

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 IV

PROVISIONS APPLYING TO AVIATION AND STATIONARY INSTALLATIONS]

[^{F2}[^{F3}Article 11a

Use of CERs and ERUs from project activities in the [^{F4}EU ETS] before the entry into force of an international agreement on climate change

1 Without prejudice to the application of Article 28(3) and (4), paragraphs 2 to 7 of this Article shall apply.

2 To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8, operators may request the competent authority to issue allowances to them valid from 2013 onwards in exchange for CERs and ERUs issued in respect of emission reductions up until 2012 from project types which were eligible for use in the [^{F4}EU ETS] during the period from 2008 to 2012.

Until 31 March 2015, the competent authority shall make such an exchange on request.

3 To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8, competent authorities shall allow operators to exchange CERs and ERUs from projects that were registered before 2013 issued in respect of emission reductions from 2013 onwards for allowances valid from 2013 onwards.

The first subparagraph shall apply to CERs and ERUs for all project types which were eligible for use in the [^{F4}EU ETS] during the period from 2008 to 2012.

4 To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8, competent authorities shall allow operators to exchange CERs issued in respect of emission reductions from 2013 onwards for allowances from new projects started from 2013 onwards in LDCs.

The first subparagraph shall apply to CERs for all project types which were eligible for use in the [^{F4}EU ETS] during the period from 2008 to 2012, until those countries have ratified a relevant agreement with the [^{F4}Union] or until 2020, whichever is the earlier.

5 To the extent that the levels of CER and ERU use, allowed to operators or aircraft operators by Member States for the period from 2008 to 2012, have not been used up or an entitlement to use credits is granted under paragraph 8 and in the event that the negotiations on an international agreement on climate change are not concluded by 31 December 2009, credits from projects or other emission reducing activities may be used in the [^{F4}EU ETS] in accordance with agreements concluded with third countries, specifying levels of use. In accordance with such agreements, operators shall be able to use credits from project activities in those third countries to comply with their obligations under the EU ETS].

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

6 Any agreements referred to in paragraph 5 shall provide for the use of credits in the [F4EU ETS from project types which were eligible for use in the EU ETS] during the period from 2008 to 2012, including renewable energy or energy efficiency technologies which promote technological transfer and sustainable development. Any such agreement may also provide for the use of credits from projects where the baseline used is below the level of free allocation under the measures referred to in Article 10a or below the levels required by [F4Union] legislation.

7 Once an international agreement on climate change has been reached, only credits from projects from third countries which have ratified that agreement shall be accepted in the [F4EU ETS] from 1 January 2013.]

F58

F59

Textual Amendments

- F2** Inserted by [Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms \(Text with EEA relevance\).](#)
- F3** Substituted 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 \(Text with EEA relevance\).](#)
- F4** 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 \(Text with EEA relevance\).](#)
- F5** Deleted 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 \(Text with EEA relevance\).](#)

Article 11b

Project activities

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

[F6The [F4Union] and its Member States shall only authorise project activities where all project participants have headquarters either in a country that has concluded the international agreement relating to such projects or in a country or sub-federal or regional entity which is linked to the [F4EU ETS] pursuant to Article 25.]

2 Except as provided for in paragraphs 3 and 4, Member States hosting project activities shall ensure that no ERUs or CERs are issued for reductions or limitations of greenhouse gas emissions from [F7activities] falling within the scope of this Directive.

3 Until 31 December 2012, for JI and CDM project activities which reduce or limit directly the emissions of an installation falling within the scope of this Directive, ERUs and

CERs may be issued only if an equal number of allowances is cancelled by the operator of that installation.

4 Until 31 December 2012, for JI and CDM project activities which reduce or limit indirectly the emission level of installations falling within the scope of this Directive, ERUs and CERs may be issued only if an equal number of allowances is cancelled from the national registry of the Member State of the ERUs' or CERs' origin.

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

6 In the case of hydroelectric power production project activities with a generating capacity exceeding 20 MW, Member States shall, when approving such project activities, ensure that relevant international criteria and guidelines, including those contained in the World Commission on Dams November 2000 Report 'Dams and Development — A New Framework for Decision-Making', will be respected during the development of such project activities.]

F57

Textual Amendments

- F2** Inserted by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms (Text with EEA relevance).
- F4** 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).
- F5** Deleted 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).
- F6** 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).
- F7** Substituted by Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (Text with EEA relevance).

Article 12

Transfer, surrender and cancellation of allowances

- 1 Member States shall ensure that allowances can be transferred between:
- a persons within the [F4Union];
 - b persons within the [F4Union] and persons in third countries, where such allowances are recognised in accordance with the procedure referred to in Article 25 without restrictions other than those contained in, or adopted pursuant to, this Directive.

[F61a The Commission shall, by 31 December 2010, examine whether the market for emissions allowances is sufficiently protected from insider dealing or market manipulation and, if appropriate, shall bring forward proposals to ensure such protection. The relevant provisions

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁽¹⁾ may be used with any appropriate adjustments needed to apply them to trade in commodities.]

2 Member States shall ensure that allowances issued by a competent authority of another Member State are recognised for the purpose^{[F1} of meeting an aircraft operator's obligations under paragraph 2a or] of meeting an operator's obligations under paragraph 3.

^{[F12a} Administering Member States shall ensure that, by 30 April each year, each aircraft operator surrenders a number of allowances equal to the total emissions during the preceding calendar year from aviation activities listed in Annex I for which it is the aircraft operator, as verified in accordance with Article 15. Member States shall ensure that allowances surrendered in accordance with this paragraph are subsequently cancelled.]

^{[F83} For the period until 31 December 2020, Member States shall ensure that, by 30 April each year, the operator of each installation surrenders a number of allowances, other than allowances issued under Chapter II, that is equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that those allowances are subsequently cancelled. For the period starting from 1 January 2021, Member States shall ensure that, by 30 April each year, the operator of each installation surrenders a number of allowances, that is equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that those allowances are subsequently cancelled, subject to the review referred to in Article 28b.]

^{[F93-a} Where necessary, and for as long as is necessary, in order to protect the environmental integrity of the EU ETS, aircraft operators and other operators in the EU ETS shall be prohibited from using allowances that are issued by a Member State in respect of which there are obligations lapsing for aircraft operators and other operators. The legal act referred to in Article 19 shall include the measures necessary in the cases referred to in this paragraph.]

^{[F63a} An obligation to surrender allowances shall not arise in respect of emissions verified as captured and transported for permanent storage to a facility for which a permit is in force in accordance with Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide⁽²⁾.]

4 Member States shall take the necessary steps to ensure that allowances will be cancelled at any time at the request of the person holding them. ^{[F10}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).]

^{[F65} Paragraphs 1 and 2 apply without prejudice to Article 10c.]

Textual Amendments

- F4** 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 \(Text with EEA relevance\)](#).
- F6** 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 \(Text with EEA relevance\)](#).

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- F8** Substituted by Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021.
- F9** Inserted by Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021.
- F10** Inserted 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).

[^{F4}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.]

Textual Amendments

- F4** 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).

[^{F3}Article 14

Monitoring and reporting of emissions

^{F41} 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).]

2 The [^{F4}acts referred to in paragraph 1 shall take into account the most accurate and up-to-date scientific evidence available, in particular from the IPCC, and may also specify requirements for operators to report on emissions associated with the production of goods produced by energy intensive industries which may be subject to international competition. These acts] may also specify requirements for this information to be verified independently.

Those requirements may include reporting on levels of emissions from electricity generation covered by the [^{F4}EU ETS] associated with the production of such goods.

3 Member States shall ensure that each operator of an installation or an aircraft operator monitors and reports the emissions from that installation during each calendar year, or, from 1

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

January 2010, the aircraft which it operates, to the competent authority after the end of that year in accordance with the [F4acts] referred to in paragraph 1.

4 The [F4acts] referred to in paragraph 1 may include requirements on the use of automated systems and data exchange formats to harmonise communication on the monitoring plan, the annual emission report and the verification activities between the operator, the verifier and competent authorities.]

Textual Amendments

- F3** Substituted 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 \(Text with EEA relevance\).](#)
- F4** 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 \(Text with EEA relevance\).](#)

[F7Article 15

[F3Verification and accreditation]

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

Member States shall ensure that an operator or aircraft operator whose report has not been verified as satisfactory in accordance with the criteria set out in Annex V and any detailed provisions adopted by the Commission in accordance with this Article by 31 March each year for emissions during the preceding year cannot make further transfers of allowances until a report from that operator or aircraft operator has been verified as satisfactory.

[F4The 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).]]

Textual Amendments

- F3** Substituted 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 \(Text with EEA relevance\).](#)
- F4** 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 \(Text with EEA relevance\).](#)

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

F7 Substituted by Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (Text with EEA relevance).

[^{F6}Article 15a

Disclosure of information and professional secrecy

Member States and the Commission shall ensure that all decisions and reports relating to the quantity and allocation of allowances and to the monitoring, reporting and verification of emissions are immediately disclosed in an orderly manner ensuring non-discriminatory access.

Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the applicable laws, regulations or administrative provisions.]

Textual Amendments

F6 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).

Article 16

Penalties

1 Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that such rules are implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify these provisions to the Commission [^{F11}by 31 December 2003 at the latest,] and shall notify it without delay of any subsequent amendment affecting them.

[^{F72} Member States shall ensure publication of the names of operators and aircraft operators who are in breach of requirements to surrender sufficient allowances under this Directive.

3 Member States shall ensure that any operator or aircraft operator who does not surrender sufficient allowances by 30 April of each year to cover its emissions during the preceding year shall be held liable for the payment of an excess emissions penalty. The excess emissions penalty shall be EUR 100 for each tonne of carbon dioxide equivalent emitted for which the operator or aircraft operator has not surrendered allowances. Payment of the excess emissions penalty shall not release the operator or aircraft operator from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in relation to the following calendar year.]

[^{F34} The excess emissions penalty relating to allowances issued from 1 January 2013 onwards shall increase in accordance with the European index of consumer prices.]

[^{F15} In the event that an aircraft operator fails to comply with the requirements of this Directive and where other enforcement measures have failed to ensure compliance, its

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

administering Member State may request the Commission to decide on the imposition of an operating ban on the aircraft operator concerned.

- 6 Any request by an administering Member State under paragraph 5 shall include:
- a evidence that the aircraft operator has not complied with its obligations under this Directive;
 - b details of the enforcement action which has been taken by that Member State;
 - c a justification for the imposition of an operating ban at [F4Union] level; and
 - d a recommendation for the scope of an operating ban at [F4Union] level and any conditions that should be applied.

7 When requests such as those referred to in paragraph 5 are addressed to the Commission, the Commission shall inform the other Member States through their representatives on the Committee referred to in Article 23(1) in accordance with the Committee's Rules of Procedure.

8 The adoption of a decision following a request pursuant to paragraph 5 shall be preceded, when appropriate and practicable, by consultations with the authorities responsible for regulatory oversight of the aircraft operator concerned. Whenever possible, consultations shall be held jointly by the Commission and the Member States.

9 When the Commission is considering whether to adopt a decision following a request pursuant to paragraph 5, it shall disclose to the aircraft operator concerned the essential facts and considerations which form the basis for such decision. The aircraft operator concerned shall be given an opportunity to submit written comments to the Commission within 10 working days from the date of disclosure.

10 At the request of a Member State, the Commission may, in accordance with the [F4examination procedure referred to in Article 22a(2)], adopt a decision to impose an operating ban on the aircraft operator concerned.

11 Each Member State shall enforce, within its territory, any decisions adopted under paragraph 10. It shall inform the Commission of any measures taken to implement such decisions.

[F412 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).]

Textual Amendments

- F3** Substituted 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 \(Text with EEA relevance\).](#)
- F4** 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 \(Text with EEA relevance\).](#)
- F7** Substituted by [Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community \(Text with EEA relevance\).](#)
- F11** Deleted by [Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community \(Text with EEA relevance\).](#)

[^{F12}Article 17

Access to information

Decisions relating to the allocation of allowances, information on project activities in which a Member State participates or authorises private or public entities to participate, and the reports of emissions required under the greenhouse gas emissions permit and held by the competent authority, shall be made available to the public in accordance with Directive 2003/4/EC.]

Textual Amendments

- F12** Substituted by [Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms \(Text with EEA relevance\)](#).

Article 18

Competent authority

Member States shall make the appropriate administrative arrangements, including the designation of the appropriate competent authority or authorities, for the implementation of the rules of this Directive. Where more than one competent authority is designated, the work of these authorities undertaken pursuant to this Directive must be coordinated.

[^{F2}Member States shall in particular ensure coordination between their designated focal point for approving project activities pursuant to Article 6 (1)(a) of the Kyoto Protocol and their designated national authority for the implementation of Article 12 of the Kyoto Protocol respectively designated in accordance with subsequent decisions adopted under the UNFCCC or the Kyoto Protocol.]

Textual Amendments

- F2** Inserted by [Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms \(Text with EEA relevance\)](#).

[^{F1}Article 18a

Administering Member State

- 1 The administering Member State in respect of an aircraft operator shall be:
 - a in the case of an aircraft operator with a valid operating licence granted by a Member State in accordance with the provisions of Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers⁽³⁾, the Member State which granted the operating licence in respect of that aircraft operator; and

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- b in all other cases, the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator in the base year.

2 Where in the first two years of any period referred to in Article 3c, none of the attributed aviation emissions from flights performed by an aircraft operator falling within paragraph 1(b) of this Article are attributed to its administering Member State, the aircraft operator shall be transferred to another administering Member State in respect of the next period. The new administering Member State shall be the Member State with the greatest estimated attributed aviation emissions from flights performed by that aircraft operator during the first two years of the previous period.

- 3 Based on the best available information, the Commission shall:
- a before 1 February 2009, publish a list of aircraft operators which performed an aviation activity listed in Annex I on or after 1 January 2006 specifying the administering Member State for each aircraft operator in accordance with paragraph 1; and
 - b before 1 February of each subsequent year, update the list to include aircraft operators which have subsequently performed an aviation activity listed in Annex I.

4 The Commission may, in accordance with the [F4examination procedure referred to in Article 22a(2)], develop guidelines relating to the administration of aircraft operators under this Directive by administering Member States.

5 For the purposes of paragraph 1, 'base year' means, in relation to an aircraft operator which started operating in the [F4Union] after 1 January 2006, the first calendar year of operation, and in all other cases, the calendar year starting on 1 January 2006.

Textual Amendments

- F4** 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 \(Text with EEA relevance\)](#).

Article 18b

Assistance from Eurocontrol

For the purposes of carrying out its obligations under Articles 3c(4) and 18a, the Commission may request the assistance of Eurocontrol or another relevant organisation and may conclude to that effect any appropriate agreements with those organisations.]

Article 19

Registries

[F31 Allowances issued from 1 January 2012 onwards shall be held in the [F4Union] registry for the execution of processes pertaining to the maintenance of the holding accounts opened in the Member State and the allocation, surrender and cancellation of allowances under the Commission [F4Acts] referred to in paragraph 3.

Each Member State shall be able to fulfil the execution of authorised operations under the UNFCCC or the Kyoto Protocol.]

2 Any person may hold allowances. The registry shall be accessible to the public and shall contain separate accounts to record the allowances held by each person to whom and from whom allowances are issued or transferred.

[^{F43} 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.]

[^{F64} The [^{F4}Acts referred to in paragraph 3 shall contain appropriate modalities for the [^{F4}Union registry to undertake transactions and other operations to implement arrangements referred to in Article 25(1b). These Acts] shall also include processes for the change and incident management for the Union registry with regard to issues in paragraph 1 of this Article. It shall contain appropriate modalities for the Union] registry to ensure that initiatives of the Member States pertaining to efficiency improvement, administrative cost management and quality control measures are possible.]

Textual Amendments

- F3** Substituted 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 \(Text with EEA relevance\)](#).
- F4** 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 \(Text with EEA relevance\)](#).
- F6** 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 \(Text with EEA relevance\)](#).

Article 20

Central Administrator

1 The Commission shall designate a Central Administrator to maintain an independent transaction log recording the issue, transfer and cancellation of allowances.

2 The Central Administrator shall conduct an automated check on each transaction in registries through the independent transaction log to ensure there are no irregularities in the issue, transfer and cancellation of allowances.

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

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Article 21

Reporting by Member States

1 Each year the Member States shall submit to the Commission a report on the application of this Directive. ^[F3]That report shall pay particular attention to the arrangements for the allocation of allowances, the operation of registries, the application of the implementing measures on monitoring and reporting, verification and accreditation and issues relating to compliance with this Directive and on the fiscal treatment of allowances, if any.] The first report shall be sent to the Commission by 30 June 2005. ^[F4]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).] The questionnaire or outline shall be sent to Member States at least six months before the deadline for the submission of the first report.

2 On the basis of the reports referred to in paragraph 1, the Commission shall publish a report on the application of this Directive within three months of receiving the reports from the Member States.

^[F3] The Commission shall organise an exchange of information between the competent authorities of the Member States concerning developments relating to issues of allocation, the use of ERUs and CERs in the ^[F4]EU ETS], the operation of registries, monitoring, reporting, verification, accreditation, information technology, and compliance with this Directive.]

^[F10]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.]

Textual Amendments

- F3** Substituted 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 \(Text with EEA relevance\)](#).
- F4** 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 \(Text with EEA relevance\)](#).
- F10** Inserted 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 \(Text with EEA relevance\)](#).

^[F2]Article 21a

Support of capacity-building activities

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

Textual Amendments

- F2** Inserted by [Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms \(Text with EEA relevance\)](#).

*[^{F4} 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.]

Textual Amendments

- F4** 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 \(Text with EEA relevance\)](#).

*[^{F10} 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⁽⁴⁾. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council⁽⁵⁾.

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.]

Textual Amendments

- F10** Inserted 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 \(Text with EEA relevance\)](#).

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

[^{F4} 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⁽⁶⁾.

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.]

Textual Amendments

- F4** 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 \(Text with EEA relevance\)](#).

[^{F3} Article 24

Procedures for unilateral inclusion of additional activities and gases

[^{F41} 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.]

2 When the inclusion of additional activities and gases is approved, the Commission may at the same time authorise the issue of additional allowances and may authorise other Member States to include such additional activities and gases.

3 On the initiative of the Commission or at the request of a Member State, these [^{F4}acts] may be adopted on the monitoring of, and reporting on, emissions concerning activities, installations and greenhouse gases which are not listed as a combination in Annex I, if that monitoring and reporting can be carried out with sufficient accuracy.

[^{F4}The Commission is empowered to adopt delegated acts in accordance with Article 23 to supplement this Directive to this effect.]]

Textual Amendments

- F3** Substituted 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 \(Text with EEA relevance\).](#)
- F4** 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 \(Text with EEA relevance\).](#)

[^{F6}Article 24a

Harmonised rules for projects that reduce emissions

[^{F41} 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.]

Any such measures shall not result in the double-counting of emission reductions nor impede the undertaking of other policy measures to reduce emissions not covered by the [^{F4}EU ETS. Measures shall only be adopted where inclusion is not possible in accordance with Article 24, and the next review of the EU ETS] shall consider harmonising the coverage of those emissions across the [^{F4}Union].

^{F5}2

3 A Member State can refuse to issue allowances or credits in respect of certain types of projects that reduce greenhouse gas emissions on its own territory.

Such projects will be executed on the basis of the agreement of the Member State in which the project takes place.]

Textual Amendments

- F4** 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 \(Text with EEA relevance\).](#)

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- F5** Deleted 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).
- F6** 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).

Article 25

Links with other greenhouse gas emissions trading [F4systems]

1 Agreements should be concluded with third countries listed in Annex B to the Kyoto Protocol which have ratified the Protocol to provide for the mutual recognition of allowances between the [F4EU ETS] and other greenhouse gas emissions trading [F4systems] in accordance with the rules set out in Article 300 of the Treaty.

[F61a Agreements may be made to provide for the recognition of allowances between the [F4EU ETS] and compatible mandatory greenhouse gas emissions trading systems with absolute emissions caps established in any other country or in sub-federal or regional entities.

1b Non-binding arrangements may be made with third countries or with sub-federal or regional entities to provide for administrative and technical coordination in relation to allowances in the [F4EU ETS] or other mandatory greenhouse gas emissions trading systems with absolute emissions caps.]

F52

Textual Amendments

- F4** 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).
- F5** Deleted 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).
- F6** 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).

[F1Article 25a

Third country measures to reduce the climate change impact of aviation

1 [F4Where 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.]

The Commission may propose to the European Parliament and the Council any other amendments to this Directive.

The Commission may also, where appropriate, make recommendations to the Council in accordance with Article 300(1) of the Treaty to open negotiations with a view to concluding an agreement with the third country concerned.

2 The [F⁴Union] and its Member States shall continue to seek an agreement on global measures to reduce greenhouse gas emissions from aviation. In the light of any such agreement, the Commission shall consider whether amendments to this Directive as it applies to aircraft operators are necessary.]

Textual Amendments

- F4 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 \(Text with EEA relevance\).](#)

Article 26

Amendment of Directive 96/61/EC

In Article 9(3) of Directive 96/61/EC the following subparagraphs shall be added:

Where emissions of a greenhouse gas from an installation are specified in Annex I to 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⁽⁷⁾ in relation to an activity carried out in that installation, the permit shall not include an emission limit value for direct emissions of that gas unless it is necessary to ensure that no significant local pollution is caused.

For activities listed in Annex I to Directive 2003/87/EC, Member States may choose not to impose requirements relating to energy efficiency in respect of combustion units or other units emitting carbon dioxide on the site.

Where necessary, the competent authorities shall amend the permit as appropriate.

The three preceding subparagraphs shall not apply to installations temporarily excluded from the scheme for greenhouse gas emission allowance trading within the Community in accordance with Article 27 of Directive 2003/87/EC.

[F³Article 27

Exclusion of small installations subject to equivalent measures

1 Following consultation with the operator, Member States may exclude from the [F⁴EU ETS] installations which have reported to the competent authority emissions of less than 25 000 tonnes of carbon dioxide equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW, excluding emissions from biomass, in each of the three years

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

preceding the notification under point (a), and which are subject to measures that will achieve an equivalent contribution to emission reductions, if the Member State concerned complies with the following conditions:

- a it notifies the Commission of each such installation, specifying the equivalent measures applying to that installation that will achieve an equivalent contribution to emission reductions that are in place, before the list of installations pursuant to Article 11(1) has to be submitted and at the latest when this list is submitted to the Commission;
- b it confirms that monitoring arrangements are in place to assess whether any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year. Member States may allow simplified monitoring, reporting and verification measures for installations with average annual verified emissions between 2008 and 2010 which are below 5 000 tonnes a year, in accordance with Article 14;
- c it confirms that if any installation emits 25 000 tonnes or more of carbon dioxide equivalent, excluding emissions from biomass, in any one calendar year or the measures applying to that installation that will achieve an equivalent contribution to emission reductions are no longer in place, the installation will be reintroduced into the [F⁴EU ETS];
- d it publishes the information referred to in points (a), (b) and (c) for public comment.

Hospitals may also be excluded if they undertake equivalent measures.

2 If, following a period of three months from the date of notification for public comment, the Commission does not object within a further period of six months, the exclusion shall be deemed approved.

Following the surrender of allowances in respect of the period during which the installation is in the [F⁴EU ETS], the installation shall be excluded and the Member State shall no longer issue free allowances to the installation pursuant to Article 10a.

3 When an installation is reintroduced into the [F⁴EU ETS] pursuant to paragraph 1(c), any allowances issued pursuant to Article 10a shall be granted starting with the year of the reintroduction. Allowances issued to these installations shall be deducted from the quantity to be auctioned pursuant to Article 10(2) by the Member State in which the installation is situated.

[F⁴Any 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.]

4 For installations which have not been included in the [F⁴EU ETS] during the period from 2008 to 2012, simplified requirements for monitoring, reporting and verification may be applied for determining emissions in the three years preceding the notification under paragraph 1 point (a).

Textual Amendments

- F3** Substituted 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 \(Text with EEA relevance\).](#)
- F4** 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 \(Text with EEA relevance\).](#)

[^{F10}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.]

Textual Amendments

F3 Substituted 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 \(Text with EEA relevance\)](#).

F10 Inserted 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 \(Text with EEA relevance\)](#).

Article 28

**Adjustments applicable upon the approval by the
[^{F4}Union] of an international agreement on climate change**

1 Within three months of the signature by the [^{F4}Union] of an international agreement on climate change leading, by 2020, to mandatory reductions of greenhouse gas emissions exceeding 20 % compared to 1990 levels, as reflected in the 30 % reduction commitment as endorsed by the European Council of March 2007, the Commission shall submit a report assessing, in particular, the following elements:

- a the nature of the measures agreed upon in the framework of the international negotiations as well as the commitments made by other developed countries to

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- comparable emission reductions to those of the [F4Union] and the commitments made by economically more advanced developing countries to contributing adequately according to their responsibilities and respective capabilities;
- b the implications of the international agreement on climate change, and consequently, options required at [F4Union] level, in order to move to the more ambitious 30 % reduction target in a balanced, transparent and equitable way, taking into account work under the Kyoto Protocol's first commitment period;
- c the [F4Union] manufacturing industries' competitiveness in the context of carbon leakage risks;
- d the impact of the international agreement on climate change on other [F4Union] economic sectors;
- e the impact on the [F4Union] agriculture sector, including carbon leakage risks;
- f the appropriate modalities for including emissions and removals related to land use, land use change and forestry in the [F4Union];
- g afforestation, reforestation, avoided deforestation and forest degradation in third countries in the event of the establishment of any internationally recognised system in this context;
- h the need for additional [F4Union] policies and measures in view of the greenhouse gas reduction commitments of the [F4Union] and of Member States.

2 On the basis of the report referred to in paragraph 1, the Commission shall, as appropriate, submit a legislative proposal to the European Parliament and to the Council amending this Directive pursuant to paragraph 1, with a view to the amending Directive entering into force upon the approval by the [F4Union] of the international agreement on climate change and in view of the emission reduction commitment to be implemented under that agreement.

The proposal shall be based upon the principles of transparency, economic efficiency and cost-effectiveness, as well as fairness and solidarity in the distribution of efforts between Member States.

3 The proposal shall allow, as appropriate, operators to use, in addition to the credits provided for in this Directive, CERs, ERUs or other approved credits from third countries which have ratified the international agreement on climate change.

4 The proposal shall also include, as appropriate, any other measures needed to help reach the mandatory reductions in accordance with paragraph 1 in a transparent, balanced and equitable way and, in particular, shall include implementing measures to provide for the use of additional types of project credits by operators in the [F4EU ETS] to those referred to in paragraphs 2 to 5 of Article 11a or the use by such operators of other mechanisms created under the international agreement on climate change, as appropriate.

5 The proposal shall include the appropriate transitional and suspensive measures pending the entry into force of the international agreement on climate change.

Textual Amendments

F3 Substituted 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 \(Text with EEA relevance\)](#).

F4 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 \(Text with EEA relevance\)](#).

[^{F13}~~XI~~ Article 28a]

[^{F8} Derogations applicable in advance of the implementation
of the ICAO's global market-based measure]

1 By way of derogation from Articles 12(2a), 14(3) and Article 16, Member States shall consider the requirements set out in those provisions to be satisfied and shall take no action against aircraft operators in respect of:

- [^{F8}a all emissions from flights to and from aerodromes located in countries outside the EEA in each calendar year from 1 January 2013 to 31 December 2023, subject to the review referred to in Article 28b;
- b all emissions from flights between an aerodrome located in an outermost region within the meaning of Article 349 of the Treaty on the Functioning of the European Union and an aerodrome located in another region of the EEA in each calendar year from 1 January 2013 to 31 December 2023, subject to the review referred to in Article 28b.]
- [^{F14}c the surrender of allowances, corresponding to verified 2013 emissions from flights between aerodromes located in States in the EEA, taking place by 30 April 2015 instead of 30 April 2014, and verified 2013 emissions for those flights being reported by 31 March 2015 instead of 31 March 2014.]

For the purposes of Articles 11a, 12 and 14, the verified emissions from flights other than those referred to in the first subparagraph shall be considered to be the verified emissions of the aircraft operator.

[^{F8}2 By way of derogation from Articles 3e and 3f, aircraft operators benefiting from the derogations provided for in points (a) and (b) of paragraph 1 of this Article shall be issued, each year, with a number of free allowances reduced in proportion to the reduction of the surrender obligation provided for in those points.

By way of derogation from Article 3f(8), allowances that are not allocated from the special reserve shall be cancelled.

From 1 January 2021, the number of allowances allocated to aircraft operators shall be subject to the application of the linear factor referred to in Article 9, subject to the review referred to in Article 28b.

As regards activity in the period from 1 January 2017 to 31 December 2023, Member States shall, before 1 September 2018, publish the number of aviation allowances allocated to each aircraft operator.]

3 By way of derogation from Article 3d, Member States shall auction a number of aviation allowances reduced in proportion to the reduction in the total number of allowances issued.

[^{F8}4 By way of derogation from Article 3d(3), the number of allowances to be auctioned by each Member State in respect of the period from 1 January 2013 to 31 December 2023 shall be reduced to correspond to its share of attributed aviation emissions from flights which are not subject to the derogations provided for in points (a) and (b) of paragraph 1 of this Article.]

5 By way of derogation from Article 3g, aircraft operators shall not be required to submit monitoring plans setting out measures to monitor and report emissions in respect of flights which are subject to the derogations provided for in points (a) and (b) of paragraph 1 of this Article.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

[^{F86} By way of derogation from Articles 3g, 12, 15 and 18a, where an aircraft operator has total annual emissions lower than 25 000 tonnes of CO₂, or where an aircraft operator has total annual emissions lower than 3 000 tonnes of CO₂ from flights other than those referred to in points (a) and (b) of paragraph 1 of this Article, its emissions shall be considered to be verified emissions if determined by using the small emitters tool approved under Commission Regulation (EU) No 606/2010⁽⁸⁾ and populated by Eurocontrol with data from its ETS support facility. Member States may implement simplified procedures for non-commercial aircraft operators as long as such procedures provide no less accuracy than the small emitters tool provides.]

[^{F87} Paragraph 1 of this Article shall apply to countries with whom an agreement pursuant to Article 25 or 25a has been reached only in line with the terms of such agreement.]]

^{F148}

Editorial Information

- X1** Substituted by [Corrigendum to Regulation \(EU\) No 421/2014 of the European Parliament and of the Council of 16 April 2014 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions \(Official Journal of the European Union L 129 of 30 April 2014\).](#)

Textual Amendments

- F3** Substituted 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 \(Text with EEA relevance\).](#)
- F8** Substituted by [Regulation \(EU\) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021.](#)
- F13** Inserted by [Regulation \(EU\) No 421/2014 of the European Parliament and of the Council of 16 April 2014 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions \(Text with EEA relevance\).](#)
- F14** Deleted by [Regulation \(EU\) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021.](#)

[^{F9} Article 28b

Reporting and review by the Commission concerning the implementation of the ICAO's global market-based measure

1 Before 1 January 2019 and regularly thereafter, the Commission shall report to the European Parliament and to the Council on progress in the ICAO negotiations to implement the global market-based measure to be applied to emissions from 2021, in particular with regard to: (i) the relevant ICAO instruments, including Standards and Recommended Practices; (ii) ICAO Council-approved recommendations relevant to the global market-based measure; (iii) the establishment of a global registry; (iv) domestic measures taken by third countries to implement the global market-based measure to be applied to emissions from 2021; (v) the implications

of reservations by third countries; and (vi) other relevant international developments and applicable instruments.

In line with the UNFCCC's global stocktake, the Commission shall also report on efforts to meet the aviation sector's aspirational long-term emissions reduction goal of halving aviation CO₂ emissions relative to 2005 levels by 2050.

2 Within 12 months of the adoption by the ICAO of the relevant instruments, and before the global market-based measure becomes operational, the Commission shall present a report to the European Parliament and to the Council in which it shall consider ways for those instruments to be implemented in Union law through a revision of this Directive. The Commission shall, in that report, also consider the rules applicable in respect of flights within the EEA, as appropriate. It shall also examine the ambition and overall environmental integrity of the global market-based measure, including its general ambition in relation to targets under the Paris Agreement, the level of participation, its enforceability, transparency, the penalties for non-compliance, the processes for public input, the quality of offset credits, monitoring, reporting and verification of emissions, registries, accountability as well as rules on the use of biofuels. In addition, the report shall consider whether the provisions adopted under Article 28c(2) need to be revised.

3 The Commission shall accompany the report referred to in paragraph 2 of this Article with a proposal, where appropriate, to the European Parliament and to the Council to amend, delete, extend or replace the derogations provided for in Article 28a, that is consistent with the Union economy-wide greenhouse gas emission reduction commitment for 2030 with the aim of preserving the environmental integrity and effectiveness of Union climate action.

Textual Amendments

- F3** Substituted 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 \(Text with EEA relevance\)](#).
- F9** Inserted by [Regulation \(EU\) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021](#).

[^{F4} 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.]]

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

Textual Amendments

- F3** Substituted 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).
- F4** 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).
- F9** Inserted by Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021.

Article 29

Report to ensure the better functioning of the carbon market

If, on the basis of the regular reports on the carbon market referred to in Article 10(5), the Commission has evidence that the carbon market is not functioning properly, it shall submit a report to the European Parliament and to the Council. The report may be accompanied, if appropriate, by proposals aiming at increasing transparency of the carbon market and addressing measures to improve its functioning.]

Textual Amendments

- F3** Substituted 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).

^{F6}Article 29a

Measures in the event of excessive price fluctuations

1 If, for more than six consecutive months, the allowance price is more than three times the average price of allowances during the two preceding years on the European carbon market, the Commission shall immediately convene a meeting of the Committee established by Article 9 of Decision No 280/2004/EC.

2 If the price evolution referred to in paragraph 1 does not correspond to changing market fundamentals, one of the following measures may be adopted, taking into account the degree of price evolution:

- a a measure which allows Member States to bring forward the auctioning of a part of the quantity to be auctioned;
- b a measure which allows Member States to auction up to 25 % of the remaining allowances in the new entrants reserve.

Those measures shall be adopted in accordance with the management procedure referred to in Article 23(4).

3 Any measure shall take utmost account of the reports submitted by the Commission to the European Parliament and to the Council pursuant to Article 29, as well as any other relevant information provided by Member States.

4 The arrangements for the application of these provisions shall be laid down in the [F4 acts] referred to in Article 10(4).]

Textual Amendments

- F4** 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 \(Text with EEA relevance\)](#).
- F6** 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 \(Text with EEA relevance\)](#).

[F4 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-CO₂ effects of aviation, accompanied, where appropriate, by a proposal on how best to address those effects.]

Textual Amendments

- F4** 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 \(Text with EEA relevance\)](#).

Textual Amendments

- F1** Inserted by [Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community \(Text with EEA relevance\)](#).

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

- (1) [^{F6}OJ L 96, 12.4.2003, p. 16.]
- (2) [^{F6}OJ L 140, 5.6.2009, p. 114.]
- (3) [^{F1}OJ L 240, 24.8.1992, p. 1.]
- (4) [^{F10}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).]
- (5) [^{F10}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).]
- (6) [^{F4}OJ L 123, 12.5.2016, p. 1.]
- (7) OJ L 275, 25.10.2003, p. 32.'
- (8) [^{F3}[^{F13}[^{F8}Commission Regulation (EU) No 606/2010 of 9 July 2010 on the approval of a simplified tool developed by the European organisation for air safety navigation (Eurocontrol) to estimate the fuel consumption of certain small emitting aircraft operators (OJ L 175, 10.7.2010, p. 25).]]]

Textual Amendments

- F1** Inserted by Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (Text with EEA relevance).
- F3** Substituted 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).
- F4** 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).
- F6** 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).
- F8** Substituted by Regulation (EU) 2017/2392 of the European Parliament and of the Council of 13 December 2017 amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021.
- F10** Inserted 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).
- F13** Inserted by Regulation (EU) No 421/2014 of the European Parliament and of the Council of 16 April 2014 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in view of the implementation by 2020 of an international agreement applying a single global market-based measure to international aviation emissions (Text with EEA relevance).