

Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC (Text with EEA relevance)

[^{F1}CHAPTER III

STATIONARY INSTALLATIONS]

[^{F1}^{F2}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 CO₂ reductions taking into account the size of the project;
 - (ii) are additional, clearly respond to replacement and modernisation needs and do not supply a market-driven increase in energy demand;
 - (iii) offer the best value for money; and
 - (iv) do not contribute to or improve the financial viability of highly emission-intensive electricity generation or increase dependency on emission-intensive fossil fuels.

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

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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.]]

Textual Amendments

- F1** Inserted by [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 \(Text with EEA relevance\)](#).
- F2** Substituted by [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 \(Text with EEA relevance\)](#).