



STATUTORY INSTRUMENTS.

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EUROPEAN COMMUNITIES (GREENHOUSE GAS EMISSIONS  
TRADING) REGULATIONS 2024

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EUROPEAN COMMUNITIES (GREENHOUSE GAS EMISSIONS  
TRADING) REGULATIONS 2024

I, EAMON RYAN, Minister for the Environment, Climate and Communications, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving further effect to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003<sup>1</sup>, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004<sup>2</sup>, Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008<sup>3</sup>, Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009<sup>4</sup>, Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018<sup>5</sup>, Regulation (EU) 2023/435 of the European Parliament and of the Council of 27 February 2023<sup>6</sup>, Directive (EU) 2023/958 of the European Parliament and of the Council of the 10 May 2023<sup>7</sup> and Directive 2023/959 of the European Parliament and of the Council of 10 May 2023<sup>8</sup> hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Communities (Greenhouse Gas Emissions Trading) Regulations 2024.

*Commencement*

2. These Regulations shall come into operation on 19 September 2024.

*Interpretation*

3. In these Regulations –

“Activity Level Changes Regulation” means Commission Implementing Regulation (EU) 2019/1842 of 31 October 2019<sup>9</sup> laying down rules for the application of Directive 2003/87/EC<sup>1</sup> of the European Parliament and of the Council as regards further arrangements for the adjustments to free allocation of emission allowances due to activity level changes, and any amendment thereto;

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<sup>1</sup> OJ No. L. 275, 25.10.2003. p.32.

<sup>2</sup> OJ No. L. 338, 13.11.2004. p.18.

<sup>3</sup> OJ No. L. 8, 13.1.2009. p.3.

<sup>4</sup> OJ No. L. 140, 5.5.2009. p. 63.

<sup>5</sup> OJ No. L. 76, 19.3.2018. p. 3.

<sup>6</sup> OJ No. L. 63, 28.2.2023. p.1.

<sup>7</sup> OJ No. L. 130, 16.5.2023. p.115.

<sup>8</sup> OJ L 130, 16.5.2023, p. 134.

<sup>9</sup> OJ L 282, 4.11.2019, p.20.

“administering authority in respect of a shipping company” means, in respect of the State, the Agency, and in respect of other Member States of the European Union, any administering authority specified in the national law of that State as notified by the Commission;

“Agency” means the Environmental Protection Agency established under section 19 of the Environmental Protection Agency Act 1992 (No. 7 of 1992);

“allowance” means an allowance to emit one tonne of carbon dioxide equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of these Regulations and shall be transferable in accordance with the provisions of the Directive;

“approval” means, in relation to a proposed project activity, the approval or authorisation, as appropriate, required under Article 6 or Article 12 of the Protocol;

“assigned amount unit” is a unit issued pursuant to Article 3 of the Kyoto Protocol and the decisions adopted pursuant to the Convention and the Protocol;

“certified emission reduction unit” or "CER" means a unit issued pursuant to Article 12 of the Kyoto Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“combustion” means any oxidation of fuels, regardless of the way in which the heat, electrical or mechanical energy produced by this process is used, and any other directly associated activities, including waste gas scrubbing;

“Commission” means the European Commission;

“Commission Delegated Regulation (EU) 2023/2830” means Commission Delegated Regulation (EU) 2023/2830 of 17 October 2023<sup>10</sup> supplementing Directive 2003/87/EC of the European Parliament and of the Council by laying down rules on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances;

“Commission’s Free Allocation Rules” means -

- (a) in relation to allocations relating to the period prior to 1 January 2021, Commission Decision 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<sup>1</sup> of the European Parliament and of the Council, and
- (b) in relation to allocations relating to the period commencing on 1 January 2021, Commission Delegated Regulation (EU) 2019/331 of 19 December 2018<sup>11</sup> 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;

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<sup>10</sup> OJ No. L. 20.12.2023

<sup>11</sup> OJ No. L. 59, 27.2.2019, p.8

“Commission’s Interpretation of Aviation Activities” means Commission Decision of 8 June 2009<sup>12</sup> on the detailed interpretation of the aviation activities listed in Annex I to Directive 2003/87/EC<sup>1</sup>;

“Commission’s Monitoring and Reporting Regulation” means Commission Regulation (EU) No 601/2012 of 21 June 2012<sup>13</sup> on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council, as amended by Commission Implementing Regulation (EU) 2018/2066 of 19 December 2018<sup>14</sup> and all subsequent amendments;

“Commissions Restrictions on Industrial Gas Credits” means Commission Regulation (EU) No 550/2011 of 7 June 2011<sup>15</sup> on determining certain restrictions applicable to the use of international credits from projects involving industrial gases;

“Commission’s Verification and Accreditation Regulation” means Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018<sup>16</sup> on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC<sup>1</sup> of the European Parliament and of the Council;

“competent authority” means, in respect of the State, the Agency, and in respect of other Member States of the European Union, any competent authority specified in the national law of that State as notified by the Commission;

“Convention” means the 1992 United Nations Framework Convention on Climate Change;

“cruise passenger ship” means a passenger ship that has no cargo deck and is designed exclusively for commercial transportation of passengers in overnight accommodation on a sea voyage;

“direction” means a direction issued by the Agency pursuant to Regulation 31;

“Directive” means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003<sup>1</sup> establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC, as amended by Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004<sup>2</sup>, Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008<sup>3</sup>, Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009<sup>4</sup>, Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018<sup>5</sup>, Regulation (EU) 2023/435 of the European Parliament and of the Council of the 10 May 2023<sup>6</sup>, Directive (EU) 2023/958 of the European Parliament and of the Council of 10 May 2023<sup>7</sup>, and Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023<sup>8</sup>;

“Directive 2009/31/EC” means Directive 2009/31/EC of 23 April 2009<sup>17</sup> on the geological storage of carbon dioxide;

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<sup>12</sup> OJ No. L.149, 12.6.2009, p.69

<sup>13</sup> OJ No L. 181 12.7.2012, p.30

<sup>14</sup> OJ No. L.334, 31.12.2018, p.1

<sup>15</sup> OJ No. L 149, 8.6.2011 p. 1.

<sup>16</sup> OJ No. L 334, 31.12.2018, p.94.

<sup>17</sup> OJ No. L. 140, 5.6.2009, p140.

“emissions” means the release of greenhouse gases from sources in an installation or the release from an aircraft performing an aviation activity listed in Schedule I or from ships performing a maritime transport activity listed in Schedule I of the gases specified in respect of that activity or the release of greenhouse gases corresponding to the activity referred to in Schedule 5;

“emission reduction unit” or "ERU" means a unit issued pursuant to Article 6 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“enactment” means an Act or statutory instrument or any portion of an Act or statutory instrument;

“EU ETS” means the system for greenhouse gas emission allowance trading within the European Union provided for in the Directive;

“fuel” for the purposes of Chapter II of these Regulations means any energy product referred to in Article 2(1) of Directive 2003/96/EC<sup>18</sup>, including the fuels listed in Table A and Table C of Annex I to that Directive, as well as any other product intended for use, offered for sale or used as motor fuel or heating fuel as specified in Article 2(3) of that Directive, including for the production of electricity;

“greenhouse gases” means the gases listed in Schedule 2 and other gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

“greenhouse gas emissions permit” means a permit granted under Regulations 6, 7 and 17;

“host country” means a country which is a Party to the Kyoto Protocol and in which a project activity will take place;

“installation” means, a stationary technical unit where one or more activities listed in Schedule 1 may be carried out and any other directly associated activities which have a technical connection with the said activities on that site and which could have an effect on emissions and pollution, and references to an installation include references to part of an installation;

“Irish ship” means a ship within the meaning of section 9 of the Mercantile Marine Act 1955 (No. 29 of 1955);

“LDCs” means Least Developed Countries as defined by the Committee for Economic Development and endorsed by the Economic and Social Council of the United Nations;

“master”, in relation to a ship, means the person having, for the time being, the command or charge of the ship;

“Minister” means the Minister for the Environment, Climate and Communications;

“new entrant” means -

- (a) for the purposes of the allocation of allowances prior to 1 January 2021 -

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<sup>18</sup> OJ No. L. 283, 21.10.2003, p.51.

- (i) any installation carrying out one or more of the activities listed in Schedule 1 which has obtained a greenhouse gas emissions permit for the first time after 30 June 2011;
- (ii) any installation carrying out an activity which is included in the EU ETS pursuant to Article 24(1) or (2) of the Directive for the first time; or
- (iii) any installation carrying out one or more of the activities listed in Schedule 1 or an activity which is included in the EU ETS pursuant to Article 24(1) or (2) of the Directive, which has had a significant extension after 30 June 2011, only in so far as this extension is concerned, and in accordance with the Commission's Free Allocation Rules,

and

- (b) for the purposes of the allocation of allowances from 1 January 2021, any installation carrying out one or more of the activities listed in Schedule 1, 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) of the Directive, and ending three months before the date for the submission of the subsequent list under that Article of the Directive;

“operator” means any person who operates or controls an installation or to whom decisive economic power over the technical functioning of the installation has been delegated;

“person” means any natural or legal person;

“port of call” means the port where a ship stops to load or unload cargo or to embark or disembark passengers, or the port where an offshore ship stops to relieve the crew; stops for the sole purposes of refuelling, obtaining supplies, relieving the crew of a ship other than an offshore ship, going into dry-dock or making repairs to the ship, its equipment, or both, stops in port because the ship is in need of assistance or in distress, ship-to-ship transfers carried out outside ports, stops for the sole purpose of taking shelter from adverse weather or rendered necessary by search and rescue activities, and stops of containerships in a neighbouring container transhipment port listed in the implementing act adopted pursuant to Article 3ga(2) are excluded;

“project activity” means a project activity within the meaning of Article 6 or Article 12 of the Protocol and the decisions adopted pursuant to the Convention or the Protocol;

“Protocol” means the 1997 Kyoto Protocol to the 1992 United Nations Framework Convention on Climate Change;

“public” means one or more persons and associations, organisations or groups of persons;

“regulated entity” means any natural or legal person, except for any final consumer of the fuels, that engages in the activity in the State referred to in Schedule 5 and that falls within one of the following categories:

- (i) where the fuel passes through a tax warehouse as defined in Article 3, point (11), of Council Directive (EU) 2020/262<sup>19</sup>, the authorised warehouse keeper as defined in Article 3, point (1), of that Directive, liable to pay the excise duty which has become chargeable pursuant to Article 7 of that Directive;
- (ii) if point (i) of this point is not applicable, any other person liable to pay the excise duty which has become chargeable pursuant to Article 7 of Directive (EU) 2020/262<sup>19</sup> or Article 21(5), first subparagraph of Council Directive 2003/96/EC<sup>18</sup> in respect of the fuels covered by Chapter II;
- (iii) if points (i) and (ii) of this point are not applicable, any other person that has to be registered by the relevant competent authorities of the State for the purpose of being liable to pay the excise duty, including any person exempt from paying the excise duty, as referred to in Article 21(5), fourth subparagraph, of Directive 2003/96/EC<sup>18</sup>;
- (iv) if points (i), (ii) and (iii) are not applicable, or if several persons are jointly and severally liable for payment of the same excise duty, any other person that the Minister may, by order, designate.

“Regulation (EU) 2023/956” means Regulation (EU) 2023/956 of 10 May 2023<sup>20</sup> on establishing a carbon border adjustment mechanism.

“release for consumption” means release for consumption as defined in Article 6(3) of Directive (EU) 2020/262;

“removal unit” is a unit issued pursuant to Article 3 of the Kyoto Protocol and the decisions adopted pursuant to the Convention and the Protocol;

“shipping company” means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the shipowner and that, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Management Code for the Safe Operation of Ships and for Pollution Prevention, set out in Annex I to Regulation (EC) No 336/2006<sup>21</sup> of the European Parliament and of the Council;

“statutory instrument” means an order, regulation, rule, bye-law, warrant, licence, certificate, direction, notice, guideline or other like document made, issued, granted or otherwise created by or under an Act and references, in relation to a statutory instrument, to “made” or to “made under” include references to made, issued, granted or otherwise created by or under such instrument; and

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<sup>19</sup> OJ No. L 58, 27.2.2020, p.4

<sup>20</sup> OJ No. L 130 16.5.2023, p.52

<sup>21</sup> OJ No. L. 64 4.3.2006, p.1

“tonne of carbon dioxide equivalent” means one metric tonne of carbon dioxide (CO<sub>2</sub>) or an amount of any other greenhouse gas listed in Schedule 2 with an equivalent global-warming potential;

“voyage” means a voyage as defined in Article 3, point (c), of Regulation (EU) 2015/757 of the European Parliament and of the Council<sup>22</sup>;

(2) In these Regulations—

- (a) where an installation has not been put into operation, the person who will have control over the operation of the installation when it is put into operation shall be treated as the operator of the installation, and
- (b) where an installation has ceased to be in operation, the person who holds the greenhouse gas emissions permit which applies to the Schedule 1 activities carried out in the installation shall be treated as the operator of the installation.

(3) A word or expression that is used in these Regulations and is also used in the Directive has the same meaning in these Regulations that it has in the Directive.

(4) Where an order is proposed to be made under subsection (1) under the definition of “regulated entity”, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

#### *Purpose and Application*

4. (1) These Regulations provide for the implementation in the State of a system for greenhouse gas emissions allowance trading within the European Union in order to promote reductions of greenhouse gas emissions from activities in a cost effective and economically efficient manner.

(2) These Regulations apply to the activities listed in Schedule 1 and greenhouse gases listed in Schedule 2 and in respect of the Buildings, Road Transport and Additional Sectors, Schedule 5.

(3) These Regulations provide for—

- (a) the designation of the Agency as Focal Point and National Authority for the purposes of Articles 6 and 12, respectively, of the Protocol and the decisions adopted pursuant to the Convention and the Protocol,
- (b) the establishment of a registry, and designation of the Agency as national registry administrator, for the purposes of Article 7 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol.

(4) These Regulations shall not apply to a proposed project activity to be carried out in Ireland.

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<sup>22</sup> OJ No. L. 123 19.5.2014, p.55

(5) These Regulations apply to shipping companies in accordance with Article 3gf of the Directive. Where the Agency is the administering authority in respect of a shipping company it shall retain that responsibility regardless of subsequent changes in the shipping company's activities or registration until those changes are reflected in an updated list of shipping companies established by the Commission pursuant to Article 3gf of the Directive or implementing acts thereunder.

#### *Greenhouse Gas Emissions Permits*

5. (1) No person shall carry out an activity listed in Schedule 1 at an installation resulting in emissions specified therein, except under and to the extent authorised by a greenhouse gas emissions permit issued by the Agency pursuant to Chapter I of these Regulations.

(2) The Agency may exclude from the EU ETS installations which have reported to the Agency emissions of less than 25 000 tonnes of carbon dioxide equivalent and, where they carry out combustion activities, have a rated thermal input below 35 MW, excluding emissions from biomass, in each of the three years preceding the notification pursuant to Article 27(1) (a) of the Directive in line with the requirements set out in Article 27 of the Directive. Hospitals may also be excluded if they undertake equivalent measures.

(3) The Agency may exclude from the EU ETS installations that have reported to the Agency emissions of less than 2 500 tonnes of carbon dioxide equivalent, disregarding emissions from biomass, in each of the three years preceding the notification pursuant to Article 27a(1)(a) of the Directive in line with the requirements set out in Article 27a of the Directive.

(4) When an installation is reintroduced into the EU ETS pursuant to point (c) of paragraph 1 of Article 27 of the Directive, any allowances allocated pursuant to Article 10a of the Directive 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) of the Directive by the Agency.

(5) The Agency 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 of Article 27 of the Directive, under the same conditions as set out in paragraphs 1 and 2 of that Article.

(6) A person who contravenes paragraph (1) commits an offence.

#### *Applications for Greenhouse Gas Emissions Permits*

6. (1) An application to the Agency for a greenhouse gas emissions permit shall include a description of—

- (a) the installation and its activities, including the technology used;
- (b) the raw and auxiliary materials, the use of which is likely to lead to emissions of gases listed in Schedule 1;

- (c) the sources of emissions of gases listed in Schedule 1 from the installation;
  - (d) the measures planned to monitor and report emissions in accordance with Regulation 15;
  - (e) any other appropriate information requested by the Agency; and
  - (f) a non-technical summary of the details referred to in the preceding subparagraphs of this paragraph.
- (2) A person who contravenes paragraph (1) commits an offence.
- (3) The Agency may revoke a permit where the regulated entity, is in the opinion of the Agency, no longer capable of monitoring and reporting emissions or the operator has ceased to carry out the activity listed in Schedule 1.
- Conditions for and Contents of Greenhouse Gas Emissions Permits under this Chapter*
7. (1) As soon as practicable after receipt of an application in accordance with Regulation 6, the Agency shall issue a greenhouse gas emissions permit to the operator granting authorisation to emit greenhouse gases from an installation if the Agency is satisfied the operator complies with the conditions of these Regulations and is capable of monitoring and reporting emissions.
- (2) A greenhouse gas emissions permit may cover one or more installations on the same site operated by the same operator.
- (3) Greenhouse gas emissions permits shall contain the following—
- (a) the name and address of the operator;
  - (b) a description of the activities at and emissions from the installation;
  - (c) a monitoring plan that fulfils the requirements under Regulation 15 and as approved by the Agency;
  - (d) reporting requirements;
  - (e) requirements to notify the Agency in relation to any planned changes to the nature or functioning of the installation or any extension or significant reduction of its capacity which may require updating the greenhouse gas emissions permit;
  - (f) an obligation to surrender a number of allowances, by 30 September each year, equal to the total emissions from that installation during the preceding calendar year, as verified in accordance with Regulation 16; and
  - (g) requirements to pay penalties for non-compliance under subparagraph (f) of this paragraph.
- (4) An operator shall submit any updated monitoring plans to the Agency for approval.
- (5) A person who contravenes paragraph (4) commits an offence.

*Changes relating to Installations*

8. (1) The operator shall inform the Agency of any planned changes to the nature or functioning of the installation, or any extension or significant reduction of its capacity, which may require updating of the greenhouse gas emissions permit and where appropriate, the Agency shall update the greenhouse gas emissions permit accordingly.
- (2) In addition to the above notifications, an operator who has applied for free allocation of allowances shall submit a verified activity level report to the Agency annually in accordance with the Activity Level Changes Regulation.
- (3) Where there is a change in the identity of the installation's operator, the Agency shall update the greenhouse gas emissions permit to include the name and address of the new operator.
- (4) A person who contravenes paragraph (1) commits an offence.

*Community-wide Quantity of Allowances for the Third Trading Period*

9. (1) In respect of an installation carrying out one or more activities listed in Schedule 1, which is only included in the EU ETS, the operator of an installation shall, submit to the Agency duly substantiated and independently verified emissions data, of such nature and in such form as shall be specified by the Agency for the purposes of the administration and implementation of the Directive with respect to the adjustment of the Union-wide quantity of allowances to be issued.
- (2) The operator shall ensure that the data referred to in paragraph (1) is submitted in accordance with—
  - (a) the provisions adopted pursuant to Article 14(1) of the Directive, and
  - (b) any detailed provisions on verification adopted by the Commission pursuant to Article 15 of the Directive to the satisfaction of the Agency.
- (3) (a) The Agency shall notify the Commission of the data received under this Regulation, if the Agency is satisfied that the operator has complied with paragraphs (1) and (2).
  - (b) In the case of an installation emitting greenhouse gases other than CO<sub>2</sub>, the Agency may notify the Commission of a lower amount of emissions according to the emission reduction potential of the installation.
- (4) A person who contravenes paragraph (1) or (2) commits an offence.

*National Implementation Measures*

10. (1)(a) An operator shall submit to the Agency information, of such nature and in such form as shall be specified by the Agency in accordance with the Commissions Free Allocation Rules, and any other requirements of the Agency which are necessary for the

purposes of the administration and implementation of the Directive.

(2) The operator shall ensure that the information referred to in paragraph (1) is submitted in accordance with-

- (a) the Commissions Free Allocation Rules;
- (b) the provisions adopted pursuant to Article 14(1) of the Directive; and
- (c) any detailed provisions on verification adopted by the Commission pursuant to Article 15 of the Directive,

to the satisfaction of the Agency.

(2A) An operator of an installation eligible for free allocation pursuant to Article 10a of the Directive may submit to the Agency an application for free allocation in accordance with the Commission's Free Allocation Rules.

(2B) An application under paragraph (2A) shall include information, of such nature and in such form as shall be specified by the Agency in accordance with the Commission's Free Allocation Rules, and any other requirements of the Agency which are necessary for the purposes of the administration and implementation of the Directive.

(2C) A person who knowingly or recklessly submits information to the Agency under paragraph (1)(a) or in an application under paragraph (2A) that is false or misleading in a material respect shall commit an offence.

(3) The Agency shall, in accordance with Article 11 of the Directive and the Commission's Free Allocation Rules, publish and submit to the Commission the list of installations covered by the Directive in the State and any free allocation to each installation in the State.

(4) The Agency shall, not later than 30 June of each year and commencing after 1 January 2024, issue the quantity of allowances that are to be allocated for that year, calculated in accordance with Articles 10 and 10a of the Directive, and in accordance with the Commissions Free Allocation Rules and the Activity Level Changes Regulation.

(5) The Agency may not issue allowances free of charge under paragraph (6) to an installation whose inscription in the list referred to in paragraph (5) has been rejected by the Commission.

(6) In this Regulation, "allocation period" has the same meaning as it has in the Commission's Free Allocation Rules.

(7) If an installation is covered by the obligation to conduct an energy audit or to implement a certified energy management system under Article 8 of Directive 2012/27/EU of the European Parliament and of the Council<sup>23</sup> and if the recommendations of the audit report or of the certified energy management system are not implemented, unless the pay-back time for the relevant investments exceeds three years or unless the costs of those investments are disproportionate, then the amount of free allocation shall be reduced by 20 %. The amount of free allocation shall not be reduced if an operator demonstrates

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<sup>23</sup> OJ No. L. 315, 14.11.2012, p.1.

that it has implemented other measures which lead to greenhouse gas emission reductions equivalent to those recommended by the audit report or by the certified energy management system for the installation concerned.

(8) In addition to the requirements set out in paragraph (7), the reduction by 20% referred to in that paragraph shall be applied where, by 1 May 2024, operators of installations whose greenhouse gas emission levels are higher than the 80th percentile of emission levels for the relevant product benchmarks have not established a climate-neutrality plan for each of those installations for its activities covered by this Directive. That plan shall contain the elements specified in Article 10b(4) of the Directive and be established in accordance with the implementing acts provided for in that Article. Article 10b(4) of the Directive shall be read as only referring to the installation level. The achievement of the targets and milestones referred to in Article 10b(4) of the Directive, third subparagraph, point (b), shall be verified in respect of the period until 31 December 2025 and in respect of each period ending 31 December of each fifth year thereafter, in accordance with the verification and accreditation procedures provided for in Article 15. No free allowances beyond 80 % shall be allocated if achievement of the intermediate targets and milestones has not been verified in respect of the period until the end of 2025 or in respect of the period from 2026 to 2030.

(9) No free allocation shall be given to installations in sectors or subsectors to the extent they are covered by other measures to address the risk of carbon leakage as established by Regulation (EU) 2023/956<sup>20</sup>.

(10) Subject to the application of Regulation (EU) 2023/956<sup>20</sup>, no free allocation shall be given in relation to the production of goods listed in Annex I to that Regulation.

(11) By way of derogation from paragraph (10), for the first years of application of Regulation (EU) 2023/956<sup>20</sup>, the production of goods listed in Annex I to that Regulation shall benefit from free allocation in reduced amounts. A factor reducing the free allocation for the production of those goods shall be applied (CBAM factor). The CBAM factor shall be equal to 100 % for the period between the entry into force of that Regulation and the end of 2025 and, subject to the application of provisions referred to in Article 36(2), point (b), of that Regulation, shall be equal to 97,5 % in 2026, 95 % in 2027, 90 % in 2028, 77,5 % in 2029, 51,5 % in 2030, 39 % in 2031, 26,5 % in 2032 and 14 % in 2033. From 2034, no CBAM factor shall apply.

(12) No free allocation shall be given to an installation that has ceased operating. Installations for which the greenhouse gas emissions permit has expired or has been withdrawn and installations for which the operation or resumption of operation is technically impossible shall be considered to have ceased operations.

#### *Use of CERs and ERUs from Project Activities in the EU ETS*

11. (1) The use of CERs and ERUs pursuant to this Regulation shall be in accordance with the Commissions Restrictions on Industrial Gas Credits and any detailed provisions on the use of specific credits from project types adopted by the Commission pursuant to Article 11a of the Directive, and in accordance with

any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive.

*Transfer, Surrender and Cancellation of Allowances*

12. (1) Subject to paragraph (5), only allowances issued by a competent authority shall be recognised for the purpose of meeting an operator's, aircraft operator's or shipping company's obligations under paragraph (2).

(2) The operator of each installation or a shipping company shall surrender, by 30 September each year at the latest, a number of allowances, equal to the total emissions from that installation or the total emissions from that shipping company during the preceding calendar year, as verified in accordance with Regulation 15.

(3) The Agency shall cancel or cause to be cancelled allowances surrendered in accordance with paragraph (2).

(4) The Agency shall cancel or cause to be cancelled allowances at any time at the request of the person holding them.

(a) In the event of the closure of an electricity generator due to additional national measures, the Minister may, having consulted with the Minister for Public Expenditure and Reform, direct the Agency to cancel allowances from the total quantity of allowances to be auctioned by the State up to an amount corresponding to the average verified emissions of the installation concerned over a period of 5 years preceding the closure.

(b) The Minister shall, in considering whether to direct the Agency to cancel allowances pursuant to subparagraph (a), take into account -

- (i) the likely effect of such cancellation on the operation of the EU ETS in the State and in the European Union;
- (ii) the potential environmental benefit of such cancellation, having regard to the interaction between climate policies in the State and in the European Union; and
- (iii) the impact of the cancellation on auction proceeds.

(5) The transfer, surrender and cancellation of allowances shall be in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive.

(6) 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<sup>17</sup>.

(7) A person who contravenes paragraph (3) commits an offence.

(8) Shipping companies shall be liable to surrender allowances according to the following schedule:

- (a) 40 % of verified emissions reported for 2024 that would be subject to surrender requirements in accordance with Article 12 of the Directive;
  - (b) 70 % of verified emissions reported for 2025 that would be subject to surrender requirements in accordance with Article 12 of the Directive;
  - (c) 100 % of verified emissions reported for 2026 and each year thereafter in accordance with Article 12 of the Directive.
- (9) The allocation of allowances and the application of surrender requirements in respect of maritime transport activities of a shipping company for which the Agency is responsible under these Regulations shall apply in respect of fifty percent (50 %) of the emissions from ships performing voyages departing from a port of call under the jurisdiction of a Member State and arriving at a port of call outside the jurisdiction of a Member State, fifty percent (50 %) of the emissions from ships performing voyages departing from a port of call outside the jurisdiction of a Member State and arriving at a port of call under the jurisdiction of a Member State, one hundred percent (100 %) of emissions from ships performing voyages departing from a port of call under the jurisdiction of a Member State and arriving at a port of call under the jurisdiction of a Member State, and one hundred percent (100 %) of emissions from ships within a port of call under the jurisdiction of a Member State.
- (10) When the ultimate responsibility for the purchase of the fuel, or the operation of the ship, or both, is assumed by an entity other than the shipping company pursuant to a contractual arrangement, the shipping company is entitled to reimbursement from that entity for the costs arising from the surrender of allowances. A reimbursement under this Regulation may be recovered by the shipping company as a simple contract debt in a court of competent jurisdiction.
- “Operation of the ship” for the purposes of this Regulation means determining the cargo carried or the route and the speed of the ship. The shipping company shall remain the entity responsible for surrendering allowances as required for these regulations;
- (11) Shipping companies may surrender 5 % fewer allowances than their verified emissions released until 31 December 2030 from ice-class ships, provided that such ships have the ice class IA or IA Super or an equivalent ice class, established based on HELCOM Recommendation 25/7.
- (12) The Agency shall consider the requirements of these Regulations satisfied and shall not take any action against shipping companies in respect of emissions released until 31 December 2030 from voyages performed by passenger ships, other than cruise passenger ships, and by ro-pax ships, between a port of an island under the jurisdiction of that requesting Member State, with no road or rail link with the mainland and with a population of fewer than 200 000 permanent residents according to the latest best data available in 2022, and a port under the jurisdiction of that same Member State and from the activities, within a port, of such ships in relation to such voyages.
- (13) An obligation to surrender allowances shall not arise in respect of emissions of greenhouse gases which are considered to have been captured and utilised in such a way that they have become permanently chemically bound in

a product so that they do not enter the atmosphere under normal use, including any normal activity taking place after the end of the life of the product. When considering if the condition in the above subparagraph has been met the verifier and the Agency shall apply the requirements set out in any delegated acts adopted by the Commission under Article 23 of the Directive concerning the requirements for considering that greenhouse gases have become permanently chemically bound.

(14) In respect of emissions from maritime transport activities listed in Schedule I to these Regulations, the Agency shall ensure that a shipping company under its responsibility monitors and reports the relevant parameters during a reporting period and submits to it aggregated emissions data at company level in accordance with Chapter II of Regulation (EU) 2015/757<sup>22</sup>.

(15) The Agency shall ensure that the reporting of aggregated emissions data at shipping company level submitted by a shipping company pursuant to Article 3gd of the Directive is verified in accordance with the verification and accreditation rules set out in Chapter III of Regulation (EU) 2015/757<sup>22</sup>.

#### *Validity of Allowances*

- 13. (1) (a) Allowances issued from 1 January 2013 onwards shall be valid indefinitely.
- (b) Without prejudice to subparagraph (a), allowances issued from 1 January 2021 onwards shall -
  - (i) include an indication showing in which ten-year period beginning from 1 January 2021 they were issued, and
  - (ii) be valid for emissions from the first year of that period onwards.

#### *Monitoring and Reporting of Emissions*

- 14. (1) The operator of an installation shall monitor emissions and, where relevant, activity data from that installation in accordance with-
  - (a) the principles set out at Schedule 4;
  - (b) the Commission's Monitoring and Reporting Regulation;
  - (c) its monitoring plan as approved by the Agency under Regulation 7; and
  - (d) any detailed provisions on monitoring and reporting of emissions adopted by the Commission pursuant to Article 14 of the Directive.
- (2) The operator shall report the emissions and, where relevant, activity data as specified in the greenhouse gas emissions permit from each installation during each calendar year, to the Agency, not later than 31 March of the following year in accordance with-
  - (a) the conditions specified in the greenhouse gas emissions permit;

- (b) the principles set out in Schedule 4;
  - (c) its monitoring plan as approved by the Agency under Regulation 7; and
  - (d) any detailed provisions on monitoring and reporting adopted by the Commission pursuant to Article 14 of the Directive.
- (3) A person who contravenes paragraph (1) or (2) commits an offence.

*Verification and Accreditation*

15. (1) The operator shall ensure that the report referred to in Regulation 14(2) is verified in accordance with-

- (a) the criteria set out in Schedule 4;
- (b) the Commission's Verification and Accreditation Regulation; and
- (c) any detailed provisions on verification and accreditation adopted by the Commission pursuant to Article 15 of the Directive, to the satisfaction of the Agency and shall provide a copy of the said verification report to the Agency when submitting the report specified in Regulation 14(2).

(2) An operator whose report has not been verified or has not submitted a verification report to the satisfaction of the Agency by 31 March each year in accordance with this Regulation, for emissions during the preceding year, cannot make further transfers of allowances until a report from that operator has been verified as satisfactory.

(3) The Agency shall ensure that the reporting of aggregated emissions data at shipping company level submitted by a shipping company pursuant to Article 3gd of the Directive is verified in accordance with the verification and accreditation rules set out in Chapter III of Regulation (EU) 2015/757<sup>22</sup>.

(4) A person who contravenes paragraph (1) commits an offence.

(5) A shipping company who contravenes with paragraph(3) commits an offence.

**Chapter II: Buildings, Road Transport and Additional Sectors**

*Greenhouse Gas Emissions Permits*

16. (1) From 1 January 2025, no regulated entity shall carry out an activity referred to in Schedule 5 unless that regulated entity holds a permit issued by the Agency in accordance with Regulations 17 and 18.

(2) A person who contravenes paragraph (1) commits an offence.

*Applications for Greenhouse Gas Emissions Permits under Chapter II*

17. (1) An application to the Agency by the regulated entity pursuant to Regulation 19 for a greenhouse gas emissions permit shall include a description of:

- (a) the regulated entity;
  - (b) the type of fuels in Schedule 5 it releases for consumption and the means through which it releases those fuels for consumption;
  - (c) the end use(s) of the fuels released for consumption for the activity referred to in Schedule 5;
  - (d) the measures planned to monitor and report emissions, in accordance with the implementing acts referred to in regulations 24 and 25;
  - (e) a non-technical summary of the information under points (a) to (d).
- (2) The Agency may require such other information for an application as it considers necessary.

#### *Authorisation for GHG permits*

18. (1) The Agency shall issue a greenhouse gas emissions permit granting authorisation to the regulated entity referred to in Regulation 17 for the activity referred to in Schedule 5, if it is satisfied that the entity is capable of monitoring and reporting emissions corresponding to the quantities of fuels released for consumption pursuant to Schedule 5.

(2) The Agency may revoke a permit where the regulated entity is, in the opinion of the Agency, no longer capable of monitoring and reporting emissions or has ceased to carry out the release of fuels referred to in Schedule 5 to the market.

#### *Contents for GHG Permits*

19. (1) Greenhouse gas emissions permits shall contain the following:

- (a) the name and address of the regulated entity;
- (b) a description of the means by which the regulated entity releases the fuels for consumption in the sectors covered by Chapter II of these Regulations;
- (c) a list of the fuels the regulated entity releases for consumption in the sectors covered by Schedule 5;
- (d) a monitoring plan that fulfils the requirements established by the implementing acts referred to in Article 14 of the Directive;
- (e) reporting requirements established by the implementing acts referred to in Article 14 of the Directive;
- (f) an obligation to surrender allowances, issued under these Regulations, equal to the total emissions in each calendar year, as verified in accordance with Article 15 of the Directive by 30 April each year, in accordance with the deadline for the surrender of allowances by 31 May each year as and from 1 January 2028.

(2) The Agency may provide any such additional terms and conditions in the permit as it considers necessary.

*Monitoring Plans*

20. (1) Regulated entities shall submit any updated monitoring plans to the Agency for approval.

(2) A person who contravenes paragraph (1) commits an offence.

*Amendments to emissions permits*

21. (1) Where there are any planned changes to the nature of a regulated entity's activity or to the fuels it releases for consumption which requires updating the greenhouse gas emissions permit, the regulated entity shall inform the Agency accordingly.

(2) Where appropriate, the Agency shall update the permit in accordance with the implementing acts referred to in Article 14 of the Directive.

(3) Where there is a change in the identity of a regulated entity covered by these Regulations the Agency shall update the permit to include the name and address of the new regulated entity.

(4) A person who contravenes paragraph (1) commits an offence.

**Transfer, Surrender and cancellation of allowances**

*Obligation to Surrender allowances*

22. (1) The requirements of Article 12 of the Directive shall apply to the emissions, regulated entities and allowances covered by this Chapter, with the exception of paragraphs 3 and 3a, paragraph 4, second and third sentence, and paragraph 5 of that Article of the Directive. For that purpose:

- (a) any reference to emissions shall be read as if it were a reference to the emissions covered by this Chapter;
- (b) any reference to operators of installations shall be read as if it were a reference to the regulated entities covered by this Chapter;
- (c) any reference to allowances shall be read as if it were a reference to the allowances covered by this Chapter.

(2) No later than 31 May 2028 and each year thereafter, a regulated entity shall surrender for cancellation an amount of allowances covered by this Chapter that is equal to the regulated entity's total emissions, corresponding to the quantity of fuels released for consumption pursuant to Annex III to the Directive, during the preceding calendar year as verified in accordance with Articles 15 and 30(f).

(3) A person who contravenes paragraph (2) commits an offence.

*National Derogation to ETS II*

23. (1) The Agency may exempt a regulated entity from the obligation under Regulation 22(2) to surrender allowances for a given reference year where a derogation has been granted under Article 30(e)(3) of the Directive by the Commission.

(2) The Agency shall not allow an exemption under (1) until it has received confirmation from the Minister that the conditions set out in Article 30(e)(3) (a), (b) and (e) have been satisfied, and that the Agency is satisfied that Article 30(e)(3)(c) has been complied with.

(3) No later than 31 May 2028 and each year thereafter, the Commission shall be notified of the application of the exemption, referred to in paragraph (1) of this Regulation, in respect of the preceding calendar year and of the corresponding quantity of emission allowances to be cancelled by the Agency.

(4) The Agency shall determine the quantity of emission allowances referred to in the preceding paragraph on the basis of the verified reports of the regulated entities in accordance with Regulation 25.

(5) The number of allowances referred to in Regulation 22 for a particular reference year shall not be auctioned by the Agency until the quantity of volume of allowances to be cancelled under Article 30(e)(3) is determined in accordance with paragraphs (3) and (4).

Additional allowances allocated for the year 2027, pursuant to Article 30(d)(2), first subparagraph of the Directive, shall not be auctioned by the Agency.

(6) As set out under paragraph (3), the Agency shall cancel a volume of allowances from the total quantity of allowances to be auctioned, as referred to in Article 30(d)(5) of the Directive, for the reference year.

(7) In the event that the remaining quantity of allowances to be auctioned in the reference year, as per Article 30(d)(5) of the Directive, after the cancellation of allowances pursuant to paragraph 5 is less than the quantity of allowances to be cancelled, the Agency shall ensure that it cancels the volume of allowances corresponding to the difference by the end of the year after the reference year.

*Monitoring and Reporting of Emissions*

24. (1) Articles 14 and 15 of the Directive shall apply to the emissions, regulated entities and allowances governed by this Chapter. For this purpose:

- (a) any reference to emissions shall be read as if it were a reference to the emissions covered by this Chapter;
- (b) any reference to activity listed in Annex I of the Directive shall be read as if it were a reference to the activity referred to in Schedule 5;
- (c) any reference to operators shall be read as if it were a reference to the regulated entities covered by these regulations;
- (d) any reference to allowances shall be read as if it were a reference to the allowances covered by this Chapter;

- (e) the reference to the date in Article 15 shall be read as if it were a reference to 30 April.
- (2) Each regulated entity holding a permit or required to hold a permit in accordance with Regulation 16 on 1 January 2025 shall report their historical emissions for the year 2024 by 30 April 2025.
- (3) A regulated entity shall, in respect of each calendar year as from 2025, monitor the emissions corresponding to the quantities of fuels released for consumption pursuant to Schedule 5. Each regulated entity shall report these emissions to the Agency in the following year, starting in 2026, in accordance with the implementing acts referred to in Article 14(1) of the Directive.
- (4) Each regulated entity shall put in place such procedures as necessary to identify and document reliably and accurately, per type of fuel, the precise volumes of fuel released for consumption which are used for combustion in the sectors identified in Schedule 5, and the final use of the fuels released for consumption.
- (5) A regulated entity shall take appropriate measures to limit the risk of double counting of emissions covered under this Chapter and the emissions under Chapter I as well as the risk of allowances being surrendered for emissions not covered by this Chapter.
- (6) The principles for monitoring and reporting of emissions covered by this Chapter are set out in Schedule 3.
- (7) From 1 January 2028 each year and until 2030, each regulated entity shall report the average share of costs related to the surrender of allowances under this Chapter which it passed on to consumers for the preceding year.
- (8) A person that contravenes either of paragraphs (2), (3), (4), (5) or (7) commits an offence.

*Verification and Accreditation*

25. (1) The regulated entity shall ensure that the reports referred to in Regulation 24(3) are verified in accordance with-
- (a) the criteria set out in Schedule 4;
  - (b) the Commission's Verification and Accreditation Regulation; and
  - (c) any detailed provisions on verification and accreditation adopted by the Commission pursuant to Article 15 of the Directive, to the satisfaction of the Agency and shall provide a copy of the said verification report to the Agency when submitting the report specified in Regulation 24.
- (2) A person who contravenes paragraph (1) commits an offence.

*Exceptionally High Energy Prices*

26. Where one or both of the conditions referred to in paragraph (1) of Article 30(k) of the Directive are met, the following rule shall apply:

by way of derogation from Article 30(e)(2) of the Directive, the deadline for initial surrendering of allowances shall be postponed to 31 May 2029 for the total emissions of the year 2028.

### **CHAPTER III ENFORCEMENT**

#### *Issue of Direction*

27. (1) The Agency may issue a direction to a permit holder or a shipping company under these regulations to comply with Regulation 5(1), 6(1), 7(4), 8(1), 9(1), 10(1)(a), 11, 12(2), 13, 14(1), 15(3), 14, 15, 16(1), 20(2), 21(1), 22(2), 24(2), 24(3), 24(4), 24(5), 24(7) or 25(1).

(2) A permit holder or a shipping company who contravenes a direction issued to him or her commits an offence.

#### *Direction*

28. A direction issued by the Agency shall—

- (a) be in writing;
- (b) be served in accordance with Regulation 29;
- (c) contain reasons for the direction;
- (d) specify the date by which the direction is to be complied with; and
- (e) advise the recipient of his or her right of appeal pursuant to Regulation 30.

#### *Service of Direction*

29. (1) Where a direction is required to be issued by the Agency, the direction shall be in writing and shall be addressed to the permit holder or shipping company and shall be given to the permit holder or shipping company in one of the following ways—

- (a) by delivering it to the permit holder or shipping company;
- (b) by leaving it at the address at which the permit holder or shipping company carries on business;
- (c) by sending it by post in a pre-paid registered letter addressed to the permit holder or shipping company at the address at which the permit holder or shipping company carries on his or her business;
- (d) if an address for the service of a direction has been furnished by the permit holder or shipping company, by leaving it at, or sending it by pre-paid registered post addressed to the permit holder or shipping company, to that address;
- (e) by sending it by means of electronic mail or a facsimile machine, to a device or facility for the reception of electronic mail or facsimiles located at the address at which the permit holder or

shipping company carries on business or, if an address for the service of a direction has been furnished by the permit holder or shipping company; that address:

provided that—

- (i) the sender's—
  - (I) facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail; or
  - (II) facsimile machine generates a message confirming successful transmission of the total number of pages of the direction; and
- (ii) the direction is also given in one of the other ways mentioned in any of the preceding paragraphs.

(2) For the purposes of paragraph (1)—

- (a) a company registered under the Companies Acts is deemed to be ordinarily resident at its registered office, and
- (b) every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(3) A copy of a direction, which has endorsed on it a certificate purporting to be signed by an officer of the Agency authorised in that behalf by the Agency stating that the copy is a true copy of the direction or reply may, without proof of signature of that person, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the direction or reply.

#### *Appeal from a Direction Issued by the Agency*

30. (1) A direction issued by the Agency shall take effect—

- (a) where it is received by the person on whom it is served, or
- (b) where an appeal is brought against the direction, on the day immediately following,
  - (i) the day on which the direction is confirmed on appeal or the appeal is withdrawn, or
  - (ii) the day specified in the direction.

(2) The bringing of an appeal against a direction referred to in paragraph (1) shall not have the effect of suspending the operation of the direction, but the appellant may apply to the court to have the operation of the direction suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the notice be suspended until the appeal is disposed of.

(3) A person on whom a direction referred to in paragraph (1) is served may, within 7 days beginning on the day on which the direction is served on him or

her, appeal against the direction to a judge of the District Court in the district court district in which the direction was served and in determining the appeal the judge may, if he or she is satisfied that it is reasonable to do so, confirm, vary or cancel the notice.

(4) Where, on the hearing of an appeal under this Regulation, a direction is confirmed, notwithstanding paragraph (1), the judge by whom the appeal is heard may, on the application of the appellant, suspend the operation of the direction for such period as in the circumstances of the case the judge considers appropriate.

(5) A person who—

- (a) brings an appeal under paragraph (3), or
- (b) applies for the suspension of the operation of a direction under paragraph (4) shall at the same time notify the Agency of the appeal or application, and the grounds for the appeal or application.

#### *Injunctive Relief*

31. (1) Where, on application by the Agency to the High Court, the Court is satisfied that a permit holder or shipping company has contravened a direction or a requirement of these Regulations, the Court may by order—

- (a) direct the person to comply with the direction or requirement, and
- (b) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

(2) An application for an order under this Regulation shall be by motion, and the High Court, when considering the matter, may make such interim or interlocutory order as it considers appropriate.

(3) An application for an order under this Regulation may be made whether or not there has been a prosecution for an offence under these Regulations in relation to the activity concerned and shall not prejudice the initiation of a prosecution for an offence under these Regulations in relation to the activity concerned.

#### *Authorised Officer*

32. (1) The Agency may appoint in writing one or more of its officers, as it considers appropriate, to be an authorised officer or authorised officers for the purposes of ensuring compliance with these Regulations.

(2) A person appointed as a surveyor of ships under section 724 of the Merchant Shipping Act 1894 may serve as an authorised officer for the purposes of Regulations 36, 37, 38, 39, 40 and 41.

(3) Every authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and shall if requested by any

person thereby affected, produce such warrant of appointment or copy of it to that person for inspection.

- (4) An appointment under this Regulation shall cease—
  - (a) if the Agency revokes the appointment;
  - (b) in the case of an appointment that is for a fixed period, on the expiry of the period; or
  - (c) if the person appointed ceases to be an officer of the Agency.
- (5) An authorised officer may, for the purposes of these Regulations—
  - (a) subject to paragraph (8) enter on any premises at all reasonable times for any purpose connected with these Regulations;
  - (b) at such premises inspect and take copies of, any books, records, other documents (including documents stored in non-legible form) or extracts therefrom, which he or she finds in the course of his or her inspection;
  - (c) remove such photographs, books, records or documents from such premises and detain them for such period as he or she reasonably considers to be necessary for the purposes of his or her functions under these Regulations;
  - (d) require the operator or his or her agent or employee or any person at the premises or person in charge of the premises and any person employed there to give to him or her such assistance and information and to produce to him or her such books, documents or other records (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under these Regulations;
  - (e) direct that any matter or thing not be moved from the premises without his or her consent; or
  - (f) secure for later inspection any premises or part of any premises for such period as he or she considers reasonably necessary for the purposes of his or her functions under these Regulations.
- (6) When performing a function under these Regulations, an authorised officer may, subject to any warrant under paragraph (7), be accompanied by such number of authorised officers or members of the Garda Síochána as he or she considers appropriate.
- (7) An authorised officer shall not enter a dwelling other than—
  - (a) with the consent of the occupier, or
  - (b) in accordance with a warrant issued under paragraph (8).
- (8) Upon the sworn information of an authorised officer, a judge of the District Court may, if satisfied that there are reasonable grounds for believing that books, records or other documents (including documents in non-legible form referred to in paragraph (5)(d) are being kept or stored in any dwelling,

issue a warrant authorising a named authorised officer accompanied by such other authorised officers or members of the Garda Síochána as may be necessary, at any time or times, not later than one month from the date of issue of the warrant, to enter the dwelling and perform the functions of an authorised officer under subparagraphs (a) to (f) of paragraph (5).

(9) Any person who obstructs or interferes with an authorised officer or a member of the Garda Síochána in the course of exercising a power conferred on him or her by these Regulations or a warrant under paragraph (8), or impedes the exercise by the officer or member, as the case may be, of such power, or fails or refuses to comply with a request or requirement of, or to answer a question asked by, the officer or member pursuant to this Regulation, or in purported compliance with such request or requirement or in answer to such question gives information to the officer or member that he or she knows to be false or misleading in any material respect, commits an offence.

(10) Where an authorised officer believes, upon reasonable grounds, that a person has committed an offence under these Regulations he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.

(11) A person who falsely represents himself or herself to be an authorised officer commits an offence.

(12) A statement or admission made by a person pursuant to a request or requirement or in answer to a question under this Regulation shall not be admissible as evidence in proceedings brought against that person for an offence (other than an offence under paragraph 9).

(13) In this Regulation—

“premises” means as respects entry pursuant to paragraph (4), any place and shall include any building, ship or other vessel, aircraft, railway wagon and includes a lorry or container used to transport vehicles, or a lorry found on the lands,

“record” includes, in addition to a record in writing—

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in legible or audible form;
- (b) a film, tape or other device in which visual images are embodied so as to be capable (with or without the aid of some other instrument) of being reproduced in visual form;
- (c) a photograph, and any reference to a copy of a record includes—
  - (i) in the case of a record to which subparagraph (a) applies, a transcript of the sounds or signals embodied therein;
  - (ii) in the case of a record to which subparagraph (b) applies, a still reproduction of the images embodied therein, and

- (iii) in the case of a record to which subparagraphs (a) and (b) apply, such a transcript together with such a still reproduction.

*Offences*

33. (1) A person that commits an offence under Regulation 5(1), 6(1), 7(4), 8(1), 9(1), 9(2), 10(1)(a), 12(3), 14(1), 14(2), 15(1), 16(1), 20(1), 21(1), 22(2), 24(2), 24(3), 24(4), 24(5), 24(7), 25(1), 27(2), 32(8), 32(10) or 39(6) shall be liable—
- (a) on summary conviction, to a Class A fine or to imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €500,000, or to imprisonment for a term not exceeding 3 years, or both.
- (2) Subject to subsection (3), where a person continues to contravene a provision of these Regulations in respect of which he or she has been convicted, he or she shall commit an offence on every day on which the contravention continues after the original conviction and for each such offence, he or she shall be liable on summary conviction, to a fine not exceeding €1,000 or, on conviction on indictment, not exceeding €130,000;
- (3) The maximum cumulative fines under subsection (2) shall not exceed €500,000.
- (4) Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance of or approval of, or to have been facilitated by any neglect on the part of any director, manager, secretary or any other officer of such body, such person shall also commit an offence.
- (5) Where a court imposes a fine or affirms or varies a fine imposed by another court for an offence under these Regulations, prosecuted by the Agency, it shall, on the application of the Agency (made before the time of such imposition, affirmation or variation), provide by order for the payment of the amount of the fine to the Agency and such payment may be enforced by the Agency, as if it were due to it on foot of a decree or order made by the court in civil proceedings.
- (6) An offence under these Regulations may be prosecuted summarily by the Agency.
- (7) Notwithstanding the provisions of section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under these Regulations may be commenced
- (a) at any time within 12 months from the date on which the offence was committed, or
  - (b) at any time within 6 months from the date on which evidence sufficient, in the opinion of the person by whom the proceedings are initiated, to justify the proceedings, comes to such person's

knowledge, whichever is the later, provided that no such proceedings shall be initiated later than 5 years from the date on which the offence concerned was committed.

(8) For the purposes of this Regulation, a certificate signed by or on behalf of the person initiating the proceedings as to the date on which evidence relating to the offence came to his or her knowledge shall be *prima facie* evidence thereof and in any legal proceedings a document purporting to be a certificate issued for the purposes of this paragraph and to be so signed shall be deemed to be so signed and shall be admitted as evidence without proof of the signature of the person purporting to sign the certificate, unless the contrary is shown.

(9) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Agency the costs and expenses measured by the court, incurred by the Agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of directors, employees, consultants and advisers.

#### *Penalties*

34. (1) The Agency shall publish the names of permit holders or shipping companies who are in breach of the requirements to surrender allowances as required by Regulation 12(2), and the details of such breach.

(2) An operator or a shipping company who fails to surrender allowances as required by Regulation 12(2) by 30 September of each year to cover its emissions during the preceding year shall be liable for payment to the Agency of an excess emissions penalty in the amount of €100 for each tonne of carbon dioxide equivalent emitted by that installation or shipping company for which the operator or the shipping company has not surrendered allowances, as required.

(3) A regulated entity who fails to surrender allowances as required by Regulation 22(1) by 31 May of each year to cover its emissions during the preceding year shall be liable for payment to the Agency of an excess emissions penalty in the amount of €100 for each tonne of carbon dioxide equivalent emitted by that installation for which the operator has not surrendered allowances.

(4) The excess emissions penalty relating to allowances issued from 1 January 2013 onwards shall increase in accordance with the European index of consumer prices.

(5) Payment of the excess emissions penalty specified in this Regulation shall not release the operator or the shipping company from the obligation to surrender an amount of allowances equal to those excess emissions when surrendering allowances in the following calendar year.

(6) Where the Agency determines that an excess emissions penalty is to be imposed on an operator, shipping company or regulated entity the Agency shall notify said operator, shipping company or regulated entity:

- (a) that the Agency has concluded that an excess emissions penalty should be imposed on them pursuant to this Regulation;
- (b) the reasons for its conclusion;
- (c) the amount of the excess emissions penalty;
- (d) the date on which the excess emissions penalty is due;
- (e) the action the operator, shipping company or regulated entity is to take to pay the penalty;
- (f) the right of the operator, shipping company or regulated entity to appeal, and the procedures for making such an appeal.

(7) Where the excess emissions penalty has not been paid by the date specified in paragraph (6)(d) it may be recovered by the Agency as a simple contract debt in a court of competent jurisdiction.

#### *Appeal against a Penalty*

35. (1) Where an operator, shipping company or regulated entity is the subject of a decision to impose a penalty pursuant to Regulation 34(2) or 34(3) they may, within 28 days from the date on which a decision given under Regulation 36(6) was confirmed by the Agency, appeal to the High Court on a point of law against the decision,

(2) The court, on hearing an appeal under paragraph (1), may consider any evidence adduced or argument made by the operator, shipping company or regulated entity whether or not already adduced or made to the Agency.

(3) The court may, on the hearing of an appeal under paragraph (1) –

- (a) confirm the decision the subject of an appeal, or
- (b) remit the matter back to the Agency for its reconsideration.

#### *Expulsion orders*

36. (1) Where a shipping company contravenes the surrender requirements for two or more consecutive reporting periods in the circumstances set out in Regulation 12, the Agency, having considered any observations from the shipping company, and having exhausted all other enforcement measures available to them, shall inform the Department of Transport.

(2) The Department of Transport may, on the instruction of the Agency, serve an order, (in this Regulation referred to as an ‘expulsion order’), on the owner or master of a ship under the responsibility of the shipping company referenced in paragraph (1).

(3) An expulsion order shall direct the owner or master of the ship to ensure that the ship leaves the port as soon as practicable and shall prohibit the ship from entering any other port in the State.

(4) An expulsion order shall take effect when the order is served under paragraph (2).

(5) The Department of Transport shall inform the person served with an expulsion order under paragraph (2) of the reasons for serving the order and of the right to bring an appeal under Regulation 35.

(6) Where an expulsion order is served under paragraph (2), the Department of Transport shall give notice to the following:

- (a) the port authority concerned and all other port authorities in the State;
- (b) the European Commission;
- (c) the European Maritime Safety Agency;
- (d) the competent authorities of other Member States;
- (e) the flag state concerned.

(7) The Department of Transport, on the instruction of the Agency, shall by notice served on the owner or master of the ship, withdraw the expulsion order if—

- (a) the shipping company referenced in paragraph (1) has fulfilled its surrender obligations in accordance with Regulation 12, or
- (b) an appeal under Regulation 37 is allowed.

(8) As soon as practicable after an expulsion order has been withdrawn, the Department of Transport shall give notice to the persons referred to in paragraph (6) of the withdrawal.

#### *Appeal against expulsion order*

37. (1) A person being the owner or master of the ship may appeal against an expulsion order served under Regulation 36(2) and such an appeal shall be made to the judge of the Circuit Court in whose circuit the port in which the ship was located on the date the expulsion order was served.

(2) A notice of an appeal shall contain a statement of the grounds on which the appeal is made and be made by written notice, which shall be lodged with the appropriate office of the Court within 7 working days of the date upon which the order concerned was served, unless the Court considers that there is good and sufficient reason for extending that period.

(3) A copy of the notice of appeal shall be given by the person who makes an appeal under this Regulation to the Agency not less than 48 hours before the hearing of the appeal and the Agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(4) An appeal under this Regulation shall not have the effect of suspending the operation of the expulsion order.

(5) On hearing the appeal, the Court may confirm the expulsion order, or allow the appeal and vacate the order.

(6) A decision of the Circuit Court on an appeal under this Regulation shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

*Expulsion orders in other Member States*

38. Where the Agency is notified of the service or withdrawal of an expulsion order by the competent authority of another Member State, it shall without delay, instruct the Department of Transport to notify all port authorities in the State that such ship is to be refused access to ports in the State, or is no longer to be refused access, as the case may be.

*Detention of a ship*

39. (1) Where—

- (a) an Irish ship is served with an expulsion order under Regulation 36 of these Regulations and returns to a port in the State, or
- (b) an Irish ship under the responsibility of a shipping company that contravenes with the surrender requirements for two or more consecutive reporting periods in the circumstances set out in Regulation 12 and is located in a port in the State,

the Department of Transport on the instructions of the Agency, following consideration of observations made by the shipping company, may serve a notice of detention on the owner or master of the ship until the shipping company concerned fulfils its surrender obligations under Regulation 12.

(2) A notice of detention under (1) shall:

- (a) state the grounds upon which the ship is detained;
- (b) identify the provision of Regulation 12 that has not been or is not being complied with;
- (c) specify the action to be taken before the notice will be withdrawn, and where appropriate, the period within which that action shall be taken;
- (d) inform the owner or master of the right to appeal the notice in accordance with Regulation 38 of these Regulations; and
- (e) state that contravening the notice is an offence under Regulation 34 of these Regulations.

(3) Where a notice of detention is served under paragraph (1), the Department of Transport shall give notice to the following:

- (a) the port authority concerned;
- (b) the European Commission;
- (c) the European Maritime Safety Agency;
- (d) the competent authorities of other Member States;

(4) The Department of Transport, on the instruction of the competent authority, shall by notice served on the owner or master of the ship, withdraw the notice of detention if—

- (a) the shipping company referenced in paragraph (1) has fulfilled its surrender obligations in accordance with Regulation 12, or
- (b) an appeal under Regulation 37 is allowed.

(5) As soon as practicable after a notice of detention has been withdrawn, the Department of Transport shall give notice to the persons referred to in paragraph (3) of the withdrawal.

(6) The owner or master of a ship who contravenes a notice of detention served on him or her commits an offence.

#### *Appeal against detention of a ship*

40. (1) A person being the owner or master of the ship may appeal against a notice of detention served under Regulation 39(1) and such an appeal shall be made to the judge of the Circuit Court in whose circuit the port in which the ship was located on the date the notice of detention was served.

(2) A notice of an appeal shall contain a statement of the grounds on which the appeal is made and be made by written notice, which shall be lodged with the appropriate office of the Court within 7 working days of the date upon which notice of detention was served, unless the Court considers that there is good and sufficient reason for extending that period.

(3) A copy of the notice of appeal shall be given by the person who makes an appeal under this Regulation to the Agency not less than 48 hours before the hearing of the appeal and the Agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(4) An appeal under this Regulation shall not have the effect of suspending the operation of the notice of detention.

(5) On hearing the appeal, the Court may confirm the notice of detention, or allow the appeal and vacate the order.

(6) A decision of the Circuit Court on an appeal under this Regulation shall be final, save that, by leave of the Court an appeal from the decision shall lie to the High Court on a specified question of law.

#### *Detention orders in other Member States*

41. Where the Agency is notified of the service or withdrawal of a detention order by the competent authority of another Member State, it shall without delay, instruct the Department of Transport to notify all port authorities in the State that such ship is to be refused access to ports in the State, or is no longer to be refused access, as the case may be.

#### *Access to Information*

42. The Agency shall make available to the public information on project activities, decisions relating to the allocation of allowances and the reports of emissions submitted to it by permit holders/shipping companies in accordance with the Commission's Monitoring and Reporting Regulation and the provisions of the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. No. 133 of 2007).

*Disclosure of Information and Confidentiality*

43. (1) The Agency, in consultation with 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.

(2) Information received as a result of the application of these Regulations shall be treated as confidential and shall not be disclosed to any other person or authority except:

- (a) for the purpose of the discharge of functions under these Regulations or the Directive;
- (b) with the consent of the person to whom the information applies;
- (c) when required, by an order of a court of competent jurisdiction, to disclose the information in civil or criminal proceedings; or
- (d) where otherwise provided in any other enactment.

*Competent Authority*

44. (1) The Agency is designated as the competent authority in the State for the purposes of these Regulations and the Directive and for the implementation of the Commission's Free Allocation Rules.

(2) The Agency is appointed as the auctioneer in the State for the purposes of these Regulations and Commission Delegated Regulation (EU) 2023/2830<sup>10</sup>.

(3) The Agency shall carry out all the obligations, on behalf of the State, relating to the joint procurement procedures arising under Commission Delegated Regulation (EU) 2023/2830<sup>10</sup>.

(3A) The Agency shall carry out the obligation, on behalf of the State, to notify the Commission under Article 25 of Commission Delegated Regulation (EU) 2023/2830<sup>10</sup> of its intention to cancel allowances under Regulation 12.

- (4) (a) The Agency, in consultation with the Minister and the Minister for Public Expenditure and Reform, shall seek the deduction of the reasonable costs incurred in administering the greenhouse gas emissions allowance trading system in the State from the auction proceeds due to the State in accordance with Commission Delegated Regulation (EU) 2023/2830<sup>10</sup>.
- (b) The Minister shall ensure that the auction proceeds due to the State, following the deduction of the costs referred to in subparagraph (a), are paid into an account, established by the

Minister for Public Expenditure and Reform and disposed of for the benefit of the Exchequer.

(5) The Agency is designated as the competent authority in the State for the purposes of the Commission's Monitoring and Reporting Regulation.

(6) The Agency is designated as the competent authority in the State for the purposes of the Commission's Verification and Accreditation Regulation.

*Union Registry*

45. The Agency shall, in accordance with any detailed provisions for a standardised and secured system of registries adopted by the Commission pursuant to Article 19 of the Directive, manage its own accounts and the accounts in the Union Registry under the jurisdiction of the State.

*Reporting to the Commission*

46. The Agency shall submit to the Commission an annual report on the application of these Regulations in accordance with Article 21 of the Directive, which annual report -

- (a) shall, each year, provide information on the matters specified in paragraph (1) of that Article, and
- (b) shall, every 3 years, also provide information on the matters specified in paragraph (4) of that Article.

*Designation of Focal Point and National Authority and Establishment of Registry*

47. (1) Subject to Regulation 4(4), the Agency is designated-

- (a) the Focal Point for the purposes of Article 6 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol, and
  - (b) the National Authority for the purposes of Article 12 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol.
- (2) (a) The Agency shall establish and maintain a national registry to ensure the accurate accounting of the issuance, holding, transfer, acquisition, cancellation and retirement of emission reduction units, certified emissions reduction units, assigned amount units and removal units and the carry-over of emissions reduction units, certified emission reduction units and assigned amount units.
- (b) The Agency is designated national registry administrator for the purposes of Article 7 of the Protocol and the decisions adopted pursuant to the Convention and the Protocol.

*Approval of Project Activities*

48. (1)(a) Any person may apply to the Agency for approval in respect of a proposed project activity.
- (b) Certified emission reduction units or emission reduction units arising from an application under paragraph (2) shall, in the first instance, be registered in the registry provided for in Regulation 47(2)(a).
- (2) (a) An application for approval in respect of a proposed project activity shall be made in such form and shall contain such information as the Agency may require.
- (b) An application should contain-
  - (i) a description of the proposed project activity, including a project design document;
  - (ii) a declaration signed by the applicant that participation by all parties to the project is voluntary and that the information supplied as part of the application is complete and accurate; and
  - (iii) a letter of approval from the designated Focal Point or National Authority, as appropriate, for the host country.
- (3) An application under paragraph (2) shall be accompanied by the fee payable in accordance with Regulation 50.
- (4) As soon as practicable after receipt of an application in accordance with paragraphs (2) and (3), the Agency shall respond in writing to the applicant indicating either that
  - (a) approval is granted, with or without conditions, or
  - (b) approval is refused and the reason for the refusal.
- (5) For the purposes of determining an application under paragraph (2), the Agency shall satisfy itself that-
  - (a) in accordance with Article 11b(1) of the Directive, in respect of a project activity to be undertaken in a country which has signed a Treaty of Accession with the European Union, the baseline used for determining the emissions reductions from the project activity complies with all legislation of the European Union, subject only to any temporary derogations set out in that Treaty;
  - (b) the project participants of the project activity 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 EU ETS pursuant to Article 25 of the Directive;
  - (c) participation in the proposed project activity is consistent with Ireland's obligations under Article 11b(5) of the Directive;

(d) in accordance with Article 11b(6) of the Directive, relevant international criteria and guidelines will be respected during the development of hydroelectric power production project activities with a generating capacity exceeding 20 MW.

(6) An application under paragraph (2) may be withdrawn at any time before it is determined.

(7) The Agency shall not issue an approval in respect of a proposed project activity where certified emissions reduction units or emission reduction units are generated from a nuclear facility.

*Power of the Agency to Request Further Information*

49. (1) The Agency may, in the case of an application under Regulation 48(2), request the applicant to provide further information on the proposed project activity.

(2) A request for further information under paragraph (1) shall be made in writing and shall state the reason for the request and the time within which the further information is to be provided.

*Fees for Letters of Approval*

50. (1) Each application for approval under Regulation 48 shall be accompanied by a fee of €1 for every 100 certified emission reduction units or emissions reduction units anticipated to accrue from the proposed project activity, subject to a minimum fee of €500 and a maximum fee of €5,000 per application.

(2) An application in respect of which the full fee has not been paid may, after the Agency giving notice in writing to the applicant and allowing a reasonable period for a response, be deemed invalid by the Agency and returned to the applicant together with any part of the fee paid.

(3) Where an application is withdrawn in accordance with Regulation 48(6), the Agency may, at its discretion, refund all or part of the application fee.

(4) The Agency may require any information included in an application, or further information submitted pursuant to a request from the Agency, to be independently verified to enable it to properly assess the application. A requirement under this provision may include a requirement for verification to be provided by a person designated by the Agency and for the applicant to defray or contribute towards the cost of any such verification.

(5) Notwithstanding any other provision of these Regulations, the Agency shall have an absolute discretion to refund or waive all or any part of the fee payable in respect of a particular application where it is satisfied that the payment in full of the fee would not be just and reasonable in the particular circumstances of the application or the proposed project activity.

*Revocation*

51. (1) The following are revoked-

- (a) the European Communities (Greenhouse Gas Emissions Trading) Regulations 2012 (S.I. No. 490 of 2012),
- (b) the European Union (Greenhouse Gas Emissions Trading)(Amendment) Regulations 2020 (S.I. No. 755 of 2020).



GIVEN under my Official Seal,  
19 September, 2024.

EAMON RYAN,  
Minister for the Environment,  
Climate and Communications.

## SCHEDULE 1

Categories of Activities

1. Installations or parts of installations used for research, development and testing of new products and processes are not covered by this Directive. Installations where during the preceding relevant five-year period referred to in Article 11(1), second subparagraph, emissions from the combustion of biomass that complies with the criteria set out pursuant to Article 14 contribute on average to more than 95 % of the total average greenhouse gas emissions are not covered by this Directive.';

2. The thresholds values given below generally refer to production capacities or outputs. Where several activities falling under the same category are carried out in the same installation, the capacities of such activities are added together.

3. When the total rated thermal input of an installation is calculated in order to decide upon its inclusion in the EU ETS, the rated thermal inputs of all technical units which are part of it, in which fuels are combusted within the installation, shall be added together. Those units may include all types of boilers, burners, turbines, heaters, furnaces, incinerators, calciners, kilns, ovens, dryers, engines, fuel cells, chemical looping combustion units, flares, and thermal or catalytic post-combustion units. Units with a rated thermal input under 3 MW shall not be taken into account for the purposes of this calculation.

4. If a unit serves an activity for which the threshold is not expressed as total rated thermal input, the threshold of this activity shall take precedence for the decision about the inclusion in the EU ETS.

5. When the capacity threshold of any activity in this Schedule is found to be exceeded in an installation, all units in which fuels are combusted, other than units for the incineration of hazardous or municipal waste, shall be included in the greenhouse gas emission permit.

6. From 1 January 2012 all flights which arrive at or depart from an aerodrome situated in the territory of a Member State to which the Treaty applies shall be included.

7. Where an installation that is included within the scope of the EU ETS due to the operation of combustion units with a total rated thermal input exceeding 20 MW changes its production processes to reduce its greenhouse gas emissions and no longer meets that threshold, the Agency shall provide the operator with the options of remaining within the scope of the EU ETS until the end of the current and next five- year period referred to in Article 11(1) of the directive, second subparagraph, following the change to its production

processes. The operator of that installation may decide that the installation is to remain within the scope of the EU ETS until the end of the current five-year period only or also of the next five-year period, following the change to its production processes. The Agency shall notify the Commission of changes compared to the list submitted to the Commission pursuant to Article 11(1) of the Directive.

<b>Activities</b>	<b>Greenhouse gases</b>
Combustion of fuels in installations with a total rated thermal input exceeding 20 MW (except in installations for the incineration of hazardous or municipal waste)  From 1 January 2024, combustion of fuels in installations for the incineration of municipal waste with a total rated thermal input exceeding 20 MW, for the purposes of Articles 14 and 15 of the Directive.	Carbon dioxide
Refining of oil, where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production of coke	Carbon dioxide
Metal ore (including sulphide ore) roasting or sintering, including pelletisation	Carbon dioxide
Production of iron or steel (primary or secondary fusion) including continuous casting, with a capacity exceeding 2.5 tonnes per hour	Carbon dioxide
Production or processing of ferrous metals (including ferro-alloys) where combustion units with a total rated thermal input exceeding 20 MW are operated. Processing includes, inter alia, rolling mills, re-heaters, annealing furnaces, smelters, foundries, coating and pickling	Carbon dioxide
Production of primary aluminium or alumina	Carbon dioxide and perfluorocarbons
Production of secondary aluminium where combustion units with a total rated thermal input exceeding 20 MW are operated	Carbon dioxide
Production or processing of non-ferrous metals, including production of alloys, refining, foundry casting, etc., where combustion units with a total rated thermal input (including fuels used as reducing agents) exceeding 20 MW are operated	Carbon dioxide
Production of cement clinker in rotary kilns with a production capacity exceeding 500 tonnes per day or in other furnaces with a	Carbon dioxide

<b>Activities</b>	<b>Greenhouse gases</b>
production capacity exceeding 50 tonnes per day	
Production of lime or calcination of dolomite or magnesite in rotary kilns or in other furnaces with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Manufacture of glass including glass fibre with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Manufacture of ceramic products by firing, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain, with a production capacity exceeding 75 tonnes per day	Carbon dioxide
Manufacture of mineral wool insulation material using glass, rock or slag with a melting capacity exceeding 20 tonnes per day	Carbon dioxide
Drying or calcination of gypsum or production of plaster boards and other gypsum products, with a production capacity of calcined gypsum or dried secondary gypsum exceeding a total of 20 tonnes per day	Carbon dioxide
Production of pulp from timber or other fibrous materials	Carbon dioxide
Production of paper or cardboard with a production capacity exceeding 20 tonnes per day	Carbon dioxide
Production of carbon black involving the carbonisation of organic substances such as oils, tars, cracker and distillation residues with a production capacity exceeding 50 tonnes per day	Carbon dioxide
Production of nitric acid	Carbon dioxide and nitrous oxide
Production of adipic acid	Carbon dioxide and nitrous oxide
Production of glyoxal and glyoxylic acid	Carbon dioxide and nitrous oxide
Production of ammonia	Carbon dioxide
Production of bulk organic chemicals by cracking, Carbon dioxide reforming, partial or full oxidation or by similar processes, with a production capacity exceeding 100 tonnes per day	Carbon dioxide

<b>Activities</b>	<b>Greenhouse gases</b>
Production of hydrogen (H <sub>2</sub> ) and synthesis gas with a production capacity exceeding 5 tonnes per day	Carbon dioxide
Production of soda ash (Na <sub>2</sub> CO <sub>3</sub> ) and sodium bicarbonate (NaHCO <sub>3</sub> )	Carbon dioxide
Capture of greenhouse gases from installations covered by these Regulations for the purpose of transport and geological storage in a storage site permitted under Directive 2009/31/EC <sup>17</sup>	Carbon dioxide
Transport of greenhouse gases for geological storage in a storage site permitted under Directive 2009/31/EC <sup>17</sup> , with the exclusion of those emissions covered by another activity under this Directive'	Carbon dioxide
Geological storage of greenhouse gases in a storage site permitted under Directive 2009/31/EC <sup>17</sup>	Carbon dioxide
<p>‘Maritime transport</p> <p>Maritime transport activities covered by Regulation (EU) 2015/757<sup>22</sup> with the exception of the maritime transport activities covered by Article 2(1a) and, until 31 December 2026, Article 2(1b) of that Regulation</p>	<p>Carbon dioxide</p> <p>From 1 January 2026, methane and nitrous oxide’</p>
<p>Aviation</p> <p>Flights which depart from or arrive in an aerodrome situated in the territory of a Member State to which the Treaty applies.</p> <p>The detailed interpretation of these aviation activities, including the exemptions, is set out in the Commission's Interpretation of Aviation Activities.</p> <p>This activity shall not include:</p> <p>(a) flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a country other than a Member State, where this is substantiated by an appropriate status indicator in the flight plan;</p>	Carbon dioxide

<b>Activities</b>	<b>Greenhouse gases</b>
<p>(b) military flights performed by military aircraft and customs and police flights;</p> <p>(c) flights related to search and rescue, fire-fighting flights, humanitarian flights and emergency medical service flights authorised by the appropriate competent authority; (d) any flights performed exclusively under visual flight rules as defined in Annex 2 to the Chicago Convention;</p> <p>(e) flights terminating at the aerodrome from which the aircraft has taken off and during which no intermediate landing has been made;</p> <p>(f) training flights performed exclusively for the purpose of obtaining a licence, or a rating in the case of cockpit flight crew where this is substantiated by an appropriate remark in the flight plan provided that the flight does not serve for the transport of passengers and/or cargo or for the positioning or ferrying of the aircraft;</p> <p>(g) flights performed exclusively for the purpose of scientific research or for the purpose of checking, testing or certifying aircraft or equipment whether airborne or ground-based;</p> <p>(h) flights performed by aircraft with a certified maximum take-off mass of less than 5,700 kg;</p> <p>(i) flights performed in the framework of public service obligations imposed in accordance with Regulation (EEC) No 2408/9218 on routes within outermost regions, as specified in Article 299(2) of the Treaty, or on routes where the capacity offered does not exceed 50,000 seats per year; and</p> <p>(j) flights which, but for this point, would fall within this activity, performed by a commercial air transport operator operating either:</p> <ul style="list-style-type: none"> <li>— fewer than 243 flights per period for three consecutive four-month periods, or</li> </ul>	

<b>Activities</b>	<b>Greenhouse gases</b>
<p>— flights with total annual emissions lower than 10,000 tonnes per year.</p> <p>Flights performed exclusively for the transport, on official mission, of a reigning Monarch and his immediate family, Heads of State, Heads of Government and Government Ministers, of a Member State may not be excluded under this point;</p> <p>(k) from 1 January 2013 to 31 December 2030, flights which, but for this point, would fall within this activity, performed by a non-commercial aircraft operator operating flights with total annual emissions lower than 1 000 tonnes per year (including emissions from flights referred to in points (l) and (m));</p> <p>(l) flights from aerodromes situated in Switzerland to aerodromes situated in the EEA;</p> <p>(m) flights from aerodromes situated in the United Kingdom to aerodromes situated in the EEA.</p>	

SCHEDULE 2

Greenhouse Gases

Carbon dioxide (CO<sub>2</sub>)

Methane (CH<sub>4</sub>)

Nitrous Oxide (N<sub>2</sub>O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Sulphur Hexafluoride (SF<sub>6</sub>)

## SCHEDULE 3

### Principles for Monitoring and Reporting

#### **Monitoring and reporting of emissions from stationary installations**

This Schedule shall be construed in conjunction with the Commission's Monitoring and Reporting Guidelines up to 31 December 2012 and in accordance with the Commission's Monitoring and Reporting Regulation from 1 January 2013.

#### **Monitoring of carbon dioxide emissions**

Emissions shall be monitored either by calculation or on the basis of measurement.

#### **Calculation**

Calculations of emissions shall be performed using the formula:

$$\text{Activity data} \times \text{Emission factor} \times \text{Oxidation factor}$$

Activity data (fuel used, production rate, etc.) shall be monitored on the basis of supply data or measurement.

Emission factors accepted or approved by the Agency shall be used. Activity specific emission factors are acceptable for all fuels. Default factors are acceptable for all fuels except non-commercial ones (waste fuels such as tyres and industrial process gases). Seam-specific defaults for coal, and EU-specific or producer country-specific defaults for natural gas shall be further elaborated. IPCC default values are acceptable for refinery products. The emission factor for biomass shall be zero.

If the emission factor does not take account of the fact that some of the carbon is not oxidised, then an additional oxidation factor shall be used. If activity specific emission factors have been calculated and already take oxidation into account, then an oxidation factor need not be applied.

Default oxidation factors developed by the InterGovernmental Panel on Climate Change shall be used, unless the operator can demonstrate that activity specific factors are more accurate.

A separate calculation shall be made for each activity, installation and for each fuel.

#### **Measurement**

Measurement of emissions shall use standardised or accepted methods, and shall be corroborated by a supporting calculation of emissions.

### **Monitoring of emissions of other greenhouse gases**

Standardised or accepted methods shall be used, developed by the Commission in collaboration with all relevant stakeholders and adopted in accordance with the procedure referred to in Article 23(3) of the Directive.

### **Reporting of emissions**

Each operator shall include the following information in the report for an installation:

A. Data identifying the installation, including:—

- name of the installation;
- its address, including postcode where applicable, and country;
- type and number of activities specified in Schedules 1 and 5 carried out in the installation;
- address, telephone, fax and email details for a contact person; and
- name of the owner of the installation, and of any parent company.

B. For each activity specified in Schedules 1 and 5 carried out on the site for which emissions are calculated:—

- activity data;
- emission factors;
- oxidation factors;
- total emissions; and
- uncertainty.

C. For each activity specified in Schedules 1 and 5 carried out on the site for which emissions are measured:—

- total emissions;
- information on the reliability of measurement methods; and
- uncertainty.

D. For emissions for combustion, the report shall also include the oxidation factor, unless oxidation has already been taken into account in the development of an activity-specific emission factor.

### **Monitoring and reporting of emissions corresponding to the activity referred to in Schedule 5**

Monitoring of emissions

Emissions shall be monitored by calculation.

## Calculation

Emissions shall be calculated using the following formula:

Fuel released for consumption × emission factor

Fuel released for consumption shall include the quantity of fuel released for consumption by the regulated entity.

Default IPCC emission factors, taken from the 2006 IPCC Inventory Guidelines or subsequent updates of these Guidelines, shall be used unless fuel-specific emission factors identified by independent accredited laboratories using accepted analytical methods are more accurate.

A separate calculation shall be made for each regulated entity, and for each fuel.

## Reporting of emissions

Each regulated entity shall include the following information in its report:

A. Data identifying the regulated entity, including:

- name of the regulated entity;
- its address, including postcode and country;
- type of the fuels it releases for consumption and its activities through which it releases the fuels for consumption, including the technology used;
- address, telephone, fax and email details for a contact person; and
- name of the owner of the regulated entity, and of any parent company.

B. For each type of fuel released for consumption and which is used for combustion in the sectors defined in Schedule 5, for which emissions are calculated:

- quantity of fuel released for consumption;
- emission factors;
- total emissions;
- end use(s) of the fuel released for consumption; and
- uncertainty.

Member States shall take measures to coordinate reporting requirements with any existing reporting requirements in order to minimise the reporting burden on businesses.

## SCHEDULE 4

### Criteria for Verification

#### **Verification of emissions from stationary installations**

##### **General Principles**

1. Emissions from each activity listed in Schedules 1 and 6 shall be subject to verification.

2. The verification process shall include consideration of the report submitted pursuant to Regulation 15(2) and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, in particular:

- (a) the reported activity data and related measurements and calculations;
- (b) the choice and the employment of emission factors;
- (c) the calculations leading to the determination of the overall emissions; and
- (d) if measurement is used, the appropriateness of the choice and the employment of measuring methods.

3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the operator to show that:-

- (a) the reported data is free of inconsistencies;
- (b) the collection of the data has been carried out in accordance with the applicable scientific standards; and
- (c) the relevant records of the installation are complete and consistent.

4. The verifier shall be given access to all sites and information in relation to the subject of the verification.

5. The verifier shall take into account whether the installation is registered under the Union eco-management and audit scheme provided for in Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by organisations in a Union eco-management and audit scheme (EMAS)22.

## **Methodology**

### **Strategic analysis**

6. The verification shall be based on a strategic analysis of all the activities carried out in the installation. This requires the verifier to have an overview of all the activities and their significance for emissions.

### **Process analysis**

7. The verification of the information submitted shall, where appropriate, be carried out on the site of the installation. The verifier shall use spot-checks to determine the reliability of the reported data and information.

### **Risk analysis**

8. The verifier shall submit all the sources of emissions in the installation to an evaluation with regard to the reliability of the data of each source contributing to the overall emissions of the installation.

9. On the basis of this analysis the verifier shall explicitly identify those sources with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the choice of the emission factors and the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those sources with a high risk of error and the above mentioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the operator with a view to minimising the degree of uncertainty.

### **Report**

11. The verifier shall prepare a report on the validation process stating whether the report pursuant to Regulation 15(2) is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to Regulation 15(2) is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially mis-stated.

### **Minimum competency requirements for the verifier**

12. The verifier shall be independent of the operator, carry out his activities in a sound and objective professional manner, and understand:

- (a) the provisions of these Regulations, the Commission's Monitoring and Reporting Regulation, the Commission's Verification and Accreditation Regulation and the Directive, as

well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1);

- (b) the legislative, regulatory and administrative requirements relevant to the activities being verified; and
- (c) the generation of all information related to each source of emissions in the installation, in particular, relating to the collection, measurement, calculation and reporting of data.

## **Verification of emissions corresponding to the activity referred to in Chapter II of these Regulations**

### **General Principles**

1. Emissions corresponding to the activity referred to in Chapter IVa of the Directive shall be subject to verification.

2. The verification process shall include consideration of the report pursuant to Article 14(3) and of monitoring during the preceding year. It shall address the reliability, credibility and accuracy of monitoring systems and the reported data and information relating to emissions, and in particular:

- (a) the reported fuels released for consumption and related calculations;
- (b) the choice and the employment of emission factors;
- (c) the calculations leading to the determination of the overall emissions.

3. Reported emissions may only be validated if reliable and credible data and information allow the emissions to be determined with a high degree of certainty. A high degree of certainty requires the regulated entity to show that:

- (a) the reported data is free of inconsistencies;
- (b) the collection of the data has been carried out in accordance with the applicable scientific standards; and
- (c) the relevant records of the regulated entity are complete and consistent.

4. The verifier shall be given access to all sites and information in relation to the subject of the verification.

5. The verifier shall take into account whether the regulated entity is registered under the Union Eco-Management and Audit Scheme (EMAS).

## Methodology

### **Strategic analysis**

6. The verification shall be based on a strategic analysis of all the quantities of fuels released for consumption by the regulated entity. This requires the verifier to have an overview of all the activities through which the regulated entity is releasing the fuels for consumption and their significance for emissions.

### **Process analysis**

7. The verification of the information submitted shall, where appropriate, be carried out on the site of the regulated entity. The verifier shall use spot-checks to determine the reliability of the reported data and information.

### **Risk analysis**

8. The verifier shall submit all the means through which the fuels are released for consumption by the regulated entity to an evaluation with regard to the reliability of the data on the overall emissions of the regulated entity.

9. On the basis of this analysis the verifier shall explicitly identify any element with a high risk of error and other aspects of the monitoring and reporting procedure which are likely to contribute to errors in the determination of the overall emissions. This especially involves the calculations necessary to determine the level of the emissions from individual sources. Particular attention shall be given to those elements with a high risk of error and the abovementioned aspects of the monitoring procedure.

10. The verifier shall take into consideration any effective risk control methods applied by the regulated entity with a view to minimising the degree of uncertainty.

### **Report**

11. The verifier shall prepare a report on the validation process stating whether the report pursuant to Article 14(3) is satisfactory. This report shall specify all issues relevant to the work carried out. A statement that the report pursuant to Article 14(3) is satisfactory may be made if, in the opinion of the verifier, the total emissions are not materially misstated.

### **Minimum competency requirement for the verifier**

12. The verifier shall be independent of the regulated entity, carry out his or her activities in a sound and objective professional manner, and understand:

- (a) the provisions of this Directive, as well as relevant standards and guidance adopted by the Commission pursuant to Article 14(1);

- (b) the legislative, regulatory, and administrative requirements relevant to the activities being verified; and
- (c) the generation of all information related to all the means through which the fuels are released for consumption by the regulated entity, in particular, relating to the collection, measurement, calculation and reporting of data.”

## SCHEDULE 5

### BUILDINGS, ROAD TRANSPORT AND ADDITIONAL SECTORS

#### Categories of Activities

<b>Activity</b>	<b>Greenhouse gases</b>
<p>Release for consumption of fuels which are used for combustion in the sectors of buildings and road transport and additional sectors.</p> <p>This activity shall not include:</p> <ul style="list-style-type: none"> <li>(a) the release for consumption of fuels used in the activities set out in Annex I to Directive 2003/87/EC, except if used for combustion in the activities of transport of greenhouse gases for geological storage (activity row twenty seven) or if used for combustion in installations excluded under Article 27a of the Directive;</li> <li>(b) the release for consumption of fuels for which the emission factor is zero;</li> <li>(c) the release for consumption of hazardous or municipal waste used as fuel.</li> </ul> <p>The sectors of buildings and road transport shall correspond to the following sources of emissions, defined in 2006 IPCC Guidelines for National Greenhouse Gas Inventories, with the necessary modifications to those definitions as follows:</p> <ul style="list-style-type: none"> <li>(a) Combined Heat and Power Generation (CHP) (source category code 1A1a ii) and Heat Plants (source category code 1A1a iii), insofar as they produce heat for categories under (c) and (d) of this point, either directly or through district heating networks;</li> <li>(b) Road Transportation (source category code 1A3b), excluding the use of agricultural vehicles on paved roads;</li> <li>(c) Commercial / Institutional (source category code 1A4a);</li> <li>(d) Residential (source category code 1A4b).</li> </ul> <p>Additional sectors shall correspond to the following sources of emissions, defined in 2006 IPCC Guidelines for National Greenhouse Gas Inventories:</p> <ul style="list-style-type: none"> <li>(a) Energy industries (source category code 1A1), excluding the categories defined under paragraph 2 point (a) of this Schedule;</li> <li>(b) Manufacturing Industries and Construction (source category code 1A2).</li> </ul>	Carbon dioxide

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