraph 2 of this Article or, where the investments do not fall into the areas listed in paragraph 2 of this Article, is in line with the recommendations of the investment committee. The Commission shall adopt its decision in a timely manner. The revenues shall be distributed amongst the Member States and according to the shares set out in Annex IIb, in accordance with paragraphs 6 to 12 of this Article.

4. Any Member State concerned may use the total free allocation granted pursuant to Article 10c(4), or part of that allocation, and the amount of allowances distributed for the purposes of solidarity, growth and interconnections within the Union in accordance with Article 10(2)(b), or part of that amount, 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 Commission of the respective amounts of allowances to be used under Article 10(2)(b), Article 10c and Article 10d.

5. An investment committee for the Modernisation 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 five years. It shall be chaired by the representative of the Commission. One representative of each Member State that is not a member of the investment committee may attend meetings of the committee as an observer.

The investment committee shall operate in a transparent manner. The composition of the investment committee and the curricula vitae and declarations of interests of its members shall be made available to the public and, where necessary, updated.

6. Before a beneficiary Member State decides to finance an investment from its share in the Modernisation 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 2, the Member State may proceed to finance the investment project from its share.

Where an investment in the modernisation of energy systems, which is proposed to be financed from the Modernisation Fund, does not fall into the areas listed in paragraph 2, the investment committee shall assess the technical and financial viability of that investment, including the emission reductions it achieves, and issue a recommendation on financing the investment from the Modernisation Fund. The investment committee shall ensure that any investment relating to district heating achieves a substantial improvement in energy efficiency and emission reductions. That recommendation may include suggestions regarding appropriate financing instruments. Up to 70 % of the relevant costs of an investment which does not fall into the areas listed in paragraph 2 may be supported with resources from the Modernisation Fund provided that the remaining costs are financed by private legal entities.

7. The investment committee shall strive to adopt its recommendations by consensus. If the investment committee is not able to decide by consensus within a deadline set by the chairman, it shall take a decision by simple majority.

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

8. Any acts or recommendations by the EIB or the investment committee made pursuant to paragraphs 6 and 7 shall be made in a timely manner and state the reasons on which they are based. Such acts and recommendations shall be made public.

9. The beneficiary Member States shall be responsible for following up on the implementation with respect to selected projects.

10. The beneficiary Member States shall report annually to the Commission on investments financed by the Modernisation 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.

11. The investment committee shall report annually to the Commission on experience with the evaluation of investments. By 31 December 2024, taking into consideration the findings of the investment committee, the Commission shall review the areas for projects referred to in paragraph 2 and the basis on which the investment committee bases its recommendations.

12. The Commission shall adopt implementing acts concerning detailed rules on the operation of the Modernisation Fund. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 22a(2).

(17) 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 2019, and lists for each subsequent period of 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.'

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

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

(20) In Article 12(4), the following sentences are added:

'In the event 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 an amount corresponding 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).'

(21) Article 13 is replaced by the following:

*Article 13*

#### **Validity of allowances**

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

(22) In Article 14, paragraph 1 is replaced by the following:

'1. The Commission shall adopt implementing acts concerning the detailed arrangements for the monitoring and reporting of emissions and, where relevant, activity data, from the activities listed in Annex I, for the monitoring and reporting of tonne-kilometre data for the purpose of an application under Article 3e or 3f, which shall be based on the principles for monitoring and reporting set out in Annex IV and the requirements set out in paragraph 2 of this Article. Those implementing acts shall also specify the global warming potential of each greenhouse gas in the requirements for monitoring and reporting emissions for that gas.

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

(23) In Article 15, the third, fourth and fifth paragraphs are replaced by the following:

'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. The Commission may also adopt implementing acts for the verification of reports submitted by aircraft operators pursuant to Article 14(3) and applications under Articles 3e and 3f, including the verification procedures to be used by verifiers. It shall specify conditions for the accreditation and withdrawal of accreditation, for mutual recognition and peer evaluation of accreditation bodies, as appropriate.

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

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

'12. The Commission shall adopt implementing acts concerning detailed 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(2).'

(25) In Article 19, paragraph 3 is replaced by the following:

'3. The Commission is empowered to adopt delegated acts in accordance with Article 23 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 applicable, of allowances, and to provide for public access and confidentiality, as appropriate. Those delegated acts shall also include provisions to put into effect rules on the mutual recognition of allowances in agreements to link emission trading systems.'

(26) Article 21 is amended as follows:

(a) in paragraph 1, the fourth sentence is replaced by the following:

'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).';

(b) the following paragraph is added:

'4. Every three years, the report referred to in paragraph 1 shall also pay particular attention to the equivalent measures adopted for small installations excluded from the EU ETS. The issue of equivalent measures adopted for small installations shall also be considered in the exchange of information referred to in paragraph 3.'

(27) Article 22 is replaced by the following:

'Article 22

#### **Amendments to the Annexes**

The Commission is empowered to adopt delegated acts in accordance with Article 23 to amend, where appropriate, the Annexes to this Directive, with the exception of Annexes I, IIa and IIb, 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.'

(28) The following Article is inserted:

'Article 22a

#### **Committee procedure**

1. The Commission shall be assisted by the Climate Change Committee established by Article 26 of Regulation (EU) No 525/2013 of the European Parliament and of the Council (\*). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council (\*\*).

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.

(\*) Regulation (EU) No 525/2013 of the European Parliament and of the Council of 21 May 2013 on a mechanism for monitoring and reporting greenhouse gas emissions and for reporting other information at national and Union level relevant to climate change and repealing Decision No 280/2004/EC (OJ L 165, 18.6.2013, p. 13).

(\*\*) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).'

(29) Article 23 is replaced by the following:

'Article 23

### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall be conferred on the Commission for an indeterminate period of time from 8 April 2018.

3. The delegation of power referred to in Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. 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 (\*).

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Articles 3d(3), 10(4), 10a(1) and (8), 10b(5), 19(3), Article 22, Articles 24(3), 24a(1), 25a(1) and Article 28c shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to 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 of the Council.

(\*) OJ L 123, 12.5.2016, p. 1.'

(30) Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. From 2008, Member States may apply emission allowance trading in accordance with this Directive to activities and to greenhouse gases which are not listed in Annex I, taking into account all relevant criteria, in particular the effects on the internal market, potential distortions of competition, the environmental integrity of the EU ETS and the reliability of the planned monitoring and reporting system, provided that the inclusion of such activities and greenhouse gases is approved by the Commission, in accordance with delegated acts which the Commission is empowered to adopt in accordance with Article 23.';

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

'The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive to this effect.'

(31) Article 24a is amended as follows:

(a) in paragraph 1, the first and second subparagraphs are replaced by the following:

'1. In addition to the inclusions provided for in Article 24, the Commission may adopt measures for issuing allowances or credits in respect of projects administered by Member States that reduce greenhouse gas emissions not covered by the EU ETS.

Such measures shall be consistent with acts adopted pursuant to former Article 11b(7) as in force before 8 April 2018. The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive by setting out the procedure to be followed.';

(b) paragraph 2 is deleted.



(32) In Article 25, paragraph 2 is deleted.

(33) In Article 25a(1), the first and second subparagraphs are replaced by the following:

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

The Commission is empowered to adopt delegated acts in accordance with Article 23 to amend Annex I to 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, except in relation to scope, which are required by an agreement concluded pursuant to Article 218 of the Treaty on the Functioning of the European Union.’.

(34) In Article 27(3), the second subparagraph is replaced by the following:

‘Any such installation shall stay in the EU ETS for the rest of the period referred to in Article 11(1) during which it was reintroduced.’.

(35) The following Article is inserted:

‘Article 27a

#### **Optional exclusion of installations emitting less than 2 500 tonnes**

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

- (a) 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;
- (b) confirms that simplified monitoring arrangements are in place to assess whether any installation emits 2 500 tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass, in any one calendar year;
- (c) confirms that if any installation emits 2 500 tonnes or more of carbon dioxide equivalent, disregarding emissions from biomass, in any one calendar year, the installation will be reintroduced into the EU ETS; and
- (d) makes the information referred to in points (a), (b) and (c) available to the public.

2. When an installation is reintroduced into the EU ETS pursuant to point (c) of paragraph 1 of this Article, any allowances allocated pursuant to Article 10a shall be granted starting from the year of the reintroduction. Allowances allocated to such an installation shall be deducted from the quantity to be auctioned pursuant to Article 10(2) by the Member State in which the installation is situated.

3. Member States may also exclude from the EU ETS reserve or backup units which did 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.’.

(36) Article 28c is replaced by the following:

‘Article 28c

#### **Provisions for monitoring, reporting and verification for the purpose of the global market-based measure**

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

(37) Article 30 is replaced by the following:

*Article 30*

**Review in the light of the implementation of the Paris Agreement and the development of carbon markets in other major economies**

1. 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.
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. In this context, the Commission shall also consider whether measures in relation to the compensation of indirect costs should be further harmonised.
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 regard to the need for additional Union policies and measures in view of necessary greenhouse gas reductions by the Union and its Member States, including in relation to the linear factor referred to in Article 9. The Commission may make proposals to the European Parliament and to the Council to amend this Directive where appropriate.
4. Before 1 January 2020, the Commission shall present an updated analysis of the non-CO<sub>2</sub> effects of aviation, accompanied, where appropriate, by a proposal on how best to address those effects.

(38) In Annex IIa to Directive 2003/87/EC, the entries for Belgium, Italy, Luxembourg and Sweden are deleted.

(39) Annex IIb to Directive 2003/87/EC is replaced by the text appearing in Annex I to this Directive.

(40) Annex IV to Directive 2003/87/EC is amended in accordance with Annex II to this Directive.

*Article 2*

**Amendments to Decision (EU) 2015/1814**

Article 1 of Decision (EU) 2015/1814 is amended as follows:

(1) In the first subparagraph of paragraph 5, the following sentence is added:

‘By way of derogation from the first and second sentences, until 31 December 2023, the percentages and the 100 million allowances referred to in those sentences shall be doubled.’

(2) The following paragraph is inserted:

‘5a. Unless otherwise decided in the first review carried out in accordance with Article 3, from 2023 allowances held in the reserve above the total number of allowances auctioned during the previous year shall no longer be valid.’

*Article 3*

**Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 9 October 2019. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

By way of derogation from the first subparagraph, Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with the publication and reporting obligations contained in point (14)(f) of Article 1 of this Directive concerning Article 10a(6) of Directive 2003/87/EC by 31 December 2018.

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

*Article 4***Transitional provision**

When complying with their obligation as set out in the first subparagraph of Article 3(1) of this Directive, Member States shall ensure that their national legislation transposing Article 10, Article 10a(4) to (7), the first and second subparagraphs of Article 10a(8), Article 10a(12) to (18), Article 10c and Article 11a(8) and (9) of Directive 2003/87/EC, and Annexes IIa and IIb to that Directive, as in force on 19 March 2018, continue to apply until 31 December 2020. The list contained in the Annex to Decision 2014/746/EU shall continue to apply until 31 December 2020.

*Article 5***Entry into force**

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

*Article 6***Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 14 March 2018.

*For the European Parliament*  
*The President*  
A. TAJANI

*For the Council*  
*The President*  
L. PAVLOVA

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## ANNEX I

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

'ANNEX IIb

**DISTRIBUTION OF FUNDS FROM THE MODERNISATION FUND UNTIL 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 %

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## ANNEX II

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

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

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**DIRECTIVE (EU) 2018/411 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 14 March 2018****amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure <sup>(1)</sup>,

Whereas:

- (1) Directive (EU) 2016/97 of the European Parliament and of the Council <sup>(2)</sup> harmonises national provisions concerning the distribution of insurance and reinsurance products and insurance-based investment products by insurance intermediaries and insurance companies, and their employees, and by ancillary insurance intermediaries in the Union.
- (2) Pursuant to Article 42(1) of Directive (EU) 2016/97, Member States are to bring the laws, regulations and administrative provisions necessary to comply with that Directive into force by 23 February 2018.
- (3) On 21 September 2017, the Commission adopted Delegated Regulations (EU) 2017/2358 <sup>(3)</sup> and (EU) 2017/2359 <sup>(4)</sup>, supplementing Directive (EU) 2016/97.
- (4) In its decisions not to raise any objections to Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359, the European Parliament invited the Commission to adopt a legislative proposal setting 1 October 2018, rather than 23 February 2018, as the date of application of the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2016/97. The European Parliament substantiated that request by highlighting the need to give insurance undertakings and insurance distributors more time to better prepare for a correct and effective implementation of Directive (EU) 2016/97 and to implement the necessary technical and organisational changes to comply with Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359.
- (5) Directive (EU) 2016/97 should therefore be amended accordingly.
- (6) Given the very short period of time left before the national laws, regulations and administrative provisions necessary to comply with Directive (EU) 2016/97 are to be brought into force, and in order to ensure legal certainty and avoid potential market disruption, this Directive should enter into force as a matter of urgency and should apply, with retroactive effect, from 23 February 2018.
- (7) Consequently, it is also justified to apply in this case the exception for urgent cases provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union,

<sup>(1)</sup> Position of the European Parliament of 1 March 2018 (not yet published in the Official Journal) and decision of the Council of 9 March 2018.

<sup>(2)</sup> Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

<sup>(3)</sup> Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (OJ L 341, 20.12.2017, p. 1).

<sup>(4)</sup> Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to conduct of business rules applicable to the distribution of the insurance-based investment products (OJ L 341, 20.12.2017, p. 8).

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive (EU) 2016/97 is amended as follows:

(1) in Article 42(1), the first subparagraph is replaced by the following subparagraphs:

‘1. By 1 July 2018, Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

Member States shall apply those measures from 1 October 2018 at the latest.’;

(2) in Article 44, the first paragraph is replaced by the following:

‘Directive 2002/92/EC, as amended by the Directives listed in Part A of Annex II to this Directive, is repealed with effect from 1 October 2018, without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law of the Directives set out in Part B of Annex II to this Directive.’.

*Article 2*

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

It shall apply, with retroactive effect, from 23 February 2018.

*Article 3*

This Directive is addressed to the Member States.

Done at Strasbourg, 14 March 2018.

*For the European Parliament*

*The President*

A. TAJANI

*For the Council*

*The President*

L. PAVLOVA

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## DECISIONS

### DECISION (EU) 2018/412 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 March 2018

#### **amending Decision No 466/2014/EU granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 209 and 212 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure <sup>(1)</sup>,

Whereas:

- (1) The international community faces an unprecedented migration and refugee crisis, which requires solidarity and the efficient mobilisation of financial resources and calls for the existing challenges to be confronted and surmounted in a concerted manner. All actors need to work together to apply sustained medium- and long-term policies and make efficient use of existing programmes in order to develop and support initiatives which contribute to the United Nations (UN) sustainable development goals and to addressing the political, social, economic and environmental factors that constitute the root causes of migration, including, but not limited to, poverty, inequality, demographic growth, lack of employment, limited access to education and economic opportunities, instability, conflict, climate change and the long-term consequences of forced displacement.
- (2) While providing resources to address the root causes of migration is of paramount importance, the Union remains fully committed to policies in other areas of key strategic priority as outlined in the Global Strategy for the European Union's Foreign and Security Policy.
- (3) A new results-oriented partnership framework with third countries which takes account of all Union policies and instruments has been developed. As part of that new partnership framework, the Union's External Investment Plan has been established in order to support investments in regions outside the Union while contributing to the achievement of the UN sustainable development goals and addressing the root causes of migration. It should also contribute to fulfilling the objectives of the UN 2030 Agenda for Sustainable Development and of the Paris Agreement adopted under the UN Framework Convention on Climate Change (the 'Paris Agreement'), as well as the objectives pursued by other financing instruments for external action.
- (4) On 28 June 2016, the European Council endorsed the proposal of the European Investment Bank (EIB) to contribute to the External Investment Plan through the EIB Resilience Initiative, which is designed to foster investments in the Southern Neighbourhood and Western Balkans.
- (5) A key component of the EIB Resilience Initiative is the expansion, in both quantitative and qualitative terms, of the EIB External Lending Mandate. This should enable the EIB to rapidly contribute to the objectives of the External Investment Plan, in particular by providing additional financing to private-sector beneficiaries, with a view to crowding in private investments and boosting long-term investment.
- (6) The Strategic Board of the European Fund for Sustainable Development, where the EIB is represented, will provide guidance on complementarity between the EIB Resilience Initiative and the components of the External Investment Plan in line with its rules of procedure and without prejudice to the EIB's internal governance rules.

<sup>(1)</sup> Position of the European Parliament of 8 February 2018 (not yet published in the Official Journal) and decision of the Council of 27 February 2018.



- (7) A budgetary guarantee for financing operations carried out outside the Union (the 'EU guarantee') was granted to the EIB by means of Decision No 466/2014/EU of the European Parliament and of the Council <sup>(1)</sup>.
- (8) In accordance with Decision No 466/2014/EU, the Commission, in cooperation with the EIB, prepared a mid-term review report evaluating the application of that Decision on the basis of an independent external evaluation.
- (9) The long-term economic resilience of refugees, migrants, host and transit communities, and communities of origin as a strategic response to addressing root causes of migration should be added as a new objective supported by the EU guarantee (the 'new objective').
- (10) Operations supported under the new objective should be distinct from Union efforts in the area of border control.
- (11) In order to allow the External Lending Mandate to respond to potential upcoming challenges and Union priorities, as well as to fulfil the new objective, the maximum ceiling for the EIB financing operations under the EU guarantee should be increased to EUR 32 300 000 000.
- (12) Under the general mandate, EUR 1 400 000 000 should be earmarked for projects in the public sector directed towards fulfilling the new objective.
- (13) Under a new private-sector lending mandate, a maximum amount of EUR 2 300 000 000 should be dedicated to projects directed towards fulfilling the new objective within the maximum increased ceiling and should benefit from the Comprehensive Guarantee by the Union.
- (14) The success of one of the EIB's main objectives under the External Lending Mandate, namely support for local private-sector development, in particular support to micro, small and medium-sized enterprises (SMEs), hinges on factors such as SMEs' access to finance, credit and technical assistance, on the promotion of entrepreneurship and on efforts to stimulate the transition from the volatile informal economy to the formal sector. In that context, the EIB financing operations should seek to support small investment projects run by SMEs, as well as investment projects in remote rural areas and in the fields of drinking-water treatment, wastewater disposal and renewable energy.
- (15) Complementarity and coordination with Union initiatives addressing root causes of migration should be ensured, including through Union support for the sustainable reintegration of returned migrants in the countries of origin.
- (16) Following the Paris Agreement, the EIB should endeavour to sustain a high level of climate-relevant operations, the volume of which should represent at least 25 % of the total EIB financing operations outside the Union. EIB financing operations covered by Decision No 466/2014/EU should be consistent with reaching the target of at least 35 % of total EIB financing operations in emerging economies and developing countries outside the Union by 2020. The EIB should take into account the European Council conclusions of 22 May 2013 on phasing out environmentally or economically harmful subsidies, including those for fossil fuels.
- (17) The risk to the general budget of the Union associated with EIB financing operations under the private-sector lending mandate should be priced. The revenues generated from such risk pricing should be paid into the Guarantee Fund for external actions established by Council Regulation (EC, Euratom) No 480/2009 <sup>(2)</sup> in order to cover the commercial risk and to avoid market distortions.
- (18) The EIB should develop and implement a set of indicators in its Results Measurement framework for projects directed towards fulfilling the new objective. Therefore, an assessment of the contribution of EIB financing operations towards the new objective, including, where applicable, the contribution to the UN sustainable development goals, the involvement of local civil society, and alignment with Union external policy priorities and budget priorities, should be included in the Commission's annual reporting to the European Parliament and to the Council on EIB financing operations.

<sup>(1)</sup> Decision No 466/2014/EU of the European Parliament and of the Council of 16 April 2014 granting an EU guarantee to the European Investment Bank against losses under financing operations supporting investment projects outside the Union (OJ L 135, 8.5.2014, p. 1).

<sup>(2)</sup> Council Regulation (EC, Euratom) No 480/2009 of 25 May 2009 establishing a Guarantee Fund for external actions (OJ L 145, 10.6.2009, p. 10).

- (19) The visibility and transparency of EIB financing operations covered by Decision No 466/2014/EU, in particular with regard to projects financed through financial intermediaries, should be ensured by improving access to information for the Union's institutions and for the general public, taking into account the need to protect confidential and commercially sensitive information.
- (20) The relevant Union policy on non-cooperative jurisdictions for tax purposes is laid down in the legal acts of the Union and in Council conclusions, in particular in the Annex to those of 8 November 2016, and any subsequent updates.
- (21) Due diligence on EIB financing operations covered by Decision No 466/2014/EU should include a thorough check of compliance with applicable Union legislation and agreed international and Union standards on anti-money laundering, the fight against the terrorism financing, tax fraud and tax avoidance. Moreover, in the context of the External Lending Mandate reporting, the EIB should provide information, on a country-by-country basis, on the compliance of EIB financing operations with its policy on non-cooperative jurisdictions and the list of intermediaries with which the EIB cooperates.
- (22) On 12 October 2016, the EIB approved the implementation of the EIB Resilience Initiative. It should be possible for projects under the EIB Resilience Initiative which were approved after that date and before the entry into force of this Decision and the conclusion of the guarantee agreement to be covered by the EU guarantee, subject to confirmation by the Commission that they are in line with the new objective and respect the terms of the guarantee agreement.
- (23) EIB financing operations with corporates should only benefit from the private-sector comprehensive guarantee if they promote inclusive growth and enhanced job creation and are not adequately served by local financial markets.
- (24) EIB financing operations should be consistent with the principles set out in the Commission communication of 25 October 2011 entitled 'A renewed EU strategy 2011-14 for Corporate Social Responsibility', including with regard to financial intermediaries.
- (25) Where the Union external policy priorities change, or in cases of urgency and crisis situations that could arise within the mandate period, and in accordance with relevant European Parliament resolutions and Council decisions and conclusions, the ceiling for reallocation between the regions by the EIB in the course of the mandate should be increased from 10 % to 20 %. The Commission should regularly inform the European Parliament and the Council of such reallocations.
- (26) Given the importance of the EIB Resilience Initiative in the Union strategy to address the root causes of migration and the needs of transit and host communities, it remains of the utmost importance that the amounts earmarked under the External Lending Mandate ceilings for projects directed to the new objective be absorbed completely. Nevertheless, if due to unforeseen circumstances the earmarked amounts cannot be absorbed completely, some increased flexibility should also be allowed. Therefore, if by 30 June 2019 the EIB concludes that it is not in a position to absorb its forecasted target under the EIB Resilience Initiative, it should be possible for up to 20 % of the EUR 1 400 000 000 under the general mandate earmarked for public-sector projects and of the EUR 2 300 000 000 under the private-sector lending mandate to be reallocated within and/or between pre-accession countries and beneficiaries and Neighbourhood and Partnership countries. Any such reallocation should be subject to prior agreement between the Commission and the EIB.
- (27) The lists of eligible regions and countries and potentially eligible regions and countries should be modified in order to exclude high-income regions and countries with high credit ratings, namely Brunei, Chile, Iceland, Israel, Singapore, South Korea and Taiwan. In addition, Iran should be added to the list of potentially eligible regions and countries.
- (28) Decision No 466/2014/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DECISION:

#### Article 1

Decision No 466/2014/EU is amended as follows:

(1) Article 2 is replaced by the following:

*‘Article 2*

#### **Ceilings for EIB financing operations under EU guarantee**

1. The maximum ceiling of the EIB financing operations under EU guarantee throughout the period 2014-20 shall be EUR 32 300 000 000. Amounts initially earmarked for financing operations but subsequently cancelled shall not count against the ceiling.

This maximum ceiling shall be broken down into:

- (a) a maximum amount of EUR 30 000 000 000 under a general mandate, of which EUR 1 400 000 000 is earmarked for projects in the public sector directed towards the long-term economic resilience of refugees, migrants, host and transit communities, and communities of origin as a strategic response to addressing root causes of migration;
- (b) a maximum amount of EUR 2 300 000 000 under a private-sector lending mandate for projects directed towards the long-term economic resilience of refugees, migrants, host and transit communities, and communities of origin as a strategic response to addressing root causes of migration.

2. The maximum amounts referred to in paragraph 1 shall be broken down into regional ceilings and sub-ceilings as laid down in Annex I. Within the regional ceilings and over the period covered by this Decision, the EIB shall ensure a country distribution within the regions covered by the EU guarantee, balanced in line with Union external policy priorities which shall be reflected in the regional technical operational guidelines referred to in Article 5.’

(2) Article 3 is replaced by the following:

*‘Article 3*

#### **General objectives and principles**

1. The EU guarantee shall be granted only for EIB financing operations which have added value on the basis of the EIB’s own assessment, and support any of the following general objectives:

- (a) local private-sector development, in particular support to micro, small and medium-sized enterprises (SMEs);
- (b) development of social and economic infrastructure, including transport, energy, environmental infrastructure, and information and communication technology;
- (c) climate change mitigation and adaptation;
- (d) the long-term economic resilience of refugees, migrants, host and transit communities, and communities of origin as a strategic response to addressing root causes of migration.

2. While preserving the EIB’s distinct character as an investment bank, EIB financing operations carried out under this Decision shall contribute to the general Union interest, in particular the principles guiding Union external action, as referred to in Article 21 TEU and shall contribute to the implementation of international environmental agreements to which the Union is a party. The EIB governing bodies are encouraged to take the necessary measures to adapt the EIB activity to contribute to the Union external policies in an effective manner, and to adequately meet the requirements set out in this Decision.

3. Regional integration among countries, including in particular economic integration between pre-accession countries and beneficiaries, Neighbourhood and Partnership countries and the Union, shall be an underlying objective for EIB financing operations within areas covered by the general objectives set out in paragraph 1. The EIB shall undertake financing operations in beneficiary countries within areas covered by the general objectives by supporting foreign direct investments that promote economic integration with the Union.

4. In developing countries, as defined in the Organisation for Economic Cooperation and Development list of official development assistance recipients, the EIB financing operations shall contribute, in accordance with Articles 208 and 209 TFEU, to the objectives of the Union's development cooperation policy, in particular towards reducing poverty through inclusive growth and sustainable economic, environmental and social development.

5. To ensure that private-sector investments have the greatest development impact, the EIB shall endeavour to contribute to creating favourable conditions for private enterprise and investment and shall ensure as a priority that the local private sector in beneficiary countries, including cooperatives and social enterprises, is strengthened through support to local investment as provided for in point (a) of paragraph 1. EIB financing operations supporting the general objectives set out in paragraph 1 shall endeavour to also enhance its support for investment projects run by SMEs from the recipient country and from the Union, enabling access to finance for new investment projects run by SMEs. EIB financing operations shall allow SMEs to take advantage of, inter alia, market access for SMEs in the eligible countries and their integration into global value chains and shall further contribute to enhancing competitiveness of Union companies.

In order to effectively monitor and evaluate the use of funds for the benefit of the SMEs concerned, the EIB shall carry out thorough due diligence and establish and maintain adequate contractual provisions imposing standard reporting obligations on both the financial intermediaries and the final beneficiaries. The EIB shall endeavour to identify and contribute to addressing the obstacles to funding faced by SMEs.

The EIB shall cooperate with financial intermediaries that can support the specific needs of SMEs in the countries of operation and that comply with the requirements of Article 13, as transposed into agreements under the third subparagraph of paragraph 1 of that Article.

6. EIB financing operations supporting the general objective set out in point (b) of paragraph 1 shall support investment projects predominantly in the areas of transport, energy, environmental infrastructure, information and communication technology, health and education. This includes production and integration of energy from renewable sources, energy-efficiency measures, energy systems transformation enabling a switch to lower carbon-intensive technologies and fuels, sustainable energy security and energy infrastructure, including for gas production and transportation to Union energy market, as well as electrification of rural areas, environmental infrastructure such as water and sanitation and green infrastructure, telecommunications and broadband network infrastructure.

7. EIB financing operations supporting the general objectives set out in point (c) of paragraph 1 shall support investment projects in climate-change mitigation and adaptation that contribute to the overall objectives of the United Nations Framework Convention on Climate Change and of the Paris Agreement adopted under that Convention, in particular by avoiding or reducing greenhouse-gas emissions and reducing the carbon footprint in the areas of renewable energy, energy efficiency and sustainable transport, or by increasing resilience to the adverse impacts of climate change on vulnerable countries, sectors and communities.

The eligibility criteria for climate action projects are defined in the EIB Climate Strategy. On the basis of the methodologies for the assessment of project greenhouse-gas emissions and emission variations drawn up by the EIB, an analysis of the carbon footprint shall be included in the environmental assessment procedure to determine whether project proposals optimise energy-efficiency improvements.

Over the period covered by this Decision, the EIB shall endeavour to sustain a high level of climate-relevant operations, the volume of which shall represent at least 25 % of the total EIB financing operations outside the Union. EIB financing under this Decision shall be consistent with reaching the target of at least 35 % of total EIB financing operations in emerging economies and developing countries outside the Union by 2020.

EIB financing operations shall, inter alia, integrate concrete actions to phase out financing projects detrimental to the achievement of Union's climate objectives and step up efforts to support renewable energy sources and energy efficiency.

The EIB shall enhance the climate-change adaptation elements in its contribution to projects across EIB financing operations within the EIB External Lending Mandate.

8. EIB financing operations supporting the general objectives set out in point (d) of paragraph 1 shall support investment projects that address root causes of migration and contribute to long-term economic resilience and to the United Nations sustainable development goals and safeguard sustainable development in beneficiary countries.

While ensuring the full respect of human, labour and social rights, fundamental freedoms and gender equality by implementing a rights-based approach encompassing all human and social rights in line with the principles of transparency, participation, non-discrimination and accountability, EIB financing operations shall:

- (a) address increased needs for infrastructure and related services to cater directly or indirectly for the influx of migrants while also benefitting the local population;
- (b) boost employment opportunities for host and refugee communities;
- (c) foster economic integration and enable refugees to become self-reliant; or
- (d) strengthen humanitarian action and support for creation of decent jobs.

EIB financing operations shall support the following:

- (a) the private sector in the areas of SMEs and mid-caps, corporate finance and microfinance;
- (b) the public sector, including municipalities and public-sector entities, in terms of infrastructure and services, including healthcare and special facilities for children, sanitation services and school education, to address significantly increased needs.

9. EIB financing operations supporting the general objectives set out in paragraph 1 shall recognise that gender equality is a cross-cutting issue which is crucial to achieving sustainable development and an important element for project due diligence. A gender perspective shall be applied to all such financing operations. The EIB shall ensure that all EIB financing operations comply with the commitments set out in its Gender Strategy and Gender Action Plan.

10. The EIB shall seek to ensure that companies participating in projects co-financed by the EIB adhere to the principles of pay transparency and gender equality and to the principle of equal pay as set out in Directive 2006/54/EC of the European Parliament and of the Council (\*). EIB decisions on project financing shall take into account action by potential beneficiary companies with regard to equal pay and corporate social responsibility.

11. The EU guarantee shall cover only EIB financing operations carried out in eligible countries that have concluded a framework agreement with the EIB establishing the legal conditions under which such operations are to be carried out and which shall be compatible with the EIB's Statement of Environmental and Social Principles and Standards and its Environmental and Social Handbook.

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(\*). Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (OJ L 204, 26.7.2006, p. 23).'

(3) Article 5 is amended as follows:

- (a) in paragraph 1, the third subparagraph is replaced by the following:

'In updating the regional technical operational guidelines, the Commission and the EIB shall take into account relevant European Parliament resolutions and Council decisions and conclusions, as well as internationally recognised principles and guidelines on corporate social responsibility. The regional technical operational guidelines shall be consistent with the priorities contained in the national or regional programmes, where available, drawn up by the beneficiary countries, taking due account of any consultation with local civil society in the process of drawing up those programmes.');

- (b) the following paragraph is inserted:

'1a. The Commission is empowered to adopt delegated acts in accordance with Article 18 concerning amendments to Annex IV.');

(4) Article 8 is amended as follows:

- (a) in paragraph 1, the following subparagraph is added:

'The Comprehensive Guarantee shall also cover EIB financing operations under the private-sector lending mandate referred to in point (b) of Article 2(1), which on average shall have a higher risk profile than the portfolio covered under the Political Risk Guarantee referred to in paragraph 3 of this Article in pre-accession countries and beneficiaries and Neighbourhood and Partnership countries.');

(b) paragraphs 5 and 6 are replaced by the following:

‘5. Financing agreements with individual promoters relating to EIB financing operations shall also include appropriate procurement, environmental, climate and social provisions in accordance with the EIB’s own rules and procedures, including requirements to make the EU guarantee and EIB involvement visible to the end beneficiary.

6. The Commission and the EIB shall set out in the guarantee agreement referred to in Article 14 a clear and transparent allocation policy allowing the EIB to identify, within its external activity, the operations to be financed under this Decision in order to ensure the most effective use of the EU guarantee. The allocation policy shall be based on the creditworthiness of EIB financing operations as assessed by the EIB, the ceilings as defined in Annex I, the nature of the counterparty, whether a sovereign State or a sub-sovereign entity falling under paragraph 1 of this Article or a private entity, EIB risk-absorption capacity and other relevant criteria, including added value of the EU guarantee. The European Parliament and the Council shall receive the allocation policy in accordance with Article 14.’

(5) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The EIB shall carry out thorough due diligence and, where appropriate in accordance with its Statement of Environmental and Social Principles and Standards and its Environmental and Social Handbook, shall require project promoters to carry out local public consultation, in line with Union social and environmental principles, with the relevant national and local stakeholders, as well as with civil society, at the project-planning and implementation stages on social, human rights, gender equality, environmental, economic and development-related aspects of investment projects covered by the EU guarantee, and to provide information relevant for the assessment of the contribution to the fulfilment of Union external policy and strategic objectives.

The EIB shall ensure that the principle of free prior informed consent is implemented prior to financing operations affecting land and natural resources.

This appraisal shall include an assessment of whether the capacities of the beneficiaries of EIB financing should be reinforced throughout the project cycle with technical assistance and, if so, how this should be done. The EIB’s own rules and procedures shall include the necessary provisions on the assessment of the environmental and social impact of investment projects and of aspects related to human rights and conflict prevention, to ensure that investment projects supported under this Decision are environmentally and socially sustainable and that EIB financing operations under the EIB Resilience Initiative, and in particular the private-sector lending mandate, improve the economic resilience of refugees, migrants, host and transit communities, and communities of origin.

As part of its available internal guidance on the application of due diligence, the EIB shall improve, as necessary, practical guidance on the assessment of aspects related to all basic human rights through its Environmental and Social Handbook, to be used during the *ex ante* assessment and ongoing monitoring on a project-by-project basis, including for projects involving financial intermediaries, based on the existing frameworks, in particular the EU Strategic Framework and Action Plan on Human Rights and Democracy, and taking into account existing human rights benchmarks provided by the Union, relevant United Nations bodies and human rights organisations.’;

(b) paragraph 3 is replaced by the following:

‘3. The EIB monitoring shall cover the implementation of intermediated operations and the performance of financial intermediaries in support of SMEs.’;

(c) paragraph 5 is replaced by the following:

‘5. The results of monitoring shall be disclosed, subject to confidentiality requirements and the agreement of relevant parties.’.

(6) In Article 10, the following paragraph is added:

‘The risk for the Union budget associated with EIB financing operations under the private-sector lending mandate referred to in point (b) of Article 2(1) shall be priced and the revenues generated from the commercial risk pricing shall be paid into the Guarantee Fund.’.

(7) Article 11(1) is amended as follows:

(a) points (b) and (c) are replaced by the following:

‘(b) an assessment of the added value, the estimated outputs, outcomes and development impact of EIB financing operations at an aggregated basis, drawing on the EIB’s Results Measurement framework annual report. To that end, the EIB shall use outcome indicators in relation to development, environmental and social aspects, including human rights and gender equality aspects, of projects funded, taking into account the relevant indicators under the 2005 Paris Declaration on Aid Effectiveness.

Indicators for gender equality shall be developed in line with the EIB’s Gender Strategy and Gender Action Plan. They shall reflect the promotion of equality between women and men, and, where possible, shall be evaluated *ex post* by disaggregating data by sex. Indicators for environmental aspects of projects shall include criteria for clean technology which are oriented in principle towards energy efficiency and technologies for reducing emissions. The EIB shall develop indicators for projects providing strategic response addressing root causes of migration and building long-term economic resilience of host and transit communities, taking into account the views of stakeholders, civil society, affected communities and non-governmental organisations;

(c) an assessment of the contribution of EIB financing operations to the fulfilment of Union external policy and strategic objectives, taking into account compliance with the principles guiding Union external action as referred to in Article 21 TEU, the regional technical operational guidelines referred to in Article 5 of this Decision and the EU Strategic Framework and Action Plan on human rights and democracy;’

(b) point (e) is replaced by the following:

‘(e) an assessment of the quality of EIB financing operations, in particular the extent to which the EIB has taken into account environmental and social sustainability in the due diligence for and monitoring of the investment projects financed as well as measures to maximise local engagement by promoting the involvement of affected communities, civil society organisations and non-governmental organisations;’

(c) the following point is added:

‘(j) an assessment of the contribution of EIB financing operations to the long-term economic resilience of refugees, migrants, host and transit communities, and communities of origin as a strategic response to addressing root causes of migration.’

(8) Article 12 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

‘(a) all EIB financing operations carried out under this Decision, after the project-approval stage, in particular indicating whether an investment project is covered by the EU guarantee and how it contributes to the goals of the Union external action, noting in particular its economic, social and environmental, climate and gender-specific impact.’

(ii) point (c) is replaced by the following:

‘(c) where possible and appropriate, existing framework agreements between the EIB and a recipient country. When signing new agreements or amending existing ones, the EIB shall ensure that it is possible for such agreements to be disclosed;’

(b) the following paragraphs are added:

‘3. The EIB shall ensure that information about planned and approved operations or any significant change thereto is published and readily available to local civil society.

4. Upon request, the EIB shall provide the European Parliament with Results Measurement sheets for investment projects covered by the EU guarantee, taking into account the protection of confidential and commercially sensitive information and subject to their respective internal rules governing the treatment of confidential information.’

(9) Articles 13 and 14 are replaced by the following:

*Article 13*

**Prevention of money laundering, the fight against the financing of terrorism, taxation and non-cooperative jurisdictions**

1. In its financing operations covered by this Decision, the EIB shall comply with applicable Union legislation and agreed international and Union standards and, therefore, shall not support projects under this Decision that contribute to money laundering, terrorism financing, tax avoidance, tax fraud or tax evasion.

In addition, the EIB shall not enter into new or renewed operations with entities incorporated or established in jurisdictions listed under the relevant Union policy on non-cooperative jurisdictions, or that are identified as high-risk third countries pursuant to Article 9(2) of Directive (EU) 2015/849 of the European Parliament and of the Council (\*), or that do not effectively comply with Union or internationally agreed tax standards on transparency and exchange of information. The EIB may derogate from this principle only if the project is physically implemented in one of those jurisdictions, and does not present any indication that the relevant operation contributes to money laundering, the terrorism financing, tax avoidance, tax fraud or tax evasion.

When concluding agreements with financial intermediaries, the EIB shall transpose the requirements referred to in this Article into the relevant agreements and shall request the financial intermediaries to report on their observance.

The EIB shall review its policy on non-cooperative jurisdictions at the latest following the adoption of the Union list of non-cooperative jurisdictions for tax purposes. Every year thereafter, the EIB shall submit a report to the European Parliament and to the Council on the implementation of its policy on non-cooperative jurisdictions in relation to its financing operations, including country-by-country information and a list of intermediaries with which it cooperates.

2. In its financing operations covered by this Decision, the EIB shall apply the principles and standards set out in Union law on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, in particular Regulation (EU) 2015/847 of the European Parliament and of the Council (\*\*) and Directive (EU) 2015/849. In particular, the EIB shall make both direct funding and funding via intermediaries under this Decision contingent upon the disclosure of beneficial ownership information in accordance with Directive (EU) 2015/849.

*Article 14*

**Guarantee agreement**

The Commission and the EIB shall sign a guarantee agreement laying down the detailed provisions and procedures relating to the EU guarantee as set out in Article 8. That guarantee agreement shall be communicated to the European Parliament and to the Council subject to their respective internal rules governing the treatment of confidential information.

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(\*) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

(\*\*) Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141, 5.6.2015, p. 1).'

(10) Article 18 is amended as follows:

(a) the following paragraph is inserted:

'2a. The delegation of power referred to in Article 5 shall be conferred on the Commission for an indeterminate period of time from 8 April 2018.;



(b) paragraph 3 is replaced by the following:

‘3. The delegation of power referred to in Articles 4 and 5 may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Articles 4 and 5 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and to 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 of the Council.’.

(11) Article 20 is replaced by the following:

‘Article 20

### **Reporting**

By 30 June 2019, the Commission shall submit to the European Parliament and to the Council a report evaluating the application of this Decision and providing input for a possible new decision on the coverage of the EIB financing operations within the EIB External Lending Mandate by the EU guarantee.

By 31 December 2021, the Commission shall present to the European Parliament and to the Council a report on the application of this Decision.’.

(12) The following Article is inserted:

‘Article 20a

### **Transitional provision**

The EIB may finance projects that were approved after 12 October 2016 and before 8 April 2018 and the conclusion of a guarantee agreement between the Commission and the EIB. Such projects may be covered by the EU guarantee, subject to confirmation by the Commission that they are in line with the objective defined in point (d) of Article 3(1) and respect the terms of the guarantee agreement.’.

(13) Annexes I, II and III are replaced by the text set out in the Annex to this Decision.

(14) In Annex IV, the first paragraph is replaced by the following:

‘EIB activity in partners participating in the pre-accession process takes place in the framework established in the Accession and European Partnerships which set out the priorities for pre-accession countries and beneficiaries with a view to making progress in moving closer to the Union, and which provide a framework for Union assistance. The Stabilisation and Association Process is the Union policy framework for the Western Balkans. It is based on progressive partnership, in which the Union offers trade concessions, economic and financial assistance and contractual relationships through stabilisation and association agreements. Pre-accession financial assistance helps pre-accession countries and beneficiaries prepare for the obligations and challenges of Union membership. Such assistance supports the reform process, including preparations for eventual membership. It focuses on institution-building, alignment with the *acquis* of the Union, preparation for Union policies and instruments and promotion of measures to achieve economic convergence.’.

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*Article 2*

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

Done at Strasbourg, 14 March 2018.

*For the European Parliament*  
*The President*  
A. TAJANI

*For the Council*  
*The President*  
L. PAVLOVA

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## ANNEX

## 'ANNEX I

**REGIONAL CEILINGS**

- A. Pre-accession countries and beneficiaries: EUR 8 075 000 000, of which EUR 7 635 000 000 under the general mandate and EUR 440 000 000 under the private-sector lending mandate.
- B. Neighbourhood and Partnership countries: EUR 19 680 000 000, broken down into the following sub-ceilings:
- (i) Mediterranean countries: EUR 13 030 000 000, of which EUR 11 170 000 000 under the general mandate and EUR 1 860 000 000 under the private-sector lending mandate;
  - (ii) Eastern Europe, Southern Caucasus and Russia: EUR 6 650 000 000.
- C. Asia and Latin America: EUR 4 083 000 000, broken down into the following sub-ceilings:
- (i) Latin America: EUR 2 694 000 000;
  - (ii) Asia: EUR 1 165 000 000;
  - (iii) Central Asia: EUR 224 000 000.
- D. South Africa: EUR 462 000 000.

Within the overall ceiling, the EIB governing bodies may decide, after consulting the Commission, to reallocate an amount of up to 20 % of the sub-regional ceilings within regions and up to 20 % of the regional ceilings between regions. In the event that, by 30 June 2019, the EIB governing bodies conclude that the EIB is not in a position to absorb its forecasted target under the EIB Resilience Initiative, up to 20 % of the EUR 1 400 000 000 under the general mandate earmarked for public-sector projects and of the EUR 2 300 000 000 under the private-sector lending mandate may be reallocated within and/or between regions referred to in points A and B of this Annex.

Any reallocation under the EIB Resilience Initiative shall be subject to prior agreement between the Commission and the EIB.

EIB governing bodies shall in particular use such possibility of reallocation to allow for a continued focus of the EU guarantee on projects with a higher risk profile in priority regions. The Commission shall regularly inform the European Parliament and the Council of such reallocations.

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## ANNEX II

**POTENTIALLY ELIGIBLE REGIONS AND COUNTRIES**

## A. Pre-accession countries and beneficiaries

Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Kosovo \*, Montenegro, Serbia, Turkey <sup>(1)</sup>

## B. Neighbourhood and Partnership countries

## 1. Mediterranean countries

Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestine, Syria, Tunisia

## 2. Eastern Europe, Southern Caucasus and Russia

Eastern Europe: Belarus, Republic of Moldova, Ukraine

Southern Caucasus: Armenia, Azerbaijan, Georgia

Russia

## C. Asia and Latin America

## 1. Latin America

Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela

## 2. Asia

Afghanistan, Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Iran, Iraq, Laos, Malaysia, Maldives, Mongolia, Myanmar/Burma, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Vietnam, Yemen

## 3. Central Asia

Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan

## D. South Africa

South Africa

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244(1999) and the ICJ Opinion on the Kosovo declaration of independence.

<sup>(1)</sup> The EIB Resilience Initiative does not include Turkey, which is covered by a separate EU-Turkey agreement.

## ANNEX III

## ELIGIBLE REGIONS AND COUNTRIES

## A. Pre-accession countries and beneficiaries

Albania, Bosnia and Herzegovina, former Yugoslav Republic of Macedonia, Kosovo \*, Montenegro, Serbia, Turkey <sup>(1)</sup>

## B. Neighbourhood and Partnership countries

## 1. Mediterranean countries

Algeria, Egypt, Jordan, Lebanon, Libya, Morocco, Palestine, Tunisia

## 2. Eastern Europe, Southern Caucasus and Russia

Eastern Europe: Belarus, Republic of Moldova, Ukraine

Southern Caucasus: Armenia, Azerbaijan, Georgia

Russia

## C. Asia and Latin America

## 1. Latin America

Argentina, Bolivia, Brazil, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela

## 2. Asia

Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Iraq, Laos, Malaysia, Maldives, Mongolia, Myanmar/Burma, Nepal, Pakistan, Philippines, Sri Lanka, Thailand, Vietnam, Yemen

## 3. Central Asia

Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, Uzbekistan

## D. South Africa

South Africa'

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\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244(1999) and the ICJ Opinion on the Kosovo declaration of independence.

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